

Vancouver, BC

November 21, 2011

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

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

2
3 MR. VERTLIEB: Now, Mr. Commissioner, I would like to deal with
4 a matter that's of serious concern. On November
5 14, we received a copy of the Evans report from
6 Deputy Chief Constable Evans, and you have heard
7 about her, of course, and that report was sent out
8 to the lawyers and some of their legal assistants
9 on the 14th of November.
10
11

12 On the 18th of November, an e-mail was sent
13 out to all the recipients of the Evans report,
14 sent by Ms. McKeechie, on behalf of the executive
15 director of your inquiry.

16 It has come to my attention that a media
17 outlet is in possession of a copy of DC
18 Evans' report that was disclosed to
19 participants on Monday. It appears that the
20 document they have obtained may have been a
21 result of a breach in undertaking to the
22 commission by a participant. The report has
23 not yet been marked as an exhibit and,
24 therefore, is not a public document. As this
25 appears to be a serious breach of an

1 undertaking, the party responsible is asked
2 to retrieve the copy immediately and to
3 contact senior commission counsel, Art
4 Vertlieb, immediately about the incident.
5 Kind regards, John Boddie, executive
6 director.

7 That went out Friday at 12:59 p.m. No one
8 contacted me. I spoke with Mr. Boddie on Sunday,
9 and on Sunday, at 11:22, a further e-mail was sent
10 out to all counsel and their appropriate
11 assistants. It's from John Boddie and it says,
12 under "importance":

13 Hi. The following message is from Art
14 Vertlieb. On Friday, I asked that any
15 counsel that had information on the
16 disclosure of the Evans report contact me to
17 discuss this matter. As of this moment, I
18 have not heard from anyone. As a result of
19 this, I wish to advise all counsel that the
20 issue of the disclosure of the Evans report
21 will be the first item that will be dealt
22 with tomorrow morning when the hearing is
23 reconvened. All counsel can be expected to
24 be asked to speak to this issue. I will
25 remain available today on my cell to discuss

1 this. [Signed under my name].

2 Now, just so you understand, and I think this
3 has been mentioned on other occasions, as part of
4 the process of your inquiry and, indeed, it's a
5 normal process in inquiries, counsel would sign an
6 undertaking agreeing to maintain confidentiality
7 of documents until the documents are marked as an
8 exhibit. The undertaking to protect documents, as
9 everyone in this room knows, is an undertaking
10 that applies to all counsel in this province on
11 any litigation matter. And so, as we all know in
12 a normal civil lawsuit, parties cannot be going to
13 the media with documents. Because of the
14 undertaking, it's implicit, but in an inquiry,
15 there is actually express undertakings signed, and
16 all of the lawyers before you have and signed the
17 undertaking. The undertaking, amongst other
18 things, says that:

19 I will not discuss or disclose, including
20 providing copies of confidential material to
21 any person [and a number of exceptions are
22 listed].

23 And it also says that if someone wants to
24 provide copies in any form, to any person, even
25 their own client, the lawyer would need approval

1 in a form provided by the commission. So, the
2 point I make is that the lawyer could not even
3 give copies of documents to her or his client
4 without permission of the commission. And I just
5 want to tell you that all the lawyers have signed
6 that undertaking that would relate to all of the
7 documents.

8 Needless to say, it's a matter of great
9 concern because so much of what we do in our
10 profession is based on an atmosphere of trust, and
11 a breakdown of trust is a very serious and
12 distressing and disappointing matter. We have a
13 long way to go in these proceedings, and if we
14 lose trust in the room, it's obviously a great
15 problem. It's, it's embarrassing to our
16 profession. It's embarrassing to the process.
17 And I want to bring this to your attention because
18 we do view it as a very serious breach. No one
19 has provided any indication of involvement in this
20 breach, so I can't tell you any more other than
21 what I wanted to outline this morning.

22 Those are my comments about that subject
23 and --

24 THE COMMISSIONER: Well, I, I am taken aback by what you have
25 said. I find it extremely upsetting,

1 disappointing to say the least, that an ethical
2 lapse on the part of someone has led to the
3 leaking of a document. Any wilful leaking of a
4 document, in contravention of the, of an
5 undertaking, of course, is reprehensible and I, I
6 just wonder how someone can be that ethically
7 challenged that they find it necessary to leak
8 documents in contravention of, of the undertaking
9 and agreement. It's an affront to, not only the
10 inquiry, but to all counsel and all participants
11 in the, in the inquiry. A lot of what we do here
12 and in the profession is based on trust, as you
13 say, and if someone is going to breach that trust,
14 then I, I, I just find it, I find it, I just find
15 it upsetting, and I'm disappointed that someone
16 would see fit to do that.

17 Setting the ethical considerations aside for
18 a minute, I don't, I don't know why people find
19 that they can somehow curry favour with the media
20 by leaking them documents as though that will
21 garner them some respect or some inside track, or
22 whatever reason people have for leaking these
23 things, but it's, it's upsetting. It's a distinct
24 lack of professionalism. I don't know if I can
25 say anything more. Does anybody have any

1 comments? No? Okay.

2 Mr. Vertlieb, any more comments?

3 MR. VERTLIEB: No.

4 THE COMMISSIONER: All right. Okay.

5 MR. VERTLIEB: Thank you. Perhaps Deputy Chief Constable
6 LePard can retake the witness stand.

7 THE COMMISSIONER: All right.

8 **DOUGLAS A. LEPARD, resumed:**

9 THE REGISTRAR: Deputy Chief, may I remind you you are still
10 under oath.

11 THE WITNESS: Thank you.

12 **CONTINUED EXAMINATION IN CHIEF BY MR. VERTLIEB:**

13 Q Now, Deputy, what I would like to do today, to
14 conclude our examination in chief of you, is to
15 cover the Williams report that was prepared, and
16 then to cover the Evans report that was recently
17 prepared, and I understand you have had a chance
18 to review. What I want to do with Williams is ask
19 you for your opinion about some of the issues that
20 he touches upon, and with the Evans report, I want
21 to give you an opportunity to deal with some of
22 the questions that emerge in there. Please keep
23 in mind that I am not going to be extensive with
24 all the questions that could be asked. There are
25 other lawyers here and they will, of course, deal

1 with questions that they think need to be asked
2 but I want to just deal with some of the issues
3 that arise. And so that's what we expect to do
4 today and then I will be concluding with you.
5 Okay, Deputy?

6 A Thank you.

7 Q You're welcome.

8 First, just so we do this, I did want to deal
9 with the Evans report. The plan had been to mark
10 it as an exhibit. I understand that Mr. Giles
11 does have three copies of the Evans report. The
12 only objection or issue around it that I have
13 heard from was from my learned friend, Mr. Ward,
14 who sent an e-mail in October saying:

15 We expect to object to the tendering of any
16 report that purports to be for an expert
17 opinion.

18 I have heard nothing of any other --
19 objection other than that comment, and so I'm not
20 sure whether Mr. Ward still wishes to object to
21 the tendering of that report.

22 MR. WARD: I do. I object to it being tendered as an expert
23 opinion and I would suggest that it be marked at
24 this point as an exhibit for identification like
25 the other documents that have been so marked, and

1 we deal with the objection when the witness comes.
2 I will be objecting to her qualifications and also
3 to any attempt to provide this report as expert
4 opinion evidence from that witness.

5 THE COMMISSIONER: Yes.

6 MR. GRATL: Mr. Commissioner, Jason Gratl for --

7 THE COMMISSIONER: Yes.

8 MR. GRATL: -- for Downtown Eastside communities. I would also
9 object to the report on the footing that it
10 contains a number of conclusions that ought not to
11 substitute for your considered conclusions once
12 all of the evidence is in, and that is to say, the
13 ultimate issue rule I would think applies to the
14 Evans report, as well as the Williams and LePard
15 reports.

16 THE COMMISSIONER: Sorry?

17 MR. GRATL: The ultimate issue rule, --

18 THE COMMISSIONER: Yes.

19 MR. GRATL: -- that no witness ought to -- that the opinion of
20 no witness ought to substitute for the decision-
21 making power of the, of the ultimate decision --

22 THE COMMISSIONER: All right. Well, I will deal with that in a
23 minute, in due course. In the meantime, what do
24 you say to counsel's position now, that he intends
25 to put parts of that report to the deputy chief in

1 order for him to comment on?

2 MR. GRATL: I don't, I don't even object to it being marked in,
3 in evidence. It seems as though it's admissible
4 for -- to assist along with the narrative.

5 THE COMMISSIONER: All right.

6 MR. GRATL: Of course, there are many hearsay elements or
7 aspects to that report, and where possible, we
8 should have direct evidence from a witness. But
9 it seems to be expedient to mark it, to mark it
10 into evidence. I would mark it as an exhibit --

11 THE COMMISSIONER: All right.

12 MR. GRATL: -- to assist along with the narrative.

13 THE COMMISSIONER: All right. Thank you. Anybody else? Mr.
14 Roberts?

15 MR. ROBERTS: Yes, Darrell Roberts on behalf of the team here
16 for First Nations women.

17 I, I take a position quite opposite to the
18 one expressed by Mr. Ward. I believe it should be
19 marked as an exhibit. I do not believe that the
20 rules that govern the court proceeding apply here.

21 Mr. Commissioner, uhm, this is obviously a
22 report prepared by someone with expertise. The
23 failure to examine on that expertise is not
24 sufficient, in my submission, to not have it
25 marked, and for purposes of the, of this inquiry,

1 I, I think it must be marked.

2 THE COMMISSIONER: All right. Thank you. Any other comments?

3 MR. SKWAROK: Yes, Skwarok for Dr. Rossmo.

4 THE REGISTRAR: Microphone please.

5 MR. SKWAROK: Sorry?

6 MR. GRATL: Microphone.

7 MR. SKWAROK: Skwarok for Dr. Rossmo.

8 THE COMMISSIONER: Yes.

9 MR. SKWAROK: In my respectful submission, any argument based
10 on hearsay is misguided. Hearsay is clearly
11 admissible before this commission and this
12 commissioner is perfectly capable and competent
13 and accustomed to dealing with weight matters.

14 With respect to any suggestion about LePard's
15 report being admissible or not, uhm, counsel have
16 already agreed that this document should be an
17 exhibit, and frankly, going backwards in time is
18 exactly that which we ought not to be doing.
19 There was a submission made about the, about
20 LePard as well. And in my respectful submission,
21 the Evans report clearly should be admissible.

22 THE COMMISSIONER: All right, thank you.

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

25 THE COMMISSIONER: Yes.

1 MS. TOBIAS: In terms of the content of the report, we have no
2 objection to it being marked as an exhibit.
3 However, there is the issue of the final editing
4 for personal information and so forth and so on,
5 and of course, this is not an RCMP document, so we
6 have not undertaken that.

7 So, I think that from Canada's point of view,
8 whether it's marked as an exhibit and goes into
9 the public domain or, or gets marked as an exhibit
10 for identification -- now, the report has been
11 leaked. So, it may be a matter of the horse being
12 out of the barn anyway.

13 However, I think this is something that needs
14 to be kept on track as we move forward. So, uhm,
15 I would simply ask if Mr., if my learned friend,
16 Mr. Vertlieb, can state for the purposes of the
17 record he is content that the report is in a form
18 where there is, there is none of what would be
19 regarded as inappropriate personal information in
20 it that would be going into the public eye at this
21 time.

22 With respect to the comments made by my other
23 friends here, uhm, I agree with Mr. Roberts that
24 the commission is entitled to take into account
25 forms of evidence that are not necessarily

1 admissible in a normal trial setting. Uhm,
2 however, since this is a departure, and you have a
3 lot of flexibility in how you approach this, it
4 would be of assistance to counsel, and certainly
5 to, to ourselves, but I think to, to everyone, if,
6 given that DC Evans' mandate was so broad that it
7 very closely approximates that of the commission,
8 if there was some direction from yourself or
9 perhaps from my learned friend, Mr. Vertlieb, as
10 the approach that the commission intends to take
11 with the report. I mean, I'm assuming, and I am
12 quite certain that you are not just going to adopt
13 someone's opinion without scrutiny.

14 THE COMMISSIONER: No.

15 MS. TOBIAS: But it does affect the way in which we approach it
16 and cross-examine on it.

17 THE COMMISSIONER: All right. Thank you. Anything?

18 MR. HERN: I don't object to it being marked as an exhibit.

19 But further to Ms. Tobias's comments, in terms of
20 confidential information, it looked like Deputy
21 Chief Evans wrote it with, with that caution in
22 mind, not to disclose third party information. I
23 haven't reviewed all of the appendices, so that
24 might be an issue, but the report itself looked
25 like it was sort of cleaned of that information.

1 In terms of marking it as an expert report,
2 it seems to me that qualifications could be
3 challenged and used as a, as a means of reducing
4 the weight of Deputy Chief Evans's report if Mr.
5 Ward wishes to pursue that.

6 But from the way we've proceeded and because
7 some of the unique evidence that's been introduced
8 here with, with respect to reviews being done by
9 Deputy Chief LePard and Williams, the term
10 "expert" doesn't -- isn't such a term of art in
11 this particular proceeding, and it seems to me
12 that you are well capable of dealing with that on,
13 on a weight basis.

14 THE COMMISSIONER: Well, thank you. I will, you know, I will
15 give counsel an opportunity to argue about this,
16 if they so wish, but I can tell you I am inclined
17 to, to have the report marked at this stage, and
18 if counsel can convince me that I am in error,
19 then I will, then I will order accordingly.

20 But I agree with Mr. Roberts and, and all
21 other counsel. There is -- first of all, it's,
22 it's -- that's -- it's an old argument that's
23 always used that you're, by adopting an expert's
24 report, that somehow you are offending the
25 ultimate issue rule. That's an argument that's

1 always raised in cases where objection is taken to
2 the filing and the admissibility of an expert's
3 opinion.

4 So, so I won't mark it at this stage. I'll
5 give counsel an opportunity to argue that. But
6 it's difficult for me at this stage to conclude
7 that someone, with the background of Deputy Chief
8 Evans, is not an expert and why she cannot comment
9 on the investigation.

10 Now, you may say that her expertise is
11 faulty, that I ought not to accept it, but that's
12 a matter that goes to weight. And it's -- in any
13 event, I won't make any ruling. But I can tell
14 you that that's the, that's the way I'm leaning
15 after listening to counsel, and I'll hear argument
16 and I will expect to hear authorities as to why
17 you think her opinion can't be accepted for what
18 it is, and how -- you can tell me how that should
19 be differentiated from weight, weight as to
20 admissibility, and, and I'll hear those arguments
21 from you. All right? In the meantime, I think
22 the deputy chief is quite competent to, to agree
23 with or disagree with her findings, so.

24 You know, it's not, it's not any great
25 mystery here. You know, we've got -- we have a

1 deputy chief from the Peel Regional Police Force
2 who has apparently examined some of the evidence
3 and has talked to some of the witnesses and has
4 come to conclusions. This is exactly what this
5 expert witness has done. And we accept those,
6 those witnesses as experts. There is nothing to
7 say that a trier of fact, a judge or a jury, or a
8 commissioner, is bound to accept those opinions
9 that are given. That's the law.

10 And, and as well, we must take into
11 consideration here that this is an inquiry, as
12 opposed to a trial, and the real issue to decide
13 here is, is there any prejudice to any party
14 affected by the admissibility of those opinions,
15 and that's what you need to look at. And if you
16 are going to challenge the admissibility of, of
17 her opinions, maybe, at the end of the day, you
18 will be able to tell me why I ought to disregard
19 it. If I look at her report, it seems to me quite
20 sympathetic to your clients. So, you obviously
21 know what you're doing, and maybe you are going to
22 ask me to disregard her evidence at the end of the
23 day. And, and again, given the fact that she
24 appears to be, at first blush, critical of the
25 police, and I don't quite understand why you

1 wouldn't want the report in, but, in any event,
2 you can argue that on another day.

3 MR. GRATL: I can say, Mr. Commissioner, that I obviously
4 recognize that DC Evans is an experienced police
5 officer --

6 THE COMMISSIONER: Yes.

7 MR. GRATL: -- and that her evidence will carry weight perhaps
8 in some areas. She provides a great deal of
9 valuable and useful information in her report.

10 THE COMMISSIONER: Yes.

11 MR. GRATL: But what, from my point of view, what we don't want
12 to see is we don't see the -- we don't want to see
13 the commission turn into a process whereby we take
14 Inspector LePard's report, the Williams report and
15 the Evans reports, and, and just sort of combine
16 them into one Oppal report. We would like to see
17 a full --

18 THE COMMISSIONER: I have been around long enough not to do
19 that.

20 MR. GRATL: I appreciate that. Thank you.

21 THE COMMISSIONER: Okay.

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

23 THE COMMISSIONER: Yes, okay.

24 MR. GRATL: So, my objections will be, will be tailored at the
25 end of the day.

1 THE COMMISSIONER: Sure, all right.

2 MR. GRATL: Thank you.

3 THE COMMISSIONER: I understand that. Look, at the end of the
4 day, we have to listen to all the evidence, the
5 evidence of the families that have come here, the
6 people from, from -- that you intend to call, the
7 police will no doubt be testifying, and the expert
8 opinions of various other people and, and your
9 closing arguments as to how that evidence ought to
10 be treated. That's what will -- and what
11 recommendations you have to make at the end of the
12 day. That's what will constitute the final
13 report, not what the various experts have said. I
14 mean, if we were going to rely on what the experts
15 have said, we might as well not be here. We can
16 -- they could just file their reports and we can
17 all go home.

18 But that's not the purpose of this inquiry.
19 The purpose of the inquiry is to listen to the
20 people who are, who are affected, and to listen to
21 the, to the experts, and at the end of the day,
22 make some findings of fact and recommendations
23 that flow from those findings of fact. That's why
24 we're here. All right?

25 MR. VERTLIEB: Mr. Giles, what exhibit for identification is

1 the Evans report please?

2 THE REGISTRAR: The Evans report will be marked for
3 identification E.

4 MR. VERTLIEB: E, thank you.

5 Q Deputy, just dealing with the Williams report. In
6 the first binder, it's in the background, tab 22.

7 THE REGISTRAR: Binder 1? Is it binder 1?

8 MR. VERTLIEB: Yes.

9 THE REGISTRAR: I can't find it.

10 MR. VERTLIEB: Is that correct?

11 THE COMMISSIONER: Wait a minute, the binder is 1 --

12 MR. VERTLIEB: Background.

13 THE COMMISSIONER: That's the Deputy Chief LePard's report, is
14 it not?

15 MR. VERTLIEB: Volume 1.

16 THE COMMISSIONER: Aren't you dealing with the Williams report
17 now?

18 MR. VERTLIEB: Yes.

19 THE COMMISSIONER: Okay. Well, that's not -- I have the wrong
20 binder. Why don't we deal with, and I'll catch up
21 to --

22 MR. VERTLIEB: Thank you. I gave you the wrong reference.

23 It's Exhibit 2.

24 THE REGISTRAR: Exhibit 2.

25 MR. VERTLIEB: That's the report.

1 Q And Deputy, you wrote a crit -- not a criticism,
2 but a critique of the Williams report in 2010.

3 A I did.

4 Q And that is in the materials that are before you
5 and I believe that would be the tab 22, Mr.
6 Commissioner, but you don't need to look at it
7 right this moment. But I do want the deputy to
8 identify, at some point this morning, that you
9 wrote that critique about the Williams report,
10 Exhibit 2. Now, you have the Williams report in
11 front of you?

12 A I have the Williams report, but not my critique.

13 Q Yes, that's correct. And this is a report that
14 was dated November 6th, 2002.

15 A Correct.

16 Q And it was written for the attention of the Deputy
17 Commissioner, Pacific Region, and Commanding
18 Officer "E" Division by then Inspector R.J.
19 Williams, who is now Superintendent Williams, and
20 he's in Alberta?

21 A Correct.

22 Q And you understand he is scheduled to be the next
23 witness?

24 A I understood that he was going to be a witness.

25 Q So, just, I want to go through his report with

1 you. First, turn to page 4 please, the third
2 paragraph, and I think there's a date error. That
3 paragraph references a meeting with Commissioner
4 Bass, Assistant Commissioner Bass and Inspector
5 Henderson in the latter part of '97 to a meeting
6 with the Attorney General?

