

MISSING WOMEN COMMISSION OF INQUIRY

HEARING COMMISSION

**FINAL SUBMISSIONS OF THE VANCOUVER POLICE DEPARTMENT
AND THE VANCOUVER POLICE BOARD**

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A. INTRODUCTION

This Inquiry

1. The Vancouver Police Department and Vancouver Police Board called for this Inquiry, beginning as early as 2006, and it has done its utmost to support it throughout the process.
2. In 2002, the VPD commissioned Inspector Doug LePard (as he then was) to conduct an internal review, and he produced a report – Exhibit 1 in these proceedings – that is perhaps unprecedented among police forces for the depth and breadth of its self-examination and criticism.¹ As this Commission has heard in these hearings and in the Study Commission, the VPD has since made a great many changes in response to that and other reports.
3. The VPD understood, however, that an internal review would not satisfy the public's right to know what went wrong in the investigation, and nor could it exhaustively explore all the possibilities for progressive change. That is why the VPD called for this Inquiry: because the public deserves to know why the police investigations did not catch Pickton sooner, and what further changes may be made so that such a tragedy never happens again. That is the task for this Commission: to give fair, balanced and realistic answers to the questions of what went wrong and what further changes should be made.
4. This Commission has withstood extensive criticism and many obstacles from within and without. Much of that criticism has stemmed from those who were disappointed that the Terms of Reference focused primarily on the police investigations and did not encompass a larger examination of the reasons the murdered women ended up addicted to drugs and selling sex on the streets. That criticism was misdirected at the Commission, as it had no control over the scope of the Terms of Reference. Within the Inquiry proceedings, a number of serious

¹ Dr. Rossmo testified that the LePard Report is “an exemplar of how you can do an internal autopsy and try to figure out what went wrong so that it won’t happen again in the future”: Transcript, January 25, 2012, p. 41, l. 8 – p. 42, l. 11 (K. Rossmo in cross by T. Dickson).

but unsubstantiated accusations were levelled at the Commission, and confidential documents were leaked to the media on at least three occasions by someone in the participant group. Nevertheless, the Commission has persevered, and for that it should be commended. Its work is important, and while the various factions present themselves as the voices of “the public”, there are other voices and other members of the communities in and around Vancouver whose voices are not so loud but who look forward to receiving this Commission’s report.

5. The VPD respectfully submits that, regardless of all of this criticism that has been directed at it, this Commission must stay true to its Terms of Reference and answer the questions they pose fairly and judicially. The public will not be served by sensationalized accounts of the failings of the police investigations, or by superficial and unrealistic suggestions for future change. Rather, this Commission will only contribute to real and lasting change if its report is firmly rooted in the evidence it has heard and is sensitive to the complex challenges of policing in the Downtown Eastside of Vancouver (the “DTES”).

These Submissions

6. The VPD and the VPB have provided submissions to the Study Commission addressing the changes that have been made since 2002, with recommendations for further change. The present submissions are directed to the Hearing Commission, which is focused on paragraphs (a) and (b) of the Terms of Reference. These submissions are limited to paragraph (a), which relates to the conduct of the police investigations from 1997 to 2002.
7. The Commission has heard from dozens of current and former VPD officers and civilians, and thousands of pages of VPD documents have been introduced into evidence. The VPD witnesses have provided their evidence and opinions about the case freely, and have been cross-examined at length. As the Commission was advised from the outset, the VPD has not sought to present a unified perspective as to what happened in the investigation of the missing women. The

views and perspectives of members and former members of the Department diverge as to whether certain aspects of the police investigation were deficient, and the witnesses have shown that the VPD is a diverse group of officers with a variety of skill sets and perspectives.

8. Because of the differences in perspectives, the VPD does not propose to survey the evidence of each officer and take a position on how the Commission ought to receive their evidence. That is the Commission's role. Rather, these submissions address a limited subset of matters where evidence or issues extended beyond the matters covered in the LePard Report. Those matters are:
 - a. challenges associated with protecting and policing sex trade workers;
 - b. certain issues within the VPD's missing women investigation, including: 911 report taking, the Missing Persons Unit, the absence of an official warning, and the VPD's efforts to secure a Joint Forces Operation ("JFO");
 - c. the Coquitlam RCMP's investigation;
 - d. the solution to the Coquitlam RCMP's languishing investigation;
 - e. Project Evenhanded;
 - f. learning from unsuccessful investigations;
 - g. allegations of systemic bias, sexism and racism;
 - h. the role of the Police Board; and
 - i. Hells Angels, cover-ups and other such allegations.

Looking Back, and Looking Forward

9. As an institution, the VPD is deeply sorry for the failings of its investigation, as it expressed when the LePard Report was released, as it stated at the outset of this Inquiry, and as it has expressed to each of the family witnesses who have

taken the stand. The VPD deeply regrets that it did not understand earlier the terrible gravity of the situation that the missing women presented, and that its response was inadequate as a result.

10. The VPD has made many changes to date in response to the shortcomings of the investigation. The VPD is committed to providing excellence in policing, and it understands that doing so requires openness to criticism and self-examination. The VPD has made serious and sustained efforts since 2002 to learn from its mistakes, and it looks forward to receiving this Commission's report so that it can further improve policing in the region, particularly with respect to vulnerable populations and Aboriginal communities.

B. CHALLENGES OF PROTECTING AND POLICING STREET SEX WORKERS

Introduction

11. An issue in the background of the Missing Women investigation is section 213 of the *Criminal Code* – the communicating law – and its enforcement by police. Section 213 criminalizes communicating for the purposes of prostitution in a public place.
12. Some participants in this Inquiry – most notably Independent Counsel for DTES Interests – have suggested that the enforcement of the communicating law played a role in the tragedy of the Missing Women by making them more vulnerable to predation. The argument is that the existence and enforcement of the communicating law disrupted a variety of techniques sex workers took to enhance their safety. It has been suggested that the law had the following effects:
 - a. it pushed street sex workers into less residential, more industrial areas, which were darker and less populated, such that there were fewer “eyes on the street” who might notice predators;
 - b. it caused sex workers to be more hasty in getting into cars, for fear of being caught violating the law; and
 - c. it made sex workers less likely to report crimes against them to the police.
13. Witnesses whose evidence is relevant to this issue include Dr. John Lowman, Dr. Kate Shannon and Ms. Susan Davis.
14. This part of the VPD’s submissions addresses this issue. In a nutshell, the police are in a very difficult position when it comes to the street sex trade: they are mandated to enforce laws that seek to address the nuisance aspects of the trade but do not resolve any of the underlying issues, and on the other side are concerns about the safety of street sex workers. During the Time Period, the

VPD attempted to mediate this conflict by creating a tolerance zone in the DTES, where the communicating law would not be enforced against sex workers.

15. The VPD's approach has since evolved further, and for years now the VPD has essentially not enforced the communicating law against sex workers anywhere in the city. The basis for this approach is the recognition that the communicating law is ineffective and does have the potential to increase the vulnerability of sex workers and to reduce the willingness of sex workers to provide information about predators to police. The role the law played in the tragedy of the missing women, however, should not be overstated: the real issue is that – generally driven by their addictions – street sex workers get into cars with strangers, and then drive to some other location to perform their services. That act – putting themselves into the control of men who are all, at the very least, willing to pay addicted women for sex – is extraordinarily dangerous, and is the real basis of their vulnerability. The communicating law certainly does not ameliorate that vulnerability and in some circumstances it may add to it somewhat, but the law's contribution to that vulnerability is small relative to the simple act of getting into a stranger's car.

Society's Interest in Addressing the Nuisance Effects of Street Prostitution

16. The history of the communicating law was explored through the testimony of Dr. Lowman.²
17. The communicating law was preceded by the solicitation law, which proved largely ineffective. In the 1978 *Hutt*³ decision, the Supreme Court of Canada ruled that the solicitation had to be “pressing and persistent”, which essentially ruled out the use of undercover agents as part of enforcement efforts, and soon after, the law fell into disuse.

² See, in particular, Transcript, October 20, 2011, p. 42, l. 16 – p. 55, l. 15 (Dr. Lowman, in cross by T. Dickson).

³ *Hutt v. The Queen*, [1978] 2 S.C.R. 476.

18. Vancouver residents thereafter became very dissatisfied with the effects of street prostitution in their communities, which is best demonstrated by the civil injunction obtained by the Attorney General in 1984, granted by Chief Justice McEachern, who expressed frustration with the inability of the criminal law to restrain street prostitution.⁴ That injunction prohibited, on the basis of nuisance, street sex workers from plying their trade in the West End. The trade then moved to the Richards/Seymour area, and then later to Mount Pleasant.
19. In 1983, the Fraser Committee was formed to study street prostitution and pornography. The Fraser Committee released its report in 1985, and called for law reform. As described in a 2006 Parliamentary report,⁵ the Fraser Committee found among Canadians “wide support for initiatives that would deal with the nuisances associated with prostitution”, and it ultimately recommended a new law to address street prostitution:

As to street prostitution, the committee focused on the public nuisance aspect noting that it “would be unreasonable to relieve prostitutes of all legal responsibility for criminal acts or specific nuisances caused by their activities.” As regards this aspect, the committee recommended a new offence involving repeated disturbances by pedestrians or motor vehicles for the purposes of prostitution.

20. The communicating law was enacted in 1985 in order to address this public nuisance aspect of the street trade. As stated in the 2006 Hanger Report: “By focusing on the public aspects of prostitution, the goal of the communicating law was obviously to address the nuisance problem. It wasn’t to address the overall prostitution issue.”⁶ A Juristat report⁷ describes the law this way: “The purpose of the communicating law which remains in force today is to maintain public order

⁴ Exhibit 5 (*Attorney General v. Couillard* (1984), 59 B.C.L.R. 102, 1984 CanLii 374 (S.C.)).

⁵ Exhibit 10 (The Challenge of Change - A Study of Canada's Criminal Prostitution Laws - Report of the Standing Committee on Justice and Human Rights, December, 2006 (the “Hanger Report”).

⁶ *Ibid.* at p.50 (Hanger Report, p. 40).

⁷ See, in particular, Transcript, October 20, 2011, p. 50, l.16 – p.52, l.11 (Dr. Lowman, in cross by T. Dickson); Exhibit A for Identification.

by making prostitution less visible and therefore less of a nuisance to the general public.” It describes the nuisance of effects of the street trade as follows:

A different perspective is presented by ordinary citizens faced with street prostitution in their communities. Indeed, many of them feel that they are the victims, since the trade usually brings added traffic, loitering, noise and drugs. In some neighborhoods inhabitants are mistaken for prostitutes or clients, while children playing outside are exposed to discarded condoms and needles.

21. The constitutionality of the communicating law was challenged in the 1990 *Prostitution Reference*⁸ but the Supreme Court of Canada upheld the law under section 1 of the *Charter*. The headnote to the case summarized this portion of the Court’s ruling as follows:

The limits of freedom of expression imposed by the communicating law are justifiable under Section 1 of the *Charter*. The communicating law is aimed at taking solicitation for the purposes of prostitution off the streets and out of public view and to that end seeks to eradicate the various forms of social nuisance arising from the public display and the sale of sex. These include street congestion, noise, harassment of nonparticipants and general detrimental effects on passersby or bystanders, especially children. The legislation, however, does not attempt at least in any direct manner to address the exploitation, degradation and subordination of women that are part of the contemporary reality of prostitution. The elimination of street solicitation and the social nuisance which it creates is a government objective of sufficient importance to justify elimination on freedom of expression.

22. Thus it can be seen that, during the Time Period, Canadian society had a very strong interest in eliminating the street sex trade because of the nuisance effects it caused. Faced with the issue, Parliament passed a law designed to eliminate those effects, which the Court upheld. The police were mandated to enforce that law. As this Inquiry has heard and as is addressed in the next section, however, the law proved ineffective in eliminating the street sex trade, and the police were placed in the position of having to mediate between the interests of residents in

⁸ Reference re: ss. 193 and 195.1(1)(c) of the Criminal Code (Man.), [1990] 1 S.C.R. 1123.

removing the nuisance caused by the sex trade and the safety issues associated with enforcement of the law.

Displacement and the Tolerance Zone

23. One reason the communicating law is ineffective in fulfilling its purpose of eradicating street prostitution is that when the law is enforced in one location, the trade simply moves elsewhere. In short, the trade is displaced and not eliminated.
24. As the Inquiry has heard, the 1984 civil injunction moved the trade out of the West End to Seymour/Richards, and then to Mount Pleasant. Especially at Mount Pleasant, residents organized to combat the trade in their neighbourhood, and the police sought to mediate the two opposing sides by shifting the trade toward 1st Avenue.
25. Later, the trade moved into the DTES, and spilled onto Pender, east of Gore, where there is a school. Again, this caused very considerable anxiety among residents and business owners. The result was that the police created, in practice, a “tolerance zone” for the street sex trade starting on the north side of Hastings, east of Main. The effect of the tolerance zone was that in this area, sex workers would not be arrested or further displaced.
26. The tolerance zone was considered to be a reasonable solution to a complex problem. Even Dr. Lowman, in a study he prepared for the Department of Justice in 1995, called it the police’s “best practical enforcement solution”.⁹ Indeed, he expressed consternation that a different police administration would abandon the tolerance zone policy:¹⁰

According to our counts, the containment strategy is working for the time being anyway. A variety of forces can upset the balance. One key difference in the 1990 situation is that displacement is occurring interjurisdictionally, not just within Vancouver. Also,

⁹ See Transcript, October 20, 2011, p. 58, ll. 18-19 (Dr. Lowman, in cross by T. Dickson).

¹⁰ Transcript, October 20, 2011, p. 57, l. 11 – p. 58, l. 13 (Dr. Lowman, in cross by T. Dickson).

there is no actual assurance that the next police administration will adopt the same approach and no guarantee that some politician will not rise from the ranks to attack the tacit policy of tolerating the street trade in certain areas.

27. The difficulty with the tolerance zone is that it does not address the root causes of street prostitution. As Dr. Lowman agreed, addressing those root causes would require the participation of many more levels of government than just the police: it would require a change in the criminal law, and the involvement of provincial ministries, such as health. Without such a coordinated response, the tolerance zone was the best practical solution to a complex problem that the police could implement on its own.¹¹
28. As for the root causes of street prostitution, Dr. Lowman at times appeared to advance a theory that it was caused by the closing of the Penthouse and Zanzibar hotels in 1975, in that it shut down an indoor area for prostitution and put it on the street.¹² The theory appears to be that the prostitution was then on the street, and had to be displaced around the city, and that ultimately contributed, over 20 years later, to the vulnerability of street sex workers in the DTES. That is, Dr. Lowman appeared in his testimony to draw a fairly straight line between the closure of two indoor prostitution areas and the creation of a large-scale street sex trade in the DTES.
29. If that truly is the theory, then, respectfully, it is not credible. The true root cause of the street trade in the DTES was the emergence of very cheap and highly addictive street drugs like powder cocaine and then crack cocaine beginning in the late 1980s. As the Inquiry heard again and again, it is the women's addictions that are the driving force behind their willingness to get into cars and sell sex. It is the fear of dopesickness that is the real motivation, as Catherine Astin testified:¹³

¹¹ Transcript, October 20, 2011, p. 59, l. 12 – p. 60, l. 23 (Dr. Lowman, in cross by T. Dickson).

¹² See, for instance, Transcript, October 13, 2011, p. 3, l. 22 – p. 4, l. 4 (Dr. Lowman, in chief by A. Vertlieb).

¹³ Transcript, October 19, 2011, p. 47, l. 25 – p. 48, l. 16 (C. Astin, in chief by K. Brooks).

