

1 vulnerability of those people. In any event,
2 there are enough safeguards particularly contained
3 in the material and will be contained in my
4 reasons that will follow next week, and they deal
5 primarily with the weight of some of the evidence.
6 In any event, I'll give written reasons next week.

7 I want to thank counsel for their
8 submissions. All right. Mr. Vertlieb, what are
9 we doing today?

10 MR. VERTLIEB: Mr. Commissioner, first I wanted to deal with
11 something that I think should be commented on.
12 Tuesday, towards the very end of the day, my
13 learned friend Mr. Ward made some comments about
14 disclosure, and the tenor of those comments are
15 such that I wanted just to outline some facts
16 around the efforts that your commission staff made
17 to deal with documents, because I wouldn't want
18 you to think that your staff has not been
19 attempting to be helpful to those who needed help.
20 And I'm not attempting to deal with any of the
21 specific document requests, because Mr. Ward is
22 going to be bringing on a motion and we'll deal
23 with the specifics, but let me just start out the
24 first item of correspondence, and there's many
25 items of correspondence, I only want to deal with

1 them as it relates to the tenor of the comments
2 about disclosure.

3 There's a letter at November 1, 2010 and it's
4 to Mr. Cameron Ward.

5 Dear Mr. Ward, Thank you for your letter
6 expressing interest in participating in the
7 Missing Women Commission of Inquiry. I'm
8 pleased to inform you the commission's
9 website is now operational. Further
10 information and instructions regarding
11 standing applications can be found. Please
12 note that applications for standing and
13 funding are due November 30, 2010. Should
14 you have any questions please don't hesitate
15 to contact me.

16 Yours truly, myself as counsel.

17 On November 30, the last day for the
18 applications, Mr. Ward wrote November 30 to
19 myself:

20 Dear Sir/Madame, Please find enclosed our
21 application for standing on behalf of
22 families...

23 And he outlines them.

24 Then December 2 a letter to Mr. Chantler,
25 December 2, 2010, and it's:

1 Re discussion of commission procedure with
2 commission counsel. The Missing Women
3 Commission of Inquiry would like to invite
4 parties and/or their counsel who have applied
5 for standing an opportunity to discuss the
6 anticipated commission procedure with
7 commission counsel Art Vertlieb and Karey
8 Brooks. If you'd like to attend an
9 information session please advise me the date
10 and time convenient for you, and please let
11 me know if there's a specific issue you'd
12 like to discuss.

13 And that's signed Elizabeth Welsh for the inquiry.
14 She's one of your staff assistants.

15 And then there's a letter January 4, 2011 and
16 it's addressed to Dear Participant and/or Counsel,
17 and it's re participant application. It's a
18 lengthy letter. The material paragraph for the
19 purposes here is to say:

20 The commissioner recognizes the families who
21 have applied for joint standing, the VPD,
22 RCMP and Criminal Justice Branch are directly
23 impacted by the work of the commission, and
24 have a unique and direct perspective to bring
25 to the commission's work, therefore, those

1 applicants have been granted standing with
2 reasons to follow.

3 So everyone was informed by a letter actually
4 signed by Elizabeth Welsh on my behalf January 4
5 that Mr. Ward's clients would be granted standing.

6 The next letter that relates to this is March
7 21 from Mr. Ward.

8 We acknowledge your recent requests...
9 This is a letter to the inquiry, but actually
10 addressed to myself.

11 We acknowledge your recent requests that we
12 arrange interviews between your office and
13 our clients, the family members of Georgina
14 Papin, Mona Wilson, Marnie Frey, Dianne Rock,
15 Cara Ellis, Cynthia Dawn Feliks, Helen Mae
16 Hallmark and Dawn Crey. We have not yet
17 received funding assistance, although
18 negotiations with government representatives
19 are underway. Once we've reached an
20 agreement we should be in a position to
21 accommodate your requests. In anticipation
22 of preparing for the inquiry we ask that you
23 provide us with copies of all relevant
24 records, preferably in electronic form,
25 together with appropriate software to

1 facilitate searching and accessing the
2 documents. We'd also request you provide us
3 with a list of anticipated witnesses as soon
4 as one's available.

5 And that's from Mr. Ward. So that was March 21,
6 2011.

7 Reply from Ms. Brooks on March 23 re witness
8 list. She says in the second paragraph:

9 We anticipate the evidentiary hearings will
10 initially proceed with witnesses from the
11 community...

12 Which, of course, you've seen develop that way.

13 And then on witnesses:

14 If you have any witnesses that have relevant
15 evidence, please let us know.

16 Now, the next letter on documents, Mr. Ward,
17 April 11:

18 Further to our letter to you dated March 21
19 we again request that you provide us with
20 copies of all relevant records and a list of
21 anticipated witnesses for the hearings.

22 Now, keep in mind at this point you couldn't just
23 get documents out because there had to be
24 confidentiality agreements in place and there had
25 to be document flow, and that took some time, but

1 I wanted to mention Mr. Ward was writing April 11
2 about that. He couldn't have them that date if he
3 wanted them for a number of reasons.

4 MR. WARD: Excuse me. Excuse me. I'm sure there's a reason
5 for this, but I trust I will have an opportunity
6 to respond once I understand what's going on here.

7 THE COMMISSIONER: Well, he's giving me a background, I assume.
8 I don't know what's going on.

9 MR. WARD: I don't know what's going on.

10 THE COMMISSIONER: Well --

11 MR. WARD: I'm being quoted in correspondence. Perhaps the
12 correspondence can be just entered into the
13 record. I don't know why we're taking up time --

14 THE COMMISSIONER: Mr. Ward --

15 MR. WARD: -- with this --

16 THE COMMISSIONER: Mr. Ward.

17 MR. WARD: Yes.

18 THE COMMISSIONER: Counsel is making a submission to me.
19 You'll have an opportunity to reply to it.

20 MR. WARD: Thank you.

21 THE COMMISSIONER: It's better to do it that way than to
22 interrupt someone.

23 MR. WARD: I appreciate it. I've had no notice of what this
24 submission is, but --

25 THE COMMISSIONER: You don't need notice for everything that's

1 done in here, Mr. Ward.

2 MR. WARD: I --

3 THE COMMISSIONER: Mr. Ward, he's -- you made an application --
4 you complained yesterday about the lack of
5 disclosure. I assume that -- I mean I don't know
6 any more than you do. I assume that commission
7 counsel is telling me now about the efforts that
8 have been made to give you disclosure. I'm
9 assuming that.

10 MR. WARD: I'll wait and have my opportunity to respond. Thank
11 you.

12 THE COMMISSIONER: That's a good idea.

13 MR. VERTLIEB: So let me just get back to where I am here. So
14 April 11 we have that letter.

15 Now, there's a next letter to Mr. Ward of May

16 5:

17 Dear Cameron, Re document disclosure
18 procedure and undertaking of counsel.

19 And it says:

20 You've been granted rights to access
21 documents in the possession of the
22 commission. Attached is a copy of the
23 undertaking to counsel that must be signed
24 and returned to the commission before access
25 may be granted. In addition instructions for

1 participant counsel have also been attached
2 which explain how the documents have been
3 organized, how counsel and participants may
4 access the documents, and what documents have
5 been received to date. Finally, you will
6 also find attached a confidentiality
7 agreement for your clients. Should you have
8 any questions regarding this process please
9 do not hesitate to contact me.

10 Yours truly and signed by me.

11 THE COMMISSIONER: What's the date of that?

12 MR. VERTLIEB: May 5.

13 THE COMMISSIONER: Okay. All right.

14 MR. VERTLIEB: On May 20 Mr. Ward writes back:

15 Dear Art, Further to your letter dated May 5
16 we enclose the originally signed undertaking
17 of counsel and look forward to receiving
18 access to the confidential material.

19 And, indeed, Mr. Ward did send the agreement as an
20 undertaking of counsel, which incidentally
21 everyone has had to sign, and it's dated May 20.

22 Now, on May 25 Robyn Kendall, who was then
23 part of the staff and assisting in all of these
24 issues, sent an e-mail to Mr. Chantler and
25 Mr. Ward and the subject is disclosure database,

1 and Ms. Kendall says:

2 Thank you for your undertaking for counsel.

3 Further to our letter to you we require the
4 external IP address of the computer that will
5 be accessing documents.

6 And that's sort of part of the protection that
7 needs to be in place for these documents.

8 Also, please confirm who will be the main
9 contact for the database.

10 And that's Ms. Kendall May 25.

11 And then May 27 Salima Samnani references a
12 conversation that she had had with Neil Chantler
13 about Concordance. Now, Concordance,
14 Mr. Commissioner, was the document management
15 system that the commission is using as a way of
16 getting all the documents out to the participants.
17 It's just another system, there's a number of
18 ones, and that was the one selected by your
19 document manager, Ms. Thompson, Judy Thompson with
20 the assistance of Mr. Boddie, the executive
21 director. Apparently Mr. Chantler had sent in the
22 undertaking, 'cause he knew to sign that as well,
23 but does not -- indicated he did not have a static
24 IP address, only a dynamic one. So they're
25 getting a new modem next week and then they'll be

1 in contact. So that's -- when they say they, that
2 means Mr. Ward and Mr. Chantler having to get a
3 different kind of modem. And that is the end of
4 May.