7 A Yes.

8 Q It's your knowledge that would be 1999; is that
9 correct?

10 A Right. That meeting took place April of 1999.

11 Q Thank you. I want to ask you to turn to page 5,
12 paragraph 5, and it starts out, the paragraph:

13 Staff Sergeant Henderson assigned then Staff
14 Sergeant Don Adam --

15 Do you see that?

16 A Yes.

17 Q -- to develop a plan of attack on the
18 difficult situation surrounding the missing
19 sex trade workers, i.e., no crime scenes,
20 gaps when the sex trade workers were actually
21 reported missing, no witnesses, --

22 Now, here's what I wanted to ask you about.

23 -- incomplete profiles on the missing women.

24 Do you know what would be meant by
25 "incomplete profiles on the missing women"?

1 A I am not really sure what he's referring to.

2 Q Is there any criticism that you have about the
3 Vancouver Police files as it related to the
4 missing women?

5 A Well, I understand that there were some problems
6 with incomplete information in the missing women
7 files from the VPD, yes. That may be what he's
8 referring to when he speaks of the word "profile".

9 Q You spoke about that earlier, and some of the
10 computer issues and data-entry issues that were
11 discussed earlier?

12 A Correct.

13 Q That would be all you could contemplate he would
14 be speaking about?

15 A Yes.

16 Q Thank you.

17 Now, I next wanted to move to the sixth
18 paragraph, and there's a comment:

19 One of the avenues explained by Staff
20 Sergeant Henderson would be to examine known
21 suspects, obtain their DNA and eliminate them
22 as serial killer suspects.

23 Do you see that?

24 A Yes.

25 Q So, the question for you is this. In the absence

1 of a crime scene, at that time, and DNA evidence
2 with respect to missing women from the Downtown
3 Eastside, can you explain how this plan would deal
4 with the problem of the missing women in
5 Vancouver?

6 A Uhm, well, it couldn't, but I don't think that
7 he's described it very well there, because I think
8 that what the strategy was, was to go through that
9 process and identify a pool of suspects that they
10 could then focus on. But you're right, that they
11 didn't have any crime scene DNA to compare it to
12 except for the known homicides in the Valley in
13 1995, which might have led to the suspect, and as
14 it turns out, it wouldn't have, because they were
15 two different killers, but that was one of the
16 theories.

17 Q Thank you. Now, go to the next page, 6 please,
18 the second paragraph, starting, "It is clear from
19 Staff Sergeant Henderson's interview." Do you see
20 that paragraph?

21 A Yes.

22 Q That sentence:

23 It is clear from his interview that, on his
24 direction, and under his guidance, because of
25 his concern, he initiated a review team,

1 which ended up becoming a task force and
2 eventually culminated in the arrest of Robert
3 William Pickton.

4 Now, the question I want to ask is, we do
5 know that there was a task force. We've heard all
6 about that. Do you agree with the statement
7 "eventually culminated in the arrest of Robert
8 William Pickton as a result of that task force"?

9 A No.

10 Q Thank you. Next, page 6, paragraph 2, the second
11 sentence:

12 Henderson relates there was an excellent
13 relationship with all municipal departments
14 in the Lower Mainland District and he
15 comments that the relationship with the VPD
16 was at best, "outstanding".

17 Do you see that statement?

18 A Yes.

19 Q Do you agree with this statement?

20 A Uhm, I partially agree in that there wasn't a
21 fractured relationship, there wasn't poor
22 relationships, but it doesn't speak to the issue
23 of whether there was good communication and
24 coordination of information, and there clearly was
25 not. So, it wasn't that there were people at odds

1 with each other or having personality conflicts,
2 uhm, generally speaking, between police agencies.
3 Certainly there was, in the investigation, in the
4 summer of 1999, there were personality conflicts.

5 Q In the fourth line, he says there was an
6 "excellent relationship". Do you see those words?

7 A Yes.

8 Q Would, in your mind, "excellent relationship"
9 include an agreement on the priority to be given
10 to the missing women investigation?

11 A Yes.

12 Q Was there such an agreement on priority?

13 A No.

14 Q Thank you. Page 6, section 4, paragraph 5, we're
15 talking about his investigational strategy. Do
16 you see that? The four-phase approach and we've
17 covered some of this when you were here before.

18 A Yes.

19 Q And you are familiar with the investigational
20 strategy?

21 A Yes.

22 Q As an experienced investigator, which of course
23 you are, was this strategy going to be a timely
24 investigative response to the missing women
25 problem in the Downtown Eastside in Vancouver?

1 A No. It was really, at that time, based on an
2 assumption that the crimes were historical and
3 that there wasn't an urgency around it and that
4 turned out not to be true. And I would argue that
5 even if the crimes were historical, they could
6 begin again at any point, that there was urgency
7 because there was an understanding that women had
8 been killed. That was the whole underlying
9 assumption of forming Evenhanded, was that there
10 was a serial killer out there and the mandate was
11 to identify him and arrest him.

12 Q So, let me ask you this question then. Given the
13 answer you have just given the commissioner, can
14 you help us understand why the Vancouver Police
15 executive would have accepted this investigational
16 strategy?

17 A I think that the same assumptions that were being
18 made in the RCMP and in Evenhanded were also being
19 made in the VPD, was my conclusion, and that it
20 was historical and so that it doesn't -- it didn't
21 raise the level of urgency that it ought to; and
22 also, that it did seem that this was one
23 reasonable strategy, but I think that it was
24 lacking, that there needed to be other strategies
25 as well to complement it.

1 Q The problem being that another strategy would be
2 needed to help deal with the ongoing danger that
3 the sex trade workers faced in Vancouver?

4 A Yes. That once it became apparent in mid-2001,
5 that this was an ongoing problem, then it demanded
6 that there be some proactive strategies. And I
7 would also argue that there really should have
8 been some complementary strategies so that all the
9 eggs weren't in one basket focusing on this
10 strategy, which I do not criticize, but I think
11 that the information clearly lent itself to a
12 suspect-focused strategy as well.

13 Q Which Evenhanded was not in the first number of
14 months?

15 A They were building towards it, and that was their
16 investigative theory, was to build a suspect pool
17 based on the strategy that you have outlined, but
18 they had also had information on suspects, many of
19 them, but there were only ever 29 to 31 suspects
20 in their priority suspect list, which is a
21 somewhat manageable number when you look at the
22 ways that suspects can be eliminated.

23 Q Let's move to page 7 please, the second paragraph,
24 starting:

25 Another area of concern expressed by Adam

1 was the fact that no members of the VPD who
2 were familiar with and working on Project
3 Amelia, VPD task force on missing women, were
4 willing to be part of the new task force.

5 Do you see that comment in there?

6 A Yes.

7 Q Do you know why that occurred?

8 A Well, I'm not sure that it was entirely true.
9 Uhm, first of all, Sergeant Field was working
10 closely with Staff Sergeant Adam in the creation
11 of Evenhanded, although she was not going to
12 become a permanent part of it. Secondly, I know
13 that there was discussion of Constable Dickson,
14 who had knowledge of the Downtown Eastside, being
15 part of it, and Evenhanded considered that. It's
16 in their notes about whether that ought to occur.
17 Uhm, in terms of Detective Constable Shenher, it's
18 certainly true, that she was burnt out and did not
19 want to be part of it. Uhm, and in terms of other
20 investigators that may have been available, I
21 believe Detective Lepine had retired by that time,
22 and Detective Chernoff, I don't know whether that
23 issue was canvassed or not, whether he would be
24 available. I just don't know.

25 Q Can we take it that, based on your evidence then,

1 you are not prepared to accept the Williams
2 statement that, "No members of the Vancouver
3 Police Department were willing to be part of the
4 new task force"?

5 A Not written the way it is.

6 Q I want to move to the fourth paragraph,
7 referencing August 29, 2001, and this is where
8 Adam is presenting a briefing report to senior
9 management of the RCMP and Vancouver Police
10 Department?

11 A Yes.

12 Q This is where he presented his four-phase
13 investigational strategy surrounding Evenhanded?
14 He made a number of -- a number of recommendations
15 were made at this briefing. You are familiar with
16 that from your work?

17 A Yes.

18 Q So, the question is, this report seems to suggest
19 that, in August, there was this briefing report.
20 December seems to be though the time when work
21 started anew in a different direction. Do I have
22 that correctly?

23 A Yes.

24 Q Is that an appropriate response time, in your
25 opinion, to an ongoing problem of missing women?

1 A Uhm, I don't want to criticize Staff Sergeant Adam
2 in this respect, because I do think that it was
3 slow. I do write about that in my report. Staff
4 Sergeant Adam stated that ongoing issues of risk
5 were the responsibility of the Vancouver Police
6 Department during that time until they got closer
7 to being fully up and running, and I think that
8 there was more that the VPD could have done in
9 being proactive to deal with those safety issues.
10 The view of management in the VPD was that they
11 were doing everything that was asked of them by
12 Project Evenhanded, who had taken over the
13 investigation, and provided resources that were
14 requested and weren't going to do something
15 independent and parallel. I disagreed with that
16 but. . .

17 Q If it was slow, what do you believe should have
18 been an appropriate response time?

19 A Well, I think that as soon as it was determined
20 and concluded that these, that women were
21 continuing to go missing, and that it was
22 occurring relatively frequently, then there were
23 proactive strategies that could have been
24 undertaken more quickly than was. So, a 12-
25 officer team was put together, the decision was

1 made in late 2001 for that. It was in place I
2 believe in January of 2002.

3 But, for example, there were things, without
4 creating a new team, that could have been done in
5 the VPD just in terms of raising awareness with
6 our patrol members and our bike squad members and
7 other members that were working in the areas,
8 that, look, we've got a problem here. Women are
9 continuing to go missing. There is a task force
10 that is operating under the assumption that women
11 are being -- they're going missing because of a
12 serial killer at work.

13 And, to me, that called out for proactive
14 work in the Downtown Eastside, to provide a higher
15 level of surveillance, I'll call it, to prevent
16 that from occurring, that the first rule of major
17 case management is to suppress the crime. And so
18 that should have been uppermost in their minds, in
19 my opinion.

20 Q Okay, page 15 please, third paragraph. The
21 paragraph reads:

22 Sergeant Connor dealt directly with senior
23 management at Coquitlam Detachment, in
24 particular, the operations officer, Inspector
25 Earl Moulton. Inspector Moulton was very

1 positive and supported the investigative
2 strategies. Inspector Moulton did what he
3 could with respect to human resources and
4 funding.

5 I recognize this is, of course, Williams'
6 view of these events. I wanted to ask you this
7 question. Can we assume that you have no
8 information about what Moulton did with respect to
9 human resources and funding?

10 A I don't know what he did other than, clearly,
11 there was no business case prepared seeking
12 further resources to support the investigation.

13 Q Now, there was apparently a short-term request for
14 Strike Force assistance some time before this
15 timeframe. You agree with that?

16 A That occurred actually in 1998, and when the very
17 first information came out, Inspector Earl Moulton
18 contacted the VPD, Inspector Ditchfield, in charge
19 of our Strike Force surveillance teams, and asked
20 for the use of the Strike Force teams until the
21 RCMP Special "O" surveillance unit was available.

22 Q Now, other than that, are you aware of Moulton
23 ever telling the Vancouver Police that they could
24 not work on the Pickton farm?

25 A No.

1 Q I want to move to page 16, the second paragraph,
2 and I believe we've covered this earlier. I just
3 wanted to be sure. This is the second paragraph
4 talking about Ellingsen and the fact that one of
5 the officers knew of her from previous dealings.
6 I believe we've covered this. I wanted to make
7 sure. You would agree that the credibility
8 assigned to Ellingsen's information was important?

9 A Yes.

10 Q And you are not in agreement with what Henley took
11 by way of steps to deal with her credibility; is
12 that correct?

13 A No, not at all.

14 Q And I just want to be sure, I thought last time
15 you were here we did cover the kinds of things
16 that you, as an investigator, would have done to
17 deal with her credibility.

18 A I think that we did cover some of it, yes.

19 Q Is there anything else that came to your mind,
20 since you left the witness stand a week ago, on
21 the subject of what else should have been done
22 from the police perspective to deal with this
23 Ellingsen denial?

24 A I'm not sure what exactly I said at that point,
25 but, in short, three different informants reported

1 information from Ellingsen that was extraordinary
2 information. There is no information to suggest
3 that they were colluding. They came forward with
4 this information separately. It was all
5 strikingly similar. It was consistent with other
6 information and not inconsistent with other
7 information that had been previously reported.

8 Her assertion that she had never said those
9 things to the informants was not believable,
10 because we were to believe that three different
11 people came forward who were not colluding and
12 reported the very same information. So, clearly,
13 she was lying and saying that she hadn't said
14 that.

15 Now, if she had said, "Yes, I did tell that
16 story but I was making it up, it wasn't a true
17 story," uhm, then perhaps that would have raised
18 some concerns, or they would have had to consider
19 whether that was true or whether her original
20 information was true.

21 But in this case, you have these unrebutted
22 stories of three different witnesses that is
23 consistent with much other information. And there
24 were many things that could have been done but --
25 for example, if those witnesses weren't believed,

1 they could have been polygraphed. Best and
2 Caldwell were completely cooperative. That's
3 something that the police do often in trying to
4 satisfy themselves as a witness's -- to a
5 witness's credibility, and that could have been
6 done. But the investigators that were dealing
7 with those informants believed what they were
8 saying. They did not believe Ellingsen's
9 recantation of what she had said. The fact that
10 she refused to take a polygraph was -- also meant
11 that the issue was unresolved.

12 So, there were many things that they could
13 have been -- could have been done, uhm, in terms
14 of bolstering the credibility of the informants.
15 But eventually what did occur was that she was
16 offered an immunity agreement and she provided a
17 statement and became the star witness for the
18 prosecution and testified essentially to the
19 information that the informants had provided.

20 Q Thank you. I wanted to ask you at page 18, the
21 fourth paragraph starts:

22 Sergeant Pollock advises from his notes that
23 between September 9th of 1999 and November of
24 2000, he had very little to do with the
25 Pickton file.

1 Do you see that statement?

2 A Yes.

3 Q Now, do you know that Pollock was the supervisor
4 of Connor, Corporal Connor?

5 A Yes, and subsequently of Constable Yurkiw.

6 Q Yes, thank you. It appears from Pollock's notes
7 that he had, in his, in the words of this report,
8 "very little to do with Pickton for approximately
9 14 months." Is that how you read that?

10 A Yes.

11 Q Do you have a view of that approach to supervisory
12 effort on, on behalf of junior officers, a
13 corporal below you and the constable?

14 A The sergeant is responsible for the work of his
15 subordinates, and I feel it is very unfortunate
16 that Constable Yurkiw, who took over in September
17 from Corporal Connor, has been censored for some
18 mistakes she made, but also the inattention of the
19 file, particularly between September of 1999 and
20 January of 2000.

21 When viewed in context, Constable Yurkiw
22 actually did know what needed to be done and was
23 frustrated with the lack of support. Uhm, she
24 knew where she had made mistakes but she also knew
25 that there was more resources that was needed and

1 she didn't get the support from her supervisors
2 that she needed. That's the role of a supervisor.
3 It was information about a homicide that was
4 possibly connected to serial killers.

5 And so I feel the same way about Constable
6 Yurkiw, somewhat, as I do about Constable Shenher,
7 in that Constable Shenher did excellent work but
8 didn't get the support and resources that she
9 needed. I think that Constable Yurkiw was trying
10 her best, but she did not get the support she
11 needed about prioritization of her work and the
12 resources that were necessary, and she did have
13 some sense of what was needed. She also was not
14 aware of all the information that was pointing to
15 Pickton, which is unfortunate.

16 Q Page 19 please, at the very bottom.

17 In summation, Moulton, now looking back on
18 this case, commented, "That given unlimited
19 time, unlimited dollars and unlimited people,
20 we perhaps would have liked to have
21 continuous 24-hour surveillance, but we
22 simply can't."

23 What are your comments regarding that
24 statement?

25 A Well, I agree that surveillance is a very

1 resource-intensive strategy, but I would just move
2 away from that and say there were many other
3 investigative strategies that the facts of this
4 case lent itself to. And when Inspector Moulton
5 reported that, "Even if I'd had more resources, I
6 wouldn't have known what to do with them because
7 we had done everything we could," I just strongly
8 disagree with that. There were many investigative
9 strategies that were absolutely justified by the
10 information that was available and not all of them
11 were resource intensive at all.

12 Q For example, please?

13 A Well, for example, uhm, Pickton could have been
14 brought in for another interview with an expert
15 interrogator. Uhm, I think that there was a case
16 that could have been made that Pickton could have
17 been arrested on reasonable grounds, not that
18 there was enough grounds to charge him at that
19 time, there wasn't a *prima facie* case, but that's
20 not necessary to arrest for reasonable grounds,
21 and that is a, quite a common investigative
22 strategy.

23 So, he could have been arrested and, for
24 example, put in with a cellmate. And, in fact,
25 key evidence that led to his conviction was the

1 confession obtained by Inspector Adam and the
2 cellmate statements that he made to an undercover
3 police officer.

4 So, those were a couple of things that could
5 have been done that were not resource intensive,
6 relatively speaking. Uhm, there were others that
7 could have been done as well. For example, using
8 Caldwell as an agent and getting an introduction
9 and seeing that there were all kinds of people
10 like him that were floating in and out of that
11 property. Young Constable Nathan Wells didn't
12 seem to have any problem finding himself an
13 informant that got him onto the property for his
14 firearms warrant. So, I could go on.

15 But there were many investigative strategies
16 that could have been pursued. Some of them would
17 have been resource intensive, like, an undercover
18 operation or continuous surveillance, but others
19 would have been not resource intensive at all and
20 might have been quite fruitful. Even an
21 unfruitful interview by someone with the expertise
22 of Inspector Adam, for example, even if he didn't
23 confess, he would have had the expertise to say,
24 "There is something here that we need to be
25 following up on," just like the investigators at

1 the time who thought that Pickton was lying. So,
2 that demanded that there be more.

3 It would not have been resource intensive,
4 for example, to follow up on the offer of a
5 consent search by Mr. Pickton, which he offered
6 several times in his statement of January 19,
7 2000. So, that's something that could have been
8 pursued.

9 Q Just on the point of arresting Pickton, could he
10 have also been arrested for the subject of the
11 threats to Ms. Anderson, who felt very apparently
12 afraid for her life because of threats she had
13 heard that were being made by Mr. Pickton? You
14 are aware of that --

15 A Yes. Well, I don't know if there -- there may
16 have been enough evidence to arrest him again on
17 reasonable grounds. There clearly wasn't enough
18 evidence at that point to charge him, to my
19 understanding, because they weren't that far along
20 and, and I believe that the evidence was hearsay
21 evidence at that point. She hadn't received the
22 threat directly, to my knowledge. But certainly
23 it was an investigative strategy. There were
24 others as well. Caldwell provided information,
25 ironically, about a firearm, a rifle with a -- a

1 semi-automatic rifle with a large-capacity
2 magazine.

3 So, one of the types of search warrants that
4 I have done in the past is to, when I hear someone
5 has a firearm, is to inquire whether they had a
6 firearms acquisition certificate. If they hadn't,
7 then they're in illegal possession of a firearm.
8 So, that's something that could have been pursued,
9 and may have by Corporal Connor when he visited
10 with Crown counsel. I don't know. I do know that
11 he consulted with Crown counsel on search warrant
12 issues.

13 Q Would you turn please to page 20, section 12,
14 fourth paragraph. Do you see that paragraph?

15 A Yes.

16 Q I want to read the third sentence.

17 The Coquitlam Detachment Major Crime Unit
18 continued to work on Pickton as the
19 opportunity arose, however, the file did not
20 receive the appropriate attention it should
21 have. This was primarily due to a number of
22 incoming serious priority investigations and
23 other related pressures.

24 I wanted to ask you about that language. Do
25 you endorse the language, "it did not receive the

1 appropriate attention"? Is that how you would
2 describe the event?

3 A Well, he's repeating Staff Sergeant Zalys's view,
4 and I agree with him, it did not receive the
5 appropriate attention, and so I thought it was
6 interesting that the conclusion of the Williams
7 report was inconsistent with Staff Sergeant
8 Zalys's assertion that it didn't receive
9 appropriate attention. It clearly did not.

10 Q And you believe the Williams report was
11 inconsistent with that comment?

12 A I believe that his conclusions were inconsistent
13 with key information in the body of the report,
14 like Staff Sergeant Zalys's statement.

15 Q Thank you. Now, at page 20 at the bottom:

16 Staff Sergeant Zalys doesn't feel there was
17 ever a formal request made for additional
18 resources to division headquarters.