Q: Did you ever observe or did women ever tell you about how their safety is affected by these symptoms of withdrawal?

A: Yeah, because they'll do anything sometimes to come out of their withdrawal. So if a women is in -- withdrawal can be really, really painful. Even if you don't have physical effects, you've got the psychological effects, and you can have terrible nightmares coming off cocaine, you can have terrible nightmares coming off any drug because if you don't have the drug then all the trauma comes back to you, which is the reason why you were taking the drug in the first place. So any woman that's coming off of drugs, if she didn't have correct supports in place then she'll do -- she'll do anything to get the drug if she's in that much pain.

30. Indeed, Dr. Thomas Kerr reported that the results of one of his studies for the BC Centre for Excellence in HIV/AIDS was that 62% of street sex workers stated that they would not engage in sex work at all but for the their need to acquire money for drugs.¹⁴ That report is consistent with the overwhelming and undisputed bulk of evidence in this Inquiry that it is addiction that is largely driving street sex workers to get into cars with strangers in order to engage in their trade.
31. There are further reasons to reject the contention that the closure of indoor venues like the Penthouse and Zanzibar had anything to do with the creation of the DTES street trade. For one thing, the Penthouse and Zanzibar would have provided room for relatively few sex workers. For another, they were of an entirely different “track” than the sex workers who gravitated to the DTES. In other words, the characteristics of the deeply addicted women working in the survival sex trade in the DTES would make them unable to work in such a setting.
32. But more important is the fact that the vast majority – over 80% – of prostitution in fact does occur indoors, as Dr. Lowman testified.¹⁵ With such a large indoor trade, it is not credible that it is the denial of indoor spaces that is the cause of the street trade. Rather, the cause is that there are customers who seek low prices and the anonymity of cars, and despite their vulnerability, street sex

¹⁴ Transcript, October 19, 2011, p. 156, ll. 10-19 (Dr. Kerr, in cross by T. Dickson).

¹⁵ Exhibit 3 (Lowman Report), p. 12.

workers' addictions drive them to take such customers' money so they can get their next fix.

Safety in the Tolerance Zone

33. As stated above in the introduction to this part of these submissions, the VPD has since refined its enforcement policy, such that now it essentially never enforces the communicating law against sex workers, and instead focuses on johns and other strategies geared to education and exit from the sex trade. The VPD recognizes both that the law is ineffective and that it raises some safety concerns for sex workers, both on the street and indoors.
34. The contribution of the enforcement of the law to the vulnerability of street sex workers should not be overstated, however. The law's role in this regard pales in comparison to the danger posed by the simple act of getting into a car with a stranger – and, indeed, with a stranger who is willing to pay an addicted woman for sex.
35. Some participants – and indeed Dr. Lowman and Dr. Shannon – have argued that the Tolerance Zone was a darker, less populated area, and that this made it more difficult for sex workers to watch out for one another. It is possible their vulnerability was increased somewhat in this way. But it must be remembered that it is not on the *stroll* that violence against a sex worker generally occurs – it is after the woman gets in the car, and the john drives her to some other location. Generally that other location will be somewhere isolated, because a john – particularly a violent john – wants privacy. Once the sex workers is in the car, she has relinquished a great deal of her control and is at enormous risk.
36. It is almost impossible to police this situation effectively. As Dr. Lowman and Susan Davis both agreed,¹⁶ sex workers do not want the police around the strolls because they scare away the johns. If the police patrol the strolls, then the johns

¹⁶ See Transcript, October 20, 2011, p. 64, l. 12 – p. 65, l. 23 (Dr. Lowman, in cross by T. Dickson); Transcript, October 31, 2011, p. 144, l. 17 – p. 146, l. 22 (S. Davis, in cross by T. Dickson).

stay away, and the sex workers move to new locations: even simple patrols displace the trade. The situation is such that it is very difficult for the police to proactively increase street sex workers' safety.

37. One of the most important means of the police better ensuring the safety of street sex workers is by removing dangerous predators from the street. Among its efforts in this regard, the VPD instituted the "DISC" program ("Deter and Identify Sex Trade Consumers"), and initiated the Prostitution Offender Program. Additionally, when the VPD obtained evidence of violent crime against street sex workers, they investigated that evidence vigorously. As DCC LePard wrote in his report, and explained in his evidence, during the relevant time period (1997-2002) the VPD conducted very vigorous investigations of homicides and serious assaults against sex workers.¹⁷
38. However, the VPD does need to continue to work on its relationship with sex workers and the DTES community more broadly so that crime against sex workers and other DTES residents is reported more often. The VPD recognizes that these relationships could have been better during the time period, and that the shortcomings of the VPD's missing women investigation have strained those relationships further. Since 2002, the VPD has made real and serious efforts to build bridges with DTES communities, with the SisterWatch program standing as only the most obvious example. These efforts are indeed improving these relationships, and the VPD is very committed to continuing along this road. The arrest of at least 17 predators as a result of information brought forward through the SisterWatch program is but one example of the real contributions that such relationships can make to increasing safety on the streets.

Conclusion

39. The enforcement of prostitution laws is complicated, as are the police's relationships with sex workers and other residents of the DTES. The VPD's enforcement policy has evolved since 2002, as is evidenced by its recent draft

¹⁷ Exhibit 1 (LePard Report), pp. 215-216 and Appendix A, pp. 366-371.

Sex Trade Enforcement Guidelines. The VPD has changed its approach for a number of reasons, including that enforcement of the communicating law can negatively impact the safety of street sex workers. While the VPD's enforcement policies in the past may have contributed somewhat to their vulnerability, that contribution is very small compared to the act of getting into a car with a stranger who seeks to pay for sex. That is the source of real danger to sex workers, and the cause of sex workers putting themselves at such risk is generally their addiction to street drugs.

C. THE LEPARD REPORT IN CONTEXT

40. The LePard Report is the product of an internal management review that was ordered in 2002 by then Chief Constable Jamie Graham. The report was based on the following sources:
- the VPD's documents relating to the Missing Women investigation;
 - the Coquitlam RCMP's file in the Pickton investigation;
 - the Williams Report;
 - interviews of the key VPD officers and civilian staff; and
 - an interview of former RCMP Constable Ruth Yurkiw.
41. In addition, DCC LePard's considerable investigative experience and extensive institutional knowledge from his many years of service with the VPD assisted him with his analysis.
42. DCC LePard wrote the bulk of his report between November 2003 and April 2004, but its release was delayed until the criminal trial and appeals were over. It was, however, eventually circulated among VPD management as recommended reading, so that VPD managers would learn from the mistakes and deficiencies identified, and not repeat them. Before it was released to the public in August 2010, the report was updated with an epilogue to explain the changes that had been made in the Department since the period in question.
43. The LePard Report is highly critical of the VPD's missing women investigation. DCC LePard identified that, for a variety of reasons, there was a failure to recognize in a timely way that the most likely reason the women were missing was that they had been murdered. DCC LePard then examined the problems with the investigation that was conducted, and why senior management continued to have difficulty recognizing the scope of the problem, even as the likelihood that the women were murdered increased as the investigation carried on with little success.

44. Because the LePard Report is extensive and highly critical of the VPD, the report creates an unusual “starting place” for this Commission in respect of the VPD evidence. Often inquiries are tasked with reviewing issues which have not received any critical attention or analysis by the organization at issue, or have been the subject of an inadequate, defensive response, such as the Williams Report.¹⁸
45. The Commission’s task is to render a measured, independent assessment of the facts and not simply adopt or reject the views expressed in the LePard Report. To do otherwise would not only be wrong in law, but could have the effect of discouraging such internal reviews and in effect reward and encourage institutions which are defensive and unwilling to reflect on their deficiencies. The VPD recognizes that different perspectives will result in different criticisms and/or different weight being ascribed to the various problems identified, but the Commission’s task is to consider all of the evidence with an open mind and to reach its own conclusions. It may be that the Commission is less critical in some respects than was DCC LePard. For example, with respect to Detective Constables Fell and Wolthers, the Commission may feel the evidence is not sufficient to criticize them to the extent that they were criticized by DCC LePard. Similarly, there would be nothing improper in the Commission reaching the same conclusion as DCC LePard (and/or DCC Evans) on an issue, provided that the Commission reaches that view on its own terms. The point is that, in order to objectively consider the VPD issues in this inquiry, the Commission must be mindful that the LePard Report presents a special context for the Commission’s work.

¹⁸ Exhibit 2 (Williams Report).

D. THE EVANS REPORT

46. DCC Evans' report was completed as an expert report for the Commission and was based on a larger body of information than was available to DCC LePard. She and her team had access to the LePard Report (although she did not rely on his opinions for the purposes of her work), the underlying interview statements, and all of the VPD's documents.
47. DCC Evans also had access to the RCMP's files, including materials from Project Evenhanded, and DCC Evans interviewed many key RCMP and VPD personnel. DCC Evans' team reviewed the VPD and RCMP missing person files for the missing women, and attempted to catalogue the work that was done in each missing person file. This was something DCC LePard did not attempt, as he confined his report to investigative issues.
48. The chronologies set out in the LePard Report and the Evans Report are highly consistent. This speaks to the reliability of the two reports, and it indicates that the events at issue can largely be confirmed and corroborated in the documentation associated with the investigations. There are only a few events in the chronologies which are derived solely from the memory of witnesses.
49. There is some divergence between the two reports in the way their analysis is framed and conducted. DCC Evans places significant emphasis on leadership and the concept of "ownership". Her use of that term is not defined in the report, but in her testimony she explained it means officers taking responsibility and holding themselves accountable for the investigations.¹⁹ Although he did not use the term "ownership", DCC LePard treated the failure on the part of some officers to fully engage in, and take responsibility for, the investigation as primarily a symptom, not a cause of the problems, and he attempted to determine by way of a more structured form of analysis what led to what DCC Evans often characterized as a lack of ownership. DCC LePard's analysis led to consideration of such issues as the role played by theories that sex workers were

¹⁹ Transcript, January 16, 2011, pp. 39-40 (DCC Evans, in chief by A. Vertlieb).

transient, the view that homicides must begin with a crime scene, and the role that personality conflicts played. These matters are discussed at Chapters 2, 6 and 7 of the LePard Report.

50. Nevertheless, when read in their totality, the reports are substantially consistent in their analysis of both the VPD investigation and the Coquitlam RCMP investigation. For example, both reports identify that:
 - a. The VPD was leading the investigation into the missing women at large.
 - b. Between 1998 and 2000, for a number of reasons VPD management did not fully recognize the severity of the problem it was facing. Those reasons included mistaken beliefs about sex worker transience, a belief that concrete evidence of a crime was needed before a homicide investigation could commence, a failure to appreciate the significance of Detective Inspector Rossmo's analysis, a lack of investigative expertise among the managers, and personality conflicts.
 - c. The failure to recognize the scope of the problem resulted in an inadequate response in the formation of the Missing Women Review Team.
 - d. The lack of leadership and direction in the Review Team, and the lack of proactive engagement from the ranks above it, inhibited the flow of information from the investigative team to the senior management, and the investigation languished as a result.
 - e. The Coquitlam RCMP were leading the homicide investigation into Pickton, knowing that he was a potential serial killer and a high value suspect to the VPD's investigation.
 - f. The Pickton investigation continued to be led by Coquitlam RCMP after the formation of Project Evenhanded and was not transferred to Project Evenhanded until after February 2002, when Pickton had been arrested.

- g. Between February 2000 and February 2002, notwithstanding it was a “high priority” file, the Pickton investigation was all but ignored by the Coquitlam RCMP as other files were attended to.
 - h. Despite the lack of attention being paid to it, other sections within the RCMP were not asked to assist with the Pickton investigation, nor were requests made for assistance from other agencies.
51. Importantly, like DCC LePard, DCC Evans found that there was no one cause of the problems in the investigations, and no one individual who was responsible. Instead, there were a number of interrelated factors, primarily systemic, which combined to undermine the investigations in both Vancouver and Coquitlam, with tragic results.²⁰
52. DCC Evans has brought a different perspective to the issues surrounding the VPD’s conduct in the missing women investigation, and has provided an independent assessment of the RCMP’s role, which to date had not been critically examined due to the RCMP’s failure to conduct an internal review of their investigation. This Commission must, of course, conduct its own analysis of all of the evidence that has been tendered. While the Commission’s analysis is necessarily independent of DCC Evans’ work, it does not mean that the

²⁰ It should be noted that there are a number of statements DCC Evans made in her report which the VPD does not accept as being accurate. In particular, her suggestion that VPD officers should “drive out to Coquitlam and begin investigating...” (page 8-44), which was addressed in cross examination by S. Hern on Jan 19, 2012 at pages 180-194; her statement that “in my experience, I believe the offence began in Vancouver” (page 8-45), which was purely speculative as DCC Evans confirmed in cross examination that there was no evidence to that effect (Transcript, Jan 20, 2012, page 20); the statement that “In my opinion the VPD should have gone to the media and announced that twenty-one women had been reported missing since 1995” (page 8-145) – in fact the VPD had spoken to the media on a number of occasions about the missing women and of course, published a poster with their pictures and names; her statement that “it would appear that officers from the RCMP had varied opinions on the jurisdiction of this investigation...” (page 8-45) – these quoted passages are not representative of the interview statements as a whole and are inconsistent with the testimony in the Inquiry. In the VPD’s view, this passage of her report sets up a straw man – jurisdiction was clearly with Coquitlam and was accepted by those investigators; her agreement with the statement of DCC Unger in reference to Evenhanded that “this is a Vancouver Police case and the RCMP have willingly joined with us”, and then her statement “I question why it took so long” to acknowledge it was a VPD case (page 7-24) – this statement is strange because the Missing Women case was always Vancouver’s and always acknowledged as such. The VPD’s disagreement with these and other such statements does not detract from the general consistency of the Evans Report with the VPD’s understanding of the events as set out in the LePard Report.

Commission is in any way precluded from arriving at the same or similar conclusions on any particular issue, so long as its conclusions are reached following a review of the evidence with an objective and independent perspective.

E. ISSUES IN THE VPD'S MISSING WOMEN INVESTIGATION

53. This section of the submission addresses specific matters relating to the VPD's missing women investigation which were either not addressed in the LePard Report or were the subject of significant additional evidence which requires comment.

I. 911 Calls and Missing Persons Policies

54. During the Inquiry, evidence was heard about the manner in which 911 operators handled calls from people reporting a missing person, and the policies that were in place that governed those reports. Some participants suggested that the 911 report taking practices or policies compromised the conduct of the missing women investigations. Based on the evidence heard at the Inquiry, the VPD submits that was clearly not the case.
55. The evidence about the taking of 911 reports was heard from witnesses Rae Lynn Dicks, Sandra Cameron, Bonnie Thiele, Dawna Marshall-Cope, Sergeant Ron Joyce, Sergeant Ted Yeomans and DCC LePard. The Inquiry heard that, until 1976, the Report Centre in the VPD took calls from the public requesting police services. When the 911 service was established in 1976, the Report Centre became known as the "Communications Centre".²¹ In June 1999, the VPD Communications Centre was closed and the 911 and dispatch work was taken over by a new entity, "E-Comm", a separate agency which continues today to handle 911 calls from throughout the Metro Vancouver area. Accordingly, the years at issue in the Terms of Reference span both the period in which calls were taken by the Communications Centre and when calls were taken by E-Comm.
56. Between 1997 and 2000, the VPD Communications Centre employed a policy which included the following language with respect to when missing persons reports would be taken:

²¹ Exhibit 179 (Will Say of Bonnie Thiele).