5 Mr. Chantler did send an e-mail to Robyn and
6 he says:

7 Thanks for your e-mail. We have discussed
8 this with our IP person and are arranging to
9 have a fixed IP address in order to
10 accommodate the commission's document
11 disclosure process. We currently have a
12 dynamic IP address and the required modem
13 should be delivered next week. We'll provide
14 the fixed IP address as soon as possible.
15 Regards Neil Chantler.

16 And then Ms. Kendall again reminds them.

17 So then we go, there's an e-mail from
18 Ms. McKeachie, one of your staff as well, sent May
19 31 to many of the participants, and Mr. Ward and
20 Mr. Chantler are on the distribution list, and
21 it's a message from John Boddie, your executive
22 director:

23 This e-mail is provided as an update to our
24 letter of May 5th, 2011 regarding the
25 disclosure of documents to participants.

1 I'm going to take the material part:

2 Please find attached a copy of the form
3 request for approval to provide copies of
4 confidential material to be used. For those
5 participants that have not yet contacted the
6 commission for access to the disclosure
7 database, please be advised the contact staff
8 members change. Request for access to
9 disclosure documents and request for approval
10 to distribute copies should now be directed
11 to Judy Thompson. Participants will still
12 need to contact Triage directly for training,
13 technical issues, additional licences, et
14 cetera. Kind regards, John Boddie.

15 Triage is an independent company that was retained
16 by your staff to actually load the documents onto
17 the database. So documents will come to your
18 commission staff, the staff will then send them to
19 an independent company who then scans them and
20 puts them into a form where everyone can get
21 access. And it's just a routine way in inquiries
22 that documents are often handled, there's nothing
23 apparently unusual about that.

24 So then we know from Ms. Thompson that
25 log-ins -- log-in IDs and passwords were sent out

1 to people. And just, for example, we know that
2 people had already started to sign on, for example
3 Sean Hern for the VPD, Mr. Arvais who was then
4 representing a group, and Ms. Gervais who is here
5 with us today of course. We know that we had by
6 then received signed undertakings from Mr. Ward
7 and Mr. Crossin for the VPD Union, and
8 Mr. Skwarok. And so we do know we were still
9 waiting for IP addresses, this is at the beginning
10 of June, before they could get the log-in details.
11 In other words, by the beginning of June some of
12 your participant counsel were all logged in and
13 ready to go and some weren't. And at that point
14 in time Mr. Crossin and Mr. Ward and Mr. Skwarok
15 weren't logged in to get this. I'm just wanting
16 you to understand what that date is about.

17 So then there's an e-mail from Ms. Thompson
18 to Troy Shannon, who I gather works for Mr. Ward,
19 because there's an e-mail where Ms. Thompson, now
20 she's your document manager, at June 6 she says:

21 Hi Troy, We need to have your static IP
22 address in order to set up access to the
23 commission's hearing database. Please advise
24 of your IP address at your convenience.

25 That's June 6.

1 Now, we then that day Troy -- I'm sorry, I
2 just mentioned his last name. Troy Shannon that
3 day, June 6:

4 Hi Judy, Here is our static address...
5 And he gives the details. And he says:

6 The primary contact for the file will be
7 Mr. Neil Chantler.

8 You remember there is a request of who is the
9 primary contact, and it's all part of the control
10 of documents so people who shouldn't be seeing
11 them are not seeing them. And so that now is
12 given to us. And then there's an e-mail June 6,
13 also from Troy, because he wasn't sure who to
14 write, he was originally writing Jessica McKeachie
15 and that's why Judy Thompson became involved. So
16 that's June 6.

17 It seems that by June 7 now with the address
18 that we had from Mr. Chantler we now have
19 Mr. Chantler being able to access the Concordance
20 database to actually get the documents. So we
21 know June 6, June 7 Mr. Chantler is able to now
22 start accessing. Ms. Thompson that day, June 7,
23 sends an e-mail to Mr. Chantler:

24 Mr. Chantler, we now have your log-in details
25 to enable you to access the commission

1 document disclosure.

2 And she says:

3 Please note the first time you access it
4 you'll have to have some prompts to download.

5 She says:

6 Additional instructions are provided in the
7 attached basic training handout...

8 And then she gives him the log-in name, the
9 password, the server and other details that he
10 would need.

11 So on June 8 Ms. Thompson, Judy Thompson,
12 sends an e-mail to Mr. Chantler:

13 Hi, Neil, We note that your request for
14 access to the Missing Women Commission's
15 document disclosure database does not include
16 an undertaking of counsel signed by you. We
17 do, however, have a copy of the undertaking
18 signed by Cameron Ward. The commission
19 requires that all lawyers accessing the
20 Concordance database sign the undertaking.
21 For your convenience we've attached a copy,
22 and please fax it to me or e-mail it.

23 'Cause, remember Mr. Ward had signed it but not
24 Mr. Chantler and Mr. Chantler was listed as the
25 primary contact. So that's June 8.

1 The next day Mr. Chantler advised:

2 Thanks, Judy. You will receive a signed copy
3 from me shortly. Regards Neil Chantler.

4 And then that day he does send it that day, and of
5 course we do have it, and it's properly signed
6 June 9, 2011 as Mr. Chantler.

7 Judy writes the same day:

8 Thank you, Neil, for your quick response.
9 Regards Judy Thompson.

10 Now, the next is June 20. It's an e-mail
11 from Judy to Neil Chantler June 20:

12 You're most welcome.

13 She says:

14 I'm not sure what the problem was. The
15 Triage managed to fix it. Judy.

16 And then there seems to have been some problem
17 with Mr. Chantler's access to the database
18 uncontrolled by us in any way. But fortunately
19 Mr. Chantler then tells us on June 20:

20 Hi Judy, The problem with my access seems to
21 have been resolved. Thanks for your help.

22 Signed Neil.

23 We have a letter from Mr. Ward August 14,
24 2011. He says:

25 We understand the commission intends to

1 commence hearings on October 11, 2011, less
2 than two months from now. We have serious
3 concerns about our ability to be ready for
4 that date arising from the nature of document
5 disclosure to date, and the commission's
6 ongoing failure or refusal to provide us with
7 a witness list.

8 And in this letter he wants -- he's unhappy with
9 the disclosure process. Mr. Ward says:

10 We appreciate the method of disclosure and
11 access was selected at a time when the
12 commission anticipated there would be
13 multiple participants.

14 He says:

15 Now that's not the case we want you to
16 change...

17 And one of the things he wanted us to do was a
18 dedicated hard drive which wasn't the way it was
19 being done. And there's a -- he's just concerned
20 about this document protocol and the way the
21 commission was using it. Apparently it seemed to
22 be fine for all the other participants, but I'm
23 just telling you there was correspondence from
24 Mr. Ward.

25 And so on August 15 Ms. Samnani writes to

1 Mr. Chantler:

2 Dear Neil, Further to your conversation on
3 Tuesday we have attached a chart which
4 contains a non-exhaustive list of documents
5 relative to the families represented by you.
6 The original file corresponding in the
7 Concordance document are listed with each
8 name.

9 And then she sets out the starting point and
10 keyword searches and how he should do everything.
11 And she just tells him what to do and she
12 concludes hopefully that this is of some
13 assistance.

14 And I do want to say that this kind of
15 information was provided as a complete courtesy.
16 No other participant counsel received help
17 identifying relevant documents for their clients.
18 It was only Mr. Ward, and in this case
19 Mr. Chantler, who were seeking this and we gave --
20 they were accommodated truly out of courtesy to
21 them. What we're doing is helping them identify
22 relevant documents for their own clients. So
23 that's August 15.

24 Now, on August 16 Ms. McKeachie actually sat
25 with, I believe, Mr. Ward and Mr. Chantler both

1 and gave them each or one of them, but I think it
2 was both, a tutorial on how to go through the
3 document disclosure. And I understand that the
4 only people who needed this tutorial were my
5 learned friends I've just referred to, but that
6 tutorial took place in commission offices on the
7 16th.

8 On the 18th Ms. Thompson, 18th of August,
9 writes to Mr. Ward and Mr. Chantler:

10 We've not forgotten about providing you with
11 disclosure documents and we will be sending a
12 courier to your office tomorrow. John Boddie
13 has identified several files to be sent to
14 you on a priority basis ahead of the rest.
15 Although all the files have not yet been
16 loaded on the external hard drive we hope to
17 have this ready early next week and delivered
18 to your office.

19 Now, that's the first reference to an external
20 hard drive that Mr. Ward had requested. I'll come
21 to that in a moment.

22 Now, Mr. Ward on the 20th e-mails Judy
23 Thompson:

24 Thank you. I also look forward to receiving
25 copies of all the agreements reached with the

1 participants, especially the RCMP, VPD and
2 CJB regarding document disclosure protocols.
3 I think this may have been his first reference to
4 wanting to see the disclosure protocols. It's not
5 a major point right now, but I put that in.