19 You are aware of that comment?

20 A Yes.

21 Q In your opinion, should such a request have been
22 made?

23 A Absolutely. That's one of the benefits of being
24 part of the RCMP, is that they are a very large
25 organization and that's the kind of support that

1 they can provide to a detachment that doesn't have
2 sufficient resources to meet the demands of the
3 day.

4 And I was interested to read from Staff
5 Sergeant Henderson's interview, his comment that
6 had he received a proper business request, he
7 could have accommodated it. And certainly in an
8 organization with over 5,000 police officers at
9 the time, in the province of BC, it was possible
10 to reprioritize and provide the resources that
11 were needed. But they needed to understand,
12 management needed to understand how compelling the
13 information was, number one; and number two, what
14 the investigative strategies were that were
15 available to them to advance the investigation.

16 Q Do you have any information as to why such a
17 request was not made?

18 A I do not, no.

19 Q So, page 25 please, at the bottom of the page,
20 he's quoting from this report:

21 From a global perspective covering the
22 elements outlined at the beginning of this
23 report, we are of the opinion the RCMP acted
24 appropriately and followed up investigative
25 leads with respect to Robert William Pickton.

1 Do you see that statement?

2 A Yes.

3 Q Do you agree?

4 A No, I do not.

5 Q There is the next comment, in the next paragraph:

6 It was difficult for RCMP investigators to
7 corroborate or substantiate the allegations
8 brought forward by a number of different
9 sources based on the information at the time.

10 Do you agree with that statement?

11 A There was certainly challenges, but they
12 absolutely had not reached the point where they
13 had exhausted all opportunities to overcome those
14 challenges, not even close.

15 Q Thank you. The next sentence:

16 There is little doubt that the RCMP attempted
17 to exhaust all investigative avenues relative
18 to the suspect, Robert William Pickton.

19 I gather from your earlier comments you don't
20 agree with that statement?

21 A No.

22 Q The RCMP ensured that Pickton was brought to
23 the forefront as a suspect to the Vancouver
24 Police Department and other local municipal
25 police agencies.

1 What do you say about that statement?

2 A Well, I am sure he must be referring to the CPIC
3 that was sent out by Corporal Connor in 1997
4 regarding the Victim 1997 incident. Uhm, so
5 that's good. I, I don't think it's relevant at
6 all to this discussion. What was relevant was the
7 information that came forward about a murder
8 believed to have occurred, or murders, on the
9 Pickton property in 1998 and 1999, and all that
10 information was brought to the Coquitlam RCMP.
11 And as I have given evidence before, it was worked
12 on diligently I believe in 1998 until the end of
13 the summer of 1999, and then essentially after
14 that, it was virtually abandoned, other than the
15 interview with Pickton on January 19th of 2000.

16 Q Continuing on that same page, the third paragraph
17 from the bottom, it reads:

18 It was the RCMP that was proactive in
19 formulating the review team that led to the
20 Missing Women's Task Force.

21 Do you agree with that statement?

22 A No. I think it's an error of omission. It
23 ignores the fact that Sergeant Field, who is
24 described as being relentless in her pursuit of a
25 joint force operation with the RCMP, and it was

1 really at her constant urging that eventually
2 Staff Sergeant Henderson agreed that there ought
3 to be a JFO, but she had made multiple efforts
4 prior to that. So, I found that statement a bit
5 self-serving.

6 Q Page 27, second paragraph. I'll read the
7 paragraph:

8 Although this was a complex review, with very
9 unique circumstances, based on our experience
10 and from the interviews conducted, it is
11 suffice to say nothing would have changed
12 dramatically if those involved had to do it
13 over again.

14 Do you agree with that statement?

15 A No, I disagree on the strongest terms.

16 Q And why do you disagree in the strongest terms?

17 A Well, I think that there were opportunities,
18 clearly, that this case could have been solved in
19 1999, and I find it astounding that he would come
20 to that conclusion based on knowing the statements
21 of people like Staff Sergeant Zalys and Corporal
22 Connor, who felt strongly that there should have
23 been more work done on this investigation. And
24 although they did not interview Constable Yurkiw,
25 who took over after Corporal Connor, uhm, she felt

1 strongly in the same way, too.

2 It's inconsistent with the work done by, for
3 example, Corporal McCartney, who came up with a
4 game plan, but then it wasn't implemented. It's
5 inconsistent with the April 2001 meeting in which
6 they agreed that the information still needed to
7 be worked on. So, I expect that there are a
8 number of investigators who wish they could have
9 this one back to do all over again with different
10 leadership and resources.

11 Q So, just to follow up on that, sitting here in
12 this courtroom before the commissioner, as the
13 number two person at the Vancouver Police
14 Department, would you say the same for the
15 Vancouver Police as you have just said about the
16 RCMP?

17 A Whether they would like to have had to do it all
18 over again?

19 Q Yes.

20 A Absolutely.

21 MR. VERTLIEB: Mr. Commissioner, I have finished with the
22 Williams review and perhaps this is an appropriate
23 time to take the break and then we'll start with
24 the Evans review.

25 THE COMMISSIONER: All right.

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

2 (PROCEEDINGS ADJOURNED AT 11:05 A.M.)

3 (PROCEEDINGS RESUMED AT 11:33 A.M.)

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

5 THE COMMISSIONER: Yes.

6 MR. VERTLIEB: Mr. Commissioner, I want to deal with the Evans
7 report and that's, of course, Deputy Chief
8 Jennifer Evans. During the break, three
9 representatives of the media, specifically from
10 the *Province*, the *Sun* and *Canadian Press* spoke
11 with me and they're concerned about not having
12 access to that report when it's obviously been in
13 the possession of some of the media, and they have
14 a concern that a level playing field for the media
15 is not being met.

16 THE COMMISSIONER: Oh, I see. It was, it was a leak to one
17 party but wasn't leaked to anyone else?

18 MR. VERTLIEB: Apparently, apparently not.

19 THE COMMISSIONER: Oh, I see. All right.

20 MR. VERTLIEB: And so I explained to them about the nature of
21 the position I take, and I really wanted to have
22 it marked as an exhibit so that everyone would
23 have access. I think it's properly an exhibit. I
24 explained that my learned friend, Mr. Ward, had
25 objected.

1 And what I would like to do is have you
2 perhaps reconsider that, because there is
3 something that doesn't seem right, that it's been
4 out in the public domain. There is references to
5 it on Mr. Ward's website apparently with CTV News,
6 and --

7 THE COMMISSIONER: I have been away. Now, has there been
8 reference in the media to the, to the leaked
9 report?

10 MR. VERTLIEB: Yes, there has. Both, well, I believe CTV, the
11 *Globe* and one other. It doesn't matter. I know
12 of at least three.

13 THE COMMISSIONER: I see. All right.

14 MR. VERTLIEB: So, the concern I have is, in that
15 circumstance, --

16 THE COMMISSIONER: Okay, I am going to deal with it right now.

17 MR. VERTLIEB: -- perhaps Mr. Ward would revisit --

18 THE COMMISSIONER: Mr. Ward, tell me why you are objecting to
19 its admissibility?

20 MR. WARD: Three reasons. The first one is that it doesn't
21 meet the threshold for the receipt of expert
22 evidence at any tribunal in that it is
23 unnecessary. As you will be aware, Mr.
24 Commissioner, from your lengthy experience as a
25 judge, expert opinion evidence is provided on the

1 theory that expert opinions are sometimes required
 2 on matters that are outside the range of the
 3 ordinary experience of a judge or judge and jury,
 4 on matters usually of scientific or other
 5 complexity.

6 In this instance, it is completely
 7 unnecessary for this commission to receive opinion
 8 evidence about policing because you, sir, are
 9 probably the most expert individual in the
 10 province on the issue of policing, having not only
 11 sat as a judge, but having authored the seminal
 12 report on policing in the province of British
 13 Columbia, the Oppal Commission report. No one
 14 needs to provide opinions to assist you in
 15 understanding issues of policing. So, my first
 16 objection is that it is completely unnecessary for
 17 any expertise in that field to be tendered or
 18 offered.

19 The second objection I have is with respect
 20 to the author's failure to meet the criteria of
 21 independence. The author is a current police
 22 officer. She is a police insider. She is not a
 23 professor from some institution. Her report is
 24 done from her perch as a police officer looking at
 25 the actions of other police officers. It is, as I

1 say, for that reason, lacking in the necessary
2 element of independence.

3 And I am just coming to the third, although I
4 wasn't expecting to argue it at this moment.

5 THE COMMISSIONER: I'll --

6 MR. WARD: But, but those are the two key thresholds.

7 THE COMMISSIONER: I will give you, I'll give you time until 2
8 o'clock, if you want.

9 MR. WARD: Oh, thank you.

10 THE COMMISSIONER: Is that all right?

11 MR. WARD: Thank you. That's fine.

12 THE COMMISSIONER: All right. I'll deal with it --

13 MR. WARD: On the other point raised by my friend, Mr.

14 Vertlieb, I wouldn't have any objection to the
15 members of the media getting it irrespective of it
16 not being marked as an exhibit, if it's done in a
17 consensual way. But I, I do object to this report
18 being treated as expert opinion evidence for those
19 two reasons and further reasons that I would seek
20 to expand upon.

21 THE COMMISSIONER: All right. I'll deal with it at 2 o'clock.

22 MR. VERTLIEB: Thank you, Mr. Commissioner.

23 Mr. Giles, can you make sure Deputy LePard
24 has a copy of Exhibit E, the Evans report?

25 THE REGISTRAR: He has it.

1 MR. VERTLIEB:

2 Q E for Identification then is before you. Can we
3 first look to page 7-13? This is under the topic
4 of -- if I can find this -- this is in the events
5 section, and she says at page 7-13, top of the
6 page, second paragraph:

7 Information and file management is important
8 when managing major cases. Without knowing
9 how these resources were being deployed
10 elsewhere, I can't comment on the decision
11 not to supply them to the Missing Women
12 Review Team.

13 The question that I really wanted to ask you
14 is, you would, of course, agree that information
15 and file management is important, particularly in
16 a case like this?

17 A Yes.

18 Q Do you have knowledge as to where Officer
19 Biddlecombe assigned resources during the
20 timeframe he was in charge of Major Crime, and why
21 he assigned them that way?

22 A Generally or specifically?

23 Q Specifically.

24 A Uhm, well, I write about that quite a bit in my
25 report. So, he had officers assigned already in

1 various areas, like, the Homicide Squads, there
2 were two of them; the Robbery Assault Squad; the
3 Missing Persons Unit; and then he had Detective
4 Constable Shenher assigned in July of 1998 to be
5 an extra position in the Missing Persons Unit to
6 investigate this increase in reports of women
7 missing from the Downtown Eastside.

8 And then later on, that occurred in May of
9 1999, he had other resources assigned. So,
10 Detective Constable Chernoff, Detective Lepine,
11 Constable Dickson on a half-time basis, uhm,
12 Detective Alex Clarke, Detective Constable Alex
13 Clarke, Detective Constables, uhm, Fell and
14 Wolthers. So, those were all officers that, one
15 way or another, he was responsible for having
16 assigned to work with Detective Constable Shenher
17 and work for Sergeant Field.

18 Q So, turn to the next page, 14, and it's the second
19 paragraph starting:

20 A handwritten note on this memorandum stated,
21 "verbal, no one available." Sergeant Field's
22 timeline indicated that they would not be
23 able to obtain further personnel until the
24 end of the summer.

25 A Yes, I see that.

1 Q And then the note that:

2 McGuinness was approached by Fell and
3 Wolthers, who asked to be assigned to the
4 review team, because they had a suspect in
5 mind. They were later assigned to the review
6 team. In my opinion, resources assigned to
7 an investigation are proportionately
8 significant to the investigation.

9 So, the question is this. Do you believe the
10 review team was appropriately staffed in the
11 summer of 1999, starting in June '99?

12 A No. My, my understanding of the facts and Deputy
13 Chief Constable Evans' understanding of the facts
14 and our description of them are extremely
15 consistent on that issue and many others. And
16 they might have been appropriate for an
17 investigation of missing people where there was no
18 foul play suspected, but considering the
19 information that they had pointing to foul play,
20 it was insufficient resources and not necessarily
21 the right type of resources either, and we both
22 say that in our reports.

23 Q Now, at 7-15 there is reference to the fact that
24 there was a request for a full-time sergeant. You
25 are familiar with that request?

1 A Yes.

2 Q What difference do you think this would have made
3 had a full-time sergeant been assigned?

4 A I think that it would have made a huge difference,
5 uhm, to this investigation, because the purpose of
6 the sergeant would have been in the team commander
7 role, is to make sure that the investigation is
8 running smoothly, that the speed, direction and
9 flow of the investigation, that's the team
10 commander's responsibility. Uhm, this was such an
11 important investigation, there were so many
12 challenges to it. Just the issue of advocating
13 for sufficient resources of the right type was
14 something that it really needed a sergeant full
15 time. Dealing with certain personnel issues that
16 were coming up in the investigation, articulating
17 forcefully to management what was needed for there
18 to be a chance of success. To be in Sergeant
19 Field's shoes and have a truly full-time job as a
20 sergeant in charge of a Homicide Squad and then
21 have this very important investigation that she
22 was expected to do off the side of her desk, it
23 was just completely unreasonable and unrealistic.

24 Q The next page, 7-16, and this is the reference to
25 "wind-down" of the review team. You are familiar

1 with that concept of a wind-down of the team?

2 A Yes.

3 Q And I am talking about the third-to-the-last
4 paragraph, Mr. Commissioner, on that page 16. Ms.
5 Evans says:

6 I found it unusual that a "wind down" of the
7 Missing Women Review Team had been considered
8 at this time. I accept that the incidence of
9 missing women had apparently decreased or
10 stopped but it had not been explained. There
11 were still suspects whose investigations had
12 not been completed.

13 Do you agree with her statement?

14 A I agree with her statement, uhm, and I write about
15 very similar issues in my report. I think that
16 needs to be put in the context of Sergeant Field
17 believed that they were spinning their wheels, in
18 effect, in their investigation, especially after
19 the summer of 1999 and the resources were being
20 created, and she had decided that the best chance
21 of success was to advocate for a joint force
22 operation with the RCMP, and she was vigorously
23 doing that and it's documented in my report on how
24 many different occasions that she met with various
25 members of the RCMP advocating for a JFO.

1 Q Did a wind-down seem sensible to you, if you were
2 running this investigation, given the fact that
3 the incidents had not been explained?

4 A No. I think that there needed to be an
5 investigation that continued until a JFO was up
6 and running, but that needed the support of her
7 management in terms of properly resourcing it,
8 which she had been completely unsuccessful in
9 convincing them.

10 Q Page 7-24 please, the third-last paragraph from
11 the bottom. This is referencing Deputy Chief
12 Constable Unger. You talked about Unger when you
13 were here last time. He would be below the chief.

14 A Yes.

15 Q Now, he writes in quotes, the last sentence:

16 It cannot be overexpressed that this is a
17 Vancouver Police case and that the RCMP have
18 willingly joined with us as a result of a
19 close working relationship on many other
20 joint projects.

21 Do you agree with Unger, that the, that this
22 was a Vancouver Police case?

23 A Well, I've characterized it a little bit
24 differently in that the information that was
25 available to that date from the RCMP from, for

1 example, Staff Sergeant Davidson, was that this
2 likely was going to become an RCMP case because
3 the most likely scenario was that the bodies were
4 going to turn up in some rural area and likely in
5 RCMP territory, and that they would then be
6 involved in the case and it would be their
7 jurisdiction, to investigate murders that occurred
8 in their jurisdiction.

9 So, I agree that the VPD clearly had an
10 important role in this case because most of the
11 women, not all of the women, were going missing
12 from the Downtown Eastside. And so the VPD had to
13 have some ownership over that. And what made the
14 most sense was that there would be a JFO and bring
15 the resources of the two organizations together,
16 ensure that there was a smooth flow of
17 information, be prepared to take on a suspect, for
18 example, or a crime, wherever that was occurring.

19 Uhm, I did not agree with Deputy Chief Unger
20 that, essentially his words were that "the RCMP
21 were doing this out of the good of their hearts
22 because they like us," when I think that the
23 context of the information is quite different.

24 So, I do think, agree that there was a joint
25 responsibility for it. As it turned out, Staff

1 Sergeant Davidson was right. The crimes did turn
2 out to have been committed on this somewhat rural
3 property in Coquitlam, in the jurisdiction of the
4 Coquitlam RCMP, where there had been an
5 investigation in 1998 and 1999 and somewhat
6 following that.

7 Q Turn to page 8-45 of the deputy's report please.
8 8-45, the top paragraph. And I realize you have
9 just seen this in the last week so you haven't had
10 a chance to study it with the same level of
11 scrutiny that you would have been able to study
12 other documents, but I do want to ask you about
13 her last statement.

14 In my experience, I believe the offence began
15 in Vancouver.

16 Do you accept the concept?

17 A Well, what I would like to preface my remarks with
18 is, first of all, I have actually read this report
19 twice. I am satisfied that I have a good
20 understanding of it, and I think that it is a very
21 impressive report by a very impressive police
22 officer, and I would say, having read the entire
23 report, that her findings of fact and her
24 conclusions are extremely consistent with mine.
25 I, I described it in my notes as being 98 percent

1 consistent. So, I thought that that was very
2 helpful.

3 In that one-line sentence when she said, "In
4 my experience, I believe the offence began in
5 Vancouver," I'm not sure if she was saying that as
6 a legal description or more of a general, you
7 know, that that's where the women came from.

8 From a legal perspective, I don't believe
9 that that is correct at all. Uhm, I have
10 described in my evidence earlier that, uhm, and I
11 don't need to explain this to Mr. Commissioner,
12 but for an offence to occur, there has to be
13 intent and there has to be an act. There wasn't
14 any evidence of that occurring.

15 THE COMMISSIONER: I have your earlier evidence on that, thank
16 you.

17 THE WITNESS: Okay. And I gave a number of examples.

18 In terms of the VPD's ownership of the issue
19 though, absolutely, the VPD was in charge of the
20 missing women investigation. Clearly, it had
21 ownership of it. It dealt with some of the
22 information, like the Pickton information, by
23 providing that to the RCMP who agreed to take
24 responsibility for that information and work on
25 it.

1 So, in my mind, very little turns on that
2 issue because the VPD did have responsibility to
3 ensure that there was an adequate investigation
4 into the missing women generally, and also, could
5 have done more to ensure that there was an
6 adequate investigation into the information about
7 Pickton and Coquitlam.

8 Q Turn back please to 8-3, the first main paragraph:

9 Is it is my opinion that Detective Constable
10 Shenher worked extremely hard on the missing
11 women investigation. She worked tirelessly
12 with little supervision or guidance and tried
13 to advocate the issues to others within the
14 police department.

15 Do you see that?

16 A Yes.

17 Q And the question I wanted to ask you, in your
18 opinion, did she receive the supervision required
19 for a person of her length of service and the task
20 that she was assigned?

21 A No. I agree with Deputy Chief Evans.

22 Q Please turn to 8-62, 8-62. There is a reference
23 in the fourth paragraph:

24 Informant management is a critical but
25 challenging part of police work. I saw no

1 evidence that Detective Constable Shenher
2 received the guidance and perhaps direction
3 that is often required with an officer of her
4 service. If any problems existed or
5 opportunities were lost, I would consider
6 them to be supervisory deficiencies, not
7 hers.

8 What do you say about that?

9 A I agree. I think that Constable Shenher's work
10 was heroic, really, the amount of work that she
11 did and her level of effort. But she obviously
12 didn't have all the experience and skills
13 necessary for every aspect of that investigation,
14 and she has been more self-critical of herself
15 than, than anyone. Uhm, I, I agree with her
16 conclusion.

17 Q Thank you. I wanted to ask you about the
18 discussion of offline searches that, that Deputy
19 Evans has and she's talking, in part, at 8-71
20 about offline searches. You are familiar with the
21 concept of an offline search?

22 A Yes, yes.

23 Q Do you agree with her, that an offline CPIC search
24 is an excellent investigative strategy that can
25 reveal contacts with law enforcement agencies?

1 A Yes.

2 Q She's apparently critical of the fact that there
3 was not the use of offline searches that would
4 have shown Pickton was, in fact, being stopped in
5 the Downtown Eastside. Are you aware of that?

6 A I'm aware of her criticism and it's, it's an
7 interesting issue. I'm not sure of the answer.
8 But what I do know, when she wonders why Detective
9 Constable Shenher was not receiving this
10 information, which would have been very helpful,
11 in fact, as it's documented in my report, Corporal
12 Connor put Pickton on CPIC in the observation
13 category back in 1998 when Constable Shenher first
14 provided him the information via Hiscox. So, if
15 there were hits occurring, that information
16 actually would have been going to Corporal Connor.
17 I don't know whether he received that information.