Only those persons who are 'MISSING' as residents of Vancouver shall qualify for a report by this Department. Callers reporting Missing Persons whose place of domicile is outside Vancouver, shall be referred to corresponding police agency.

The Missing Person Report (VPD 565) shall be used to record a status of all persons reported missing persons visiting Vancouver **AND** staying within the Vancouver jurisdiction, shall be treated as residents and subject to the usual procedure and screening process. However, call-taker shall establish a 'MISSING' status rather than just 'LOST', before report taken.

...

The persons who are reported missing, whose age is between 18-65 years, shall be missing of a period of 24 hours before a Missing Persons Report is taken, unless special circumstances indicate to do so earlier. ...

57. Ms. Dicks suggested that the first paragraph quoted above created a “residency requirement”, such that if the person who was being reported missing did not have a Vancouver address which could be provided to the 911 operator, a missing persons report would not be taken, except at the discretion of the sergeant in charge of the Communications Centre.²² Ms. Dicks suggested that this impacted street sex trade workers because they often did not have a fixed address, or the address was not known to their families reporting them missing. She said the rule was that the Communications Centre would generally not take those reports and she would argue with the sergeants, trying to convince them to take the reports. As was the case with all of Ms. Dicks' testimony, this version of events was contrary to the facts, but presented Ms. Dicks as a deeply conscientious person, advocating on behalf of sex workers to uncaring police officers.
58. Ms. Cameron testified that she had no knowledge of the so-called residency requirement until she heard about it from Ms. Dicks, in preparation for their testimony on a panel together.²³ Ms. Cameron then went on in her testimony to give evidence about a number of features of the so-called residency requirement

²² Transcript, April 23, 2012, p. 58, l.11 – p. 60, l.25 (R.L. Dicks, in chief by C. Brooks).

²³ Transcript, April 23, 2012, p. 65, l.23 – p. 66, l.14 (S. Cameron, in chief by C. Brooks).

in cross-examination with Mr. Gratl, notwithstanding having testified that she knew nothing about it. Plainly, that evidence must be discounted entirely.

59. All of the other witnesses testified that there was no such thing as the so-called residency requirement that Ms. Dicks described. Drawing on her many years of experience in the Communications Centre, Dawna Marshall-Cope's evidence was as follows:²⁴

Q. All right. And then the residency requirement, that the person needs to be a resident in Vancouver, that's a requirement, isn't it?

MS. MARSHALL-COPE: It [residency] was a requirement or where they were last seen. And the reason that really sticks in my mind because we often have someone who could live in the -- I had an example, sorry, where somebody lived in Vancouver but their car was in the parking lot in North Vancouver at one of the Grouse Mountain, Grouse Grind or something, so we had lots of conversation in that instance with who should take the report and it was in our mind the RCMP. So I also recall that specific instance where there was some debate back and forth between agencies, and we would generally just go to our sergeant and always got a take it even we did say lived in Vancouver and they were last seen in Burnaby, Burnaby won't take it, and I use those as an example, we would let on their behalf and we would let it get it sorted out by the detectives. Our priority was to get the work done and make sure they got put on CPIC.

Q. I'm suggesting that what you just testified to is not part of the written policy?

MS. MARSHALL-COPE: Actually I think that it was our policy and I think it was our practice.

Q. It wasn't part of the written policy, was it?

MS. MARSHALL-COPE: Actually I think it was.

60. Bonnie Thiele's evidence was the same – the jurisdiction in which the person was last seen was the governing factor: “if we knew someone had gone missing from a certain location and there seemed to be a problem we would go with

²⁴ Transcript, May 11, 2012, pp. 288-289 (B. Theile, D. Marshall-Cope, R.J. Joyce and F. Yeomans, in cross by J. Gratl).

that...if the person was last seen in another municipality that was where the report would go."²⁵

61. DCC LePard's evidence on the subject was as follows:

Q. And what is your recollection as to the residency requirement that Ms. Dicks -- of which Ms. Dicks spoke?

MR. LEPARD: Well, with respect to the residency requirement I know that the policy has gone through a number of iterations over the years, but I can tell you that the -- it was always the practice was to err on the side of caution to ensure that the missing person's interests were paramount. So even when there appears to be a residency requirement, which if you look farther down the policy is qualified to provide much more latitude than is implied by the evidence that was elicited.

Q. Okay. Well, you've got it in front of you. Can you just take the commissioner to what you're talking about there?

MR. LEPARD: Well, for example in the second paragraph it says:

Persons visiting Vancouver and staying within the Vancouver jurisdiction, shall be treated as residents and subject to the usual procedure and screening process.

So that qualifies the residency requirement as basically that someone that is in Vancouver is also considered to be a resident. But you also have to understand how the system worked in the communications centre is that the Vancouver communications centre was actually what was called the regional control centre for 9-1-1 for the Greater Vancouver Regional District, so that was a service that we received funding for to do the service for the entire region, and so when a call came in, and you'll see in the transcript it says police, fire or ambulance, if the person said police the next question is for what city. If it's for Vancouver they would stay on the line with that 9-1-1 operator. If it was for another city because for whatever reason it was decided no, you actually need to report that person missing to the Delta police, it was simply one button to downstream the call to the communications centre for whatever police agency was involved. So there's no runaround, it's simply downstreaming the call for the police agency. But I can tell you the practice was the staff were there, it was no problem to take a report. We would err on the side of caution.

²⁵ Transcript, May 11, 2012, p. 279, ll. 11-13; p. 280, ll. 3-5 (B. Theile, D. Marshall-Cope, R.J. Joyce and F. Yeomans, in cross by J. Gratl).

62. Ron Joyce's evidence was very clear on the point.²⁶

Q. All right. Turning then to Mr. Joyce. Let's trace through these. Do you have a better recollection than Mr. Yeomans?

MR. JOYCE: The only criteria that I was aware of is where they were missing from. It wasn't an issue of where they were resident, 'cause that wasn't a requirement.

Q. You can't recall any of that?

MR. JOYCE: It's not that I don't recall it, the only criterion was whether they were missing from the City of Vancouver.

63. Accordingly, there was no residency requirement – the policy and the practice was that the VPD would take the reports if the person was last seen in Vancouver. This makes sense given that the practical issue faced by the 911 operators was simply which police agency was best positioned to be searching for the missing person. If there were suspicious circumstances present in the call, then ascertaining the correct police jurisdiction to be searching for the missing person was obviously important because patrol units would be assigned right away. Where there were no suspicious circumstances, normally the report would be taken even if there were questions about whether Vancouver was the correct agency to take the report. This was because all that would occur is the missing person would be flagged on CPIC and then the report would be followed up by the VPD's Missing Persons Unit, which could further address the jurisdictional question as necessary.

64. In fact, the so-called residency requirement can be shown not to have existed just from looking at the VPD missing persons reports for the Missing Women. DCC LePard testified to this issue as follows:²⁷

...I would like to speak to the issue of the no fixed address matter.

Q. Sure, go ahead.

²⁶ Transcript, May 11, 2012, p., ll. 13-23; also see p. 268, ll. 24-25 and p. 269, ll. 1-2 (B. Theile, D. Marshall-Cope, R.J. Joyce and F. Yeomans, in cross by J. Gratl).

²⁷ Transcript, May 18, 2012, p. 55, l.15 – p.57, l. 13 (DCC LePard and T. Hammell, in chief by S. Hern).

MR. LEPARD: So her [Ms. Dicks'] evidence was that if there was no fixed address then the sergeants would direct that they not take a report. That is demonstrably false. On that poster over there, there are the pictures of 24 women who were reported missing to the Vancouver Police Department Comm Centre. 14 of those 24 reported missing women were of no fixed address, the reports were taken. In 12 of them they were taken by civilian communications operators. In two of them the reports were taken by police officers, one a constable working in the communications centre and the other the sergeant, then Sergeant Ian McKenzie, who was my sergeant when I was in the communications centre. So it is demonstrably false to say that a report would not be taken from someone with no fixed address when in fact the majority of the reports of missing women who appear on that poster were of no fixed address.

Q. When former Sergeant Joyce had indicated that it wasn't -- you weren't creating a lot of work for the patrol in taking a missing persons report, is that -- in the sense that when you erred on the side of caution and took the missing persons report what actually happened in terms of police department responsiveness?

MR. LEPARD: Correct. Unless it was something that had just happened and so there was some urgency that required the dispatch of a patrol car, which would generate work for the police officers on the street, but that wasn't the case in these cases, 1990 and 1999 when we transitioned to E-Comm. these were generally people who had been reported days, weeks, months, years after the fact so they weren't going to be dispatched to a patrol car. A report which could be taken quite quickly was taken in the communications centre and then it was forwarded for follow-up to the Missing Persons Unit. So it was simply a matter of spending a few minutes to submit a report and get the missing person on CPIC.

Q. Okay. So it generates an incident report, places it on CPIC, and then the file is moved to the missing persons department?

MR. LEPARD: Correct.

65. Accordingly, leaving aside the significant concerns that arise with Ms. Dicks' credibility (discussed further below in Part J of this submission), the evidence of Ms. Thiele, Ms. Marshall-Cope, DCC LePard, and Sergeant Joyce is consistent with the policy, is derived from far more experience, makes sense generally, and is supported by the actual missing persons reports at issue in this Inquiry. There

was no residency requirement and it had no impact on the missing women investigation.

66. Nor were the investigations into the missing women impacted by the requirement that a person be missing for 24 hours before a missing persons report was taken. In none of the missing women cases did the 24 hour requirement compromise the missing person investigation and, notably, in all but one instance the missing women were not reported as such to the Communications Centre within 24 hours. Moreover, as DCC LePard and Sergeant Joyce testified, when a missing person report was not made outside of the 24 hour waiting period, the 911 operators would take an “interim report”, which would later be converted into a full report upon confirmation that the person was still missing.²⁸
67. In 2000, the missing persons policy was amended when it was brought to the attention of the Planning and Research Section of the VPD. The amendments were made following consultation with the VPD’s Missing Persons Unit (“MPU”), its supervisor, Sergeant Field, Detective Dickout, and other police agencies. The amendment clarified the language from the first two paragraphs of the old policy, and maintained the discretion of the report takers to identify suspicious circumstances, which could include circumstances of increased violence that street sex workers faced. That policy has been updated in more recent years to explicitly reference sex workers as being the subject of increased levels of violence, and to flag that Aboriginal persons may be more vulnerable such that their absence may indicate suspicious circumstances.
68. Lastly, there was some suggestion that calls taken from members of the missing women’s families were spoken to rudely by 911 telephone operators. There is no evidence that this was the case. The evidence of Marion Bryce, which implicated a 911 operator, is unclear because the transcript of a call that Kathleen Bryce and Marion Bryce had with a 911 operator was recovered and indicated a very

²⁸ Transcript May 18,2012, pp. 58-59 (DCC LePard and T. Hammell, in chief by S. Hern); also Exhibit 179 (Will-Say of Sgt. Ron Joyce).

pleasant and positive conversation. It seems that rude telephone interactions were had with Ms. Cameron, but there is no indication that family members were treated rudely by 911 call operators.

II. The VPD's Missing Persons Unit

69. The Terms of Reference direct this Commission to look at the conduct of the investigations into the missing women conducted between January 23, 1997 and February 5, 2002. In July of 1998, Detective Constable Lori Shenher was transferred to the MPU to look into the growing list of women who were missing from the Downtown Eastside.²⁹ The MPU at that time was staffed by civilian clerk Sandra Cameron and Detective Al Howlett. Detective Constable Shenher generally took conduct of the files relating to missing sex workers, while Ms. Cameron and Detective Howlett worked on other files.
70. The Commission has received evidence about the handling of files in the MPU from a number of sources. First, the family members testified about their interactions with the MPU, particularly with civilian staff member Sandy Cameron, which were in some instances quite negative, and with Detective Constable Lori Shenher, which were almost universally positive.
71. The general narrative of what occurred with respect to the missing persons files for the missing women is well known from the LePard Report and from the evidence heard at the Inquiry. Detective Constable Shenher was investigating the missing women as missing person cases. She came to believe that at least some of the disappearances were likely linked and that the women were the victims of foul play. We know now the terrifying reality that the missing persons files Detective Constable Shenher had on her desk collectively comprised an investigation into an active and incredibly prolific serial killer.

²⁹ It should be noted that not all of the Missing Women were reported as missing to the VPD. While the majority were from the Downtown Eastside, a significant minority were not.

72. During the relevant period, the MPU was handling approximately 3000 reports a year. It was not well-organized, well-structured or properly staffed or supervised. While it did much good work, it did not perform well with respect to suspicious missing persons reports. The VPD accepts that.
73. It is impossible to say now whether better missing person investigations by the MPU would have resulted in leads which would have taken the police to Pickton sooner. Reviewing the missing person files today, they do not show any leads or connections to Pickton or his associates. One of the terrible ironies in this case, of course, is that within a week of Detective Constable Shenher commencing her work at the MPU, she received the Hiscox tip, which was not related to any particular missing persons file. Unbeknownst to her, with that tip she was handed the answer to the missing persons files which would occupy much of her time for the next two years. But absent that tip, and the tips received in 1999, it is not clear that Pickton would have been identified until 2001 or 2002, when Pickton's association with Dinah Taylor may have been exposed through steps taken in some of the later missing persons files.
74. It is unfortunately difficult at this time to review and assess all of the steps that were taken in the missing persons files for the missing women and make concrete findings as to whether certain steps were not taken that should have been taken. DCC Evans attempted to summarize the steps taken in many of the files, but there are records that are no longer in the files as a result of the re-ordering of the files by Project Evenhanded, their production in the criminal process and their return and production to this Inquiry by the RCMP. The deficiencies were identified by Detective Constable Shenher in her testimony at the Inquiry.³⁰
75. It is also important to note that some of DCC Evans' criticisms were misplaced in relation to the handling of the missing persons files because she did not ask Detective Constable Shenher about each file and whether there were reasons

³⁰ Transcript, February 2, 2011, p.3, l. 1 – p.12, l. 17 (L. Shenher, in cross by D. Crossin).

that she did not take a step, or why she did not contact a family member. In some instances, for example, Detective Constable Shenher had been instructed not to contact a family member unless new information was forthcoming, so she cannot be criticized for not communicating with the family in such an instance. In other instances, it is clear that Detective Constable Shenher was communicating with the families, but did not record this in the file.

76. While the testimony of the families was not always accurate and their knowledge of the steps taken in the files was naturally incomplete, Ms. Cameron's testimony was also suspect in many instances and appeared self-serving. That problem, in combination with the records not being complete, makes it difficult to come to any firm conclusions about particular files.
77. However, what is clear is that Detective Constable Shenher was overburdened with work on the missing women investigation and it would not be at all surprising if she failed to comprehensively investigate every lead in a timely manner in the missing persons files, especially when the case became suspect-focused in the summer of 1999.
78. Moreover, following his initial review of documents for the purposes of conducting his review, in 2003 DCC LePard arranged for Retired Inspector John Schouten to complete a comprehensive audit of the MPU and to provide recommendations for improvement. What Mr. Schouten discovered was a poorly performing unit requiring major changes in the way it was structured and operated. The VPD does not dispute those findings.
79. The VPD has since implemented all of Mr. Schouten's recommendations and the result is a MPU which today is a model unit performing at a very high level. Dr. Rossmo testified as to some of these changes as follows:³¹

It's my understanding the resources available, the number of people operating there has been significantly increased, their

³¹ Transcript, January 25, 2012, p. 196, ll. 1-13 (K. Rossmo in cross by T. Dickson).

response time is faster and their solve rate or the number of people they found after the report missing is very, very high. It might be a model for North America. I'm not aware of a better model in a North American police agency.