6 I want to come back to this, 'cause remember
7 I mentioned to you a hard drive, and I understand
8 that at this point in time all the other
9 participants were handling the document disclosure
10 and had no issues, but Mr. Ward wanted a hard
11 drive. I'm going to read an e-mail from John
12 Boddie, August 17, to Mr. Ward:

13 We are working on getting your hard drive set
14 up for you. Unfortunately our staff member
15 who is authorized to make such purchases is
16 away, so Wally is going out himself to buy it
17 for you now.

18 You may recall, Mr. Commissioner, that when we
19 heard that Mr. Ward had this request and the staff
20 member who was authorized was not there at the
21 time you actually went to Staples to buy the hard
22 drive, which of course was at commission expense.
23 At this point in time no one else had requested a
24 separate hard drive.

25 August 29 from Cameron Ward, an e-mail

1 apparently of Mr. Boddie's indicating you had gone
2 out yourself to buy it. I'm not sure it was a
3 referenced anywhere by Mr. Ward. He does say
4 August 29:

5 I confirm my previous request for copies of
6 document agreements and protocols reached
7 between the commission and the RCMP, VPD and
8 CJB respectively.

9 Now, August 30 there's an e-mail from Jessica
10 McKeachie, research counsel:

11 Good afternoon, Neil. I just wanted to let
12 you know that Ms. Sharon Hill, Andrea
13 Borhaven's mother, contacted the commission
14 today. I had a brief conversation with her
15 and tried to explain a bit about the inquiry
16 process, and informed her that you and
17 Cameron were representing some of the other
18 families. I gave her your contact, Neil, so
19 you will probably be hearing from her
20 shortly.

21 Now, it's not related to documents, but this is
22 another example of where the commission staff are
23 in my review of this going out of their way to
24 assist Mr. Ward. This was an example of referring
25 a family member to Mr. Ward so he could represent

1 them.

2 Now, John Boddie follows up this hard drive
3 situation, he sends an e-mail to Mr. Ward on
4 August 30, and he carbon copies Neil Chantler and
5 Judy Thompson and others. This is John Boddie:

6 Cam, I checked on the progress of your hard
7 drive yesterday and learned that it had been
8 delayed because you or Neil had asked that
9 extra information be added. I understand
10 that to be batch numbers on the disclosure.
11 I understand the rationale for the request,
12 but it meant that staff had to add that
13 information, and they are doing it. When the
14 task became more than simply copying it added
15 to the prep time. Be assured we are working
16 on it ASAP.

17 Now, I just want to say that there was no
18 obligation to do this hard drive, it was done as a
19 courtesy. It took many, many hours for
20 Ms. Thompson to actually prepare this hard drive.
21 So I just read Mr. Boddie's followup, 'cause he
22 was monitoring this. As he said I checked on the
23 progress of your hard drive, and that's August 30.

24 Now, September 6 Ms. Thompson writes to
25 Mr. Ward and Mr. Chantler:

1 Good afternoon. We are sending by courier
2 this afternoon an external hard drive of
3 disclosure documents along with corresponding
4 Concordance batch numbers.

5 She says:

6 There were damaged documents in the original
7 disclosure, including documents relating to
8 Brenda Wolf. We've advised that this along
9 with others will be replaced in the future by
10 DOJ. We'll let you know when the file has
11 been added to Concordance. Regarding the
12 LePard report you've got an unredacted
13 version, et cetera. Our purpose in sending
14 you copies was to ensure you have a correct
15 version and not the public use copy
16 available.

17 So September 6, but I think, unless I
18 misunderstand this, I gather that it's not really
19 until around this time frame that it seems that my
20 learned friend Mr. Ward is really looking at the
21 documents. I'm not quite sure, but I think that's
22 the significance of this approach of this hard
23 drive and the other circumstances. Neil Chantler
24 sends a note September 6:

25 Thanks, Judy, the hard drive's arrived.

1 Regards.

2 Now, that's into September. The last, I
3 think that relates to what this discussion's
4 about, would be an e-mail from Mr. Boddie to
5 Mr. Chantler of September 9, because Mr. Chantler
6 had confirmed a telephone conversation where
7 Mr. Boddie granted approval for Mr. Chantler and
8 Mr. Ward to disclose documents to the clients,
9 because there's always a concern about how the
10 lawyers can disclose to the clients given the
11 sensitive nature of some of the information, so I
12 gather Mr. Chantler phoned Mr. Boddie and then
13 Mr. Boddie confirmed in an e-mail:

14 Yes, approval has been granted. Please
15 complete the required form and just add it.
16 But the point is at September 9 this discussion's
17 taking place with your staff dealing with these
18 requests in what I would suggest is a kindly way.
19 So I don't want to say any more other than to read
20 these circumstances to you. It doesn't deal
21 specifically with the document requests that I
22 think Mr. Ward will have in his motion that he's
23 still working on, but I was concerned that lest
24 you have any doubt that your staff has been
25 diligent in meeting the needs of the inquiry and

1 doing their job as they have been asked to do.

2 THE COMMISSIONER: All right. Comments, Mr. Ward?

3 MR. WARD: Yes, thank you. And I seek the opportunity to
4 respond to that 40 minute presentation since it
5 was all about me and my correspondence.

6 Being the year 2011 Mr. Vertlieb and I, and
7 everybody else in the room, have the ability to
8 communicate with each other instantaneously. And
9 Mr. Vertlieb I see has his iPad with him on a
10 regular basis, and I frequently send him e-mails
11 and he responds. I had no idea this was coming up
12 this morning. I have asked repeatedly in recent
13 days what is on the agenda for the subsequent
14 days, and I've been having difficulty getting a
15 grip on that subject. I would have expected that
16 Mr. Vertlieb, eminent, experienced counsel that he
17 is, vice-president of the Law Society that he is,
18 would have shown me the courtesy of advising me
19 that he would be revealing all the contents of the
20 correspondence this morning. It must have taken
21 him some considerable time to prepare that 40
22 minute presentation and retrieve the documents
23 from the files, and he should have, in my
24 respectful submission, given me some notice that
25 he was going to do this so I had adequate time to

1 respond. I'm disappointed that he failed to do
2 that, but I am ready to respond.

3 Mr. Vertlieb, in his helpful chronology of
4 the communications that have passed between our
5 offices on the issue of document disclosure,
6 confirmed that I was essentially on the record as
7 acting for the families of the missing and
8 murdered women, and I believe it was the 1st of
9 November, 2010. It was confirmed by letter, as he
10 mentioned, that you, Mr. Commissioner, had granted
11 my clients standing on January the 4th, along with
12 three other parties or participants, the VPD, the
13 department of -- pardon me, the VPD, the RCMP and
14 the Criminal Justice Branch. So as of January the
15 4th there were four parties with standing.

16 I understand from the material I received
17 much later in October, and I'll come to that in a
18 moment, that three of the four parties or
19 participants in this commission's hearing reached
20 a document vetting protocol, the latest iteration
21 is dated February the 17th, 2011.

22 Now, Mr. Vertlieb would know, I expect, and
23 others in this room would know, and certainly you,
24 Mr. Commissioner, would know that when matters of
25 significance are determined in a proceeding all

1 parties or participants should have notice of them
2 and the opportunity to be heard on them. And that
3 is the invariable practice of courts and
4 quasi-judicial administrative tribunals like this
5 one. Regrettably I was not informed that
6 discussions were going on with respect to the
7 vetting and redaction of documents that would
8 ultimately be generated for this commission's
9 purpose. Regrettably I was not given any
10 opportunity to make any submissions with respect
11 to any agreement reached or protocols reached with
12 respect to that issue. And we'll be dealing with
13 that issue later.

14 THE COMMISSIONER: Let me stop you there. I don't want to get
15 into the redaction process now, except my
16 understanding is that there's no right for anybody
17 to be involved in the redaction process. I mean I
18 stand to be corrected on that. Why would you be
19 entitled to take part in the redaction process of
20 documents that are not yours?

21 MR. WARD: Well --

22 THE COMMISSIONER: And did you ask?

23 MR. WARD: I -- I --

24 THE COMMISSIONER: No, no. Did you ask?

25 MR. WARD: I didn't know it was going on. I had no idea it was

1 going on. How could I ask to be involved in
2 something I'm not aware is taking place. I would
3 have thought -- and I have a bit of experience
4 with prior public hearings. I would have thought
5 that the commission would have used its power to
6 compel the production of documents, would have
7 received those documents and then would have
8 ascertained upon receipt --

9 THE COMMISSIONER: Wait a minute. I only make the orders
10 compelling documents if you ask for the order.
11 You've never come before me to ask for an order,
12 so don't throw this on me. You've never come
13 before me to ask for an order. So if you had done
14 that, if you had done that obviously I would have
15 listened to you. In fact, from what I've heard
16 this morning you've complained continuously about
17 the lack of any kind of disclosure. And if I am
18 to accept what Mr. Vertlieb has said this morning,
19 and you have an opportunity to reply, and I think
20 maybe it might be better off to leave it to when
21 you're going to make your application for an
22 adjournment, the fact is the commission staff
23 spent many hours accommodating you. In fact, the
24 commission even bought you a hard drive out of the
25 commission's budget.