18 But the information from the offline searches
19 that Detective -- Deputy Chief Evans or her staff
20 obtained, would have obviously been very helpful
21 information. I did not see it in the Coquitlam
22 file so I don't know whether Corporal Connor
23 received it. I only know that he did put Pickton
24 on CPIC. So, it would have been possible to get
25 that information, number one; and I saw when

1 Constable Sherstone took over the case, she took
2 Connor's name off and put her name on in terms of
3 the contact person for CPIC.

4 Q Very briefly, just tell us, the commissioner what
5 an offline search is, an offline CPIC search?

6 A Well, an offline search would enable someone
7 querying to determine whether a person who had
8 been put under observation or a licence plate had
9 been checked. And so that would reveal
10 information about, as she showed in her report,
11 that he had been checked by various police
12 officers, that his vehicle had been stopped in the
13 Downtown Eastside. That would have been very
14 helpful information to have.

15 What normally happens is an entry will be put
16 on CPIC with the information saying, you know,
17 "party of interest to police, code 12," which
18 means, "do not reveal the interest of the police
19 to the party, provide all information to Corporal
20 X on this party, call my pager 24 by 7," or
21 something like that. And when, if it's set up
22 properly, when the person is queried, the person
23 who put the information on CPIC in the observation
24 category should automatically receive a
25 notification, "this person was checked, their name

1 was run, their plate was run," whatever the case
2 may be.

3 Q Does a person have to be under actual police
4 observation for an offline search to be conducted?

5 A No.

6 Q No. You could do it with any of us here in this
7 room if --

8 A Yes.

9 Q Okay, thank you. Let's move on to Caldwell.
10 We've covered Caldwell and your concerns about the
11 way he was handled and your comments about what
12 the RCMP should have done. I can't remember if I
13 asked you, did you tell us what the VPD should
14 have done concerning the use of Caldwell?

15 A Uhm, I'm not sure if you did ask me that question.
16 Uhm, can you narrow that down a little bit?

17 Q Well, we covered at some length Caldwell as an
18 informant --

19 A Right.

20 Q -- and his information and the number of times the
21 police had contact with him.

22 A Right.

23 Q And we covered the fact that Chernoff and Lepine
24 had many contacts with him over quite a period of
25 time?

1 A Yes.

2 Q But I did want to ask you, once it was becoming a
3 problem where some of the police thought that
4 Ellingsen's denial was right and they didn't think
5 Caldwell was accurate, and you've covered your
6 thoughts about what the RCMP should have done?

7 A Yes.

8 Q Is there anything that the VPD should have done
9 regarding Caldwell?

10 A Well, I think there were a couple of things.
11 Number one is, rightly or wrongly, the VPD
12 investigators, Lepine and Chernoff, believed that
13 the "E" Division investigators who came in from
14 the Unsolved Homicide Unit and from the "E"
15 Division Serious Crime, had to sign off for the
16 Coquitlam RCMP to use Caldwell as an agent. And,
17 in fact, that was one of the tasks that was
18 assigned to one of the "E" Division Serious Crime
19 investigators, was to do the paperwork and start
20 the work towards using him as an agent, which is a
21 serious thing and required a certain amount of
22 dealing with bureaucratic issues and getting
23 approval and that sort of thing.

24 And when that was not forthcoming, there
25 wasn't much more for the VPD to do with Caldwell

1 in that the decision had been made that the RCMP
2 weren't going to use him as an agent and that the
3 Coquitlam RCMP were accepting of that decision,
4 where I think that they could have done more,
5 because the information was so compelling;
6 Detective Constable Chernoff took excellent notes
7 which describe the variety of the information, he
8 had a very good understanding of how it meshed
9 with previous information that had been received;
10 is that I think that they could have created a
11 very compelling argument to take up their
12 management chain of command to advocate with the
13 Coquitlam RCMP about why they couldn't let this
14 just fall off the plate.

15 Now, in fairness though, the RCMP did say
16 they were going to continue the investigation,
17 that they were going to look at an undercover
18 operation with Ellingsen, that they were going to
19 interview Pickton and, in fact, although it was
20 delayed, they did continue. They did interview
21 Pickton. So, there was some, some actions still
22 being taken.

23 I'm not sure what more they could have done
24 with Caldwell in that they had already handled him
25 very well, obtained excellent information from

1 him. It was entirely consistent from debrief to
2 debrief, consistent with the other information
3 they had. So, I'm not sure what more they could
4 have done except maybe to have suggested doing a
5 polygraph on Caldwell to say, "Look, he is telling
6 the truth here. Whether or not the information is
7 correct, he believes he is telling the truth," and
8 maybe that would have been helpful to convince
9 them that, "We can't just drop him as an informant
10 because this is someone who is willing to be an
11 agent for us, who is willing to continue to be an
12 informant." The information that he gave turned
13 out to have been, to my knowledge, 100 percent
14 correct.

15 Q Thank you. Now, I want to ask you about some
16 individual actions of police, and I want you to
17 just keep in mind that I am asking about the
18 section under the topic "Recognition and
19 Ownership," and the introductory paragraph from
20 Deputy Evans, she says --

21 A Sorry, can you just point me to the page number?

22 Q Yes, of course, 81, 8-1. I am leading this as an
23 intro to some of the questions about specific
24 events. She says:

25 In my opinion, the severity and totality of

1 the British Columbia missing women tragedy
2 went unrecognized by members of senior
3 management of both the VPD and the RCMP due
4 to the lack of ownership for this crisis. It
5 is evident from the documents reviewed and my
6 interviews with many of the involved
7 personnel, that while some recognized the
8 increasing number of missing women as
9 significant, certain officers failed to take
10 ownership and ensure the proper resources
11 were dedicated to the problem. I have
12 organized this section of my report to
13 provide comment on how relevant individuals
14 became involved in the missing women
15 investigations and how the issues of
16 recognition and ownership affected their
17 actions or inactions, and what impact this
18 had in the missing women investigations.

19 That is the introductory comment, that you
20 are aware of a review that is self-evident in her
21 comment, "the tragedy went unrecognized by members
22 of senior management of VPD and RCMP"?

23 A Yes.

24 Q Okay. Let's talk first then about Giles, and I'm
25 at page 8-6, Staff Sergeant Giles. She goes

1 through a lot of the facts around him and what he
2 did or did not do. I am not going to take you
3 through that. Others may wish to. What I want to
4 just ask you about is the very last paragraph.

5 In my opinion, Staff Sergeant Giles had some
6 opportunity to be involved in the discussions
7 regarding the missing women investigation.

8 In his interview, he gave the impression that
9 he was focused on other tasks, namely,
10 robberies and homicides, and was not involved
11 in the missing women investigation.

12 Now, here's the part that I want to ask you about.

13 While he focused on these other tasks, as
14 second in command of Major Crime, I believe
15 it was still his responsibility to pay close
16 attention to the missing women investigation.
17 He did not accept ownership in spite of the
18 documented events that illustrated his
19 knowledge and participation in meetings. His
20 lack of ownership and recognition for the
21 missing women investigation would have, in my
22 opinion, impacted on Sergeant Field and
23 detective constables' efforts to move this
24 investigation forward.

25 Do you agree with her comments?

1 A Uhm, I agree with, excuse me, I agree with most of
2 her comments. I would say that what I found in my
3 review was that even Sergeant Field felt that she
4 was reporting directly to the inspector, whoever
5 that was, and less to Staff Sergeant Giles, that
6 he was concerning himself with other things.
7 Having said that, he was the 2IC of the Major
8 Crime Section. He was the staff sergeant. And so
9 I can't disagree with what Deputy Evans says about
10 that.

11 Q Thank you. Now, let's discuss Dureau. He would
12 have been acting in a, in a more senior position
13 to Giles, through some of this timeframe? Is that
14 a fair assessment?

15 A Yes. The situation was that, even though Staff
16 Sergeant Giles was in the Major Crime Section, he
17 was what we call a staff sergeant while so
18 employed. So, he actually held the rank of
19 sergeant and he was occupying, on a long-term
20 basis, the rank of staff sergeant. Staff Sergeant
21 Dureau was a substantive staff sergeant. So, when
22 it came to opportunities to be the acting
23 inspector, he got it over Staff Sergeant Giles,
24 even though he wasn't normally working in that
25 side of Major Crimes. And so, yes, he was in

1 place for some key periods of time.

2 Q If you look please at page 8-9, the last paragraph
3 under the discussion about Dureau, it's the second
4 paragraph, starting:

5 It is my opinion that, at no time, did Acting
6 Inspector Dureau take any responsibility or
7 ownership for the missing women
8 investigation. I believe that there was a
9 consistent theme of not being involved. In
10 my experience, a position like inspector in
11 charge of Major Crime has to take an active
12 interest and role in priority cases. A
13 passive management style will not work as
14 evidenced here. In my opinion, Acting
15 Inspector Dureau should have taken a
16 proactive role in establishing the creation
17 of a JFO at an earlier stage.

18 Do you see her comments?

19 A Yes.

20 Q She is seemingly critical of Dureau. What is your
21 opinion?

22 A I came to similar conclusions and wrote those in
23 my report.

24 Q Now, let's move on to Greer please and this, I
25 have the note at 8-14. You mentioned Inspector

1 Gary Greer when you were with us last time. If
2 you turn to the last paragraph under "Greer," and
3 you see it's the fifth paragraph starting, "What
4 occurred here is troubling"; do you see that?

5 A Yes.

6 Q And she references the, the issue about -- well,
7 let me go back to the previous paragraph.

8 In my opinion, when Inspector Greer received
9 Dickson's memorandum on November 5, '98, it
10 provided Inspector Greer with the perfect
11 opportunity to phone over or visit Inspector
12 Biddlecombe and ask for an update. There was
13 no evidence that this occurred. When asked
14 if he forwarded the information to Deputy
15 Chief Constable Blythe, he advised he could
16 not recall, and felt if he did, then it would
17 have been left for the DCC's [deputy chief
18 constables] to discuss at their level. In
19 spite of the meetings between members of
20 senior management, I did not see evidence
21 that anyone from senior management or the
22 executive were providing any direction on the
23 missing women investigation.

24 And she continues:

25 What occurred here is troubling. An area

1 commander satisfied himself that a problem
2 actually existed, and when Inspector
3 Biddlecombe challenged him for taking an
4 interest, he should have escalated the
5 problem, rather than taking the path of least
6 resistance and walking away. This did not
7 assist with solving the issue, and as a
8 senior manager, it was his duty to pay closer
9 attention.

10 She is seemingly critical of the work of Gary
11 Greer. Do you agree with her comments about Mr.
12 Greer?

13 A Uhm, I would say that, overall, I, I agree
14 generally. I think that it was probably a little
15 bit harsh towards Greer knowing that -- you know,
16 one of the advantages that Deputy Chief Evans had
17 was distance, but it's also a disadvantage, is
18 that I was actually there and saw the dynamics
19 going on. So, that was an advantage and a
20 disadvantage for me.

21 But what I would say, from my review and from
22 my personal observations during that time, was
23 that Inspector Greer was the one who did raise the
24 issue in the first place and formed the working
25 group with Detective Inspector Rossmo, and it was

1 a good strategy that I think was unfortunate that
2 did not continue. But he was faced with someone
3 who is a strong personality, who said, "This is
4 our responsibility. We will take it on and we
5 will take care of it. You should butt out." And
6 he acquiesced to that view.

7 So, whether he should have or should not
8 have, uhm, I understand Deputy Chief Evans' point,
9 and in retrospect, I suspect that then Inspector
10 Greer might have wished that he could have that
11 one to do over again. But knowing the dynamics
12 and someone saying, "I am going to take this off
13 your hands, I am taking responsibility for this,"
14 I don't think I'm quite as critical of Inspector
15 Greer.

16 I do agree with her overall comment though,
17 is that she didn't see evidence that anyone from
18 senior management was providing direction about
19 the investigation. So, there was some shared
20 responsibility here, and it seemed to have been
21 quite diffused.

22 Q And so we're clear about the words "senior
23 management and the executive of the Vancouver
24 Police Department," who do you consider to be
25 senior management in terms of title, at that time?

1 A So, senior management I would say is someone who
2 is in the management ranks, so inspector and
3 above; and the executive was the deputy chiefs and
4 the chief.

5 Q And so in that timeframe, there would be four on
6 the executive, the chief and three deputies?

7 A Yes.

8 Q And the senior management would be inspector and
9 above?

10 A Yes.

11 Q Thank you. Now, then she moves on to discussion
12 about McGuinness. He was DCC McGuinness and,
13 therefore, he would have been the executive?

14 A Yes.

15 Q Getting about as high up as you can go?

16 A Pretty close.

17 Q She says at 8-16, starting the second paragraph:

18 As the DCC in command over Operations
19 Support, I believe it was his job to ensure
20 that proper resources were applied and that
21 he was kept informed as to the issues.

22 Stopping there. McGuinness was DCC in command of
23 Operations Support?

24 A Yes, which is what we call the Investigation
25 Division now, and it essentially was then as well.

1 Q In September '98, he had assigned Detective
2 Inspector Rossmo and Inspector Greer to
3 co-chair the Missing Women Working Group, but
4 when the group dissolved, after the meeting
5 of September 22nd, 1998, he allowed it to
6 disband.

7 Do you agree with that comment?

8 A Uhm, well, he certainly did. But I would say, in
9 fairness again, is that not only did you have
10 Inspector Biddlecombe saying, "We are going to
11 take this on, this is our responsibility," but you
12 had Inspector Greer from this other division
13 agreeing with that, rightly or wrongly. And so I
14 can see how Deputy Chief McGuinness, in those
15 circumstances, would have said, "Okay, well, they
16 have had a meeting. Biddlecombe has convinced
17 Greer that the right way to go is for Major Crimes
18 to maintain ownership over this investigation.
19 Greer is not coming to me and saying, 'this is
20 wrong,' or going to his own deputy chief, Deputy
21 Blythe, and saying, 'this is wrong'." So, I can
22 understand why he might have been accepting of
23 that decision. If there had been debate about it,
24 uh, then I agree that he should have stepped in.
25 So, you know, again, it's one of those ones,

1 distance and closeness, as I personally observed
2 Deputy Chief McGuinness being extremely engaged
3 and a very hard-working person. So, not every
4 decision he made will have turned out to be the
5 right one, but it wasn't for lack of interest on
6 his part.

7 Q So, when you say "debate about it," do you mean
8 debate as between Greer and Biddlecombe?

9 A Yes. That when they, I think the dye was set when
10 Greer and Biddlecombe agreed, essentially that
11 Greer acquiesced to Biddlecombe's view of the
12 situation, and McGuinness seems to have accepted
13 that, rather than saying, "No, I, I disagree with
14 you," uh, agreeing with him. So, I think that the
15 circumstances do need to be considered.

16 Having said all that, I agree with Deputy
17 Chief Evans, that the working group was a good
18 idea. Like Detective Inspector Rossmo described,
19 you know, this is one where we almost got it
20 right, where the community had identified a
21 problem. The information had been floated up by
22 Constable Dickson, through to Staff Sergeant
23 MacKay-Dunn, to Inspector Greer. An action was
24 being taken. We were going to take a multi-
25 disciplinary approach to this.

1 Detective Inspector Rossmo is an extremely
2 smart guy who had unprecedented exposure to cases
3 like this. So, I think that it was a mistake for
4 that to be disbanded. I am just not quite as
5 critical of Deputy Chief McGuinness, knowing all
6 the circumstances and the dynamics that were
7 involved. Her overall conclusions I think are
8 correct.

9 Q So, let's continue. She says, same paragraph:

10 In February 1999, following Shenher's
11 attendance at the community meeting,
12 McGuinness did not dedicate additional
13 resources to assist with the investigation.
14 In July 1999, he did not take ownership of
15 the distribution of the missing women reward
16 poster.

17 Now, she seems to be critical of McGuinness
18 there. Do you have a comment about that?

19 A On the second point, only that my recollection, in
20 doing my review, was that Deputy McGuinness was
21 not available on the day that the poster was being
22 released and the press conference, and so asked I
23 believe then Inspector Unger -- it might have been
24 deputy chief, I think it was inspector -- to take
25 that on for him. So, without knowing more about

1 why he was unavailable, you know, it could have
2 been an equally compelling duty that he had to
3 attend to. He did ensure that a senior manager
4 took responsibility for that.

5 Uhm, in terms of the resourcing, which was
6 your first point, I think, unfortunately, he was
7 relying on Inspector Biddlecombe, who told him,
8 you know, "We, we're doing the best we can. We've
9 got adequate resources," because that's what he
10 believed at the time. So, unfortunately, I
11 believe that Deputy Chief McGuinness was
12 misinformed in that respect.

13 Q So, just looking ahead at page 8-152, still
14 talking about McGuinness, who was the deputy
15 police chief, look at the paragraph titled
16 "Supervision". Do you see that?

17 A Yes.

18 Q And she's talking now about VPD. Evans says:

19 As I previously stated, it is important to
20 distinguish the difference between leadership
21 and supervision. In my opinion, there was a
22 lack of supervision by DCC McGuinness
23 overseeing Biddlecombe and the Major Crime
24 Section. While he commented in his interview
25 that he was seen as a micro manager, I

1 believe he failed to supervise Inspector
2 Biddlecombe and Acting Inspector Dureau
3 during the missing women investigations.

4 Do you have a comment about her opinion?

5 A Well, I would just say that, with respect to
6 Deputy Chief McGuinness, he was relying on
7 information provided to him, and while I agree
8 with her that she -- he had an important role, and
9 in retrospect, maybe he should have done more in
10 informing himself about what the issues were, but
11 he relied on these people to give him the
12 information to make decisions.

13 And I guess the other point is that, if it's
14 accepted and had it been accepted then, that the
15 reason the women were going missing was because of
16 a serial killer, I think that Deputy Chief
17 McGuinness, his actions would have been very, very
18 different from what they were. But as he said,
19 during his time as the deputy chief, he never came
20 to the conclusion that there was a serial killer
21 operating, that if he had come to that conclusion,
22 he would have acted very differently.

23 So, knowing now that it was a serial killer,
24 then there's obviously a question about whether he
25 should have understood that that was the most

1 likely cause, and if he should have, then the
2 criticism is warranted, or more warranted. Uhm,
3 if there was not sufficient information for him to
4 come to that conclusion, uhm, then it, it might be
5 a little bit harsh.

6 Having said that, people at the executive
7 level are accountable and they need to be
8 accountable for the things that go on underneath
9 them, sometimes, uhm, to the point where you are
10 taking a bullet for the team for things that you
11 weren't personally responsible for, and I have
12 never known Deputy Chief McGuinness to shirk that
13 sort of responsibility.

14 So, I say, in terms of him, I think that the
15 criticism was a little bit harsh, but overall, her
16 findings of fact are consistent with those I found
17 in my report.

18 Q She finally concludes at page 8-16, in her -- she
19 says:

20 In my opinion, McGuinness should have taken
21 the lead and made contact with Chief
22 Superintendent Bass himself due to the
23 serious nature of the missing women
24 investigation.

25 Do you see that comment as well?

1 A Uhm, I'm sorry, what page are you on?

2 Q 8-16. Do you see that?

3 A No, I just can't --

4 Q In that paragraph right above "DCC Unger," the
5 one we were just reading from?

6 A Yes, I see it now.

7 Q She seems to be critical that he didn't, with his
8 position right near the top, get on the phone in
9 some way or meet with Bass to say, "Let's do a
10 JFO." Do you see that?

11 A Yes.

12 Q What do you say about that comment?

13 A Well, I agree that that is what should have
14 happened, and I have said that repeatedly through
15 my report, is that there needed to be action at a
16 senior level taken with the RCMP, but that
17 information was not being floated up to that
18 level. So, he wasn't sufficiently informed on
19 that, and I think that he was let down by some of
20 his subordinates in that respect, because he would
21 not have been one to be shy about doing that. So,
22 I agree that the outcome should have been that
23 someone at his level should have been dealing with
24 that. I'm not quite as prepared to put all the
25 blame on him based on the level of information

1 that he had.

2 Q So, let's just turn to the bottom of page 8-13,
3 the very bottom.

4 While I recognize that the responsibility for
5 the Missing Persons Unit rested with
6 Inspector Biddlecombe as the officer in
7 charge of Major Crime --

8 Do you see that?

9 A Yes.

10 Q -- it is unfortunate that members of senior
11 management could not discuss their concerns
12 regarding the missing women issue in a more
13 constructive manner, instead of deferring
14 ownership and effectively washing their hands
15 of it.