80. Key components of the MPU's work today are responsive and regular communication with family members, rapid identification of suspicious circumstances and linkages between files, and a threshold of time where if a person remains missing, the file becomes a homicide investigation.
81. The VPD has also apologized to the family members of the missing women for the instances where they had negative interactions with the MPU in reporting and seeking updates about their missing loved ones.

III. Lack of an Official VPD Warning

82. Over the course of the inquiry, questions have been raised as to whether the VPD should have issued an official warning to the effect that it was likely there was a serial killer responsible for the missing women.
83. Detective Inspector Rossmo proposed a news release in September of 1998, which could be said to serve as a warning in the course of announcing the formation of the Missing Women Working Group. The draft press release was worded as follows:

Date: 98-09-03

Formation of Downtown Eastside Missing Persons Working Group

Over the last few years there has been a disturbing number of sex trade workers from Vancouver's Downtown Eastside who have been found murdered or reported missing. Community concerns and our own preliminary analysis has led the Vancouver Police Department [to] forming the Downtown Eastside Missing Persons Working Group. The objective of this Group is to determine if a serial murderer is preying upon people in the Downtown Eastside and, if so, what murders and disappearances are linked together.

A three-part strategic blueprint for the Group has been developed that involves first compiling an comprehensive list of possible victims, then linking cases together, and finally making

investigative recommendations. Reports from as far back as 1970 will be examined in this effort. The Working Group will be chaired by Inspector Gary Greer, District 2, and Detective Inspector Kim Rossmo, Geographic Profiling Section. We will also be seeking involvement from the RCMP as many of the cases appear to be inter-jurisdictional in nature.

84. It was not released because then Inspector Biddlecombe, who was in charge of the Major Crime Section, believed it was premature. Testifying at the inquiry, he explained that he didn't consider the contents of the news release to be accurate. With respect to whether a warning should have been issued, Inspector Biddlecombe testified as follows:³²

From my recollection there was. I gave the media release I believe in October of '98. I can't recall the exact words now, but it was to the effect that we were doing an investigation and looking into whether there was a serial crime. I don't recall the specifics of that conversation or that media release, and I think it was around the same time that Inspector Greer also gave a very similar media release.

85. Ultimately, no official warning was released by the VPD that a serial killer was likely responsible for the missing women. Instead, the VPD's communications to the public about the missing women were made in a variety of comments made to the media by various members of the department. These are detailed in the LePard Report.³³

³² Transcript, April 24, 2012, p. 173–174 (G. Powell, F. Biddlecombe and D. Dureau, in chief by A. Vertlieb).

³³ It should be noted that Deputy Chief Evans' opinion on this issue was premised on some incorrect facts. In particular, she wrote at page 8-145 that "it was not until November [of 1999] that VPD disclosed to the media the possibility of a serial killer". This was not correct, as was noted in cross examination. The VPD had been acknowledging all along the "possibility" that a serial killer was responsible for the missing women, but that acknowledgment was at times inconsistent and in any event remained too equivocal given that as the investigation progressed, the likelihood of a serial killer being responsible increased. While a formal media release that a serial killer was likely responsible for the Missing Women would have carried some weight as the official view of an institution responsible for public safety, the Evans Report does acknowledge that there were a wide variety of other sources through which the message was being issued, whether by community groups such as the Memorial March, newspaper reports, discussions at Downtown Eastside meetings and on the America's Most Wanted episode.

86. The VPD does not dispute that a warning should have been issued, and in fact the LePard Report concluded that the decision not to was “misguided”.³⁴ The considerations of whether to release information to the public include whether releasing the information is: (a) likely to harm the investigative strategies that are underway, (b) can be used to assist the investigation in some way, including motivating members of the public to come forward with information, and (c) potentially able to assist members of the public in keeping safe. An analysis of these factors was not made by the members of the VPD involved in the missing women investigation and, as a result, media communications were haphazard and sometimes inconsistent.
87. Looking back at the investigation now, once the VPD recognized a serial killer or killers were likely the cause of the missing women, a warning should have been issued. There was no harm to the investigation in doing so, and if there was a possibility that it would have caused some women to take additional precautions, then there was real value in it. This view was confirmed on several occasions by DCC LePard in his testimony at the inquiry.³⁵
88. In his report, at pages 214-215, DCC LePard considered the question as to whether, if the police had provided a stronger warning that a serial killer was at work, sex trade workers would have taken precautions for their own safety. His conclusion was that the evidence did not support the proposition that sex trade workers would have taken precautions in response to a public warning by the VPD.³⁶
89. As is made clear in the report, DCC LePard’s understanding of this issue was based on information from Constable Dave Dickson that street sex workers operate every night with the reality that several violent predators are seeking to

³⁴ Exhibit 1 (LePard Report), pp. 36 and 221.

³⁵ Transcript, November 7, 2011, pp. 177-178 (DCC LePard, in chief by A. Vertlieb); November 8, 2011, pp. 12-13, 16 (DCC LePard, in chief by A. Vertlieb); November 21, 2011, pp. 130-132 (DCC LePard, in chief by A. Vertlieb); November 30, 2011, pp. 18-20 (DCC LePard, in cross by J. Gratl).

³⁶ Exhibit 1 (LePard report), pp. 214-215.

abuse and perhaps kill sex workers they seek to pick up. The bad date sheets issued in the Downtown Eastside demonstrate the significant violence to which sex trade workers are exposed on an ongoing basis. And unlike the often detailed information in the bad date sheets, the police did not have specific information about which to caution street sex workers: they were not able to say, for example, “don’t get in a car with a man who looks like ‘x’ or who drives a type of car that looks like ‘y’”. All that could be said was that there was likely a serial killer responsible for the missing women.

90. Information of that level of generality would not, according to Constable Dickson, have changed the women’s behaviour. Constable Dickson’s statement to DCC LePard, which is quoted on page 215 of his report, was this: “if we told the sex trade workers that it was absolutely confirmed that there was a serial killer killing women in the Downtown Eastside, they wouldn’t have stopped for a second; their addiction is just too strong”. Constable Dickson reiterated this point in his evidence in the Inquiry.³⁷ This was also Sergeant Field’s view.³⁸

Early on I know there was some discussion about that, and I think that my feelings at the time were that there wasn't a lot to -- there was nothing specific to warn them about. My general sense of the sexual predators that were down there and the nature of the women and their vulnerabilities, that any male that they get in a car with is a potential danger, and because we didn't have anything specific like a description or anything else to go on my general feeling at the time was that it wouldn't have been too productive.

91. Moreover, DCC LePard’s understanding was that, notwithstanding the VPD’s inability to commit to the serial killer theory, it was widely believed in the Downtown Eastside as early as 1997 that there was a serial killer responsible for the missing women. In that regard, DCC LePard relied on comments from Judy

³⁷ Transcript, March 8, 2012, p. 9, l. 13 – p. 12, l. 21 (D. Dickson, in cross by T. Dickson).

³⁸ Transcript, April 24, 2012, pp. 172-173 (G. Powell, F. Biddlecombe and D. Dureau, in chief by A. Vertlieb).

McGuire, a Downtown Eastside advocate at the time, whom he quoted at page 214 of his report. This was also Inspector Biddlecombe's view:³⁹

From my perspective almost all the work that Detective Shenher and Sergeant Powell and the group that formed the later missing women work group, their whole thrust was to let the public know what was going on and what they were doing. John Turvey, who unfortunately is no longer with us, was very active in the Downtown Eastside and he made a number of media releases prior to his passing basically along that fact that everything the VPD were doing was to bring this to the attention of the people in the Downtown Eastside. I believe there were a number of other media releases from other members of the Downtown Eastside that supported that. So from my perspective as an inspector I thought a lot of this information was getting out in a timely fashion.

92. Nevertheless, DCC LePard acknowledged in his evidence to the Commission that if it was the case that a general warning would have changed one woman's behaviour, then it would have been worthwhile. His information was that it would not have done so, but of course if there was evidence to show that Constable Dickson's observations were not accurate, then DCC LePard's analysis would change.

IV. VPD Efforts to Secure a JFO

93. DCC LePard outlined the efforts of the VPD to engage the RCMP in the investigation and to form a Joint Forces Operation ("JFO") at pages 234-239 of his report. For the most part, these efforts were driven by Sgt. Field, who did make substantial efforts to engage the RCMP. Sgt. Field was not adequately supported by VPD management in these efforts until late 2000, and the VPD accepts its share of the responsibility in that regard.
94. What is clear, however, is that the RCMP was not sufficiently responsive to the need for a JFO. DCC LePard did avert to the RCMP's reluctance to get involved in the missing women case in his report, but acknowledged that understanding

³⁹ Transcript, April 24, 2012, pp. 173-174 (G. Powell, F. Biddlecombe and D. Dureau, in chief by A. Vertlieb).

the reasons why was beyond the scope of his review.⁴⁰ DCC LePard noted that the RCMP's S./Sgt. Davidson believed that the RCMP needed to become involved.

95. The evidence late in this Inquiry has revealed that on March 1, 2000 S./Sgt. Davidson did present a proposal for a JFO to Superintendent Gary Bass, who was the officer in charge of "E" Division's Major Crime Section. That proposal essentially fell on deaf ears.
96. The testimony of now retired Deputy Commissioner Bass and of now retired S./Sgt. Davidson reveals the following facts:
 - a. On February 10, 2000, S./Sgt. Davidson met with the VPD's Det. Cst. Shenher, Det. Cst. Mark Chernoff and Det. Lepine, the RCMP's Cpl. Kingsbury, Cpl. St Mars, Grant Johnston and Cst. Paul McCarl. They discussed the need for a JFO to investigate the missing women from the DTES and other unsolved homicides of sex trade workers throughout the province. The VPD believed a JFO was necessary, and was advocating for one. It was resolved at that meeting that S./Sgt. Davidson would approach then-Insp. Bass (who was S./Sgt. Davidson's direct supervisor) on the VPD's behalf.⁴¹
 - b. S./Sgt. Davidson met with Insp. Bass, Sgt. Paulson and Cpl. Filer on March 1, 2000 in Insp. Bass's office. S./Sgt. Davidson had set up the meeting, and in advance he prepared a three-page proposal⁴², which he plainly gave to Insp. Bass in the meeting,⁴³ despite Insp. Bass's protestations that he did not remember receiving it. In this regard, Insp. Bass provided hearsay evidence from Commissioner Paulson to the effect that he also did not remember

⁴⁰ Exhibit 1 (LePard Report), pp. 238-239.

⁴¹ Exhibit 214 (Davidson Will Say), paras 24-25.

⁴² See Exhibit 199NR (Bass Affidavit), Ex. "J".

⁴³ Exhibit 214 (Davidson Will Say), para 31.

receiving it. It is telling that Insp. Bass did not see fit to inquire with S./Sgt. Davidson as to his recollection.

- c. S./Sgt. Davidson's proposal for a JFO was detailed and compelling. The document speaks for itself, but among the key points that can be drawn from it are these:
- i. S./Sgt. Davidson was attempting to bring to Insp. Bass's attention a province-wide problem, which included as one of its components the missing women from the Downtown Eastside.
 - ii. He was trying to impress upon Insp. Bass that the patchwork approach to the various investigations was unsatisfactory for a number of reasons, including a lack of communication between the investigations and an absence of coordination. Deputy Commissioner Bass's testimony to the effect that the work S./Sgt. Davidson was proposing was actually being done was not only wrong, it missed the point: S./Sgt. Davidson was rightly suggesting that a coordinated approach under one team commander was required. Indeed, that was the approach ultimately taken with Project Evenhanded.
- d. Deputy Commissioner Bass testified that he was not told the VPD was interested in a JFO and that, had he been told that, he "would have followed up with the VPD".⁴⁴ That evidence is directly contradicted by S./Sgt. Davidson, who stated that he would have explained to then-Insp. Bass that the VPD wanted a JFO.⁴⁵ Indeed, that only makes sense. S./Sgt. Davidson's proposal discussed the VPD's missing women investigation and proposed that three VPD investigators be part of the JFO. S./Sgt. Davidson had been meeting with the VPD and he plainly would have explained that background

⁴⁴ Exhibit 199NR (Bass Affidavit), para 66.

⁴⁵ Exhibit 214 (Davidson Will Say), para 32.

to Insp. Bass. In any event, given the seriousness of the information S./Sgt. Davidson, it is inexplicable that Insp. Bass did not follow up with the VPD to discuss the situation and to determine whether, in fact, the VPD did want a JFO.

e. Insp. Bass determined that he would put more resources into the Valley murder investigation, which was under the command of the RCMP's Sgt. Paulson, who was at the meeting. This fell far short of what S./Sgt. Davidson was advocating for, and he was disappointed in the result. Contrary to Deputy Commissioner Bass's suggestions in his evidence, S./Sgt. Davidson did not agree with this outcome, but only acquiesced in it because then-Insp. Bass was his commanding officer.⁴⁶ Again, it was not responsible on the part of Insp. Bass to make this decision without communicating with the VPD to assess the potential need for a JFO.

97. What this evidence reveals is that the RCMP were indeed reluctant to form a JFO. As DCC LePard identified in his report, the VPD was trying to engage the RCMP in a JFO, but was not meeting with success prior to the fall of 2001. The VPD's efforts in this regard were spearheaded by Sgt. Field, with assistance from Det./Cst. Shenher. These efforts are another occasion on which VPD management was not involved and ought to have been, and the VPD bears some responsibility in that regard because advocacy from senior management might well have succeeded in engaging the RCMP earlier. But the RCMP must also bear its own responsibility, as the provincial police force, for its reluctance to become involved.
98. All of this evidence points to the need for a clear, formalized process to trigger a JFO. DCC LePard identified that need in his report at pages 239-241, and S./Sgt. Davidson made a similar recommendation at 36-41 of his Will Say. The VPD urges this Commission to make a recommendation along these lines in its report.

⁴⁶ Exhibit 214 (Davidson Will Say), paras 33 and 34.

F. THE FAILINGS OF THE COQUITLAM RCMP'S PICKTON INVESTIGATION

99. DCC LePard reviews the Pickton investigation from 1998 until the 2002 search warrants at pages 296-322 of his report. His central conclusions in respect of that investigation include the following:
- a. The Coquitlam RCMP had jurisdiction over the Pickton investigation, beginning in 1998 (there is, of course, no dispute that the Coquitlam RCMP had jurisdiction over the 1997 investigation into the attack on Ms. Anderson);⁴⁷
 - b. The evidence – particularly once Caldwell came forward in the summer of 1999 – was sufficiently compelling and the allegations sufficiently serious that it required an aggressive, sustained investigation of Pickton;⁴⁸
 - c. The investigation faltered after the Provincial Unsolved Homicide Unit discounted the credibility of the Caldwell information, the interview of Pickton was conducted poorly and too few steps were taken in the investigation after the interview;⁴⁹
 - d. Many investigative opportunities were missed in the Pickton investigation; indeed, far too little investigation of Pickton was conducted after 1999;⁵⁰ and
 - e. The Evenhanded investigative team's knowledge of Pickton was incomplete; that knowledge should have been fuller, and should have led the team to push for a targeted investigation of Pickton.⁵¹
100. Ultimately, DCC LePard concluded that those in positions of authority in the Coquitlam RCMP and PUHU must bear primary responsibility for the failures of

⁴⁷ Exhibit 1 (LePard Report), pp. 299-301.

⁴⁸ Ibid., pp. 301-304.

⁴⁹ Ibid., pp. 304-312.

⁵⁰ Ibid., pp. 312-314.