1 MR. WARD: I'm --

2 THE COMMISSIONER: Just a minute. And no one else here was
3 ever required that kind of accommodation. So I
4 assume that's what the purpose of all of this is.
5 So, you know, I don't know -- I don't know
6 anything about what's being said other than what
7 Mr. Vertlieb has told us here this morning, but I
8 assume that he's done this this morning in order
9 to respond to your concern that you raised about
10 the lack of accommodation by commission staff.
11 And if I were to accept his -- his submission, he
12 said for instance that Judy Thompson spent many
13 hours with you to bring you up to speed because
14 your system wasn't up to speed, and in fact got
15 the commission to buy you a hard drive. No one
16 else required that type of accommodation. Now, I
17 assume that's why Mr. Vertlieb has told me all of
18 this, and if there is a response to that then I'll
19 hear it, but don't tell me about my not making an
20 order to make you a part of the redaction process
21 when you didn't come before me.

22 MR. WARD: Thank you. Mr. Vertlieb and you, Mr. Commissioner,
23 are quite right, I have complained continuously
24 about the document disclosure and what I perceive
25 to be the grave inadequacies with respect to it,

1 both with respect to the method by which documents
2 have been disclosed to me and the quantity of the
3 documents and the nature of the documents
4 disclosed. The document disclosure, in my
5 submission, remains inadequate and that is why I
6 have a motion pending, and I'm preparing that for
7 presentation in the first opportunity. But coming
8 back to my friend Mr. Vertlieb's -- the thrust of
9 his remarks as I understand them, if I understand
10 them correctly, yes, it's quite right I have been
11 and continue to complain as forcefully as I'm able
12 about what I perceive to be improper and
13 inadequate document disclosure.

14 In October of this year after these hearings
15 had commenced I obtained for the first time copies
16 of correspondence between the commission and the
17 Department of Justice, and I'd like to pass up
18 three copies of those because they go directly to
19 my friend's remarks.

20 THE COMMISSIONER: Okay.

21 MR. WARD: And I have other copies for my friends. Again, I
22 obtained these in October of this year, and I just
23 want to --

24 THE COMMISSIONER: Sorry. These are communications between the
25 Department of Justice and the commission?

1 MR. WARD: And commission counsel, yes.

2 THE COMMISSIONER: So are you entitled to them?

3 MR. WARD: Well, I certainly am. I take the position I am.

4 THE COMMISSIONER: I don't know. Maybe you can tell me. Maybe
5 someone can tell me.

6 MR. WARD: Commission counsel gave them to me in October.

7 MR. VERTLIEB: Mr. Ward asked for them, and frankly I'm not
8 sure he was entitled to them, but in the hopes of
9 allaying his concern I thought he should see what
10 had been requested. I thought it might help, but
11 I'm not sure it has.

12 THE COMMISSIONER: I assume, and maybe you can correct me if
13 I'm wrong, but if you've got communications
14 between commission counsel that he doesn't have to
15 show them to the counsel for the Department of
16 Justice or the VPD. I mean, those are
17 communications that you're making towards
18 commission counsel, is he supposed to disclose all
19 that to someone else?

20 MR. WARD: Oh, I take the position that all communications
21 between any counsel and commission counsel should
22 be disclosed to everybody just like they would be
23 in a legal proceeding.

24 THE COMMISSIONER: Well, that's not quite true. That's not
25 accurate as far as the law is concerned. But I

1 mean you may take that position, but I'm -- I mean
2 I'm asking you. I don't know.

3 MR. WARD: Of course I'm entitled to them is my response.

4 THE COMMISSIONER: Sorry?

5 MR. WARD: Of course I'm entitled to this is my response
6 because it was given to me by commission counsel.

7 THE COMMISSIONER: Well, they may have been given to you, but
8 that doesn't mean you're by law entitled to them.
9 I mean there's certain communications that lawyers
10 make, but that doesn't mean every other lawyer is
11 entitled to them. I don't know, I'm just throwing
12 this out to you. You seem to think that you're
13 automatically entitled to everything. But let's
14 assume for minute that Mr. Hern writes to
15 Mr. Vertlieb and there's a matter of some
16 privilege in there, I don't know, are you
17 automatically entitled to that?

18 MR. WARD: Well, these are not privileged communications, and
19 if they were privilege was waived when commission
20 counsel gave them to me in October. In any
21 event --

22 THE COMMISSIONER: In any event. Okay.

23 MR. WARD: In any event we're getting a little off track. I
24 want to point out just a few things. If you could
25 turn, please, to the December 24th, 2010 letter

1 from the Department of Justice to my friend
2 Mr. Vertlieb and my friend Ms. Brooks. It's about
3 -- these are arranged in chronological order, and
4 I'm sorry there's no page numbers on the top, but
5 this letter December 24th, four paragraphs down
6 Ms. Tobias, the author of this letter of December
7 24th, Christmas Eve last year, says:

8 The volume of documentation in the project
9 Evenhanded database is enormous.

10 And at the end of that paragraph she says:

11 While we do not have an exact figure, our
12 current understanding is that the total
13 number of pages is closer to 2 million.

14 As opposed to the 1.2 million she originally
15 thought. So justice is saying in December
16 2 million documents are here. I'm not able to
17 tell you, Mr. Commissioner, what has been
18 disclosed to us in terms of number of pages, but
19 my best estimate is something just under 200,000
20 pages or 10 percent of what there was in the
21 government's file.

22 Let me take you, please, next on this issue
23 of the chronology that my friend Mr. Vertlieb has
24 taken you through to a letter from his office,
25 January 27th, 2011, to Ms. Tobias at the

1 Department of Justice. And it refers to this
2 vetting disclosure protocol which I have and will
3 continue to complain about and the Williams report
4 and the appendices to it. And then it concludes
5 with this couple of paragraphs on page 2. This is
6 Mr. Vertlieb, Q.C. to Ms. Tobias, Q.C. of justice,
7 January 27, 2011:

8 As you know I am troubled by the manner in
9 which this commission is receiving disclosure
10 from the RCMP. I am now wondering if it
11 would be more efficient for us to dissolve
12 the informal basis upon which we have been
13 relying upon for disclosure from the RCMP and
14 obtain a formal order for disclosure.

15 Perhaps a formal order for disclosure
16 pursuant to the Public Inquiries Act will at
17 least put the Commission on equal terms to
18 the demands of the media pursuant to freedom
19 of information. Yours very truly, Art
20 Vertlieb.

21 So it seems that frustration and concern
22 about document disclosure by the repository of the
23 documents is not a concern unique to myself. At
24 least it wasn't as of January 27th. But let me
25 get right to the point.

1 As Mr. Vertlieb helpfully laid out I was on
2 record as acting for the families by November the
3 4th. I believe it was actually October 2010. On
4 January the 4th I had standing. For all the
5 reasons set out in my correspondence I did not --
6 I was not entitled to access to any documents
7 until I returned the undertaking which was given
8 to me in May 2011. I actually achieved access to
9 the documents after solving technical difficulties
10 in June of 2011, four and a bit months ago.

11 We've received information from the
12 commission that Deputy Chief Evans of the Peel
13 Regional Police Department was engaged by the
14 commission in November of 2010 and that she
15 started work on the files in December or
16 thereabouts of 2010. I now have the additional
17 concern in addition to all those concerns
18 expressed in my previous correspondence of why in
19 the world couldn't the families have had access to
20 the files at the same time or around the time that
21 Deputy Chief Evans did. That would have given us
22 six more months to work on this complex matter,
23 and I just don't understand why she got the
24 documents as early as she did. We'll find out
25 exactly which day when she testifies, but she

1 obviously, I'm told, is independent. I'm not
2 independent in the sense that I represent parties
3 with a very real direct interest in these
4 proceedings, and despite that direct interest in
5 these proceedings I as their counsel wasn't
6 entitled, wasn't granted any access until the
7 summer, May, June of 2011, some five, six months
8 apparently after Deputy Chief Evans from Peel,
9 Ontario was given access. If that's a level
10 playing field, if that's fair then I -- you know,
11 I just -- I'm speechless. I'm still gravely,
12 gravely concerned about document disclosure.

13 THE COMMISSIONER: All right.

14 MR. WARD: And I'll bring that up with my motion. And those
15 are my remarks in response to Mr. Vertlieb's
16 submission.

17 THE COMMISSIONER: Thank you. What about the comment that he
18 has made -- that Mr. Ward has raised here about
19 Deputy Chief Evans being entitled to documents?