16 Do you see that comment?

17 A Yes.

18 Q That's --

19 A I agree. I agree that there was some unhealthy
20 dynamics going on, that cooperation and
21 communication was not good at the senior level of
22 the VPD going on. Uhm, Deputy Chief McGuinness
23 acknowledged that in his interview with me, and
24 Deputy Chief, or then Chief Blythe, acknowledged
25 that there was friction that impaired their

1 ability to communicate well on these issues. I
2 think that was very unfortunate and I came to the
3 same conclusion that Deputy Chief Evans did.

4 Q Continuing about her discussion of Unger, also
5 right near the top of 8-16. You have read her
6 comments and she appears to be critical of Deputy
7 Chief Constable Unger?

8 A Yes.

9 Q Do you share her criticism?

10 A Can you just point to me the comment that you are
11 asking me there?

12 Q The third paragraph.

13 A Yes.

14 Q He left negotiations on the JFO with Sergeant
15 Field, even though he apparently had a good
16 relationship with Bass --

17 A Yes.

18 Q -- of the RCMP.

19 A Yes, I agree.

20 Q So, we've gone through two of the chiefs, deputy
21 chiefs, McGuinness and Unger. Now I want to come
22 to the chief, Bruce Chambers. Page 17 and 18, and
23 the last paragraph:

24 In my opinion, Chief Constable Chambers did
25 not pay close enough attention to the missing

1 women issue. The fact that he was shocked at
2 the news in February '99 following Detective
3 Constable Shenher's community meeting
4 demonstrates that senior management was not
5 aware of such an obvious concern to the
6 community. I saw no indication of any action
7 he took as a result of receiving Detective
8 Constable Shenher's memorandum, and since the
9 review team did not commence until May,
10 following a request by Detective Constable
11 Shenher, then I believe he took no action to
12 address the concern. I believe he did not
13 recognize or take ownership of the missing
14 women issue during his tenure.

15 A I agree. I was quite critical of him in my
16 report, more critical than her I think.

17 Q And the next chief after Chambers became Terry
18 Blythe.

19 A Yes.

20 Q And at the time, he was DCC Terry Blythe. So,
21 this would be the third deputy chief constable we
22 are discussing?

23 A Yes.

24 Q We're at page 8-18, third paragraph. I'm just
25 only highlighting, for purposes of the time here

1 today. She says:

2 It is my opinion that CC Blythe first became
3 aware of the missing women issue when he was
4 the DCC in Operations.

5 Does that accord with your knowledge of the
6 events?

7 A Yes.

8 Q Although he suggested that DCC McGuinness
9 didn't provide much information, I believe it
10 was his responsibility to pursue that
11 information and remain informed.

12 Do you agree with that?

13 A Yes.

14 Q Later, when he became acting chief, and then
15 chief constable, he had every opportunity to
16 review what was going on and take action.

17 Do you agree with that?

18 A Yes.

19 Q She says:

20 I saw no evidence of that.

21 Do you agree with that?

22 A I didn't either.

23 Q I believe he failed to take ownership over
24 the issue and ensure that this growing
25 concern was addressed in the best possible

1 way. He suggested, and I accept, that he was
2 dealing with many issues when he became
3 acting chief, but I believe this was such a
4 concern to the community, that it demanded
5 his attention and action.

6 What do you say about that comment, Deputy LePard?

7 A I think that it's consistent with what I found and
8 what I wrote in my report, that there was a
9 failure at the senior management levels to show
10 leadership in this case.

11 Q And the senior management levels extends all the
12 way to the very top?

13 A That's actually mostly what I was referring to,
14 when I speak to that, at the executive level.

15 Q At page 8-150, Deputy Evans makes a comment, and I
16 just want to read it to you. She starts -- well,
17 let me go to the previous page, 8-149.

18 On March 29, 1999, a letter was addressed to
19 Chief Constable Chambers from a citizen
20 expressing "disgust and dismay at what
21 appears to be a lack of concrete effective
22 action on the part of your department to
23 solve the 20 or so cases of missing women in
24 Vancouver's Eastside." Chief Constable
25 Chambers responded and advised the

1 complainant that DCC McGuinness was in charge
2 of the Missing Persons Unit and directed the
3 citizen where he could be reached. I
4 mentioned this letter within the leadership
5 section because Detective Constable Shenher
6 sent her own response to the criticism and
7 provided an update as to the work, effort and
8 concern that she had invested in these
9 missing person cases.

10 In reviewing both letters, it is
11 apparent that Detective Constable Shenher was
12 much more concerned about the disparaging
13 remarks made regarding the investigation, and
14 I would suggest her letter, while it provided
15 more information than was necessary, should
16 have left a positive impression that
17 something was being done.

18 Now, this is what I want to come to.

19 This was in far contrast to the letter from
20 Chief Constable Chambers, who simply said,
21 "that DCC McGuinness can be reached at the
22 following telephone number and he can answer
23 your questions."

24 Here's the material sentence:

25 Leadership needs to inspire confidence and

1 promote transparency.

2 The next sentence:

3 Neither, in my opinion, were demonstrated by
4 Chief Constable Chambers' letter of response.

5 What do you say about her comments?

6 A I agree a hundred percent.

7 THE COMMISSIONER: I think what we'll do is we'll stop there.

8 THE REGISTRAR: The hearing is now adjourned until 2 p.m.

9 **(PROCEEDINGS ADJOURNED AT 12:28 P.M.)**

10 **(PROCEEDINGS RESUMED AT 1:59 P.M.)**

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

12 THE COMMISSIONER: Mr. Ward.

13 MR. WARD: Yes, thank you. With respect to the objection to
14 the anticipated use of the Evans report, I am
15 ready to make some brief oral submissions now.

16 THE COMMISSIONER: Yes.

17 MR. WARD: Normally these would be done when the report is
18 tendered through the expert witness, but which
19 would be in a number of days from now. I
20 apologize for not being completely ready and also
21 because, due to technical difficulties, I am
22 unable to pass up copies of the cases I am
23 referring to, but I can provide cites.

24 THE COMMISSIONER: Well, I don't think the law is in dispute
25 here. The question here is whether, in the

1 circumstances of this hearing, whether this report
2 ought to be made admissible. And you might want
3 to address the query that I have, and that is,
4 that if Deputy Chief LePard's report has been
5 admitted, why can't the Evans report be admitted?

6 MR. WARD: And I, I do propose to do that. So, I will start
7 there and accede now to your invitation to explain
8 why I am objecting to the Evans report being used
9 as an expert opinion.

10 First of all, in response to your question,
11 Mr. Commissioner, my understanding of the LePard
12 report, Exhibit 2 in these proceedings, and the
13 Williams report, Exhibit 1 in these proceedings,
14 is that neither has been tendered as an expert
15 opinion report. Both were delivered by counsel on
16 the premise that they constituted reviews from the
17 perspective of those two reviewers, Inspector
18 Williams, on the one hand, on behalf of his police
19 force, the RCMP; Deputy Chief LePard, on the
20 other, on behalf of his police force, the
21 Vancouver Police Department.

22 You will recall that when --

23 THE COMMISSIONER: Well, regardless of what you call it, excuse
24 me for interrupting you, but regardless of what
25 you call it, the fact is that the LePard report

1 is, is replete with opinion evidence. That's
2 really what we're talking about. When we're
3 looking at experts' reports, the real concern
4 about the reports is whether or not the opinion,
5 opinions given in expert reports ought to be
6 admitted. And Deputy Chief LePard has given
7 numerous opinions regarding the conduct of the, of
8 the investigation. So, it doesn't matter what you
9 call it, the fact is, he's given opinions and
10 that, that's been admitted here already.

11 MR. WARD: Yes, I accept that, and you of course are entitled
12 to give those opinions whatever weight you find
13 they deserve.

14 THE COMMISSIONER: Yes.

15 MR. WARD: Uhm, Evans's report, however, is in a completely
16 different category, in my respectful submission.
17 My understanding, based upon the comments of
18 counsel thus far, is that Deputy Chief Evans, of
19 the Peel Regional Police, was retained by this
20 commission to conduct a review of the files and
21 interview such witnesses as she deemed appropriate
22 and produce an expert's report.

23 If I am right in that premise, then I would
24 expect that when Deputy Chief Evans attends and
25 takes the stand, my friend, Mr. Vertlieb, will

1 lead her with respect to her qualifications to
2 provide expert opinion evidence. Other counsel
3 would, in the ordinary course, have the
4 opportunity to cross-examine. And if qualified,
5 then you would make a ruling that her report and
6 the expert opinion evidence within it is
7 admissible as such.

8 So, I, I take as a starting point to these
9 submissions that Evans's report is on a completely
10 different footing than the two internal reviews
11 done by Williams, on the one hand, and LePard on
12 the other, and it is on that premise that these
13 objections are based.

14 It was only after I sat down this morning
15 that I remembered the third objection and I will
16 restate them now.

17 The objections are: firstly, that it is
18 unnecessary for this tribunal to receive expert
19 opinion evidence on this subject, on the subject
20 of policing; the second is that Deputy Chief Evans
21 lacks the necessary independence to be qualified
22 as an expert who can provide such opinion
23 evidence; and thirdly, the opinions usurp the
24 tribunal's function by, in shorthand, offending
25 the ultimate issue rule.

1 It is your job, Mr. Commissioner, not any
2 expert's, to draw conclusions and come to opinions
3 as to these issues.

4 With respect to -- and I should say at the
5 outset, that I rest my objection primarily on the
6 first point, the lack of necessity for this
7 report.

8 THE COMMISSIONER: All right.

9 MR. WARD: I will provide some authorities. The first one you
10 are no doubt familiar with, Mr. Commissioner, my
11 friends are probably too, the case of *R. v. Mohan*,
12 1990, the decision of the Supreme Court of Canada.

13 THE COMMISSIONER: Yes.

14 MR. WARD: The Court said then that four factors must be
15 satisfied for opinion evidence to be admissible:
16 a) relevance; b) necessity in assisting the trier
17 of fact; c) the absence of any exclusionary rule
18 and; d) a properly qualified expert.

19 I accept, as it's already been pointed out,
20 Mr. Commissioner, that the rules with respect to
21 the admissibility of all evidence, including
22 expert opinion evidence, are relaxed in a quasi-
23 judicial administrative tribunal like this one.
24 But, nonetheless, there is support for the
25 proposition that, if an expert opinion is

1 unnecessary, a tribunal should not receive it.
2 And by the tribunal, I mean a non-court tribunal
3 like this one.

4 And I'll refer to this authority. It's
5 McCauley and Sprague, in *Practice and Procedure*
6 *Before Administrative Tribunals*, 1997, paragraph
7 17-14:

8 The agency should ask the purpose --
9 I quote from there:

10 The agency should ask the purpose for which
11 it is receiving expert opinion evidence. "If
12 the expert evidence is being admitted for the
13 same reasons as a court, that is, because the
14 issue is beyond your ability to understand it
15 unaided, then the agency may wish to adopt
16 the same cautious approach as the courts use
17 -- as the courts, in use of that evidence."

18 So, on that first objection, my position,
19 that expert opinion evidence from this police
20 officer is unnecessary, I refer as well to the
21 Supreme Court of Canada decision in *R. v. Abbey*, a
22 1982 decision. It's well-known. I will just read
23 out a short quote from it.

24 THE COMMISSIONER: I am familiar with the case.

25 MR. WARD: Thank you.

1 THE COMMISSIONER: It's a drug case, right?

2 MR. WARD: Indeed. And, and the bottom line is, if the judge,
3 or jury, the trier of fact, can form their own
4 conclusions without the help of an expert, then an
5 expert's report is unnecessary.

6 The, the fundamental premise is that the
7 expert renders an opinion because the subject of
8 the expertise is outside the knowledge and
9 understanding of the trier of fact. They need
10 help because they know nothing about the issue.
11 You will see it, for instance, and you've seen it,
12 Mr. Commissioner, time and time again where you
13 have forensic psychiatrists or chiropractors, you
14 name it, any, any types of medical people, all
15 types of medical people and other specialists who
16 have special expertise in areas that are outside
17 the knowledge of the trier of fact.

18 However, in this case, as I said before this
19 morning, Mr. Commissioner, with respect, really,
20 there is no one better qualified than yourself to
21 understand and express opinions on issues
22 pertaining to policing in the Province of British
23 Columbia. You literally wrote the book on this
24 subject. You don't need --

25 THE COMMISSIONER: I appreciate --

1 MR. WARD: -- the help of Deputy Chief Evans --

2 THE COMMISSIONER: I appreciate the flattery, but the fact is
3 that I am not so sure I am an expert in
4 operational matters and I, in fact, as a matter of
5 fact, I am not an expert in operational matters.
6 The report that, that, that I wrote in 1994 dealt
7 with -- it's a compre -- while it's a
8 comprehensive review of policing, it did not deal
9 with the same type of operational matters that are
10 dealt with in Deputy LePard's report or what's
11 contained in the Evans report.

12 So, anyway, go ahead.

13 MR. WARD: Well, I really don't want to waste anybody's
14 valuable time. That's my principal objection.

15 THE COMMISSIONER: Okay.

16 MR. WARD: If you, Mr. Commissioner, feel that you need the
17 assistance of this police officer and you need her
18 expert's opinion to assist you in your work, then
19 obviously you are not with me on the question of
20 necessity.

21 It is my assessment, that based on those
22 authorities that I referred to, that such opinion
23 evidence is not necessary given this tribunal's
24 special qualifications and expertise.

25 THE COMMISSIONER: All right.

1 MR. WARD: On the other two points, I will simply say, with
2 respect to the second issue of lack of
3 independence, it would be my intention to
4 illustrate this through cross-examination of
5 Deputy Chief Evans with respect to her
6 qualifications, however, I am making this
7 objection now, so I don't have that opportunity.

8 I will acknowledge and accept that, to the
9 degree it may be shown that she lacked
10 independence -- lacks independence, because she is
11 a current member of the police fraternity in this
12 country, that is an issue that goes to weight and,
13 and, and not necessarily to admissibility. So, I
14 expect to have more to say about that later.

15 THE COMMISSIONER: All right.

16 MR. WARD: And with respect to the last issue, the third issue,
17 my contention that the report offends the ultimate
18 issue rule, again, that's not going to be enough,
19 in my submission, to, to have it ruled
20 inadmissible at this stage.

21 Again, you, Mr. Commissioner, with your
22 breadth and degree of experience, is able to
23 disabuse your mind of portions of the report that
24 may be trenching on your authority as head of this
25 tribunal, and I have full confidence that you can

1 do that. So, I may have submissions later urging
2 you to ignore parts of the opinion because it
3 offends that, that rule.

4 THE COMMISSIONER: Well, obviously I will have to hear from you
5 on that.

6 MR. WARD: But that would be later when --

7 THE COMMISSIONER: Yes.

8 MR. WARD: On the assumption that the report becomes part of
9 the evidentiary body here, I will be making
10 submissions --

11 THE COMMISSIONER: All right.

12 MR. WARD: -- with respect to aspects of it that I feel ought
13 to be given less weight or that might be offensive
14 and should not be considered for, for those
15 reasons.

16 THE COMMISSIONER: All right.

17 MR. WARD: Those are my submissions.

18 THE COMMISSIONER: Thank you, Mr. Ward.

19 Mr. Vertlieb, Mr. Ward has said that since
20 the Deputy Chief Evans has not been qualified as
21 an expert in the usual manner of doing things in
22 courtrooms and in hearings, therefore, I cannot
23 find that she is an expert witness.

24 MR. VERTLIEB: Well, her bibliography, her curriculum vitae is
25 in her report, and it shows extensive background.

1 I don't think anyone looking at that, whether
2 someone working in the police fraternity, or I
3 should add sorority, if that's appropriate
4 language, or anywhere else would think that she is
5 not capable of giving an opinion. It goes to
6 weight.

7 THE COMMISSIONER: All right.

8 MR. VERTLIEB: But it's in the materials before you.

9 THE COMMISSIONER: Yes, all right.

10 MR. VERTLIEB: So, I don't agree with his submission on that.

11 I don't agree with his other submissions, --

12 THE COMMISSIONER: All right.

13 MR. VERTLIEB: -- but you are not asking me to comment on
14 those.

15 THE COMMISSIONER: Thank you.

16 Commission counsel seeks to file a report
17 prepared by Deputy Chief Jennifer Evans of the
18 Peel Regional Police Force. The report contains a
19 review of the investigations conducted by the
20 Vancouver Police Department and the Royal Canadian
21 Mounted Police.

22 Aside from giving a comprehensive review of
23 the investigation, and the interviews that she
24 conducted, as well as the reports that she has had
25 the advantage of examining, she has expressed

1 opinions regarding the operation of the missing
2 women's investigations, both by the Vancouver
3 Police and by the RCMP.

4 Mr. Ward, on behalf of the, some of the
5 families, has objected to the admissibility of
6 that report. I pause here to note that the
7 remaining counsel here take no objections to the
8 admissibility of the report. If I may be
9 permitted to generalize, it is the position of
10 most counsel here that the issue that I ought to
11 pay more attention to is the weight that ought to
12 be attached to the evidence and the opinions that
13 are expressed in that report.

14 Three objections are taken by Mr. Ward. The
15 first is that the report is not necessary and,
16 therefore, does not fit within the parameters or
17 the pre-conditions that exist for the
18 admissibility of expert witnesses.

19 It is said that I may draw upon my own
20 knowledge and come to the conclusions that are
21 reached by Deputy Chief Evans. With great
22 respect, I must disagree with that argument
23 because this report of Deputy Chief Evans, as with
24 the report of Deputy Chief LePard, are reports
25 that are prepared by people who have a particular

1 expertise and a particular specialty in
2 operational matters of policing. Those are not
3 matters that are within the ordinary knowledge or
4 purview of an average person. I categorize myself
5 as an average person. I do not have the necessary
6 expertise to know how investigations in these
7 circumstances ought to be conducted and what steps
8 should have been taken by the two police forces
9 when they received complaints during the course of
10 the Pickton investigation. Therefore, the first
11 ground of objection must, with respect, fail.

12 The second ground, or second objection raised
13 by Mr. Ward is that the report lacks necessary
14 independence, and the term that he has used is
15 that Deputy Chief Evans is a member of the
16 "fraternity" and, therefore, lacks the
17 impartiality that needs -- that is a pre-
18 condition to the admissibility of expert evidence.

19 I pause here to note that it is common
20 practice for counsel and for commentators to say
21 that police are not capable of investigating
22 police because of perceived bias. I will leave
23 that argument aside for the time being, but I will
24 say this, that it is not uncommon in the courts of
25 this nation for police to testify against other

1 police. It is not uncommon in our courts for
2 doctors to testify against other doctors, for
3 engineers to testify against other engineers. The
4 fact that those circumstances take place does not
5 render that evidence inadmissible. It may be that
6 the effect or bias may take place but, however,
7 that's a matter to consider in the circumstances
8 of each case. Each case must be decided on its
9 own circumstances.

10 I cannot conclude that merely because
11 chief -- Deputy Chief Constable Evans is a police
12 officer, that her views ought to be rejected
13 outright. There may be other reasons why her
14 views, ultimately, may be rejected, but that
15 certainly is not a ground. So that, with respect,
16 that ground must fail as well.

17 The third ground raised, or the third
18 objection raised by Mr. Ward is that the evidence
19 of Chief Constable -- Deputy Chief Constable Evans
20 is inadmissible because her evidence offends the
21 ultimate issue rule, in other words, that she is
22 making findings of fact and expressing opinions
23 that ought to be made by myself; in other words,
24 she is usurping the function of the trier of fact.
25 Again, I must disagree with that. While she has

1 come to some clear conclusions or clear opinions
2 as to what happened during the course of the
3 investigation, those opinions are not binding on
4 me at all. As a matter of fact, I fully expect
5 counsel for the police and other parties here to
6 urge upon me that her report or conclusions or
7 opinions ought not to be accepted by myself for
8 reasons I am sure that counsel will proffer.

9 So, in conclusion, I, I am of the view that
10 her report does not offend the ultimate-issue
11 doctrine and it is opinion evidence and I have to
12 treat it as such. It is not, certainly not
13 binding on me but, no doubt, it may be helpful at
14 some stage. However, I cannot reach that
15 conclusion, of course, until I hear the remaining
16 evidence and hear arguments of counsel.