⁵¹ Ibid., pp. 314-316.

the Pickton investigation, although VPD management should have applied pressure to the Coquitlam RCMP to reinvigorate their investigation after it appeared to falter in late 1999.⁵²

101. The evidence heard in this Inquiry entirely supports these conclusions, as outlined below.

The Coquitlam RCMP Had Jurisdiction over the Pickton Investigation

102. There is no serious dispute in this Inquiry that the Coquitlam RCMP had jurisdiction over the Pickton investigation in the summer of 1999 and thereafter. Cpl. Connor acknowledged that, even in the summer of 1999 when the Coquitlam RCMP was being assisted by the VPD and PUHU, the Coquitlam RCMP was leading the investigation.⁵³ As he noted in his Timeline of the Pickton investigation, when Cpl. Connor was promoted and transferred, “[t]he Pickton investigation was then left in the hands of Coquitlam Major Crime Section.”⁵⁴ Further, the Pickton investigation always remained an active file within the Coquitlam RCMP’s responsibility, right up until the search of the Pickton farm.⁵⁵
103. It is therefore perfectly clear that the Coquitlam RCMP had jurisdiction of the Pickton investigation from the summer of 1999 until the search of the Pickton farm. The only question on which there has been any real division in opinion is whether the Coquitlam RCMP had primary jurisdiction of the Pickton investigation in 1998. The VPD submits that it is clear they did.
104. In both 1997 and 1999, the Coquitlam RCMP properly took jurisdiction into the investigations into Pickton. In 1997, the charges related to an alleged attempted murder of Ms. Anderson on the Pickton property. In 1999, the specific allegations were of a murder of a sex worker on the Pickton property, and other information

⁵² *Ibid.*, pp. 317-318.

⁵³ Transcript, February 9, 2012, p. 93, ll. 2-17 (Sgt. Connor in cross by T. Dickson).

⁵⁴ Transcript, February 9, 2012, p. 120, l. 19 – p. 121, l. 6 (Sgt. Connor in cross by T. Dickson).

⁵⁵ Transcript, February 9, 2012, p. 143, ll. 5-9 (Sgt. Connor in cross by T. Dickson).

suggested multiple murders of sex workers on the property. As the alleged crimes were within the Coquitlam RCMP's jurisdiction, responsibility for the investigations lay with the Coquitlam detachment.

105. The information in 1998 was in the same vein: while the Hiscox information was less specific than the Caldwell information in 1999, it suggested that Pickton was murdering sex workers on his farm in Port Coquitlam. Cpl. Connor noted as much in his request for surveillance in September of 1998: "Information received that this subject is hiring prostitutes from Vancouver, Burnaby and New Westminster, and bringing them out to his farm where they are killed and buried on his property."⁵⁶ He agreed that the information pointed to murders in his jurisdiction:⁵⁷

Q And so your understanding is if the Hiscox information is true that women are being killed on the Pickton farm?

A Yes, I had no reason to disbelieve the information, especially after I had a chance to sit down and speak with him.

Q Yes.

A It was -- certainly it was troubling information, but I believe information that needed to be followed up on.

Q Yes, because it's alleged murders --

A Yes.

Q -- in your jurisdiction?

A That's correct.

106. It is certainly true that Det./Cst. Shenher was collaborating with Cpl. Connor in 1998. Det./Cst. Shenher was handling Hiscox, and she and Cpl. Connor were strategizing together on the investigation. Det./Cst. Shenher was of the view that Pickton may be responsible for the missing women of the DTES. But the information pointed to Pickton also killing women from prostitution strolls outside of Vancouver and, of course, the information was that he was killing women on

⁵⁶ Transcript, February 9, 2012, p. 78, l. 17 – p. 79, l. 24 (Sgt. Connor in cross by T. Dickson).

⁵⁷ Transcript, February 9, 2012, p. 79, l. 25 – p. 80, l. 13 (Sgt. Connor in cross by T. Dickson).

his property in Port Coquitlam. That being the case, primary jurisdiction for the investigation always lay with the Coquitlam RCMP.⁵⁸

107. That is not to say that the VPD had no jurisdiction to investigate Pickton. It certainly did. It is simply to say that jurisdiction primarily lay with the Coquitlam RCMP, and the VPD had to respect that jurisdiction and offer whatever support was requested.
108. A question within this Inquiry is whether the VPD should have asserted jurisdiction over the Pickton investigation in the fall of 1999 and thereafter, when the Coquitlam RCMP's investigation began to languish. That issue is addressed in Part G of these submissions.

The Pickton Investigation in 1998

109. In the summer of 1998, Hiscox came forward with information he obtained from Lisa Yelds, which suggested that Pickton had bloody women's clothing and identification, which appeared to be kept as trophies. Yelds, who had been friends with Pickton since they were teenagers, apparently believed that Pickton was a serial killer.
110. A question has been raised in this Inquiry – most prominently by Mr. Roberts – as to whether the VPD and Coquitlam RCMP could have and should have obtained a search warrant in 1998 based on the information from 1997 pertaining to Pickton's attack on Ms. Anderson, and the information that Hiscox brought forward in 1998. Mr. Roberts went so far as to create a mocked up Information to Obtain, which he used to cross-examine DCC LePard over the course of two days.
111. The answer to the question posed by Mr. Roberts – whether the VPD and Coquitlam RCMP could have obtained a search warrant in 1998 – is very clearly “no”. As DCC LePard testified, there were fatal inaccuracies and

⁵⁸ See DCC LePard's evidence on this point at Transcript, November 24, 2011, p. 35, ll. 1-24 and p. 41, l. 5 – p. 42, l. 2 (DCC LePard in cross by D. Roberts).

misrepresentations in Mr. Roberts' mocked up ITO, which would have precluded a search warrant being granted in the first place or, if it was granted, surviving a challenge in court by Pickton's defence counsel.⁵⁹ Indeed, it is very clear on the whole of the evidence, that there was not nearly enough information in 1998 to obtain a search warrant.⁶⁰ Further investigation and more information were required. More information did become available when Caldwell came forward in 1999, and it is at that point that the real failings in the Pickton investigation are manifested.

The Information Pointing to Pickton in the Summer of 1999

112. One of DCC LePard's central conclusions was that the evidence pointing to Pickton in the summer of 1999 was sufficiently compelling, and the allegations sufficiently serious, that an aggressive and sustained investigation into Pickton was required to either corroborate the allegations or dismiss them. None of this is to say that there was enough evidence yet gathered to charge Pickton with murder or anything else; more evidence was certainly needed. But there was enough credible information that it had to be examined with a serious and sustained investigation until the information could be verified or discounted.
113. The evidence heard in this Inquiry completely supports this view. Indeed Cpl. Connor – the lead investigator in the summer of 1999, and then later the sergeant in charge of Coquitlam's Major Crime Section – entirely agreed that the specificity of the information and the nature of the allegations required a sustained investigation.
114. It is important to acknowledge the nature of the allegations that were being made against Pickton in the summer of 1999. The specific information brought forward by Caldwell was that Ellingsen had stated she had seen Pickton butchering one

⁵⁹ See Transcript, November 28, 2011, p. 72, l. 6 – p. 80, l. 23 (DCC LePard in cross by D. Roberts). See also DCC LePard's notes on Mr. Roberts' mocked up ITO at Exhibit 39.

⁶⁰ Transcript, November 7, 2011, p. 132, ll. 4-15 (DCC LePard in chief by A. Vertlieb); Transcript, February 6, 2012, p. 133, l. 11 – p. 135, l. 11 (Sgt. Connor in chief by A. Vertlieb); Transcript, February 7, 2012, p. 15, l. 9 – p. 20, l. 13 (Sgt. Connor in cross by C. Tobias).

sex worker in his barn. But other information suggested that Pickton was killing many sex workers. The context of the investigation into Pickton in the summer of 1999 was that he may have been responsible for serial murder of sex workers. The information suggesting serial murder included:

- a. The 1997 attempted murder of Ms. Anderson.
 - b. The 1998 Hiscox information, which suggested that Pickton kept bloody women's clothes and women's identification as trophies. Yelds, who knew Pickton from childhood and was intensely loyal to him, also suggested that Pickton was responsible for the missing women. Hiscox also stated to Cpl. Connor that Pickton had told him personally that he (Pickton) could dispose of bodies.
 - c. The 1999 Caldwell information, which included Ellingsen's information that Pickton was having trouble getting girls into cars (which suggested that he continued to seek to prey on them); that Pickton had a special freezer, where it was suggested he kept human flesh; that Caldwell believed he was served human flesh; and that Pickton was disposing of bodies in barrels. Caldwell further described that Pickton told him personally that he could dispose of bodies.
115. Indeed, Cpl. Connor himself suspected Pickton to be a serial murderer. As noted above, even in 1998 his surveillance request stated that the information on Pickton is that he was "hiring prostitutes from Vancouver, Burnaby and New Westminster, and bringing them out to his farm where they are killed and buried on his property."⁶¹ In the spring of 1999 his surveillance request was phrased this way: "Intelligence of questionable reliability has surfaced that Pickton may be responsible for the disappearance and murder of a number (?) of local prostitutes."⁶² And in his Timeline, at p. 60, Sgt. Connor noted that "there is no

⁶¹ Transcript, February 9, 2012, p. 78, l. 17 – p. 79, l. 24 (Sgt. Connor in cross by T. Dickson); emphasis added.

⁶² Transcript, February 9, 2012, p. 96, ll. 6-14 (Sgt. Connor in cross by T. Dickson).

doubt in my mind that Pickton and Ellingsen were involved in the murders of prostitutes.”⁶³ In cross, Sgt. Connor agreed that he “believed Pickton may very well, in fact likely is a serial killer at this time”.⁶⁴

116. So while the information specifically being investigated in the summer of 1999 was the statement from Ellingsen that she saw Pickton butchering one woman in his barn, the context of the investigation was serial murder of multiple women. This was also clearly understood by Constable Yurkiw⁶⁵ and Inspector Moulton.⁶⁶
117. As Sgt. Connor agreed, the information pointing to Pickton in the summer of 1999 was compelling. The weight of the evidence lay not just in the Ellingsen information, but in multiple independent lines of information all pointing to Pickton. At the beginning of August of 1999, that information included the following:⁶⁷
- a. The 1997 charges against Pickton, which of course related to an attempted murder of a sex worker from the DTES, in which Pickton employed handcuffs.
 - b. The 1998 information from Hiscox, which suggested that Pickton kept trophies from women he had murdered, and was able to dispose of bodies, which Hiscox alleged Pickton said to him directly. Yelds was also reported to have said she believed Pickton to be a serial killer.
 - c. The statement attributed to Ellingsen, whereby she was alleged to have assisted Pickton to bring a sex worker from the DTES to his farm, and

⁶³ Transcript, February 9, 2012, p. 99, l. 23 – p. 100, l. 11 (Sgt. Connor in cross by T. Dickson).

⁶⁴ Transcript, February 9, 2012, p. 103, ll. 3-5 (Sgt. Connor in cross by T. Dickson).

⁶⁵ Transcript, May 15, 2012, p. 276, ll. 4-6 (R. Chapman, D. Pollock, F. Henley, E. Moulton, in cross by S. Hern).

⁶⁶ Transcript, May 15, 2012, p. 275, ll. 25, p. 276, ll. 1-3 (R. Chapman, D. Pollock, F. Henley, E. Moulton, in cross by S. Hern).

⁶⁷ See Transcript, February 9, 2012, p. 108, l. 8 – p. 113, l. 9 (Sgt. Connor in cross by T. Dickson).

then to have witnessed Pickton leading that sex worker in handcuffs to his barn, and then butchering her there.

- d. Ellingsen's statement included unique elements that bolstered its credibility, including:
 - i. She accurately described the block and tackle system in the centre of the barn where Pickton did his butchering of pigs. Both Caldwell and Sgt. Connor had seen that site first hand.
 - ii. She remarked that she did not know that human fat was yellow, which it is. The importance of this observation is, of course, that very few people would know this fact, which suggests that Ellingsen did in fact see the event and was not making it up.
 - e. Caldwell was not the only person to whom Ellingsen relayed this story. Both Menard and Best reported having heard essentially the same story from Ellingsen. That fact in turn has a number of implications: that Ellingsen did in fact tell all three of them this story; that all three of them were accurately reporting what Ellingsen told them; and that the story was not some offhand, fanciful statement by Ellingsen, as she was reporting it to multiple people, and then denied doing so when interviewed by police, but refused to take a polygraph. That denial was clearly not credible, and was therefore a large and prominent red flag.
 - f. Pickton told Caldwell that he was able to dispose of bodies.
 - g. Pickton had been seen on the New Westminster prostitution stroll with Ellingsen.
 - h. Caldwell stated that Ellingsen was extorting money from Pickton.
118. The totality of these multiple pieces of information pointing to Pickton was compelling, and required a serious investigation to either corroborate or discredit them. On August 10, 1999, however, PUHU investigators interviewed Ellingsen

and put the allegations to her, and she denied them. As the Commissioner has heard, this caused a serious division in the investigative team. The PUHU investigators (other than Cpl. Justason) believed Ellingsen's denial; that is, they found Caldwell's information not to be credible. On the other hand, the Coquitlam and VPD investigators believed that Ellingsen was lying when she denied having seen the incident in the barn. Sgt. Connor summed up the situation this way: "There was a definite difference of opinion as to whether the information was reliable enough for the investigation to continue."⁶⁸

119. Ellingsen's denial should never have caused any doubt as to whether the investigation should continue in full force. First, the information pointing to Pickton remained compelling and serious and demanded more investigation even if Ellingsen's denial was credible. Second, Sgt. Connor (at that time Cpl. Connor) was the lead investigator and he was of the view that Ellingsen was lying when she denied have witnessed the incident in the barn; as lead investigator, his view ought to have governed. Third, there were numerous and compelling reasons not to believe Ellingsen's denial, including the following:⁶⁹
- a. She denied making the statement at all, when in fact she had relayed it to three independent people. The fact that she told the story was direct evidence, not hearsay.
 - b. Her denial did not account for the fact that she had known the proper colour of human fat.
 - c. There were good reasons to expect her to deny the statement:
 - i. She was anti-police;
 - ii. She would be afraid of being implicated in the murders;
 - iii. She was extorting Pickton for money, and may have wished to protect that source of money; and

⁶⁸ Transcript, February 9, 2012, p. 107, ll. 12-16 (Sgt. Connor in cross by T. Dickson); emphasis added.

⁶⁹ See Transcript, February 9, 2012, p. 113, l. 10 – p. 114, l. 9 (Sgt. Connor in cross by T. Dickson).

- iv. She would likely have been afraid of Pickton in any event.
 - d. It was not likely that Ellingsen hallucinated the event or confused the woman for a pig, because:
 - i. Cocaine does not have hallucinatory effects, as Cpl. Connor was able to confirm from the RCMP's toxicology lab; and
 - ii. Ellingsen reported having seen the woman hanging by her neck; if she saw that, then she would have seen the head as well, and would not have confused a pig's head for a woman's. Further, Pickton butchered pigs by hanging them by the hind legs, as Cpl. Connor was able to confirm by talking to Britco and Pat Casanova.
 - e. Further information pointing to Pickton came to light following the interview of Ellingsen. Casanova reported that Pickton told him the police had been talking to his friends and asking questions about the missing women and that Pickton was "very worried". Menard reported to Cpl. Connor that, when Menard mentioned to Pickton that DNA might be found on the property by the police, Pickton was concerned and said that he was in over his head and he talked about leaving the area.
120. As stated above, the PUHU investigators' disbelief of the Caldwell information should not have been allowed to derail the investigation: the other information remained compelling and demanded further investigation; Cpl. Connor was the lead investigator and he continued to believe the Caldwell information; and a serious, *bona fide* analysis of Caldwell's credibility was never undertaken. But moreover, the information listed above should have undermined Ellingsen's denial of the story in the eyes of the investigators, and persuaded them to press on aggressively with the investigation. That this information was not properly analyzed and Ellingsen's false denial was allowed to derail the Coquitlam RCMP's investigation is one of the most significant failings of the police investigations in this case.