20 MR. VERTLIEB: I think Mr. Ward, as he said, will explore all
21 that with the deputy when she's in the witness box
22 and he can discuss what she had and when she had
23 it. We haven't seen her report yet, which
24 unfortunately is delayed, and so when we have the
25 report he will --

1 THE COMMISSIONER: Are you able to tell me how she gets the
2 documents?

3 MR. VERTLIEB: No.

4 THE COMMISSIONER: Pardon me?

5 MR. VERTLIEB: She worked independently, and because she was a
6 police officer there may have been different
7 issues. Part of the problem, as you can
8 appreciate, is disclosure to non-police agencies
9 of sensitive information, so frankly I'm not quite
10 sure how that worked out. I didn't know that was
11 -- I knew Mr. Ward was bothered with the deputy
12 from Peel, but I wasn't aware that was a competent
13 concern of his, so I just --

14 THE COMMISSIONER: Did she work through the commission or did
15 she work with the police directly?

16 MR. VERTLIEB: I know she met with police directly and would
17 come out and meet different police officers and
18 have interviews, I just am not certain of exactly
19 when she started seeing documents.

20 THE COMMISSIONER: Okay.

21 MR. VERTLIEB: I just don't know when she saw them, because you
22 could hear that there were discussions that we had
23 with the DOJ about documents and the fulsome
24 nature of disclosure.

25 THE COMMISSIONER: All right. In any event it's something that

1 you can canvass with the deputy chief when she
2 gives evidence.

3 I just want to say that look, this is a
4 difficult commission of inquiry, it's doing very
5 important work, and rarely a day goes by when I'm
6 not stopped in the street by some citizen who
7 commends us for what we're doing. Last night a
8 well-known citizen came up to me and said, "You're
9 doing the most important work in this province
10 right now." So the public realizes how important
11 it is that we do this work. It is not easy doing
12 this. I know there are voluminous number of
13 documents that are out there. We're being asked
14 to re-examine an investigation that took place
15 back in the '90s, so nothing is easy here. So I
16 just ask counsel to have some patience. I say
17 that at the same time I'm telling you we have a
18 deadline. The fact is that we have to be
19 flexible, we have to work with one another, and we
20 have to show some professionalism. I'm entirely
21 satisfied that all the lawyers in this room are
22 working with the best of intentions, and we all
23 want to see that at the end of the day that all
24 the evidence that's relevant is given to me so
25 that we can prepare a report that will take into

1 all the factors and that everybody is treated
 2 fairly, and all those people who come before us
 3 and that we have a productive report at the end of
 4 the day that will be meaningful. And so that's
 5 really why we're here. And I know that sometimes
 6 in these difficult, highly charged circumstances
 7 that feelings and emotions run high, but having
 8 said that we're -- everybody here is legally
 9 trained, so part of the prerequisites of someone
 10 being legally trained is that you set your
 11 emotions aside and we cheerfully consider what we
 12 say to one another and that we accommodate one
 13 another. And as I said a moment ago I'm satisfied
 14 that everyone here is working with the best of
 15 intentions, and even though we're working with
 16 very difficult circumstances, and indeed we're
 17 working with terrible tragedies that have taken
 18 place, that's our job to look at these tragedies,
 19 to look at the victims, to look at the families to
 20 ensure that they receive fair treatment and that
 21 at the end of the day everybody is accommodated.

22 All right. Any other comments from anybody?

23 MR. WARD: Just one very quickly, Mr. Commissioner. I
 24 neglected to ask that the package of documents I
 25 was referring to be marked as an exhibit.

1 THE COMMISSIONER: All right. Okay.

2 THE REGISTRAR: Exhibit number 32.

3 **(EXHIBIT 32)**

4 MR. HERN: Just before we take the break, Mr. Commissioner, I
5 just wanted to clarify one aspect of your order,
6 that what you granted is the order that was as
7 amended Mr. Gratl in the course of the
8 proceedings?

9 THE COMMISSIONER: Yes.

10 MR. HERN: So the affidavits that will come in will not be
11 anonymous, but they will be presumptively
12 admissible in that form and that we can have leave
13 to apply to cross-examine?

14 THE COMMISSIONER: It is amended, yes.

15 MR. HERN: Okay. Thank you.

16 THE COMMISSIONER: Thank you. So you have an application this
17 morning?

18 MR. HERN: The Department of Justice is going to be making the
19 application that I had introduced last Friday, and
20 I will be supporting it, but I don't expect that I
21 will have a whole lot to say about it.
22 Mr. Brongers is going to do that.

23 THE COMMISSIONER: How long do you think you'll be, Mr.
24 Brongers?

25 MR. MAJAWA: Mr. Commissioner, Andrew Majawa for the Government

1 of Canada. I expect to be in the neighbourhood of
2 30 to 40 minutes with my submissions, and of
3 course I'm not sure how long my friends will be.

4 THE COMMISSIONER: All right. We'll come back.

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

6 **(PROCEEDINGS ADJOURNED AT 10:59 A.M.)**

7 **(PROCEEDINGS RESUMED AT 11:17 A.M.)**

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

9 MR. VERTLIEB: Just one point on your ruling. Ms. Gervais
10 reminds me that she had asked for the protection
11 that you were affording Mr. Gratl's position to be
12 extended to her position as well, and I just
13 wanted you --

14 THE COMMISSIONER: Yes.

15 MR. VERTLIEB: Thank you.

16 THE COMMISSIONER: All right. Yes.

17 MR. MAJAWA: Mr. Commissioner, Andrew Majawa for the Government
18 of Canada. I believe you have a brief of
19 materials in front of you. It is a thin brief
20 with a clear plastic cover.

21 THE COMMISSIONER: I don't have it. I don't know what I've
22 done with it. I'm sure you gave it to me.

23 MR. MAJAWA: I believe I have an extra copy. This was
24 distributed to my friends yesterday, I believe, or
25 perhaps the day before. I can't recall.

1 I rise today to seek your direction and your
2 guidance, whether it be through an order or a
3 direction or some other means, in respect of
4 developing a protocol which will help to prevent
5 the publication of sensitive, private information,
6 and potentially privileged information as well
7 which I will refer to throughout these submissions
8 as the confidential information. Now, at the
9 outset I would like to --

10 THE COMMISSIONER: Maybe I can shorten this up. I'm not going
11 to make any order today with respect to the
12 prohibition of any publication. I just won't do
13 it.

14 MR. MAJAWA: And I'm not -- we're not seeking a publication
15 ban.

16 THE COMMISSIONER: Have you discussed this with other counsel
17 as to what their position is on this?

18 MR. MAJAWA: Mr. Commissioner, we've through concerted efforts
19 of Mr. Vertlieb tried to come to an agreement as
20 to what information should be afforded protection
21 and should be kept from public disclosure. As I
22 said we had some meetings, we've exchanged
23 correspondence, and unfortunately it appears that
24 we are not able to come to an agreement amongst
25 the participants. What I'm rising to seek here

1 today is not a publication ban. It's been
2 mischaracterized that way in the media and perhaps
3 by some of my friends. But what we are seeking
4 here is some direction here as to a protocol, a
5 process as to how we can deal with keeping
6 confidential information confidential, and a
7 process by which if there are issues with
8 publication that it can be dealt with on a
9 case-by-case basis. So we're not seeking an order
10 right now in a vacuum where there's no document
11 before you or no evidence before you.

12 THE COMMISSIONER: I think the best way of dealing with this is
13 the conventional way, and that is what you argued
14 yesterday that these things ought to be decided on
15 a case-by-case basis, and that's what I would --
16 that's what I intend to do subject to any
17 opposition to that.

18 MR. MAJAWA: And we agreed that it should be dealt with in
19 terms of the actual ban on -- any ban on
20 publication should be dealt with on a case-by-case
21 basis. However, in order to assure that there's
22 no inadvertent disclosures of confidential
23 information during the hearings either during
24 examination of the witness or otherwise we need to
25 have an understanding that we can all work under

1 to ensure that that doesn't happen, whether it be
2 by speaking of people by initials. But we also
3 need to know exactly what information we're going
4 to try to not reveal. When it becomes an issue as
5 to whether or not something should actually be in
6 the public domain then we can argue the issue on a
7 case-by-case basis as you have suggested. But the
8 problem also is, as you are aware these
9 proceedings are streamed live over the Internet,
10 they are available immediately, so anything that
11 is said is published right away. There could be
12 the potential, very real potential --

13 THE COMMISSIONER: Well, surely counsel must know when they're
14 calling a particular witness or are in the process
15 of filing a particular document as to whether or
16 not a red flag ought to be raised and at that
17 stage I would expect counsel to tell me that the
18 identity of this particular document or the
19 publication of that document or the viva voce
20 evidence is in question and I ought to deal with
21 it similarly to a voir dire in a criminal case.

22 MR. MAJAWA: And that's generally the process that we propose,
23 but I do not believe that there is a consensus
24 amongst my friends as to exactly what information
25 would set off that red flag. We have our position

1 set out in the letter of October 31st.

2 THE COMMISSIONER: Well, tell me what you -- I mean maybe I'm
3 missing something and I'm simplifying it here, but
4 tell me what you're proposing.

5 MR. MAJAWA: In terms of the process?

6 THE COMMISSIONER: Yes.

7 MR. MAJAWA: Well, perhaps if I could turn you to page 2 of --

8 THE COMMISSIONER: You don't have to read the argument, just
9 tell me what it is.

10 MR. MAJAWA: Well, I just would like to highlight the types of
11 information that we are talking about. So if you
12 can go to page 2 of the letter that's dated
13 October 31st.