17 So, for those reasons, the report will be
18 admissible.

19 I, as well, I should have dealt with the
20 other issue raised by Mr. Ward, and that is that
21 he said that she has not been qualified in the
22 usual way. And I agree with Mr. Ward in that she
23 has not been cross-examined, however, there is an
24 extensive curriculum vitae that is attached to her
25 report and I, I must take that into consideration.

1 For all those reasons, the report will be
2 held to be admissible and may be marked as an
3 exhibit.

4 MR. VERTLIEB: Mr. Commissioner, may I suggest that, for the
5 time being, the report and Appendix A and B be
6 marked as an exhibit, and then Appendix C and D
7 not yet be marked so that counsel for the
8 respective police agencies can review those for
9 any possible redacting, although it's our view
10 that none needs to be done, but out of an
11 abundance of caution, I think it's wise to do
12 that.

13 So, the report and Appendix A and B to be
14 marked, Appendix C and D to be maintained as an
15 exhibit for identification subject to confirmation
16 from VPD and RCMP counsel that those can be marked
17 as well.

18 THE COMMISSIONER: I should add as well, there is a fairness
19 issue involved here as well, and that is, this
20 report apparently was released to some members of
21 the media and not released to other members of the
22 media, and clearly, no member of the media should
23 be preferred over others. And for that reason, I
24 think that all members of the media ought to be
25 treated equally and, therefore, that's a factor I

1 must consider in the circumstances.

2 THE REGISTRAR: The report and Appendix A and B will be marked
3 as Exhibit Number 34 and Appendix C and D will
4 remain under the caveat of for identification E.

5 **(EXHIBIT NO. 34:** Report of Deputy Chief Jennifer
6 Evans and Appendices "A" and "B")

7 **(EXHIBIT NO. E FOR IDENTIFICATION:** Appendix "C"
8 and "D" to report of Deputy Chief Jennifer Evans)

9 MR. VERTLIEB: Thank you, Mr. Giles. That's absolutely spot on
10 to do it that way. Thank you.

11 **CONTINUED EXAMINATION IN CHIEF BY MR. VERTLIEB:**

12 Q Now, Deputy LePard, I'm now going to ask you, just
13 for confirmation, if you look at the first binder,
14 which I had you look at during the break, and turn
15 to tab 22, and just to confirm please for the
16 commissioner, that's a commentary you prepared on
17 the Williams report, which is Exhibit 2?

18 A That's correct.

19 Q Thank you. Returning to the Evans report at page
20 8-30, please, 8-30. I want to ask you some
21 questions about some of the RCMP involvement, in
22 addition to what we discussed this morning. If
23 you look at the bottom of page 8-30, the last
24 paragraph:

25 In my opinion, more resources should have

1 been applied to this investigation following
2 Ellingsen's refusal to show up for the
3 polygraph test.

4 I trust you agree with that as well?

5 A Yes.

6 Q Coquitlam RCMP investigators had information
7 from multiple sources, albeit secondhand,
8 that Pickton was responsible for a murder and
9 suspected of involvement in the missing women
10 from the Downtown Eastside.

11 You agree with that, too, I presume?

12 A Yes.

13 Q The information demanded attention and
14 action.

15 You agree with that?

16 A Yes.

17 Q And here is the question for you.

18 If he [meaning Moulton] was unable to deal
19 with it, he should have requested assistance
20 and not just ignored it.

21 Do you agree with that?

22 A I do.

23 Q Going over to the next page, to discuss RCMP
24 Superintendent Hall, you know that name?

25 A Yes.

1 Q And at the time, he was the officer in charge of
2 the entire detachment?

3 A Correct.

4 Q So, he would be, effectively and practically, he
5 would be the chief of the detachment?

6 A That's correct.

7 Q Now, she is making a comment about him below the
8 part where she references an interview with Hall,
9 and then you will see the paragraph on page 8-31
10 starting:

11 I did not see any documentation that would
12 demonstrate the level of knowledge that
13 Superintendent Hall had in relation to the
14 Pickton investigation.

15 Just take that as a given.

16 He was present during the meeting on August
17 11, 1999, and would have been aware of some
18 of the information.

19 Now, does that accord with your recollection
20 that he was, in fact, present for some of the
21 events?

22 A Yes.

23 Q Thank you. Here's the question, reading this
24 sentence:

25 In my opinion, he [meaning Hall] should have

1 followed up with his own investigators and
2 sought out their thoughts on the
3 investigation.

4 Do you agree with that?

5 A I do.

6 Q Thank you. Now, I next want to focus on the chief
7 superintendent of the, of the time, Mr. Bass. She
8 discusses him at page 8-33. Starting at the
9 fourth paragraph:

10 In my opinion, Chief Superintendent Bass,
11 as officer in charge of "E" Division, should
12 have made further inquiries and acted upon
13 this information.

14 Now, she's referencing the information above
15 that he was aware of. You have read this portion
16 of, of her report?

17 A Yes.

18 Q He was being told that there were at least
19 three serial killers operating in the
20 province. At the very least, I would have
21 expected to see something result from that
22 meeting. Staff Sergeant Davidson stated that
23 he didn't recall the conversation, but that
24 he remembered that he was unsuccessful in his
25 attempt to get the RCMP involved.

1 Continuing:

2 It is my opinion that Chief Superintendent
3 Bass recognized the missing women
4 investigation as evidenced by his attendance
5 at various meetings and his approval for VPD
6 to access to RCMP files.

7 Now, that statement is correct, as far as
8 your knowledge of the events?

9 A Yes. Chief Superintendent Bass, I think he was
10 superintendent at the time, was the one that
11 arranged for access to the homicide files from the
12 '95 Valley murders, when Detective Constable
13 Shenher was having difficulty accessing that
14 information.

15 Q Continuing:

16 There was no indication that Chief
17 Superintendent Bass assumed ownership over
18 the Pickton investigation as that remained
19 under the control of Coquitlam RCMP.
20 However, it is my view that Staff Sergeant
21 Davidson's proposal in March 2000 should have
22 prompted Chief Superintendent Bass to direct
23 the officer in charge of Major Crime to
24 contact VPD and discuss a coordinated
25 approach.

1 Do you have any view of this apparent
2 criticism of Chief Superintendent Bass?

3 MS. TOBIAS: Mr. Commissioner, --

4 THE WITNESS: I don't disagree.

5 MS. TOBIAS: -- Cheryl Tobias for the Government of Canada.

6 THE COMMISSIONER: Sorry?

7 MS. TOBIAS: I rise to ask to a clarification question. It
8 appears that my learned friend, Mr. Vertlieb, is
9 asking this witness questions about things and
10 documents and events that went beyond his -- the
11 documents and so forth that he looked at for his
12 report. And when he was -- I don't remember
13 exactly how the question was phrased, but I
14 believe that the witness was asked whether that
15 accorded with his view of what happened at the
16 time. I am simply asking that -- Mr.
17 Commissioner, you have said that you're interested
18 in, in the views of people like this witness who
19 have familiarity with policing techniques and, and
20 so on and so forth.

21 What I am a bit concerned about is that DC
22 Evans' opinion presumably is based on the
23 substratum of fact that she looked into and so on
24 and so forth. It's not at all clear to me what,
25 what this witness is being asked to agree with.

1 THE COMMISSIONER: Okay. Why don't -- well, you clarify that
2 then, Mr. Vertlieb.

3 MR. VERTLIEB: Well, I think, frankly, if the witness doesn't
4 have an opinion or doesn't know the factual basis,
5 this is, this is an experienced officer, an
6 experienced witness, and he would say so. I think
7 he did answer, and I don't think Deputy LePard is
8 taking the answer lightly. I asked the question,
9 "Deputy LePard, if you had, if you had a view of
10 that apparent criticism," and I think you were
11 answering when my learned friend was, was starting
12 her objection.

13 THE COMMISSIONER: Is there anything wrong with that?

14 MS. TOBIAS: Well, it all depends on how, how you take it I
15 think. Uhm, if, if you, if you take the answer as
16 being that the witness, from his own review of the
17 evidence and so on and so forth has come to a
18 similar conclusion, that is something different
19 than if he says, "Well, you know, from what she
20 says, this seems to have happened and that
21 happened, I do agree." It's not clear to me
22 which, which he's saying.

23 And I am concerned about it, because as you
24 will recall, there are, uhm, there are limits that
25 this witness has testified to in terms of the

1 material he reviewed. The body of material he
2 reviewed and the body of material she reviewed
3 isn't the same. So, I think it's important to
4 assist you to be clear on, on where we are and
5 what, what, what the opinion is based on at any
6 given time. And I appreciate that Mr. Vertlieb
7 might well want to ask whether, on the same facts,
8 he would come to the same conclusion or if he has
9 anything to add, but I just think that, for the
10 record, and for, for your assistance and for ours,
11 it's, it's very helpful to know which it is.

12 THE COMMISSIONER: My understanding is that the witness is
13 being asked to testify as to whether or not he
14 agrees with what Deputy Chief Evans said about
15 Bass. Is that not so?

16 MR. VERTLIEB: Yes, exactly.

17 MS. TOBIAS: Yes, it is. But as I said, it's not clear to me
18 whether he's being asked whether he agrees on the
19 basis of what he saw and reviewed, or simply on
20 the basis of what DC Evans outlines in her report,
21 because --

22 THE COMMISSIONER: Okay, maybe you had better clarify.

23 MS. TOBIAS: -- those aren't the same.

24 MR. VERTLIEB: Well, let's just read -- okay, fair enough.

25 Q Deputy, do me a favour please. Look at the third

1 paragraph starting with page 8-33, "on March 1st,
2 2000." Do you see that?

3 A Yes.

4 Q I will read it out, Mr. Commissioner:

5 On March 1st, 2000, Chief Superintendent Bass
6 had a meeting with Staff Sergeant Davidson,
7 Sergeant Paulson --

8 And that's actually Bob Paulson, is it?

9 A It is.

10 Q The new commissioner.

11 A The new commissioner.

12 Q -- and Corporal Filer. Staff Sergeant
13 Davidson had prepared a written proposal that
14 addressed the significant number of unsolved
15 homicides of sex trade workers and missing
16 women from Vancouver.

17 Now, you are familiar with Staff Sergeant
18 Davidson's work?

19 A Yes.

20 Q And we've covered that earlier in your evidence.

21 A Yes.

22 Q We won't go back over that. She just excerpts:

23 Staff Sergeant Davidson wrote, [and this is
24 part of his work] "There is no coordination
25 of investigative effort, such as sharing

1 suspect lists, suspect background, suspect
2 DNA and forensic evidence and information
3 between all potentially interested
4 investigations. There is no viable method of
5 associating known suspected offenders with
6 known or suspected crimes. At least three
7 serial killers are believed to be operating
8 in BC at this time."

9 She then continues:

10 From my interview, I was informed that a
11 formal business case for the proposal was
12 not submitted.

13 Now, you are aware of that being a factual
14 case as well?

15 A Yes. I am also aware of the information that, in
16 Staff Sergeant Davidson's report, and it was part
17 of the documentation that I reviewed.

18 Q Yes, I thought so. I thought we'd covered it, but
19 I just want to make sure since my learned friend
20 for the Department of Justice has made her
21 comments and we respect those.

22 So, she then says:

23 In my opinion, Chief Superintendent Bass, as
24 officer in charge of "E" Division, should
25 have made further inquiries and acted upon

1 this information.

2 Now, just so we're clear, "E" Division is the
3 overall organization for the RCMP in British
4 Columbia?

5 A That's correct. But I would just like to make one
6 minor correction is that, as chief superintendent,
7 at that time, he was not in charge of "E"
8 Division. He had a superior.

9 Q Fair enough. He, he would sit though at "E"
10 Division over top of the Coquitlam Detachment, to
11 your understanding of policing?

12 A Uhm, I don't believe that in his role at the time
13 they were actually subordinate to him. He
14 certainly was at a very senior level in "E"
15 Division and, at the time, he had responsibility
16 for things such as "E" Division Serious Crime and
17 the Unsolved Homicide Unit. But it would probably
18 be better for someone from the RCMP to describe
19 the reporting relationship.

20 Q That's fair.

21 He [meaning Bass] was being told that there
22 were at least three serial killers operating
23 in the province.

24 Now, you understand that statement, because
25 it flows from the memo of Davidson we just read

1 and, in fact, you have read?

2 A Yes.

3 Q At the very least, I [meaning Evans] would
4 have expected to see something result from
5 that meeting. Staff Sergeant Davidson stated
6 that he didn't recall the conversation but
7 that he remembered that he was unsuccessful
8 in his attempt to get the RCMP involved.

9 A Yes. That was clear in the documentation and
10 various notes I saw, that Staff Sergeant Davidson
11 seemed to have a clear understanding about what
12 needed to be done but he was frustrated with the
13 lack of response.

14 Q So, your last statement, sir, comes from your own
15 review of the, of the documents in this case, not
16 just reading Jennifer Evans's comments?

17 A Correct.

18 Q Thank you. I think we're answering my learned
19 friend's concern. Let's continue.

20 It is my opinion that Chief Superintendent
21 Bass recognized the missing women
22 investigation as evidenced by his attendance
23 at various meetings and his approval for VPD
24 to access RCMP files.

25 We've covered that. That's factually

1 correct, as far as you know?

2 A Correct.

3 Q There is no indication that Chief
4 Superintendent Bass assumed ownership over
5 the Pickton investigation as that remained
6 under the control of Coquitlam RCMP.

7 From your review, is that a fair statement
8 and correct, to your knowledge?

9 A Yes.

10 Q Now, here's the sentence that I wanted to go over
11 again with you.

12 However, it is my view that Staff Sergeant
13 Davidson's proposal in March 2000 should have
14 prompted Chief Superintendent Bass to direct
15 the officer in charge of Major Crime to
16 contact VPD and discuss a coordinated
17 approach.

18 Now, that's where I wanted to ask your
19 opinion of what appears to be a criticism of Chief
20 Superintendent Bass. Do you have an opinion for
21 the commissioner on that last sentence?

22 A Well, Mr. Commissioner, I don't disagree with it.
23 I think that there were a number of people, if
24 only they had stepped in and promoted a
25 coordinated response, it would have been helpful,

1 and that obviously was another opportunity where
2 that could have happened.

3 Q Thank you. Now, I wanted to move to a discussion
4 in brief of the Oger document. Is it Oger or Ojay
5 (phonetics) or -- I don't want to mispronounce
6 someone's name.

7 A It's Oger.

8 Q Thank you. You are familiar with his report?

9 A Yes.

10 Q And we've covered that at some length last time?

11 A Yes.

12 Q I don't believe though I asked you this question.
13 What was your opinion of that document?

14 A Uhm, well, much of the document was repetition of
15 others' reports. For example, Detective Inspector
16 Rossmo's report, in which he quoted extensively
17 from. So, some of his report, some of his report
18 was quoting from other reports, which I thought
19 was important information, and it was good to
20 revisit it. Some of it, uhm, I could see, showed
21 his lack of knowledge and experience.

22 But I thought the one really key point that
23 came out of it, a really important point, was that
24 he said, "Look," words to the effect, "if we had
25 40 murders where the bodies had been found, would

1 we be proceeding in the way that we are proceeding
2 now where we've got that many women who are
3 missing and assumed to have been killed by a
4 serial killer?" And I think that that was a very
5 good observation, uhm, and just spoke to, I
6 suppose, the fact that it was still somewhat
7 surreal and the lack of urgency in the response.
8 And I think that, from that point of view, this
9 layman's point of view, that was an important
10 point.

11 Q Thank you. I want to ask you now about the issue
12 around regionalization. At 8-45 there is a
13 comment from Ms. Evans. 8-45 please, the
14 second-to-last paragraph. And I want to preface
15 this, Deputy, by indicating that the issue of
16 regionalization is one that, in our opinion as
17 counsel, is more properly left for the study
18 phase, and no doubt you will have some comments.

19 But I do want to ask you a question, only
20 because it's referenced here, as it relates to the
21 Pickton case. She says:

22 I believe that a quicker and more coordinated
23 police response would have resulted if one
24 police agency held the same jurisdictional
25 control over both Pickton's residence and the

1 Downtown Eastside where the women went
2 missing from.

3 Do you agree with this statement by Ms.
4 Evans?

5 A Yes, I strongly agree and I wrote quite a bit
6 about that issue in my report, which she has
7 summarized quite concisely.

8 Q In the study commission phase, we can ask you what
9 the downside to regionalization could be. I don't
10 think we need to hear that under oath in this
11 phase.

12 I want to move to a discussion about West
13 Coast Reduction and this is in her report at
14 section 8-106 and 107. Now, you are familiar with
15 the issue around West Coast?

16 A Yes.

17 Q And I believe the evidence will indicate that
18 Special "O" is a, is a group that follows people
19 but doesn't get out and actively apprehend or, or
20 do any of that type of investigation?

21 A That's my understanding.

22 Q So, in this report, there's a reference at the
23 bottom of 8-106:

24 The information from Caldwell regarding
25 Pickton delivering barrels to the West Coast

1 Reduction Limited demanded a follow-up
2 inquiry.

3 Do you agree with that?

4 A Yes.

5 Q Corporal Connor advised in his interview that
6 he did not pursue that aspect as he did not
7 want to expose the Pickton investigation to
8 the personnel at West Coast Reduction
9 Limited.

10 She continues:

11 This statement is in contrast to the
12 interviews he conducted with Yelds, Casanova
13 and Menard, who all had a very close
14 association to Pickton and were more likely
15 to talk to Pickton than anyone at West Coast
16 Reduction Limited.

17 Do you agree with that?

18 A I, I do agree with her conclusion. I would like
19 to say, in fairness to Corporal Connor, that he
20 was being diligent. I agree with her that that
21 was something that could have and should have been
22 pursued, and it just shows the benefit of
23 brainstorming and round-tabling these sorts of
24 things to talk about what investigative
25 strategies. So, I'm loathe to second-guess him,

1 uh, in that he was trying to be diligent, but I
2 agree with the conclusion of Deputy Chief Evans,
3 in considering this carefully, that her opinion
4 was a better one.

5 Q Right. So, just so we know, we've covered the
6 name, Yelds, that's Lisa Yelds. We've covered
7 that earlier. Casanova, that was a person named
8 Pat Casanova?

9 A Yes.

10 Q And he was a friend of Pickton's?

11 A Yes.

12 Q That was a new name. And then Menard, that's Ron
13 Menard?

14 A Correct.

15 Q And we heard about Menard earlier.

16 And to your knowledge, Evans is right in
17 saying they all had a very close association to
18 Pickton?

19 A Yes.

20 Q That's factually correct?

21 A Yes.

22 Q And then she also says, next sentence:

23 Corporal Connor also knew at that point, from
24 civilian RCMP employee, Bev Hyacinthe, that
25 Pickton was aware he was under surveillance.

1 And there wasn't a woman named Bev Hyacinthe
2 who worked in the RCMP?

3 A Correct, a civilian employee.

4 Q And she did confirm that fact, that Pickton did
5 know he was under surveillance?

6 A I understood that she passed on that information,
7 that belief.

8 Q So, that's another reason why Evans is saying that
9 to worry about exposing Pickton to the people who
10 worked at West Coast Reduction isn't something
11 that she's accepting apparently, according to the
12 way she's written this?

13 A Yes.

14 Q She then concludes:

15 In my opinion, Corporal Connor had already
16 exposed the investigation, and following up
17 with West Coast Reduction Limited, in my
18 opinion, would not have jeopardized the
19 investigation, but may have assisted.

20 A Yes, I agree.

21 Q Now, I wanted to ask you about another point in
22 this. At page 107, she says that Connor may not
23 have been getting realtime updates. This is the
24 third paragraph from the bottom.

25 A Yes.

1 Q While I acknowledge that Corporal Connor may
2 not have been getting realtime updates, I
3 believe it was a priority for him to follow
4 up on that information regarding the barrels
5 and the information at West Coast Reduction
6 Limited as it corroborated information
7 provided by Caldwell.

8 Do you agree with that statement?

9 A Yes.

10 Q In this same memorandum, I was advised that
11 information could have been obtained at a
12 later date but I have seen no documentation
13 to show that Corporal Connor, or anyone else
14 from Coquitlam RCMP, conducted this follow-up
15 until Pickton was arrested in February of
16 2002.

17 Do you accept that as well, from your knowledge?

18 A Yes.

19 Q She then says:

20 On the basis of my review, I disagree with
21 Corporal Connor's statement that they have
22 never seen Pickton do this before, as
23 surveillance reports revealed that Pickton
24 was followed to West Coast Reduction Limited
25 on August 4th, and then followed to the area

1 of the Patricia Hotel in the Downtown
2 Eastside.