121. Another loss to the investigation was the promotion and transfer of Cpl. Connor. He left just after the investigation fell into disarray following the interview of Ellingsen, and just before the VPD investigators Chernoff and Lepine were sent back to the VPD. Connor's departure meant that the lead investigator was replaced with someone who had no history on the file, and no history with Pickton. Connor had investigated the 1997 attempted murder of Ms. Anderson; he had worked with Det./Cst. Shenher in 1998 on the Hiscox information; and he had led the investigation in 1999 based on the Caldwell/Menard/Best information. To his credit, Connor asked to remain on the case; it is a great shame his superiors did not allow him to do so.

The Investigation after Cpl. Connor's Transfer, and Steps that Could Have Been Taken

122. Cpl. Connor was replaced by Cpl. Yurkiw as lead investigator on August 24, 1999. On August 25th, Ellingsen was interviewed again, and again she denied having seen the incident. She agreed to take a polygraph, but then later declined on the advice of her lawyer.
123. In early September, the investigators attempted to interview Pickton a number of times. Dave Pickton, however, was able to put off the interview "until the rainy season". Ultimately, Pickton was only interviewed more than four months later – on January 20, 2000.
124. The delay in the interview of Pickton is a very tangible indicator of the breakdown of the Coquitlam RCMP's investigation into Pickton. The interview was an essential step in an investigation into a suspected serial murderer. The lack of urgency in conducting the interview is emblematic of the lack of urgency in the Coquitlam RCMP's investigation as a whole.

125. In early September 1999, when the investigators first tried to interview Pickton but were put off, there were many other steps that could have been taken, as Sgt. Connor and Corporal Davidson agreed in their testimony.⁷⁰ These included:
- a. An undercover operation on Ellingsen.
 - b. Polygraphing Caldwell, Best and Menard to dispel any doubts they were accurately reporting what Ellingsen had told them.
 - c. Interviewing Ellingsen's boyfriend.
 - d. Locating Hiscox and interviewing him again.
 - e. Conducting more surveillance on Pickton.
 - f. Showing Pickton's photo to sex workers on the strolls to learn if there were other witnesses who had information about him.
 - g. Conducting surveillance on Ellingsen.
 - h. Talking to West Coast Reduction in order to search the barrels Pickton dropped off.
 - i. Interviewing Pickton's niece, Tammy Humeny.
 - j. Interviewing Bev Hyacinth's husband, who worked on Pickton's farm, to see if he had any information and, possibly, if he would be willing to be an agent.
126. None of these steps were conducted prior to the interview of Pickton on January 20, 2000, even though Sgt. Connor stated that "it was imperative to advance [the

⁷⁰ Transcript, February 9, 2012, p. 114, l. 10 – p. 119, l. 23 (Sgt. Connor in cross by T. Dickson); May 24, 2012, p. 67-70 (Staff Sgt. Davidson in cross by S. Hern)

investigation]” during the four months leading up to that interview.⁷¹ Indeed, none of these steps were ever taken.

127. The Commissioner has heard that the interview of Pickton was poorly conducted, and indeed that is the case. Most troubling are two signs of very little preparation and strategy around such an important interview. One is that Gina Houston was allowed to attend the interview (at which she repeatedly interfered), even though Cst. Yurkiw had advance notice of Houston’s intention to do so.⁷² A second set of indicia of a lack of preparation is that there appeared to be no plan for the interview in place; no experienced investigator had been assigned to conduct the interview; and John Cater was asked to assist with the interview, but he was only asked to do so on the very day the interview was to take place.⁷³
128. Following the interview of Pickton, there was further reason to advance the investigation against him aggressively: Cpl. Connor, who knew the most about Pickton of any of the investigators, thought he was “lying through his teeth”.⁷⁴ And indeed, there were many investigative steps that could have been taken. The Coquitlam RCMP investigators identified some of them on February 9, 2000, when the Major Crime Section met to discuss the direction of the Pickton investigation and identify tasks. Those tasks included:⁷⁵
- a. Re-interviewing Ellingsen.
 - b. Identifying “Val” (last name unknown).
 - c. Timelining the investigation to date.
 - d. Arranging for EDCAS to detail the file.

⁷¹ Transcript, February 9, 2012, p. 127, ll. 21-24 (Sgt. Connor in cross by T. Dickson).

⁷² See Transcript, February 9, 2012, p. 127, l. 25 – p. 129, l. 9 (Sgt. Connor in cross by T. Dickson).

⁷³ Transcript, February 9, 2012, p. 124, l. 11 – p. 125, l. 24 (Sgt. Connor in cross by T. Dickson).

⁷⁴ Transcript, February 9, 2012, p. 129, ll. 10-21 (Sgt. Connor in cross by T. Dickson).

⁷⁵ See Ex. 2A, Tab L (Sgt. Connor’s Timeline), p. 131.

- e. Taking further aerial photos of the Pickton farm.
 - f. Re-contacting ViCLAS to assist.
 - g. Contacting Sgt. Davidson to determine whether he could assist with a criminal or geographic profile.
 - h. Interviewing Lorna Humphries.
129. Aside from the aerial photographs, none of these steps were ever completed. Moreover, there were other steps that could have been taken, including:⁷⁶
- a. Pickton could have been re-interviewed by a skilled interrogator. At least the video of the first interview could have been reviewed by that skilled interrogator.
 - b. An undercover operation of Ellingsen could have been conducted.
 - c. An undercover operation could have been conducted on Lisa Yelds.
 - d. West Coast Reduction could have been approached and Pickton's barrels searched.
 - e. The Coquitlam RCMP could have acted on Pickton's consent to have his farm searched.
 - f. The Coquitlam RCMP could have attempted to cultivate an informant on the Pickton farm, such as Bev Hyacinth's husband.
130. None of those steps were taken either. Some members of the Major Crime Section of the Coquitlam RCMP recognized that action had to be taken on the Pickton file and were going to reinvigorate the investigation in February of 2000, but other priority files came in at that time and the Pickton file was allowed to languish. Sgt. Connor reported in his Timeline the outcome of a meeting on

⁷⁶ Transcript, February 9, 2012, p. 131, l. 22 – p. 119, l. 23 (Sgt. Connor in cross by T. Dickson).

February 14, 2000 between Coquitlam MCS and criminal profilers (S/Sgt. Davidson and Cpl. Filer) and ViCLAS members.⁷⁷

Various scenarios were discussed with the intent of a major push to investigate this matter when on February the 19th another serious and complex homicide investigation was undertaken into another matter.

131. Later, on April 18, 2000, the situation had not improved, and Cpl. Yurkiw reported to S./Sgt. Zalys that she “wasn’t able to do anything on the file given the recent homicide and its ongoing investigation”. Sgt. Pollock was in the same position.
132. It is perhaps not surprising that little attention was paid to the file because Inspector Moulton’s view of the file was that, while it was technically classified as a high priority, following the Pickton interview there were no other viable investigative avenues to pursue and no resources available in any event. According to S./Sgt. Zalys, Insp. Moulton instructed him that “there would be no additional resources to assist and the unit would have to investigate when time permitted and do the best we can when we can.”⁷⁸ Even if he had the resources to conduct more surveillance or show Pickton’s photo on the strolls to see if more witnesses would come forward, however, Inspector Moulton considered these avenues of investigation to be pointless as they had been tried before.⁷⁹ Similarly, Inspector Moulton did not make any disciplined analysis of whether there were reasonable grounds to arrest Pickton as an investigative strategy (that is, for interrogation and/or to put him with a police cell mate), relying instead on the information that Corporal Connor had received in August 1999 from Crown Counsel Gulbranson that a Part VI Information to Obtain was not available.⁸⁰ It

⁷⁷ Transcript, February 9, 2012, p. 131, ll. 5-21 (Sgt. Connor in cross by T. Dickson).

⁷⁸ Transcript, February 9, 2012, p. 133, l. 17 – p. 134, l. 10 (Sgt. Connor in cross by T. Dickson).

⁷⁹ Transcript, May 14, 2012, p. 267, ll 13-19 and pp. 268-269 (E. Moulton in cross by S. Hern).

⁸⁰ The available facts of the consultation with Crown Counsel Gulbranson do not suggest a thorough examination of the question of whether the totality of the evidence gave rise to reasonable grounds. It is difficult to see how leaving a file overnight for Crown Counsel to review was sufficient for Crown Counsel to fully understand the case – what was warranted was a detailed review and discussion with Crown Counsel to ensure that he fully understood the matter. Moreover there was no analysis of whether the

was clear from Inspector Moulton's testimony as a whole that, in the absence of new information (such as was ultimately obtained by Constable Nathan Wells in 2002), the Coquitlam RCMP under his leadership were never going to advance the Pickton investigation.

133. Respectfully, such an approach is not nearly good enough on a file as pressing and serious as a serial murder investigation. Sgt. Connor agreed that the file deserved far more attention, and that it needed a "major push" and a "sustained investigation".⁸¹ It never received that. To the contrary, Sgt. Connor's Timeline describes an extraordinary absence of activity on the Pickton file in the months following that April 18, 2000 meeting.⁸² The next activity occurs seven months later on November 21, 2000, when Pickton's DNA was eliminated from the Valley Murders. Then the next activity follows about five months later, on April 11, 2001, when Coquitlam Major Crime meets to review files. Sgt. Connor was at that point back in Coquitlam Major Crime as the sergeant in charge. At that meeting, the Pickton file was classified as a "high priority", and action items were identified for the file, including conducting more surveillance on Pickton and an undercover operation on Ellingsen. Despite the priority given the file, however, those steps were never completed.
134. In fact, Sgt. Connor regarded Pickton as such a priority suspect that, at this same time in the spring of 2001, he called the Evenhanded team (specifically, the File Coordinator, S./Sgt. Wayne Clary) a number of times to advocate that they move Pickton up their suspect list and focus investigative efforts on him.⁸³ It is another one of the failings of the police investigations that no one in Evenhanded urged Coquitlam RCMP to re-invigorate their Pickton investigation, or demanded that they put more resources into it, or helped them find such resources if the Coquitlam detachment lacked them.

evidence, if not sufficient for a Part VI warrant, might have been sufficient to support other investigative steps.

⁸¹ Transcript, February 9, 2012, p. 134, ll. 11-18 (Sgt. Connor in cross by T. Dickson).

⁸² See Transcript, February 9, 2012, p. 135, l. 8 – p. 140, l. 8 (Sgt. Connor in cross by T. Dickson).

⁸³ Transcript, February 9, 2012, p. 143, l. 10 – p. 144, l. 23 (Sgt. Connor in cross by T. Dickson).

135. But it is also a failing on the part of the Coquitlam RCMP that they did not commit sufficient resources and energy to the Pickton file on their own initiative. Coquitlam Major Crime had deemed the file to be a “high priority”, and Sgt. Connor was sufficiently concerned about Pickton to advocate to Evenhanded that they make him a priority suspect, and yet no further tangible investigative step was ever completed by Coquitlam RCMP on the Pickton file. Indeed, the last tangible step in the Pickton investigation occurred on November 21, 2000, when Pickton’s DNA was submitted for examination regarding the Valley murders, for which it was eventually eliminated by April 2001. Sgt. Connor’s Timeline records the Coquitlam RCMP’s almost complete inaction on the Pickton file following the April 11, 2001 meeting at which the file was deemed to be a “high priority”:⁸⁴
- a. Cst. Yurkiw retired on August 8, 2001 and the file was transferred to Cst. Sherstone, a junior officer with “not many” years’ experience.
 - b. On November 6, 2001, Cst. Sherstone located Ellingsen and wanted to interview her and Sgt. Connor encouraged her to do so. However, Ellingsen was in a facility and the staff there would not let Cst. Sherstone in to interview her and so the interview never happened.
 - c. On January 15, 2002, Coquitlam Major Crime reviewed assignments and confirmed that Cst. Sherstone had conduct of the Pickton investigation.
136. That is all that happened in the Coquitlam RCMP’s investigation into Pickton. On February 5, 2002, of course, Cst. Wells obtained a search warrant on an unrelated weapons matter, and events unfolded from there.
137. In summary, following the summer of 1999 the Coquitlam RCMP’s investigation into Pickton is marked by extraordinary inaction and an almost total lack of

⁸⁴ Transcript, February 9, 2012, p. 149, l. 14 – p. 153, l. 19 (Sgt. Connor in cross by T. Dickson).

prioritization and urgency. Perhaps the following exchange in Sgt. Connor's testimony best summarizes it:⁸⁵

Q All right. Well, Sergeant Connor, let me summarize a little bit. Here are the significant steps that were taken on the Pickton investigation after your promotion on August 25, 1999 until the search of the Pickton's farm in February of 2002. One, Ellingsen was interviewed again in September of 1999?

A Correct.

Q Two, Pickton was interviewed on January 19th, 2000?

A Correct.

Q Three, new aerial photos were obtained of the Pickton farm?

A Correct.

Q Four, Pickton's DNA was excluded from the valley murders?

A Correct.

Q That's it; yes?

A That sounds right.

Q And you accept, I would imagine, that that is far too little progress in two and a half years on a file of this seriousness?

A Yes.

Q And you agree that the information pointing to Pickton was so compelling and the allegations so serious that a major sustained investigation needed to be pursued to either confirm or eliminate that information?

A I guess you and I would differ on the word major, but a sustained investigation was required, yes.

Q And that just wasn't done?

A No.

138. This exchange reveals the real failing in the Pickton investigation: the Coquitlam RCMP simply did not conduct a sustained investigation into him. The information pointing to him was compelling, and the allegations were obviously extremely serious, but the Coquitlam RCMP let their investigation languish.

⁸⁵ Transcript, February 9, 2012, p. 153, l. 20 – p. 155, l. 1 (Sgt. Connor in cross by T. Dickson).

139. The Williams Report, which reviewed the Coquitlam RCMP's Pickton investigation, is plainly and obviously an inadequate analysis of the investigation, and little need be said about it. However, it is worth pointing out here that Insp. Williams' conclusion that "[t]here is little doubt that the RCMP attempted to exhaust all investigative avenues relative to the suspect Robert William PICKTON"⁸⁶ is simply wrong. In fact, in cross examination, Supt. Williams conceded the following:

- a. It was a substantial problem with the Coquitlam investigation that Cpl. Connor was transferred off of it.⁸⁷
- b. The interview of Pickton was delayed too long and substantial planning should have been done for such an important interview.⁸⁸ He also agreed that it would be important to read the whole file in advance of that interview and to speak with the key investigators, such as Cpl. Connor and the VPD investigators, and that it would be a communication error if the RCMP investigators had not done that.⁸⁹
- c. In February of 2000 the totality of the information on Pickton that was known to the Coquitlam RCMP was sufficiently compelling as to require a continued and substantial investigation of him, and it was incumbent upon the Coquitlam RCMP to either corroborate or disprove the allegations.⁹⁰ Insp. Williams also testified that, had he been in charge of the Pickton file, he would certainly have put a lot of effort into the investigation.⁹¹

⁸⁶ Exhibit 2 (Williams Report), p. 26.

⁸⁷ Transcript, January 12, 2012, p. 194, l. 11 – p. 195, l. 5 (Insp. Williams in cross by T. Dickson).