14 THE COMMISSIONER: Okay.

15 MR. MAJAWA: And I think it's important to go through these
16 categories, because it gives you a context for the
17 type of information that we are concerned about.
18 So the first one is adoption records and
19 information revealing the adoptive status of
20 individuals or those who have placed children for
21 adoption. Now, I don't think my friends --

22 THE COMMISSIONER: I've read them all.

23 MR. MAJAWA: -- have an issue with that.

24 THE COMMISSIONER: Okay. Just a minute. Sometimes it's easier
25 if I just go through this instead of us reading

1 along. I can read it quicker that way. Okay. So
2 what about images contained in photographs that
3 are of a sensitive nature, so who decides what's
4 sensitive?

5 MR. MAJAWA: Well, you will decide that on a case-by-case
6 basis.

7 THE COMMISSIONER: All right. Okay. Information. All right.
8 And sub (h) is relevancy.

9 MR. MAJAWA: That's correct.

10 THE COMMISSIONER: Yeah. Okay. Well, is there anyone here
11 that's opposed to this?

12 MR. ROBERTS: Just a clarification.

13 THE COMMISSIONER: Mr. Roberts.

14 MR. ROBERTS: Yes, Darryl Roberts for aboriginal women. I just
15 want a clarification of (d), what is in the public
16 domain. I assume that the LePard Report is in the
17 public domain.

18 MR. MAJAWA: I would assume, yes. There are a number of
19 versions of the LePard Report.

20 MR. ROBERTS: I just wanted to make clear that the tipster
21 information in the LePard Report is not something
22 that the public protocol or --

23 MR. MAJAWA: Well, perhaps --

24 THE COMMISSIONER: It's been filed as an exhibit here, so I
25 assume it's in the public domain.

1 MR. ROBERTS: All right.

2 MR. MAJAWA: Well, perhaps I could just elaborate briefly on
3 (d) as to what type of information that is in
4 reference to. So it's stated there that to the
5 extent that they are not already in the public
6 domain, names and other identifying information of
7 individuals who are the originators or subjects of
8 tips made to the police in respect to the missing
9 women investigations.

10 Mr. Commissioner, there were numerous tips
11 called in by members of the public when the
12 Missing Women Task Force was operational. These
13 tips were called in often times by a neighbour
14 calling on their neighbour thinking that they may
15 be involved in the disappearance of the missing
16 women. There's incidences where a sister-in-law
17 has called in on their brother-in-law. Those
18 cases were investigated and determined to not be
19 involved with the disappearance of the missing
20 women, however, their names, their information is
21 enclosed in the documents, has not yet been
22 redacted from the documents, and that's the type
23 of information that in our view should be
24 protected.

25 THE COMMISSIONER: Okay. Yeah.

1 MR. MAJAWA: And I believe from our discussions with some of my
2 friends that there were issues with whether or not
3 that type of information should at least be
4 flagged and then dealt with on a case-by-case
5 basis. So what we are seeking here is a direction
6 that this information listed on page 2 is the type
7 of information that should at least raise the flag
8 that this is confidential information, this is
9 information that should not be released to the
10 public. It could have serious effects to people's
11 individual privacy. It could also potentially
12 cause harm to individuals if somebody was not
13 aware that their violent partner had been called
14 in on as a tip. If they became aware they may be
15 subject to some violence. So there are some very
16 serious concerns in our view in addition to the
17 privacy concerns that need to be dealt with, that
18 we all need to be on the same understanding as to
19 how we are going to deal with these going forward
20 so that there are relatively few mistakes as can
21 possibly be made.

22 THE COMMISSIONER: Okay. All right.

23 MR. MAJAWA: So that the process -- and before I move on from
24 there to the process I would just note that not
25 only are these areas of confidential information

1 that have been set out in the letter, not only are
2 those in my view obviously deserving of privacy,
3 and obviously not deserving of not being disclosed
4 publically, but they are supported also by the
5 legislation under which this commission operates.
6 What I'm referring to there is the Public Inquiry
7 Act section 15, which has also been adopted in the
8 procedures on section 5 which empowers you to
9 restrict access to information that is contained
10 in certain areas of the Freedom of Information and
11 Protection of Privacy Act, and in particular
12 sections 15 to 19 and 21 to 22.1 of those. And
13 really the relevant ones are section 15 where
14 disclosure may be harmful to law enforcement,
15 section 19 where disclosure may be harmful to
16 individual or public safety, and section 22 where
17 disclosure may be harmful to personal privacy.

18 THE COMMISSIONER: Yeah, I don't --

19 MR. MAJAWA: Okay. I'm not going to go through them all.

20 THE COMMISSIONER: I don't find any of that difficult.

21 MR. MAJAWA: For the record though, that is the basis for why
22 we are of the view that those areas are worthy of
23 protection. And of course as you have stated, and
24 as has been stated yesterday, each one can be
25 argued on an individual basis case by case as they

1 arise.

2 So perhaps then the best thing to do is to
3 first clarify the areas of confidential
4 information on page 2. And also to -- perhaps
5 I'll back up a moment before we go there. Just so
6 we're clear on this, because there's been a lot of
7 discussion today about what's existing in the
8 documents, what redactions have been made, and I
9 just want to be clear that this information that
10 exists, that we are -- that I'm addressing right
11 now is information that is currently available to
12 all counsel. It is currently existing in the
13 documents that have been disclosed and exists in
14 the Concordance database.

15 The documents that have been disclosed, as
16 you've heard, were subject to redactions pursuant
17 to a disclosure protocol. That is a separate
18 issue. And I think you appreciate that, but I
19 just want to make it clear that that is a separate
20 issue. This information and this protocol should
21 not in any way hamper counsel's ability to prepare
22 for witnesses, to prepare for cross-examination,
23 to understand the case, because it is available to
24 them.

25 THE COMMISSIONER: Yeah.

1 MR. MAJAWA: So the proposed protocol is found on page 3 of
2 that same October 31st letter. And the first
3 point there where it says that:

4 All counsel and participants shall make best
5 efforts to avoid revealing the confidential
6 information during the examination of
7 witnesses or otherwise during the course of
8 hearings.

9 For that to have any meaning or for that to be
10 workable we must all be operating on the same
11 understanding of what is presumptively
12 confidential information, and that's why it's
13 important to get direction and guidance from you.

14 THE COMMISSIONER: Okay. I've read them all. I don't -- I
15 don't see any difficulty with this protocol. I'll
16 hear from counsel on that. Okay. The protocol
17 leaves this procedure largely in the hands of
18 counsel, as it should be.

19 MR. MAJAWA: That's correct.

20 THE COMMISSIONER: And it's up to each counsel to tell me if
21 anything fits into one of these categories; right?

22 MR. MAJAWA: That's correct.

23 THE COMMISSIONER: Right.

24 MR. MAJAWA: However, as I said, every counsel needs to be on
25 the same understanding of the categories of

1 confidential information or at least deserving of
2 a red flag.

3 THE COMMISSIONER: Well, all right.

4 MR. MAJAWA: So the protocol, as you have pointed out, leaves
5 it in counsel's hands, but I just -- I think it is
6 useful to go briefly to the proposed protocol so
7 that it is understood and that it's clear that
8 it's not as it has been reported right now as a
9 publication ban that we are seeking, however, I
10 will have some comments that do need to be made
11 with respect to the live recording of the
12 proceedings.

13 The second point of the protocol is that
14 commission counsel and counsel for the
15 participants will inform witnesses of the
16 categories of confidential information and
17 instruct them to make best efforts not to reveal
18 that information while giving testimony.

19 Now, while it is certainly a different matter
20 for counsel to agree, and counsel who are
21 experienced in examining witnesses to agree to try
22 to adopt a method to refer to confidential
23 information in a way that does not actually reveal
24 it to the public, it may not be so for witnesses.
25 They may not be versed with that or capable of

1 doing that and they may make mistakes, and that's
2 why I will get into why we have some issues
3 potentially with the live streaming of it. But I
4 would note that there may be times where it is
5 necessary to refer to an individual, and that's
6 carried in (c), and we could go by initials. I
7 think that that could be agreed upon by everyone
8 to use initials if you need to refer to somebody
9 in a document that is deserving of privacy.
10 That's a very -- a typical way of doing it.

11 In (d), that's with respect -- (d) is in
12 respect to documents, that if a document is
13 referred to and proposed to be entered into
14 evidence then -- and it might reasonably contain
15 confidential information then the document should
16 be marked for identification, returned to the
17 owner of the document so that that information can
18 be redacted. And we would make best efforts on
19 behalf of the Government of Canada if a document
20 was ours to return it as quickly as possible,
21 although it of course would depend on how large
22 the document was.

23 Now, it would be on counsel as (e) if
24 confidential information is accidentally revealed
25 that counsel would flag that for yourself so that

1 we are all aware that has happened, and it's at
2 that time that a publication ban may be necessary
3 to prevent whatever was just uttered inadvertently
4 from being published in the media. And of course
5 at that point argument could be heard on a
6 case-by-case basis as to whether or not that is a
7 case, but initially the publication ban could be
8 issued at that point and do not report that
9 person's name until we --

10 THE COMMISSIONER: I understand that.

11 MR. MAJAWA: Then (f). Now, there may be circumstances where
12 it is necessary to refer to confidential
13 information it just might be too hindering to go
14 by initials.