3 Now, from your review, can you agree or
4 disagree that, in fact, Pickton was followed to
5 West Coast Reduction on August 4th?

6 A Uhm, I would have to check my chronology but I do
7 recall reading the surveillance notes and they
8 were fairly clear about where he was followed.

9 Q I will leave that with you as something that's
10 factually correct, and if, if it turns out it's
11 wrong, then sometime during your examination with
12 Mr. Hern, you can correct that for us. It's a
13 small point in all the points we've covered, but I
14 want to give you a chance to disagree if that's
15 the case.

16 Our information, just so you know, Deputy, is
17 that that's factually correct, August 4 he was
18 followed there and then on to the Patricia
19 Hotel, --

20 A Right.

21 Q -- which is in the Downtown Eastside of Vancouver.

22 A I do recall reading that in the surveillance
23 notes. I just don't have the exact date in my
24 mind.

25 Q Okay, that's fine. And Patricia Hotel is in the

1 Downtown Eastside?

2 A Yes, it is.

3 Q So, how would you have handled that information,
4 as an experienced surveillance officer and
5 investigator?

6 A Uhm, well, a couple of things. I think that what
7 this points out, Mr. Commissioner, is not a lack
8 of diligence by Corporal Connor, but a lack of
9 information management, and that has been the
10 cause of failures of many investigations. And so
11 there is a lot of information coming in and it
12 really needed someone to manage it really
13 effectively so that everybody needed to know --
14 everybody who needed to know the information did
15 have it and could action it properly. And so
16 that's about how you organize your investigation.

17 But with respect to what could have been
18 done, and I am not suggesting that Special "O"
19 would have done it, because I am not sure exactly
20 how they operate and what they are willing to do,
21 but certainly in my experience in the Strike Force
22 doing surveillance, if we knew information, for
23 example, that an informant stated that Pickton was
24 dropping off what could be human remains in these
25 large barrels to the West Coast Reduction, then an

1 obvious strategy would have been to consider at
2 least going in and making contact with the owners
3 of West Coast Reduction, trying to get a look or a
4 sample at what was being dropped off, maybe even
5 using the staff at West Coast Reduction to assist
6 in some way. In the same way that I have followed
7 many bank robbers, is that when they had made a
8 visit to a bank, we would always go in and speak
9 to the people in the bank, first of all, to see if
10 they had been robbed, because sometimes they
11 wouldn't respond the way you might think they
12 would; but secondly, because they might have been
13 doing a dry run, and so we want to know what's
14 happened.

15 So, it would be very typical for us on a
16 surveillance team, given the right information, to
17 go back and we would call it "cleaning the
18 premises," to see if there was any evidence. And
19 we might decide to do an approach, especially when
20 this seemed to be a very upstanding business, not
21 a sketchy kind of business or anything like that.

22 Q I wanted to ask you a question about a comment in
23 here, meaning Evans' report, about Project
24 Evenhanded at page 8-157, the last paragraph.

25 In my opinion, Sergeant Adam did appear to

1 have a small group of highly-motivated
2 officers and support staff that were very
3 committed to this review. I would be remiss
4 if I did not point out again, that with the
5 limited amount of human resources attached to
6 Project Evenhanded, it did not make sense
7 that officers were permitted to take extended
8 annual leave during the summer months. While
9 I am a firm believer in work/life balance
10 and recognize that it is essential for
11 officers to have time away from work in order
12 to relax, I found it difficult to accept that
13 Sergeant Adam, who was in charge of this
14 project, was permitted to take annual leave
15 from June 14 to August 13, 2001. I do not
16 blame Sergeant Adam, but rather, question the
17 decision making by his supervisor who would
18 allow this extended length of time off.

19 Do you have a comment for us about, about
20 what we just read?

21 A Uhm, well, I just say that Deputy Chief Evans
22 looked fairly extensively at Evenhanded and I
23 didn't. She looked at three parts: Vancouver,
24 Coquitlam and Evenhanded. I really just looked at
25 the two parts, because Evenhanded was an ongoing,

1 active investigation at the time I did my review.
2 So, I did not look at it in detail. I'm aware of
3 that information now and I would not disagree with
4 her conclusions, based on that information.

5 Q As you know, there was discussion here in the
6 hearing about the involvement of the media and the
7 press releases and the community concern over this
8 tragedy of these women going missing inexplicably.
9 You are aware of all of that?

10 A Yes.

11 Q I want to ask you about some comments that are in
12 Deputy Constable Evans' work at page 8-145, and
13 this is under the topic of "external" and she
14 frames it as "community and media". On the
15 previous page, she sets out the background. She
16 said under the section "community, media," she
17 says:

18 I was advised by media relations officer,
19 Constable Drennan, that VPD had no formal
20 media strategy with missing women
21 investigations. She [meaning Drennan]
22 recalled Detective Inspector Rossmo
23 approaching her in 1998 with regard to his
24 proposal.

25 I am not going to take you through that. You

1 read that recently?

2 A Yes.

3 Q Here is what she then says, then meaning -- then
4 says, meaning Evans, at the top of the page 145:

5 The failure to warn the public that women
6 were still going missing was a mistake.
7 While I accept that the VPD did not have
8 proof of a serial killer, they were aware
9 that many of the women had likely met with
10 foul play. During his interview, Inspector
11 Greer was asked for the reason why no media
12 release was issued regarding the possibility
13 of a serial killer and he stated, "At this
14 point, we don't have any crimes. We don't
15 have anybody abducted. We don't have any
16 bodies found. We don't have any crimes
17 reported. We have people who were living a
18 criminal lifestyle missing, some only being
19 reported missing after many months, after
20 months of being gone."

21 Here's the material sentence:

22 In my opinion, the VPD should have gone to
23 the media and announced they were concerned
24 that 21 women had been reported missing since
25 1995.

1 Do you share that apparent criticism?

2 A I do. I think that -- I have written about it in
3 my report, both that there was a lack of an
4 effective media strategy, which might have been
5 helpful in a number of reasons, and even though
6 this might have been right at the beginning, in
7 1998, might have been premature until there was
8 some investigation done, it was very quickly that
9 Detective Constable Shenher, by the end of August
10 of 1998, was writing reports saying, "These cases
11 are linked. They're suspicious. We can't find
12 them. We should be able to find them. They have
13 stopped collecting Welfare. You know, that's a
14 big red flag." So, clearly, by the end of August
15 1998, the red flags had been risen and there
16 should have been more information provided.

17 There was information being provided, I know
18 it was one of the minor factual errors, that there
19 had been no acknowledgement of the possibility of
20 a serial killer until an *Elm Street* article in
21 November of 1999. In fact, there had been
22 acknowledgement of the possibility of a serial
23 killer much earlier than that, back to 1998, both
24 from interviews with Inspector Biddlecombe,
25 Detective Inspector Rossmo and others.

1 But what I pointed out in my report is that,
2 although the possibility was acknowledged, it was
3 always minimized as just one possibility, among
4 many others, rather than acknowledging that it was
5 a significant possibility, given all the red
6 flags.

7 So, the timing, you know, right at the very
8 beginning, maybe it was premature, but it was not
9 much later that I agree that clearly, when, when
10 Detective Inspector Rossmo wrote his draft press
11 release saying they were going to investigate that
12 issue, that would have been the right thing to do.

13 Q There are some who appear to be very frustrated
14 with the historical reluctance of the Vancouver
15 Police to recognize a problem that the community,
16 with the support of media, was crying out for
17 action on. You understand there is a great deal
18 of frustration, even to this day, around the
19 police approach to this case?

20 A I do. Uhm, I know that the media -- the community
21 was very vocal about it. I would say that, other
22 than a few reporters, like, Lindsay Kines and Lori
23 Culbert at the time, trying to get the interest of
24 the media was actually very difficult to do from
25 my review at the time. Uhm, there were very few

1 reporters that actually showed much interest in
2 it.

3 Certainly the community was raising the
4 alarms, loud and clear. And so I understand, and
5 I deal with people from the Downtown Eastside
6 community regularly to this day, and I know that
7 we still bear the impact of the mistakes and the
8 failures of that time, even though it was 12, 13
9 years ago, that there's a, there's a consequence.

10 Q And the consequence is a lack of trust and
11 confidence by members of our community in the work
12 of our police force?

13 A Yes, that's one of the outcomes.

14 Q Hopefully, some of the work we're doing here, with
15 the good graces of the commissioner, can change
16 that.

17 A I hope so. And I also know that the Vancouver
18 Police Department has worked hard in recent years
19 and made considerable gains, both in terms of
20 public trust, but in taking actions that show our
21 level of commitment to dealing with the issue of
22 violence against marginalized women in the
23 Downtown Eastside, for example.

24 Q I am just about concluded. Just one procedural
25 point. I'm expecting, within a very short

1 timeframe, that Mr. Hern will be able to confirm
2 that all of those binders can be marked as
3 exhibits. Mr. Hern has gone through all of them.
4 He's just waiting for one last binder that's a
5 small one. Normally, I would not want to conclude
6 until I have had a chance to mark it, but I am
7 confident that we can get it marked with Mr. Hern
8 when he's taking his witness through his friendly
9 cross-examination. I didn't want you,
10 Mr. Commissioner, to think we had forgotten that
11 these binders have not yet been marked.

12 THE COMMISSIONER: All right.

13 MR. VERTLIEB:

14 Q I want to conclude on one comment that emerged at
15 page 8-139, and this is dated October 1, pardon
16 me, October 10 of 2001. Can you turn to this
17 please?

18 A Yes.

19 Q And it's in a discussion about police conduct in
20 investigations. I want to read this paragraph.

21 VPD Inspector Morris, Sergeant Emerslund,
22 Detective Kean and Detective Constable Scott
23 met with RCMP and Project Evenhanded Staff
24 Sergeant Adam.

25 That's factually correct, is it not?

1 A Yes, that's my understanding.

2 Q And this is now when Evenhanded is in full swing
3 and Adams running it?

4 A Yes.

5 Q There were discussions about information that
6 had been coming forward from victims of
7 violent sexual assaults. These
8 investigations were being conducted by the
9 Vancouver or the VPS Sexual Assault Squad --
10 VPS meaning?

11 A I think she's just misspoken and said "Vancouver
12 Police Service" rather than "Vancouver Police
13 Department."

14 Q -- who had also set up a telephone tip line
15 to generate calls in relation to violent
16 offenders.

17 That was a factually correct statement?

18 A Yes.

19 Q Thank you.

20 Information which had been obtained about
21 Pickton was also discussed.

22 That's correct?

23 A Yes.

24 Q Here's the interesting statement.

25 During this meeting, Detective Scott recalled

1 that the Staff Sergeant Adam "indicated that
2 he was familiar with the Pickton file and
3 advised that he was not sure if information
4 on the Picktons was fact or urban myth."

5 You don't subscribe to the theory of urban
6 myth, do you?

7 A No. I think that what that really speaks to is
8 that "familiar" is probably not the right word,
9 that Staff Sergeant Adam knew about the Pickton
10 file, that there had been an investigation there,
11 but had very little real knowledge about it or the
12 evidence pointing at him. I am sure that if he
13 were aware of all of it, a sharp investigator like
14 Staff Sergeant Adam would have taken that
15 information differently.

16 Uhm, but as was pointed out in both my report
17 and Deputy Chief Evans' report, that there was a
18 lack of communication between the Coquitlam RCMP
19 and Evenhanded, and when the Coquitlam
20 investigators met in April of 2001 and described
21 Pickton as still being a high priority and
22 committed to providing a package on the file to
23 Evenhanded, I did not find any record, and nor did
24 Deputy Chief Evans, that that package was ever
25 presented to Evenhanded. So, I know that they did

1 have some information about Pickton, but I don't
2 know how much or how carefully it was reviewed.

3 MR. VERTLIEB: I believe I've concluded, but perhaps we could
4 take the afternoon break for 10 minutes or so?

5 THE COMMISSIONER: All right.

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

7 **(PROCEEDINGS ADJOURNED AT 3:01 P.M.)**

8 **(PROCEEDINGS RESUMED AT 3:26 P.M.)**

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

10 MR. VERTLIEB: I understand from Mr. Hern and Ms. Tobias that
11 they're almost completed their review of the
12 binders. Mr. Hern has completed, in fact, and Ms.
13 Tobias will have a sign-off tomorrow. So,
14 hopefully we can mark those tomorrow.

15 THE COMMISSIONER: All right.

16 MR. VERTLIEB: And I am comfortable that, Mr. Commissioner.

17 Q I just want to say, Deputy, over the course of the
18 last many months, you have been very helpful with
19 documents and very cooperative, and certainly
20 sitting in the witness box as long as you have is
21 not an easy event and we recognize the stress
22 around that and we are grateful for the time that
23 you have given us and we appreciate the time you
24 spent with us.

25 A Thank you.

1 Q Thank you.

2 THE COMMISSIONER: Yes.

3 MR. HERN: Well, Mr. Commissioner, according to the protocol,
4 since this deputy is my witness, I will be going
5 second, although I usually will be going toward
6 the end in the order of cross-examinations.

7 THE COMMISSIONER: All right. So, who --

8 MR. HERN: I see Mr. Ward is on his feet so maybe we're not
9 going next.

10 THE COMMISSIONER: Let's hear from him.

11 MR. WARD: Thank you. I have two issues of concern. The first
12 is my friend, Mr. Vertlieb's, comment that the
13 binders were almost ready to be marked. I wasn't
14 quite sure what he was referring to. Was that the
15 seven binders that were tendered to Detective
16 LePard or is that those seven binders plus the
17 binder of Williams' appendices that I have been
18 concerned about since the first day we convened?
19 Is it both of those?

20 MR. VERTLIEB: Certainly they both need to be marked and I am
21 just waiting for the lawyers to confirm that we
22 can mark them both. Both Ms. Tobias and Mr. Hern
23 know best what needs to be done, but obviously,
24 the Williams report is in Ms. Tobias's domain.

25 THE COMMISSIONER: Okay. All right, does that answer your

1 question?

2 MR. WARD: Yes, it does, that one, thank you. So, I am very
3 hopeful that they will be marked tomorrow morning
4 because I will be, when I get my turn to cross-
5 examine, referring to both sets of documents.

6 The second point is a little more
7 substantial. This is the first of Mr. Hern's
8 clients who is testifying in this hearing. As you
9 know, Mr. Commissioner, when my clients testified,
10 I led their evidence in chief, and that was after
11 some considerable encouragement from Mr. Vertlieb
12 that I adopt that approach. Uhm, with respect to
13 Mr. Hern's clients, for whatever reason, that
14 approach is not the one that's being followed.
15 Rather, Mr. Vertlieb led the evidence in chief and
16 now Mr. Hern is about to ask questions of his own
17 client.

18 My only concern is that there is some clarity
19 respecting the scope and parameters around such an
20 examination, given this bifurcated means of
21 adducing the evidence in chief. And by that I, I
22 am concerned that, I am concerned whether this is
23 a new, fresh examination in chief at large, or is
24 it confined to those matters that Mr. Vertlieb
25 neglected to elicit from this witness, or exactly

1 what is it?

2 And I raise it now because I expect that
 3 there will be other of Mr. Hern's clients, and
 4 then Ms. Tobias's clients, and Mr. Crossin's
 5 clients, who may be in the same position, and I
 6 feel it ought to be addressed right at the outset.
 7 So, I am just seeking some clarity as to what the
 8 scope of this examination is and how it will be
 9 conducted.

10 MR. VERTLIEB: Let me assist. I'm not sure that clarity is
 11 needed, because I thought clarity had been
 12 provided on two counsel meetings. The two counsel
 13 meetings occurred and I made it clear that we
 14 would treat the witness who had a lawyer as the
 15 person who would conduct the examination after
 16 commission counsel had concluded, and it would be
 17 in the nature of a friendly cross-examination.
 18 It's not to be considered, in the view that I took
 19 and explained to my colleagues, an examination in
 20 chief. Obviously, a friendly cross-examination
 21 goes to the weight, and counsel is advised to be
 22 mindful of that. If they lead in a way on an
 23 important issue that ultimately you don't find
 24 helpful, then you will deal with that. But
 25 that's always been understood.

1 THE COMMISSIONER: I think that would be the normal, if there
2 is anything normal in an inquiry, would be the way
3 of doing it. And I, I appreciate that, that
4 counsel may throw a softball at, softballs at
5 their own witness, but I think I know how to deal
6 with that, but in any event, I have your concern.

7 MR. WARD: Thank you.

8 THE COMMISSIONER: Does anybody else have any comments? Ms.
9 Livingstone, you looked like you were about to
10 jump up.

11 MS. LIVINGSTON: I will just wait and see what happens.

12 THE COMMISSIONER: All right. Yes, Mr. Hern.

13 MR. HERN: I just have two comments on that. One is that I do
14 note that the order, this proposed order was
15 circulated on paper well prior to the --

16 THE COMMISSIONER: Yes.

17 MR. HERN: -- by the commission well prior to the beginning of
18 the hearings.

19 But also, with respect to scope, the party,
20 the participants, even when it's their own
21 witness, do have certain, certain interests in
22 eliciting certain evidence for you to consider --

23 THE COMMISSIONER: Absolutely.

24 MR. HERN: -- that may be different from the commission.

25 THE COMMISSIONER: Yes.

1 MR. HERN: And so I will certainly endeavor not to overlap. It
2 won't be a second duplicate of cross, because I
3 know that would irritate you and we won't do that.
4 But I do have a number of issues that I want to
5 deal with. And I should say at the outset, one of
6 the things that I will want to address in cross is
7 an overview, and I mean an overview, of changes
8 that have been made in the Department since that
9 are relevant, because that does form part of this
10 witness's review, --

11 THE COMMISSIONER: Yes.

12 MR. HERN: -- and I think it's important both, because we've
13 already had a witness, Mr. Crey, express an
14 interest in hearing that and so there is a larger
15 forum here listening.

16 THE COMMISSIONER: Well, no, I expect he will tell me that
17 there are a number of changes that have taken
18 place since this investigation, and if that's so,
19 obviously, the inquiry needs to hear about those
20 because, at the end of the day, we're going to
21 have to make some recommendations.

22 MR. HERN: Right. And I think it's helpful for all
23 participants, frankly, to, to know what those are,
24 what, what has been done, so when we're
25 formulating ideas about what else might be done,

1 it's done in context.

2 THE COMMISSIONER: All right.

3 MR. HERN: But I won't belabour those. We'll just go over
4 them --

5 THE COMMISSIONER: All right, thank you.

6 MR. HERN: For your information, I would expect that I will
7 conclude by lunchtime tomorrow.

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

9 Yes, Mr. Gratl?

10 MR. GRATL: I would just ask my friend, Mr. Hern, to provide
11 disclosure in respect of those improvements, and
12 those improvements in process and administrative
13 design and so forth within the Vancouver Police
14 Department. If he proposes to, to lead or elicit
15 evidence in respect to those improvements, it's
16 only appropriate that we have an opportunity to
17 get a little paper in respect of those.

18 MR. VERTLIEB: The only thing we want to say, Mr. Commissioner,
19 and for Mr. Hern's benefit, I totally understand
20 your comment, but keep in mind that there will be
21 a study phase which is --

22 THE COMMISSIONER: I thought about that after I made the
23 comment, so.

24 MR. VERTLIEB: And so I wouldn't want us to lose valuable
25 hearing time under oath --

1 THE COMMISSIONER: Yes.

2 MR. VERTLIEB: -- when the changes and, and recommendations
3 phase is going to still be dealt with. I just
4 wanted to make that point, Mr. Commissioner,
5 because I think it's important --

6 THE COMMISSIONER: Yes, the study --

7 MR. VERTLIEB: -- to keep in mind.

8 THE COMMISSIONER: The study commission that will follow the
9 hearing commission will deal with matters of
10 policy.

11 MR. HERN: Yes.

12 THE COMMISSIONER: And so Mr. Vertlieb's point is well-taken,
13 that is, that, that we will -- you will have the
14 opportunity, as will the deputy, to tell us about
15 proposed, or changes that have been made and other
16 proposed changes, and so that's something that you
17 need to keep in mind.