⁸⁸ Transcript, January 12, 2012, p. 197, ll. 5-25 (Insp. Williams in cross by T. Dickson).

⁸⁹ Transcript, January 13, 2012, p. 2, l. 17 – p. 4, l. 21 (Insp. Williams in cross by T. Dickson).

⁹⁰ Transcript, January 13, 2012, p. 14, ll. 1-15 (Insp. Williams in cross by T. Dickson).

⁹¹ Transcript, January 13, 2012, p. 16, l. 24 – p. 17, l. 24 (Insp. Williams in cross by T. Dickson).

- d. Time and resources prevented the Coquitlam RCMP from taking the additional investigative tasks that were required on the investigation.⁹²

Resources, Communication and Regionalization

140. A theme repeatedly raised by Coquitlam RCMP witnesses is that they lacked the resources to maintain an active investigation of Pickton after the summer of 1999. Sgt. Connor testified on this issue as follows:

- a. During the brief period in the summer of 1999 when the Coquitlam RCMP ran surveillance on Pickton, too few resources were available and they could have made use of more.⁹³
- b. On April 18, 2000, Insp. Moulton advised that no more resources would be committed to the Pickton file, which meant that the unit would simply have to investigate “when time permitted and do the best we can when we can.”⁹⁴
- c. Around the time that Coquitlam Major Crime conducted its file review on April 21, 2000, Sgt. Connor thought that the Pickton file needed more resources (although not from outside of Coquitlam Major Crime), and considered permanently assigning two members to it. However, that possibility was not put into action because the Johal homicide happened and the unit was devoted to that investigation.⁹⁵
- d. Sgt. Connor agreed that the bottom line was that they just did not have the resources to do the investigation.⁹⁶

⁹² Transcript, January 13, 2012, p. 17, l. 25 – p. 26, l. 9 (Insp. Williams in cross by T. Dickson).

⁹³ Transcript, February 9, 2012, p. 103, l. 13 – p. 104, l. 16 (Sgt. Connor in cross by T. Dickson).

⁹⁴ Transcript, February 9, 2012, p. 133, l. 17 – p. 134, l. 18 (Sgt. Connor in cross by T. Dickson).

⁹⁵ Transcript, February 9, 2012, p. 138, l. 11 – p. 140, l. 1 (Sgt. Connor in cross by T. Dickson).

⁹⁶ Transcript, February 9, 2012, p. 145, l. 17 – p. 146, l. 24 (Sgt. Connor in cross by T. Dickson).

141. Insp. Williams came to the conclusion in his report that, “[t]hroughout this review, it was apparent that the RCMP allocated adequate resources to the missing women investigation(s).”⁹⁷ That statement is very obviously wrong, and Insp. Williams conceded in cross-examination that more resources were required on the investigation and that he would have made every effort to secure them if he were in charge of the investigation.⁹⁸
142. It is very troubling that Coquitlam Major Crime did not find the resources within the unit to commit to what was, at bottom, a serial murder investigation. But perhaps the greater failing is that, after the summer of 1999, Coquitlam RCMP never asked outside units for assistance. The evidence is clear that it could have. For one thing, it could have asked the “E” Division Major Crime Section for assistance, as it did in the summer of 1999. Or it could have asked for assistance from the Provincial Unsolved Homicide Unit. Indeed, it is clear that “E” Division management had the capacity to reassign resources from throughout BC had it deemed it necessary (as it did after February 2002). Finally, the Coquitlam RCMP could have sought help from the VPD.⁹⁹ Indeed, Sgt. Connor agreed that “E” Division had provided resources when he asked for them in the summer of 1999,¹⁰⁰ and that, with respect to the VPD, “it was my belief during this whole process that if I needed resources from Vancouver City Police that I could -- I could get them.”¹⁰¹ However, neither Sgt. Connor, nor anyone else in the Coquitlam RCMP, ever sought outside resources after the summer of 1999.
143. Leaving aside whether the Coquitlam RCMP should have found the resources within its own detachment to pursue the Pickton investigation in an adequate fashion, at the very least it was incumbent upon the Coquitlam RCMP to ask for help. If the issue was a lack of resources – which the Coquitlam RCMP

⁹⁷ Exhibit 2 (Williams Report), p. 26.

⁹⁸ Transcript, January 13, 2012, p. 25, l. 13 – p. 26, l. 9 and p. 27, l. 15 – p. 32, l. 12 (Insp. Williams in cross by T. Dickson).

⁹⁹ Transcript, February 9, 2012, p. 134, l. 19 – p. 135, l. 7 (Sgt. Connor in cross by T. Dickson).

¹⁰⁰ Transcript, February 9, 2012, p. 72, l. 8 – p. 73, l. 11 (Sgt. Connor in cross by R. Peck).

¹⁰¹ Transcript, February 9, 2012, p. 91, ll. 3-6 (Sgt. Connor in cross by T. Dickson).

witnesses say it was – then they had to ask for more of them from outside agencies. Primarily this would be from within the RCMP – from “E” Division, or at least from the RCMP-led PUHU. But the Coquitlam RCMP also could have asked the VPD, which at that very time was actively seeking a JFO with the RCMP. Inspector Moulton’s (thoroughly unconvincing) explanation of the matter was as follows:

Q. Now, Mr. Moulton, you are aware that from November of 1998 Staff Sergeant Giles of the VPD had offered assistance, financial assistance or investigative assistance with the Pickton file?

MR. MOULTON: I became aware of that in the last few months. I wasn't aware of it at the time.

Q. And the VPD contributed surveillance assistance in the summer of '99. We know that?

MR. MOULTON: Yes.

Q. And then Chernoff and Lepine assisted with the handling of the source Caldwell, right?

MR. MOULTON: That's correct.

Q. And so whenever you asked VPD for assistance on the file you got it?

MR. MOULTON: That's correct.

Q. And you didn't ask for more help from the VPD in terms of resources after the fall of 1999?

MR. MOULTON: No, I did not.

Q. And you didn't ask RCMP Serious Crime for additional resources?

MR. MOULTON: I did not, no.

Q. And you didn't ask UHU for additional resources?

MR. MOULTON: No, I did not.

Q. All right. And you didn't make those requests notwithstanding that this file was a high priority file within your department and it wasn't being worked on?

MR. MOULTON: My recollection is we had approximately 20 unsolved homicides, all of which would be a priority of some nature that we --

Q. And this was a high priority file?

MR. MOULTON: Yes.

Q. But additional resources were not requested from other agencies to assist with moving it along notwithstanding it was being worked on very little in your department?

MR. MOULTON: That would reflect my understanding of the workloads and resource restrictions on those other units.

Q. On the other agencies?

MR. MOULTON: Yes.

Q. You mean your view was that it was pointless to ask for more resources because they wouldn't be forthcoming?

MR. MOULTON: That based on the information that we had that there would not be, no.

144. Plainly this issue of resources is linked to the issue of regionalization: within a segmented policing model within the Lower Mainland, the Coquitlam RCMP had responsibility for a serial murder investigation that it let languish because of a lack of resources.
145. But there is also a related problem, which is a lack of communication. The VPD acknowledges that its senior management ought to have communicated more with Coquitlam RCMP and pushed them to reinvigorate their investigation into Pickton. The VPD's failure to do so is a manifestation of the management disengagement that DCC LePard criticized in his report.
146. The RCMP also bears blame for similar breakdowns in communication. For one thing, the Coquitlam RCMP never asked the VPD for help, as discussed above. Nor did they keep the VPD apprised of major investigative steps (such as they were), including their interview of Pickton: the VPD investigators did not learn of that interview until late in 2001.
147. Moreover, in the spring of 2001, Sgt. Connor was calling Wayne Clary – the File Coordinator for Evenhanded – advocating that they prioritize Pickton as a suspect, and yet no one at Evenhanded urged the Coquitlam RCMP to advance their own investigation into him. Indeed, it appears that Evenhanded never obtained the Coquitlam RCMP's file, and instead relied on the VPD's file on

Pickton.¹⁰² This was not enough. Evenhanded should have conducted a proper review of the Pickton file, and it should have been more mindful that the killer may still be active, and, at the very least, it should have urged the Coquitlam RCMP to investigate Pickton further with urgency.

148. “E” Division Major Crime also failed to follow up with the Coquitlam RCMP after the summer of 1999. On March 1, 2000, S./Sgt. Davidson – with the agreement and urging of Sgt. Field and Det./Cst. Shenher – met with Gary Bass, the OIC of “E” Division Major Crime, to propose a JFO targeting violence against STWs. S./Sgt Davidson’s three-page proposal encompassed the VPD’s missing women investigation, but it also specifically referenced Pickton as the first of three potential suspects.¹⁰³ Gary Bass had provided assistance to the Coquitlam RCMP for their Pickton investigation in the summer of 1999, and had been briefed at that time on the investigation.¹⁰⁴ When S./Sgt. Davidson made a JFO proposal to him on March 1, 2000 and specifically referenced Pickton as the first suspect, however, Bass did not contact the Coquitlam RCMP and inquire as to the status of their investigation. Had he done so, he might have learned that the investigation was stalled because of a lack of resources, which might have led to “E” Division Major Crime providing assistance.
149. These resource and communication problems are tangible examples of the kinds of problems that arise in a segmented policing model, and they stand as powerful reasons for the implementation of regionalized policing in the Lower Mainland.

Conclusion

150. Perhaps the greatest tragedy heard in this Inquiry is that the investigation of Pickton was allowed to languish. In the summer of 1999, that investigation was

¹⁰² The VPD’s file on Pickton only contained the information up to the end of the summer of 1999. It did not contain any information about the Pickton interview. Nor did it show the investigative steps planned by the Coquitlam RCMP but not implemented. That is, the Coquitlam RCMP’s file would have revealed that very little was actually being done on the Pickton investigation, despite it being a high priority.

¹⁰³ See Exhibit 199NR (Bass Affidavit), at Ex. “J”, p. 1.

¹⁰⁴ Exhibit 199NR (Bass Affidavit), paras 51-58.

being pursued with substantial vigour and urgency, but the differences in opinion about the information following the interview of Ellingsen were allowed to undercut that sense of urgency. That is a great shame. The information pointing to Pickton was very compelling and the allegations – amounting to serial murder – were of the gravest seriousness, and the investigation had to be pursued in an aggressive and sustained manner. The Coquitlam RCMP simply failed to do that, and they failed to ask for assistance.

151. The tragedy is that that investigation was the best chance of stopping the killings, by apprehending the killer. The heart of the police forces' failings in relation to the tragedy of the missing women is the Coquitlam RCMP's failure to pursue the Pickton investigation with the vigour and the resources it required.

G. THE SOLUTION TO COQUITLAM RCMP'S LANGUISHING INVESTIGATION

152. In September of 1999, the Coquitlam RCMP's investigation into Pickton had "hit a wall", as VPD Detective Constable Chernoff described it in his testimony. The Ellingsen interviews had not resulted in evidence which moved the investigation forward, and the investigators were divided as to whether she was lying. Chernoff, Lepine and Connor believed she was lying when she denied knowledge of the murder in the barn as described to Caldwell, Best and Menard, but the PUHU investigators, who were not aware of the totality of the information against Pickton, did not. As discussed in the LePard Report, no one seemed to appreciate the significance of Ellingsen's denial that she had told the story to others – that was clearly a lie – so there was no reason to believe her when she denied seeing the body in the barn.
153. Unfortunately, in the absence of conducting that analysis, the only steps that the Coquitlam RCMP investigators believed would advance the investigation were to conduct an interview of Pickton and to perhaps convince Ellingsen to be re-interviewed. When Chernoff and Lepine returned to the MWRT to work on other aspects of the Missing Women investigation and attend to their homicide squad responsibilities, they believed the Coquitlam RCMP were going to pursue those avenues and indeed, if they had asked, it is clear that the Coquitlam RCMP would have told them that they "were working on it".¹⁰⁵
154. The VPD should have been able to expect that a large RCMP municipal detachment would diligently pursue an investigation of a man suspected of committing multiple homicides in its jurisdiction. The failure of the Pickton investigation is fundamentally and primarily the failure of the Coquitlam investigators to diligently pursue that investigation and to instead let it languish.
155. As the agency not leading the investigation, the VPD's mistakes in the Pickton investigation are, in that sense, secondary. Pickton was an important person of

¹⁰⁵ Transcript, May 14, 2012, p. 41 l. 12 – p. 47, l. 8 (R, Chapman, D. Pollock, F. Henley and E. Moulton, in chief by A. Vertlieb).

interest in the missing women investigation and, rather than assume that the Coquitlam RCMP investigators were working on the file, the VPD needed to establish contacts in the Coquitlam detachment and request updates on the Pickton investigation so that it would be recognized at an earlier date if little was being done to advance it. If the response to those inquiries indicated that the Pickton investigation was languishing, there were solutions available to remedy the problem of one jurisdiction not diligently pursuing an investigation in respect of which another police agency has an interest. The correct solutions were as follows:

- a. An officer of inspector rank or higher in the VPD should have communicated with their equivalent in the Coquitlam RCMP to urge that they prioritize and properly resource the Pickton investigation.
 - b. In that conversation, the VPD could have offered resources to assist or offered to form a JFO with Coquitlam.
 - c. The VPD could have advocated at a very senior level with “E” Division management and asked that the RCMP’s provincial Serious Crime Unit or Provincial Unsolved Homicide Unit get involved in the case and perhaps take it over.
 - d. If there were still difficulties in the way the RCMP was prioritizing the case, the Police Services Division of the Ministry of the Solicitor General could have been asked to assist with resolving the matter.
156. In other words, the option available to VPD senior management, had it recognized the problem, was to communicate its unhappiness with the state of the investigation in Coquitlam. This kind of communication occurs regularly in British Columbia.¹⁰⁶ In the patchwork policing model that is in place in Metro Vancouver, such communication is essential to effective policing. The VPD accepts that it should have taken steps to try to motivate the Coquitlam RCMP

¹⁰⁶ Transcript, November 21, 2011, p. 157, l.5 – p. 160, l. 16 (DCC LePard, in cross by S. Hern).

into advancing the investigation after August of 1999.¹⁰⁷ Deputy Chief LePard stated this position in his testimony¹⁰⁸ and in his report.¹⁰⁹

157. What was not a proper solution to the problem is that which has been proposed by Mr. Roberts, Q.C. (first on behalf of Aboriginal interests and later on behalf of Ms. Bryce): that the VPD should have simply gone out to Coquitlam and conducted a parallel investigation of a hypothetical charge against Pickton of kidnapping by fraud.
158. Mr. Roberts' theory that the fundamental problem with the VPD's investigation is that it did not investigate kidnapping by fraud is an argument made against a proverbial "straw man". It is premised on a notion that the VPD is denying any responsibility for investigating Pickton as a person of interest in the Missing Women investigation. That is not the case. The VPD has never denied that it had the jurisdiction and the responsibility to investigate crimes that may have been committed against the Missing Women in Vancouver, including kidnapping, forcible confinement and murder. It was incumbent upon the VPD to investigate the possibility of "foul play" in relation to the disappearances, and that foul play certainly could have included kidnapping, including kidnapping by fraud.
159. DCC LePard detailed the failings of the VPD's investigation into the missing women in his report, particularly at pages 187-211 and 246-296.¹¹⁰ Contrary to

¹⁰⁷ See, for instance, Transcript, January 19, 2012, p. 188, l. 18 – p. 194, l. 12 (DCC Evans in cross by S. Hern).

¹⁰⁸ One such passage in his testimony is contained at Transcript, December 15, 2011, p. 142, l. 15 – p. 143, l. 19 (DCC LePard, in chief (re-examination) by A. Vertlieb).