15 THE COMMISSIONER: I've read all of this. Yeah, I understand
16 that.

17 MR. MAJAWA: In addition to that point I would just add that
18 there also may be times, and this would be
19 something that we could deal with at the time as
20 well, but there also may be times where privileged
21 information needs to be discussed or other
22 information that would potentially resolve in
23 other orders being issued, but that again can be
24 dealt with on a confidential basis. And the
25 flexibility for parties to apply is found in (g).

1 So the parties can apply. If they do not agree
2 that that information is confidential they can
3 apply for a ruling from yourself and that is how
4 it could be dealt with.

5 Now, the final point though that I believe
6 it's important to make is that these proceedings
7 as you are aware are being streamed live over the
8 Internet. If somebody makes an accidental
9 reference to some confidential information, then
10 regardless of whatever publication ban that ends
11 up being put out there afterwards it's too late,
12 the bell has been rung and it has already been
13 published immediately. Now, we're not proposing
14 by any means that there be no camera here or that
15 proceedings do not be recorded, but we are
16 proposing that the live streaming be delayed for
17 some time, and I don't propose a particular time
18 because I don't know of the technical
19 requirements, but to be delayed for some period of
20 time so that in the event that confidential
21 information is revealed it can be removed before
22 it is broadcast.

23 THE COMMISSIONER: Well, how much of this are you expecting? I
24 mean, surely if you're interviewing your witnesses
25 ahead of time you will be advising your witness as

1 to the confidential nature of particular evidence.

2 MR. MAJAWA: And, in fact, that's the nature of part of the
3 protocol. But I don't know what others will be
4 asking on cross-examination necessarily, and I
5 can't -- I wouldn't want to hesitate to guess.

6 THE COMMISSIONER: Well, if someone asks something in
7 cross-examination surely it's up to the counsel
8 for the witness who is being examined and
9 cross-examined to immediately raise an objection.
10 I mean, isn't that the best way of dealing with
11 it?

12 MR. MAJAWA: I agree if it's something that comes up in
13 response to a particular question. However, there
14 may be times when a response is given not
15 necessarily in response to a particular question
16 that itself would raise that issue.

17 THE COMMISSIONER: There's always that eventuality. You're
18 right, there's that possibility. But I'm not so
19 sure that at this stage we can come up with a
20 protocol that will prevent that. We don't know.

21 MR. MAJAWA: No, and that's why, in my submission, it's
22 necessary to, in the possibility that that may
23 happen, that the streaming be delayed at least.
24 It will be obvious at the end of each hearing
25 period either at the lunch break or at the end of

1 the day whether or not that happened. If it
2 didn't happen then it could be released.

3 THE COMMISSIONER: Okay. Let me hear from other counsel.

4 Mr. Vertlieb, what's your position?

5 MR. VERTLIEB: Perhaps I could just listen to what's being said
6 and then I can see if there's something I need to
7 help you with. I think that would be helpful. I
8 must say though that I think the proposal set out
9 by my learned friend for the DOJ is one that makes
10 sense for our purposes.

11 THE COMMISSIONER: Yeah.

12 MR. VERTLIEB: I've always thought that the documents could go
13 to the owner of the documents and that lawyer
14 could make sure there's nothing that needs
15 attention, and then deal with it when it comes up
16 and it allows you to see what the real problem is.

17 THE COMMISSIONER: All right.

18 MR. VERTLIEB: If we've been unable to get agreement on it.

19 THE COMMISSIONER: Okay. Is anybody opposed to that? No?

20 Wait a minute.

21 MR. HERN: I think my position is probably most consistent with
22 the Department of Justice, so maybe it makes sense
23 for me to go second here.

24 I just have a couple of points. The first
25 thing I want to say, and it's really for -- I

1 understand you know this, but I want to say it for
2 the record because it keeps getting
3 mischaracterized. What this is about is about two
4 public agencies who had a lot of confidential
5 information that we've given that over to you
6 coming to you as the head of another public agency
7 to identify this as an issue. None of us want to
8 cause harm to third parties, and I think that's an
9 issue. And coincident with that is the point that
10 none of us really have a stake in the issue either
11 in the sense that it doesn't do the VPD, for
12 example, any -- it doesn't help us in any way to
13 be protecting this information. This is for the
14 benefit of third parties and we're all doing this
15 as officers of the court. So that said I think
16 the protocol makes sense that Department of
17 Justice has proposed.

18 And I just want to identify two things. One
19 is that it doesn't seem to include the
20 identification of who are sex trade workers. And
21 I know that my friend Mr. Gratl feels that's of
22 importance, and I think that's pretty reasonable.
23 If we have identified sex trade workers, and we
24 have hundreds in the documents, that those names
25 be kept out even if they're not victims. You'll

1 see within the protocol item (b) says we're going
2 to protect names of victims, but they may not be
3 victims, they may just simply be witnesses, for
4 example, who are identified as sex trade workers.

5 THE COMMISSIONER: So you're agreeable to Mr. Gratl's position?

6 MR. HERN: Absolutely on that.

7 THE COMMISSIONER: Okay.

8 MR. HERN: The part where I think that Mr. Gratl and the police
9 agencies part company is with respect to persons
10 of interest who are captured in the item (e) of
11 the Department of Justice. Now, it says:

12 Information that could identify a person of
13 interest.

14 Now, there are suspects, there are people who have
15 been accused of crimes but not convicted, and that
16 may --

17 THE COMMISSIONER: And that's my understanding of what people
18 of interest are.

19 MR. HERN: Yeah, and so that may be an issue. I think I'll
20 wait to hear from Mr. Gratl on that, but I'd like
21 to say a few things in reply. Obviously while
22 they may not be the most sympathetic of third
23 parties they are entitled to protection from this
24 commission. And those are my only two concerns.

25 THE COMMISSIONER: Okay. Thank you, Mr. Hern. Mr. Gratl.

1 MR. GRATL: Mr. Commissioner, I was taken a little bit by
2 surprise by this application this morning. I had
3 prepared materials in my mind but not on paper,
4 and so I'd be prepared to speak to this issue this
5 afternoon or else just --

6 THE COMMISSIONER: How much time do you need to prepare for
7 this? Tell me what's wrong with their protocol.

8 MR. GRATL: Well, the difficulty with the protocol is that it
9 allows for the RCMP to control information in a
10 way that's equivalent to a publication ban and
11 they can limit the publicity of information.

12 THE COMMISSIONER: No, that isn't it at all. They look at
13 information that they think will be sensitive and
14 they will ask -- I will ultimately decide whether
15 or not it will be -- that information will be
16 revealed in an open hearing.

17 MR. GRATL: All right. I wonder if I can pass forward -- I
18 wonder -- Mr. Commissioner, I'm passing forward a
19 package of documents.

20 THE COMMISSIONER: Yes.

21 MR. GRATL: This is a package of documents that has been
22 retrieved and assembled by my staff. It's a -- it
23 represents a partial amalgamation of a list of
24 missing women that were created by various police
25 agencies over the years, and you can see that the

1 names of missing women have been redacted from
2 these lists. So in page 1 you see that there's
3 what's described here by the Vancouver Police
4 Investigation Division in a 1986 missing persons
5 year end report one of the missing persons
6 outstanding in 1986 it described as native hooker
7 STW 1182.

8 THE COMMISSIONER: Yeah.

9 MR. GRATL: This is the type of information that my friends
10 propose to redact.

11 THE COMMISSIONER: Yeah. So are you opposed to that?

12 MR. GRATL: Yes. I mean, these are the missing women. It
13 would be hard, in my submission, to come to a
14 thorough understanding of the investigation of
15 missing women while their names are concealed by
16 these redactions. It seems to me that the names
17 of the missing women ought to be public. And so
18 if you go over to page 3 we see two more missing
19 women redacted under STW 8091 and STW 268. And if
20 you flip to the -- interestingly enough if you
21 flip to the last four pages you'll see a more
22 recent list of missing women. This is the fourth
23 last page in.

24 MR. MAJAWA: Sorry, I hate to arise and interrupt, but with
25 respect to Mr. Gratl's point that if sex trade

1 workers have been redacted to our list of missing
2 women, we've had discussions with our friend about
3 that. If mistakes were made we would acknowledge
4 that the missing women should not be redacted, and
5 we are working on a response to a particular
6 letter that Mr. Gratl has sent to commission
7 counsel with respect to that issue. So we do not
8 take the position that the missing women are to be
9 redacted.

10 THE COMMISSIONER: All right.

11 MR. MAJAWA: And I also would just note that this is then
12 getting into the issue of information that's
13 already been redacted, which is separate and
14 possibly part of a future application, but it is
15 separate from the protocol that I was presenting.

16 THE COMMISSIONER: In any event, you agree with the general
17 proposition that that evidence is relevant given
18 the terms of reference of the inquiry?