18 MR. HERN: I will, and that, that's what informs my submission,
19 that we will be doing just an overview of that,
20 not, not going into any detail, just touching
21 base, and I will provide my friends with a binder
22 with the paper that Mr. Gratl --

23 THE COMMISSIONER: All right.

24 MR. HERN: -- speaks of, so that they can go away and look at
25 that and take it into context.

1 **CROSS-EXAMINATION BY MR. HERN:**

2 Q So, I wanted to begin with a couple of issues that
3 I think were not touched on or were touched on
4 only very briefly within the context of, of Deputy
5 Chief LePard's analysis of the investigation, and
6 the first arose -- arises from a question that Mr.
7 Vertlieb put to you today, Deputy Chief, which
8 was, you discussed with him that Project
9 Evenhanded, early on, had a list of about 31 or so
10 Priority 1 suspects that it had gathered, and you
11 had stated that, in your view, that wasn't an
12 overwhelming number of suspects to manage or
13 consider for the purposes of a suspect- based
14 investigation had Evenhanded chosen to go that
15 route, and what I wanted to ask you was, why you
16 say that?

17 A Well, 31 suspects, Mr. Commissioner, if you were
18 actually going to do full investigations into each
19 one of those, that would be a lot. Thirty-one is
20 a lot less than 600, which was their total suspect
21 list, I understand. So, it's a lot less than
22 that. But it's still a lot of suspects.

23 But my point about that was that, with the
24 information that they had, 31 suspects, there are
25 certainly strategies to try to pare that list down

1 and eliminate suspects leaving a more manageable
2 pool. For example, we know, statistically, that
3 when the women started going missing was really in
4 1995 and it continued until the end of 2001. And
5 in fact, my understanding is that the earliest
6 known victim of Pickton was 2005 (sic) and that
7 coincides with the spike in the number of women
8 that were reported missing.

9 So, obviously, the suspect had to be
10 available during that time, and one of the things
11 that could have been done was to simply look at
12 who was out of prison during that time. So, that
13 would be one way to eliminate some suspects,
14 because the assumption was that it was one serial
15 killer that was responsible, and if there was
16 someone in prison for several years, then they
17 obviously wouldn't be looking good to be the right
18 suspect.

19 There are other strategies to use. For
20 example, if you have suspects and you have clear
21 enough information to interview them about, you
22 can ask suspects to come in for a polygraph
23 examination, and that's very commonly used, to try
24 and exclude suspects from a suspect pool. And if
25 they refuse, well, then they stay on the list.

1 Uhm, the next thing would be to compare the
2 suspect to the known information. So, I
3 appreciate that, of these 29 to 31 suspects, they
4 were all very bad people. I understand that, very
5 serious records, very violent crimes that they
6 were associated to. But then, had Evenhanded been
7 fully apprised of all the information from the
8 Coquitlam investigation, it could have been
9 compared against that information. For example,
10 how many of those suspects had, not one, but two,
11 different informants coming forward separately to
12 say, "Pickton said I can get rid of the -- he can
13 get rid of a body for me." That was pretty
14 important information. How many of them had three
15 informants who weren't colluding, who came forward
16 to say, "Ellingsen has told me this story about
17 seeing this murder in the barn," and there is no
18 evidence to rebut that? It looks believable
19 information. How many of them have a rural
20 property that they can dispose of bodies? And, in
21 fact, there is informant information about how
22 they are disposing of bodies. How many of those
23 suspects had been interviewed and provided what I
24 described in my report as evasive answers and what
25 the RCMP members just said, flat out, that he was

1 lying?

2 So, there was this preponderance of evidence
3 that was pointing towards Pickton, that the only
4 thing that, that differentiated him from any of
5 the other suspects, because I agree that if only,
6 if the only information about Pickton was the
7 Victim 1997 incident, it was a very violent
8 incident, then I agree, he might not look
9 anymore -- any better as a suspect than any of
10 these other dangerous violent men.

11 Uh, but I am not aware of any other
12 information about these other dangerous violent
13 men similar to the information pointing at Pickton
14 in terms of multiple informants, opportunity,
15 access, very cavalier statements to several
16 witnesses that he can get rid of a body, the fact
17 that he had been interviewed and, and so on.

18 It's that there was a, a wealth of
19 information, and as Mr. Vertlieb described, which
20 I agree with, is that it had a multiplier effect.
21 Because it wasn't simply adding up, when you have
22 got that many disparate pieces of information, all
23 pointing in the same direction, it becomes highly
24 improbable that there is not some fire behind that
25 smoke.

1 So, had there been, and not to discredit the
2 investigative strategy, because I think that it
3 definitely had merit, for sure, in retrospect,
4 given sufficient resources, I am sure that they
5 wished they had had the capacity to complement
6 that strategy with also a suspect-focused strategy
7 as well, uhm, which, with more of a sense of
8 urgency on it, particularly when they realized
9 that women were still going missing, that it
10 wasn't a historical case.

11 Q Now, the next thing I want to ask you about is
12 from the period of time, the end of August of
13 1999, and then into September and October with the
14 focus on Vancouver's, uhm, investigation,
15 Vancouver Police Department's investigation. And
16 just to reference everyone in the timeframe here,
17 August of '99 was when the intensive work being
18 done in Coquitlam on Pickton was occurring, right?

19 A Right.

20 Q And, and you had discussed with Mr. Vertlieb at
21 some length the different investigative strategies
22 that might have been employed out in Coquitlam to
23 further that investigation?

24 A Yes.

25 Q So, if you could turn in Exhibit 1, which is your

1 report, which may not be before you.

2 A I have a copy.

3 Q You should probably refer to the exhibit for the
4 court. Mr. Giles, would you, would you just --

5 A It is a copy of the inquiry version of the report.
6 I just put it in a binder --

7 Q All right.

8 A -- because it's easier to turn pages.

9 Q All right. If everyone is happy with that, then
10 that's fine.

11 And what I wanted to look at was page 130
12 please. I would like to just walk through a few
13 events here and then ask you some questions about
14 how the Vancouver investigation stalls in
15 September/October. And so, on the top of, within
16 your chronology here, in your report, the top of
17 page 130 begins at the August 24, 1999 where it
18 notes that Detective Constable Chernoff contacted
19 Sergeant Pollock in Coquitlam and was informed
20 that Corporal Connor, who had been leading the
21 investigation out there, was on holidays and he
22 wasn't coming back to the Coquitlam Detachment.
23 Do you see that?

24 A Yes, he wasn't coming back to the investigation.
25 He stayed in the Coquitlam Detachment.

1 Q Oh, I'm sorry. And so he wouldn't be working on
2 the Pickton file anymore?

3 A Correct.

4 Q And then on the next page, 131, under the third
5 paragraph down, you will see a notation from
6 August 26th, 1999, and that's the date that
7 Ellingsen is interviewed?

8 A Yes.

9 Q And we know what happened with that interview.

10 And then the next date is, is, on the column
11 next to that, really right adjacent to that
12 paragraph for August 31, 1999. Could you just
13 read that paragraph out?

14 A On August 31st, 1999, at 8:30 a.m., Detective
15 Constable Chernoff spoke to Constable Yurkiw
16 who advised that an RCMP polygraph test had
17 been arranged for Ellingsen that day at 9:30
18 a.m. in Surrey. Detective Constable Chernoff
19 arranged to meet with Yurkiw that afternoon
20 in Coquitlam.

21 Q All right. And then two -- one paragraph, skip
22 the next paragraph and we see:

23 At 4:30 p.m., Detective Constable Chernoff
24 and Detective Lepine attended the Coquitlam
25 RCMP office and met with Sergeant Pollock and

1 Constable Yurkiw to discuss the Pickton file
2 and investigative strategies --

3 That's what you wrote. Do you see that?

4 A Yes.

5 Q -- and they concluded that Pickton should be
6 interviewed as soon as possible.

7 A Correct.

8 Q So, that's August 31st. And then over the page,
9 the next day, September 1, 1999, could you just
10 read that out?

11 A On September 1st, 1999, Detective Constable
12 Chernoff and Detective Lepine met with RCMP
13 investigators in Coquitlam at 7:15 a.m. At 8
14 a.m., Sergeant Pollock and Constable Yurkiw
15 attended Pickton's residence but he was
16 apparently not on the property and they
17 weren't able to determine his location.
18 Sergeant Pollock and Constable Yurkiw advised
19 Detective Constable Chernoff and Detective
20 Lepine that they would continue their
21 attempts to locate Pickton and would advise
22 the VPD investigators when they were
23 successful.

24 Q All right. And the next notations are for, for
25 phone calls that Sergeant Pollock had with

1 Pickton, but the VPD wasn't involved in, in those
2 particular phone calls or, or even advised of
3 them; is that right?

4 A Correct.

5 Q So, as I understand it, the next point in time,
6 from September 1, which you have just referenced
7 Chernoff and Lepine in Coquitlam, is over the page
8 on 136 under the notation, on September 19, 1999.
9 Do you see that?

10 A Yes.

11 Q If you could just read out that first paragraph.

12 A On September 19th, 1999, the missing women
13 investigators held a meeting to review the
14 file. Present were Sergeant Field, Detective
15 Lepine, Detective Constable Shenher, Clarke,
16 Chernoff, Wolthers and Fell and Ms. Alford.

17 Q All right. And then in the chronology in your
18 report, the next item is, straight across from
19 that, in the second column, October 5, could you
20 read that out please?

21 A October 5th, 1999, the MWRT, the Missing
22 Women Review Team investigators, held another
23 meeting. Present were Sergeant Field, Acting
24 Inspector Dureau, Staff Sergeant Giles,
25 Detective Lepine, Detective Constables

1 Shenher, Clarke, Wolthers and Fell and Ms.
2 Alford. The status of various tips was
3 reviewed and various investigative strategies
4 were discussed.

5 Q All right. So, it's in that meeting that we have
6 two, two of the management or the supervisory
7 group here, Inspector Dureau and Staff Sergeant
8 Giles, attending with the Missing Women Review
9 Team.

10 A Correct.

11 Q Now, if we could turn back to page 133, there's a
12 lengthy quote from your notes of interview with
13 Detective Constable Chernoff, and which you
14 introduce on page 132 as saying:

15 Detective Constable Chernoff recalled his
16 frustration with the Coquitlam investigation
17 into Pickton stalling.

18 Do you see that?

19 A Yes.

20 Q And I want to just focus on two, two paragraphs on
21 page 133, at the bottom in the first column.
22 Could you just read the bottom paragraph that
23 starts, "I remember going back"?

24 A I remember going back to the VPD and telling
25 the other investigators and that I just

1 didn't believe what was happening and they
2 didn't understand either, and I just said,
3 "It's their show. There is nothing you can
4 do about it." I was quite upset. We were
5 sure Coquitlam was going to get a warrant in
6 a week, but it just didn't happen. We didn't
7 know Yurkiw and we didn't know the sergeant.
8 Once Connors left, it just didn't happen.
9 Even he couldn't convince his bosses, so we
10 didn't think it was going to happen.

11 Q Could you read the next paragraph as well?

12 A I got the feeling no one was going to bat for
13 us, like, our inspector or deputy, go over to
14 the RCMP and say, "What the hell is going
15 on?" Ron, I, Geramy, Lori, we were all
16 passionate about it. It was just beyond our
17 control. I guess I regret I didn't stand up
18 and scream more, but Pickton didn't live in
19 Vancouver and we couldn't do anything about
20 it. It went high in the RCMP and they made
21 the decisions, not us.

22 Q All right. So, that's one, that's the perspective
23 of one of the investigators, Detective Constable
24 Chernoff, --

25 A Yes.

1 Q -- at that juncture in time. And then I wanted to
2 reference one more event, which is over on page
3 138, in relation to October 27, 1999.

4 A Yes.

5 Q Would you read that paragraph please?

6 A On October 27th, 1999, Missing Women Review
7 Team members met at Surrey RCMP offices to
8 discuss the case with them. Sergeant Field
9 and Detective Constables Shenher, Fell and
10 Wolthers were present from the VPD. From the
11 RCMP were Superintendent Gary Bass, Sergeants
12 Bill Thordarson and Bob Paulson, Corporals
13 Nicole St. Mars and Margaret Kingsbury, and
14 Constable Paul McCarl. The investigators
15 discussed suspects [the names have been
16 redacted] and file interviews.

17 Q All right. Now, as I understand it, from that
18 point on, as you have discussed with Mr. Vertlieb,
19 nothing much more from the VPD side, and there is,
20 in Coquitlam, they're awaiting the interview of
21 Pickton in the rainy season; is that right?

22 A Correct. There was still work going on in the VPD
23 but it was rapidly, the investigation was
24 deteriorating.

25 Q All right. I, perhaps I should have said, there

1 wasn't more work being done on Pickton --

2 A Correct.

3 Q -- in support of the Coquitlam investigation?

4 A Yes, that's correct.

5 Q All right. And so, looking at that juncture in
6 time, where the last substantive meeting about
7 strategies with Coquitlam is September 1, and then
8 there's a break until October 27 when there's this
9 meeting with some high-level people in the RCMP,
10 uhm, what, what is your view of how it is that,
11 within the VPD Missing Women Review Team, the
12 investigation stalls at that point? What, what is
13 your -- what, in the course of your review, what
14 did you come to conclude about that juncture in
15 time?

16 A Uhm, what I concluded is there was investigators
17 who were extremely frustrated with what was going
18 on but felt powerless to do anything about it and,
19 in fact, it wasn't the role of a detective
20 constable like Mark Chernoff, a very competent
21 investigator, who had a very good understanding of
22 the facts. It was a management role to contact
23 the RCMP in Coquitlam and set up some sort of a
24 communication loop and to coordinate with them,
25 because obviously the VPD had a very significant

1 interest in the success of that investigation out
2 in Coquitlam.

3 It is very unfortunate that that did not
4 occur as both Deputy Chief Evans and I noted in
5 our reports when Sergeant Field was writing in her
6 memos, "Pickton is still a suspect in Coquitlam,
7 but he's not a high priority for them right now,"
8 that was a red flag for management to say, "Well
9 then, what do we need to do to make him a high
10 priority," and unfortunately that did not occur.

11 Q Now, that October 27, 1999 meeting with
12 Superintendent Gary Bass and Sergeants Bill
13 Thordarson and Bob Paulson and so on, that would
14 seem to have been an opportunity to raise those
15 variations; is that, is that fair?

16 A Yes. That was an opportunity, but I should also
17 note, and I think it's a little farther on in my
18 chronology, is that when Sergeant Field met with
19 Staff Sergeant Davidson and Corporal Filer and
20 Corporal Kingsbury was there, she was tasked by
21 Staff Sergeant Davidson to liaise with the
22 Coquitlam RCMP to consult on what was going on
23 with the Pickton investigation for information
24 about that.

25 So, even though I think she was probably

1 mistaken, I think Sergeant Field can be forgiven
2 for believing that there was three-way
3 communication going on. She was having her
4 communications with Staff Sergeant Davidson most
5 frequently, and he was communicating or assigning
6 someone to communicate with Coquitlam, but there
7 was a breakdown in communication.

8 And what really needed to occur, because
9 Staff Sergeant Davidson was frustrated as well,
10 was that there needed to be some management-level
11 communication between the Coquitlam RCMP and "E"
12 Division RCMP and the VPD and get everybody on the
13 same page so that they all understood what the
14 information was available and then talk about how
15 to advance the investigation, and that just didn't
16 happen.

17 Q And you have been in management of the VPD for
18 some time now. Uhm, in your experience, has the
19 VPD experienced other situations where it has
20 considered that an investigation of another police
21 agency, whether, be it the RCMP or another
22 municipal department, has not been adequate or
23 sufficiently high priority and that has some
24 linkage to a Vancouver issue, has that issue come
25 up in your experience?

1 A Yes.

2 Q And what, what are the options in those cases that
3 you have considered and pursued?

4 A Well, if I think about a couple of more recent
5 cases, and one of them, it was a very serious
6 violent crime issue, and Chief Constable Chu
7 himself contacted someone at a very senior level
8 in "E" Division to very bluntly express his
9 concern about the conduct of an investigation. In
10 another one, Chief Constable Chu assigned me to
11 meet with someone at a very senior level in the
12 RCMP to express our concerns about the conduct of
13 an investigation that we'd had an interest in.

14 So, the point is, is that that is an
15 appropriate role for someone at the senior
16 management level.

17 Q And do you sometimes receive pushback from the
18 other department to mind your own business?

19 A Ah, yes. Uhm, yes, certainly in the case that I
20 raised. It doesn't change my opinion about the
21 importance and duty to do it, but certainly in the
22 case that I raised, I did get that sort of
23 pushback, that it was none of my business.

24 Q Now, you, you made a reference to Sergeant Geramy
25 Field a moment ago, and her efforts on behalf of

1 the Department to have a JFO arranged and
2 organized and so on. Uhm, I note that at that
3 October 27, 1999 meeting, it appears that she was
4 the most senior officer from Vancouver; is that
5 right?

6 A Yes.

7 Q And one of the things that you commented, at some
8 length with Mr. Vertlieb, was that, and you have
9 just reiterated a moment ago, that the
10 communication over a JFO needed to be done at a
11 higher level and --

12 A Yes.

13 Q -- and, and Sergeant Field needed more support in
14 that regard.

15 A Correct.

16 Q And with respect to, uhm, Deputy Chief Evans'
17 report, she is -- do you agree with her views on
18 Sergeant Field's performance throughout?

19 A Uhm, Mr. Commissioner, as I said before, I've read
20 Deputy Chief Evans' report twice. I think it's an
21 excellent report. Uhm, I described, when I made
22 notes about it, after I read it, that 98 percent
23 of our reports are consistent in agreement. There
24 were two areas that I didn't agree, one -- other
25 than some relatively minor factual errors.

1 One was I thought she was a little bit hard
2 on Deputy Chief McGuinness on the specific issue
3 of the dissolution of the Missing Women Working
4 Group, which I already responded to earlier; and
5 the other one was the criticism of Sergeant Field
6 for not pursuing a JFO with the RCMP earlier. And
7 I will just say that I think the record speaks for
8 itself. I have written about it in my report, in
9 the chronology and in the analysis, is that I
10 would describe Sergeant Field as being extremely
11 diligent. She may have, some of her efforts may
12 have been misplaced in terms of who she was
13 contacting and where she thought she would get
14 action, but she was a sergeant. She hadn't -- she
15 wasn't in management, didn't necessarily know the
16 right way to approach it. Uhm, but I think the
17 record shows that she was very diligent in
18 pursuing the issue of a JFO with the RCMP from a
19 very early date. And she was described by her
20 manager, for example, as being relentless about
21 it. So, she had frequent meetings with the RCMP
22 about it and was clear on the, on the need for a
23 JFO to advance the investigation.

24 Q And which manager had described her in that way?

25 A Inspector Spencer had described her that way in

1 his interview, that she was relentless about it.

2 MR. HERN: All right. Mr. Commissioner, I am going to move to
3 a different subject, so this may be a good time.

4 THE COMMISSIONER: All right, we will, we will adjourn until
5 tomorrow.

6 MR. HERN: Thank you.

7 THE REGISTRAR: This hearing is now adjourned until 10 o'clock
8 tomorrow morning.

9 MR. HERN: Before we actually adjourn, Mr. Commissioner, it
10 just occurs to me that we are under a cross,
11 although it's a friendly cross --

12 THE COMMISSIONER: Because you are under cross-examination, you
13 can't talk to anyone about this case. You
14 understand that?

15 THE WITNESS: Yes.

16 MR. HERN: I guess that's what I wanted to raise was, was
17 whether a witness should properly be able to talk
18 to counsel.

19 THE COMMISSIONER: Because he's your witness, you want to talk
20 to him?

21 MR. HERN: Pardon me?

22 THE COMMISSIONER: Because he is your witness, --

23 MR. HERN: Correct.

24 THE COMMISSIONER: -- you want to talk to him?

25 MR. HERN: Correct.

1 THE COMMISSIONER: All right. What's your comment?

2 MR. HERN: Does anybody have any issue with that?

3 MR. VERTLIEB: No.

4 MR. GRATL: No.

5 MR. HERN: Thank you.

6 THE COMMISSIONER: I don't think there's anything wrong with --

7 Mr. Roberts, do you have any concern about that?

8 MR. ROBERTS: No, I --

9 THE COMMISSIONER: Yes, I think the normal rule needs to be

10 relaxed in view of the fact that he's your

11 witness.

12 MR. HERN: Thank you.

13 THE COMMISSIONER: All right, thank you.

14 THE REGISTRAR: This hearing is now adjourned.

15 **(PROCEEDINGS ADJOURNED AT 3:59 P.M.)**

16 I hereby certify the foregoing
17 to be a true and accurate
18 transcription of the proceedings
19 herein to the best of my skill
20 and ability.

21
22 Gabriele Heise, RPR
23 Official Reporter, BCSRA No. 399
24 Realtime Certified Reporter
25 United Reporting Service Ltd.

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