19 MR. MAJAWA: If we have redacted a person as a sex trade worker
20 and they happen to be also one of the women on the
21 missing women list, yes, that is a mistake and
22 that will be addressed. And we have informed
23 Mr. Gratl of that and we continue to work on other
24 specific requests with respect to that.

25 THE COMMISSIONER: All right.

1 MR. GRATL: What I've requested, Mr Commissioner, is not only
2 the names of the missing women that have been
3 concealed under the rubric of their identities as
4 sex workers, but also all documents relating to
5 them so the investigations pertaining to those
6 individuals as well. So if you look at the last
7 four pages there, which is a list of missing women
8 current to -- current to approximately the period
9 just before Mr. Pickton's arrest, you can see the
10 first name there is Sereena Abotsway, that's a
11 familiar name, and then underneath that we've
12 three missing women who are blacked out, STW 17 --

13 THE COMMISSIONER: Well, I think your friend has said that
14 those are ones that they would -- they agree with
15 your position on those.

16 MR. GRATL: And the difficulty that I have, Mr. Commissioner,
17 is that there's no provision in their redacting
18 protocol that they're proposing for independent
19 counsel or counsel for the families to review
20 these redactions, and so there's no guarantee that
21 we'll get as counsel copies of the documents in
22 unredacted form so that we might be in a position
23 to take objection to those redactions. If it --
24 if it's in the interest of the groups and
25 individuals from whom I as independent counsel are

1 to take guidance, and Ms. Gervais as independent
2 counsel is to take guidance, and Mr. Ward for his
3 clients the families if they want that information
4 in the public realm.

5 THE COMMISSIONER: Why can't you ask for disclosure of that
6 when that issue comes up?

7 MR. GRATL: Oh, I have asked for disclosure, but I actually
8 didn't get a response from my friends from the
9 Department of Justice. They haven't confirmed
10 that they will provide me with that information
11 and the underlying documents that relate to the
12 investigation of those missing women whose names
13 have been concealed.

14 THE COMMISSIONER: Okay. Yeah.

15 MR. MAJAWA: Mr. Commissioner, I fear that we are straying away
16 from the issue that we've raised this morning.
17 What Mr. Gratl is getting into right now is
18 disclosure issues and issues with respect to
19 redactions that have already been made. As I have
20 already referenced we are in discussions with
21 Mr. Gratl through commission counsel with respect
22 to certain of his requests. Should those end up
23 being needed to be discussed or aired in this
24 forum then that will be done at that point, but at
25 this point I don't believe that it's necessary to

1 go there.

2 THE COMMISSIONER: Yes, yes. Do you understand?

3 MR. GRATL: I do understand the position taken by the
4 Department of Justice, but in my respectful
5 submission the redaction protocols do amount to a
6 form of limiting public access to information.

7 THE COMMISSIONER: Well, yes, of course in the public interest.

8 MR. GRATL: And as such I think there ought to be some special
9 care exercised and safeguards put in place to
10 ensure there's not over redaction, and that
11 includes redactions that have already been made.
12 Just because the RCMP has already made those
13 redactions prior before submitting them to the
14 commission does not mean those redactions are
15 legitimate. And, in my submission, if there's to
16 be a redaction process, that redaction process
17 should include those redactions that have already
18 been made so that all participants' counsel have
19 an opportunity to make at least submissions in
20 respect of proposed redactions on which agreement
21 has not been achieved.

22 I agree a lot of what my friends say is
23 uncontroversial. There's a lot of third party
24 information that there's no -- it might be in the
25 first place irrelevant to these proceedings, and

1 in the second place the public interest in
2 publicity over that information might be over born
3 by other considerations, but the process
4 envisioned by the police simply, in my respectful
5 submission, provides an overly broad discretion to
6 the police to limit what is seen in the public
7 eye.

8 I'm not prepared to make submissions on the
9 point of persons of interest at this time. What
10 I'd like to do is I'd like to prepare a little bit
11 of case law, because in my respectful submission
12 my concern about the editing of persons of
13 interest relates to what, in my submission, is a
14 misinterpretation, overly broad interpretation of
15 the law in respect of redacting the names of
16 suspects or accused persons. That is to say in my
17 view the RCMP and the Vancouver Police Department
18 are taking the position that the names of persons
19 of interest are targets of investigation.

20 THE COMMISSIONER: All right. So when do you think you'll be
21 ready to deal with this issue?

22 MR. GRATL: I can deal with it this afternoon.

23 MR. VERTLIEB: Mr. Commissioner, I'm just concerned, and if I
24 may help here. I know Mr. Gratl has a strong view
25 about this and I respect his view. I don't want

1 him to feel rushed. We've been talking about this
2 for a while, but I really think it's important
3 that everyone if they feel they need time be given
4 that on issues of law. And I don't see any need
5 to put it over to the afternoon, because we're
6 able to start with Deputy Chief LePard Monday, I
7 don't anticipate any of these problems arising
8 next week with the deputy, and that will give my
9 learned friend Mr. Gratl and counsel for the DOJ
10 time to sit and look at the redactions of the
11 missing person list, because DOJ did agree to
12 provide that information, they recognize that may
13 have been an error and they're working together.
14 So rather than have Mr. Gratl feel in any way that
15 he's been rushed and not have the time he needs,
16 I'd rather we just adjourn this. I think we've
17 come a long way with your help this morning on the
18 subject and we've made a lot of progress, but I
19 think Mr. Gratl could have some time after the
20 deputy gives evidence next week and we can sort it
21 out. It may still come to agreement.

22 THE COMMISSIONER: All right.

23 MR. VERTLIEB: I just wanted to interrupt just to say that. I
24 think everyone's got a good idea now of the
25 commissioner's view of the recommendations and the

1 protocol, but it shouldn't happen next week with
2 Deputy LePard.

3 THE COMMISSIONER: Okay.

4 MR. VERTLIEB: Just on that subject so you know why I speak
5 with some confidence, your staff is sending out to
6 all counsel a list of the Concordance numbers for
7 the documents that we intend to put to the deputy,
8 and so that will give ample time to either DOJ or
9 VPD to look at those documents and see if there
10 are any problems, and I'm confident that counsel
11 for those respective police agencies will tell me
12 if there's a problem. I don't anticipate this
13 will be a problem next week.

14 THE COMMISSIONER: Okay. All right.

15 MR. VERTLIEB: So I just think that Mr. Gratl really should
16 have some more time.

17 THE COMMISSIONER: All right. Thank you.

18 MR. VERTLIEB: You're welcome.

19 MR. MAJAWA: Perhaps I could just add as well, Mr. Gratl has
20 made some specific requests for particular names
21 behind redactions that have already been made and
22 we are considering those requests, and I would
23 suggest that that is how it should be dealt with
24 in the first instance if we can come to an
25 agreement, and at this point it would be premature

1 to make that request or any kind of an argument
 2 with respect to that because we have not yet been
 3 unable to come to an agreement on some of the ones
 4 that he has been seeking. And I just want to
 5 again just to stress for the record that the
 6 protocol that I was speaking about earlier is
 7 separate and apart. We are not saying -- we are
 8 not taking the position that redactions that have
 9 been made are never to be looked at again. If
 10 Mr. Gratl is unsatisfied with the redactions that
 11 were made after having engaged in conversations
 12 with us, and after having engaged in conversations
 13 with commission counsel, then of course it's
 14 within his right to bring an application with
 15 respect to those, but that is separate and apart
 16 from the issue that I was speaking with respect to
 17 earlier this morning.

18 THE COMMISSIONER: All right. Thank you. All right. Any
 19 other counsel have any other comments?

20 MS. GERVAIS: Robyn Gervais, independent counsel for aboriginal
 21 interests. The only comment I would like to make
 22 is with respect to the live streaming. I think
 23 it's really important that the live streaming
 24 continue. I know that the aboriginal community
 25 across BC is watching the live stream, and as I

1 indicated yesterday I'm starting to get some
2 communication from the aboriginal community and
3 that has come in various forms. For example, when
4 I was cross-examining a witness I had someone from
5 the aboriginal community sending me text messages
6 saying could you please ask this question, and so
7 I think --

8 THE COMMISSIONER: You've got associate counsel all over the
9 province.

10 MS. GERVAIS: Yes. But I think it important that there not be
11 a delay and that the live stream continue. Thank
12 you.

13 THE COMMISSIONER: Well, I'm not going to make any order with
14 respect to the live streaming, yet in any event.

15 MR. WARD: And Cameron Ward, counsel for the families of 18
16 missing and murdered women. I've been silent, but
17 I do want to say that on behalf of my clients I
18 have strong concerns about categories (e) and (g)
19 in the department's letter of October 31st, 2011,
20 and I will have submissions on those two
21 categories and why it is inappropriate, in my
22 submission, to redact persons of interest
23 information from the documents, but I will save
24 those until we resume communicating on this issue.

25 THE COMMISSIONER: All right. Thank you.

1 MR. WARD: Thank you.

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

3 THE REGISTRAR: The hearing is now adjourned until ten o'clock
4 on Monday morning.

5 **(PROCEEDINGS ADJOURNED AT 11:57 A.M.)**

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

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