¹⁰⁹ Exhibit 1 (LePard Report), pp. 299-301. On p. 301, DCC LePard states explicitly that the fact that Coquitlam RCMP had conduct of the investigation "does not, however, take away from the fact that VPD senior management could have advocated at a high level for a better investigation by the RCMP and also offered resources for a well-run joint force operation, considering the VPD's interest in a successful resolution."

¹¹⁰ At pp. 261-262 of Exhibit 1 (LePard Report), DCC LePard states explicitly: "the MWRT could have much more actively pursued building relationships with the sex trade workers to develop information about potential suspects (as was recommended by the Behavioural Science Unit in June 1999). Further, it could have engaged in aggressive checking and surveillance of "Johns" in the target area, and surveillance of potential sex trade worker victims to determine if there were any associations that would link them to a suspect. (In 1999, there was compelling information that Pickton was using Ellingsen and

Mr. Roberts' submissions, DCC LePard has always agreed that the VPD had responsibility to investigate the possibility that the women were being lured by a predator or otherwise kidnapped by fraud. As he stated in his redirect with Mr. Vertlieb:¹¹¹

I agree with you absolutely, and it's unfortunate but I feel like some of my evidence got lost ... because of course that always had to be the main suspicion was that women were somehow being lured, coerced, forcibly taken from the Downtown Eastside and other places where they went missing like New Westminster and Surrey, for example, and that was always something that absolutely had to be contemplated that that was an offence that was occurring.

160. There was, however, no specific evidence of kidnapping in Vancouver to investigate. Indeed, every VPD witness who spoke to this particular point of whether there existed specific evidence of kidnapping in Vancouver testified that there was none.¹¹²
161. When specific information about a murder in Coquitlam was received in 1998 and again in 1999, the Coquitlam RCMP's jurisdiction was then engaged, and they accepted that jurisdiction and acted upon it, initially in a diligent fashion. That the Coquitlam RCMP took the lead in those circumstances is consistent with the accepted organizing principle of investigations in British Columbia, which provides that, unless otherwise agreed, the jurisdiction in which the crime occurred is the agency which leads the investigation. Moreover, even if there was evidence of kidnapping in the case of the woman who Ellingsen saw in the

others to assist him in bringing sex trade workers to his property. Had this information been pursued, it may have been possible to link sex trade workers who went missing to female associates of Pickton, by constant checking of the drivers of vehicles entered by sex trade workers, for example. Also, several of the Missing Women were known to be associated with a particular hotel in the Downtown Eastside where a female associate of Pickton was living.)" Also see Rossmo's comments at Trans., Jan. 25, 2012, p. 169, ll. 2-14

¹¹¹ Transcript, December 15, 2011, p. 140, l. 19 – p. 141, l. 8 (emphasis added).

¹¹² Transcript, January 25, 2012, p. 163, ll. 5-20 (K. Rossmo in cross by D. Roberts), February 22, 2012, p. 134, l. 11 – p. 135, l. 25 (T. Blythe, in cross by S. Hern); March 6, 2012, p. 140, l. 8 – p. 141, l. 2 (C. Beach, D. Dickson, G. Greer and D. McKay-Dunn, in cross by D. Roberts); March 8, 2012, p. 12, l. 22 – p. 20, l. 8 (D. Dickson, in cross by T. Dickson); May 11, 2012, p. 130, l. 9 – p. 132, l. 20; p. 137, l. 12-21; p. 139, l. 11 – p. 140, l. 17 (M. Chernoff and R. Lepine in cross by D. Roberts).

barn, which there was not, it would still have been Coquitlam's case to lead based on the principle that the jurisdiction in which the more serious crime occurs leads the investigation.

162. If Coquitlam RCMP refused to accept jurisdiction over the investigation, then no doubt the Pickton investigation would have been led by the VPD, but that is not what happened. The Coquitlam RCMP did take leadership of the Pickton investigation. It did so because the crime suggested by the information at hand was of a murder or murders within its jurisdiction. The witnesses from Coquitlam RCMP have all accepted this.¹¹³
163. Because the Coquitlam RCMP had conduct of the Pickton investigation, no serious consideration was given as to whether the VPD could or should drive out to Coquitlam and begin conducting a parallel investigation into Pickton based on a theory that the women had gone missing as a result of a crime that began in Vancouver. Such a course of action could jeopardize an investigation and put officers at risk, and it would be contrary to the daily reality that policing in a multi-jurisdictional region requires cooperation and communication among police agencies.¹¹⁴
164. Moreover, leaving aside the point that a parallel VPD investigation of Pickton would have been improper, the fact is that no one thought kidnapping by fraud was an offence supported by the evidence at hand, as seen from the following:
- a. The Anderson charges. Despite the fact that they had Anderson's statement and she survived to testify, neither Cpl. Connor nor Crown Counsel (Richard Romano and Randi Connor) considered it viable to

¹¹³ Transcript, February 9, 2012, p. 93, ll. 2-13; p. 121, ll. 1-6; p. 143, ll. 5-9 (Sgt. Connor in cross by T. Dickson). Sup. Hall accepted this evidence where he was taken to it. See also Transcript, January 12, 2012, p. 194, ll. 4-10 (Insp. Williams in cross by T. Dickson); and see Transcript, January 19, 2012, p. 186, l. 15 – p. 187, l. 21 (DCC Evans in cross by S. Hern).

¹¹⁴ Transcript, January 19, 2012, p. 193, l. 4 – p. 194, l. 12 (DCC Evans, in cross by S. Hern).

charge Pickton with kidnapping, even though it was within their jurisdiction to do so.¹¹⁵

- b. The Caldwell information. In the summer of 1999, Cpl. Connor sent his daily log to Crown Counsel Peder Gulbransen to determine whether they had enough evidence for a search warrant. Mr. Gulbransen did not suggest that Pickton be investigated for kidnapping by fraud.¹¹⁶
 - c. Evenhanded. After the initial search of the Pickton farm on February 5, 2002, Evenhanded conducted the most extensive criminal investigation in Canadian history, including an intensive investigation into the manner in which victims came to be on the farm. Pickton was charged with 26 counts of first-degree murder. He was never charged with kidnapping.¹¹⁷
165. None of the witnesses, including Detective Constable Shenher and former Chief Blythe, have testified that there was any evidence of kidnapping by fraud. Indeed, while Mr. Roberts stated in his February 23, 2012 submissions that the Commission had heard through “former Chief Terry Blythe that, yes, indeed, there were crimes in Vancouver to be investigated”, in fact Chief Blythe’s evidence is that prior to Pickton’s arrest he was not aware of any specific information that any of the missing women had been kidnapped and that he was not surprised DCC LePard did not specifically discuss kidnapping in his report because former Chief Blythe was not aware of any evidence of that nature.¹¹⁸
166. Further, looking at the investigation as a whole, Deputy Chief Evans stated in her testimony that kidnapping by fraud would not have been a fruitful investigative avenue against Pickton: “I don’t believe that investigating him or trying to proceed

¹¹⁵ Transcript, February 6, 2012, p. 74, l. 16 – p. 77, l. 1 (Sgt. Connor in cross by T. Dickson).

¹¹⁶ Transcript, February 6, 2012, p. 77, ll. 11-22 (Sgt. Connor in cross by T. Dickson).

¹¹⁷ Transcript, January 20, 2012, p. 30, ll. 8-10 (DCC Evans in cross by S. Hern).

¹¹⁸ Transcript, February 22, 2012, p. 134, l. 11 – p. 135, l. 25 (in cross by S. Hern).

by kidnap by fraud would have simplified any prosecution against Pickton. No, not at all.”¹¹⁹

167. There are two further points of substance that should be addressed in relation to Mr. Roberts’ theory, which he has spelled out in detail in his final submissions in this Hearing Commission. The first is Mr. Roberts’ assertion that the law presumes that “the intent required for kidnapping is the presumption that a person intends the natural and probable consequences of one’s act, and that kidnapping against a person’s will includes by means of fraud”.¹²⁰ Mr. Roberts appears to employ this presumption as if it cures the need for investigators to prove that the accused intended to kidnap the victim. It does not. Rather, the “natural and probable consequences” presumption applies with respect to any death that ensues during the kidnapping. The investigators must still prove the intent to kidnap, as seen from the *Metcalfe* case,¹²¹ on which Mr. Roberts has relied so heavily in the hearings:

[10] In *Regina v. Brown* (1972), 8 C.C.C. (2d) 13 (Ont. C.A.) a child had gone willingly with the accused into a car. It was argued that because she had gone willingly the kidnapping section of the Criminal Code did not apply. That submission was rejected. The Court held that since the accused's false statements had induced the girl to enter the car the crime of kidnapping was constituted. I agree with that statement of the law. However, it was submitted here that there was no express inducement of Molnar. I disagree. Whether the inducement was to talk of old times or to provide Molnar with hashish is immaterial. The principal intent from the very outset was to kidnap him and hold him for ransom.

168. With respect to the Pickton investigation, there was never any specific evidence that Pickton intended to kidnap any victim. Indeed, as was learned later, many sex workers travelled out to the farm and were not attacked by Pickton. Even with Ms. Anderson – about whom the evidence was obviously by far the most extensive – it was not known whether Pickton intended to kidnap her “from the

¹¹⁹ Transcript, January 20, 2012, p. 31, ll. 11-14 (in cross by S. Hern).

¹²⁰ Final Submissions by Counsel for Marion Bryce, para 149.

¹²¹ *R. v. Metcalfe* (1983), 10 C.C.C. (3d) 114 (B.C.C.A.); emphasis added.

very outset”, in the words of the *Metcalfe* decision, or formed the intention to attack her when they were in the trailer on his property. That is why neither the investigating officer (Cpl. Connor) nor the two Crown Counsel who reviewed the issue (Richard Romano and Randi Connor) believed Pickton should have been charged with kidnapping.

169. The second substantive on Mr. Roberts’ submissions is his assertion that only the VPD had jurisdiction to investigate Pickton for kidnapping, which Mr. Roberts referred to again and again as “Vancouver’s crimes”. There is no question that kidnapping was a possible crime that the VPD had to be – and were – investigating as part of their missing women investigation as a whole, but it was also open to the Coquitlam RCMP to investigate him for that crime, including in relation to Ms. Anderson. Sgt. Connor readily agreed with that point in his testimony:¹²²

Q I want to just touch on the issue of kidnapping which Mr. Roberts raised with you. Obviously you didn't recommend a charge of kidnapping?

A No, I believed it was forcible confinement.

Q Yes. And if you had believed that there was evidence here to make out a charge of kidnapping you would have recommended that charge to Crown?

A That's correct.

Q And if you had thought that there might be more evidence of kidnapping to be found then you could have gone and sought that evidence; right?

A Yes, I could have.

Q And obviously the Crown never suggested to you that you investigate kidnapping in relation to the Anderson incident?

A No, they didn't.

170. This is not to say that the Coquitlam RCMP should have been investigating Pickton for kidnapping: again, there simply was no specific evidence pointing in

¹²² Transcript, February 9, 2012, p. 74, l. 16 – p. 75, l. 6 (M. Connor in cross by T. Dickson); emphasis added.

that direction that would have helped advance the investigation at all. But this attempt by Mr. Roberts to suggest that the Coquitlam RCMP's Pickton investigation could not have embraced kidnapping is completely unfounded and detached from reality.

171. In summary, there were several potential solutions to the problem that the VPD faced when the Coquitlam RCMP's investigation into Pickton languished after August 1999. Initiating a parallel kidnapping by fraud investigation, notwithstanding the lack of any evidence of kidnapping, was not one of them, however. The solutions were to communicate at a senior level with the Coquitlam RCMP as to what was going on and to motivate and lend assistance to ensure the Pickton investigation was advanced in a timely and professional manner.
172. A last issue needs to be raised in respect to Mr. Roberts' cross-examinations and his submissions in these hearings. In the VPD's respectful view, Mr. Roberts' tone at times has been vitriolic and disrespectful. He went so far as to suggest that DCC LePard wrote his report on the "false premise" that only the RCMP could investigate the missing women (which is completely incorrect) and that such was "deliberately done [by DCC LePard] to mislead".¹²³ Those outrageous statements by Mr. Roberts properly prompted the Commission to intervene the next day.¹²⁴ Unfortunately Mr. Roberts continues in this tone in his written submissions, labelling DCC LePard as being argumentative at one point¹²⁵ and as incompetent at another.¹²⁶ Nothing could be further from the truth.
173. Mr. Roberts' theory of kidnapping-by-fraud was worth raising in this Inquiry, but the testimony in these hearings overwhelmingly shows that there was in fact no specific evidence pointing to that crime, and that focusing on that crime would not

¹²³ Transcript, November 30, 2011, p. 104, ll. 8-15 (DCC LePard in cross by D. Roberts).

¹²⁴ Transcript, December 1, 2011, pp. 1-4.

¹²⁵ Final Submissions by Counsel for Marion Bryce, para 154.

¹²⁶ *Ibid.*, para 248.

have advanced the investigation whatsoever. The VPD respectfully submits that this is not an issue to which the Commission's attention need be put any longer.

H. PROJECT EVENHANDED

174. The Commission heard considerable evidence regarding Project Evenhanded from Insp. Don Adam and Sgt. Jim McKnight.
175. The VPD will not address the Evenhanded investigation at all exhaustively. Generally, DCC Evans accurately chronicled the investigation and assessed its strengths and weaknesses. The VPD will here focus on three key areas where the Evenhanded investigation could have been improved. They are:
- a. Determining, with the VPD, whether the killer was active;
 - b. Moving more quickly into a proactive investigation when it was determined that the killer was active; and
 - c. Properly assessing and reacting to the information pointing to Pickton.

Determining Whether the Killer Was Active

176. On January 31, 2001, Sgt. Field reported to Don Adam and other members of the team that would become Evenhanded that three more women may be added to Vancouver's list of missing women. It was left to the VPD's Missing Persons Unit to confirm whether they were missing. The VPD's MPU reported to Evenhanded in April 5, 2001 that four women were confirmed as missing, and some of those had last been seen as recently as 2000.¹²⁷ Ultimately, Evenhanded did not come to the realization that the serial killer was active until August of 2001, when it was found that there were more missings.¹²⁸
177. This should have happened earlier, and the VPD shares in that blame. Its MPU was in charge of confirming whether the new women were truly missing, and it needed to put more resources into that task. Sgt. McKnight testified at length that the task of confirming the missings is one that does take time and that the

¹²⁷ Transcript, May 24, 2012, p. 149, l. 12 – p. 150, l. 21 (J. McKnight in cross by J. Gratl); and Exhibit 217NR (McKnight Affidavit), at Ex. "J".

¹²⁸ Transcript, May 24, 2012, p. 151, l. 16 – p. 152, l. 21 (J. McKnight in cross by J. Gratl).

members of the MPU were working hard.¹²⁹ But in hindsight, the question was so critical to Project Evenhanded that more resources needed to be put toward that question.

178. The reason the question of whether the serial killer was active was so essential to Evenhanded is that it affected its entire operational plan. As Insp. Adam conceded, the original operational plan made no sense at all if the killer was active.¹³⁰ The original operational plan was focused on a long-term investigation, whereby historical cases would be reviewed and DNA extracted in order to build up a DNA databank, against which cast-off DNA from persons of interest could be compared. This is the sort of approach that could take many months or years.
179. Indeed, when Evenhanded did realize the killer was active they recognized the need to move to a proactive approach, although, as will be addressed below, it took too long to put that approach into effect. A suspect-focused, proactive approach was clearly necessary if the killer was active.
180. Given the importance of the question of whether the killer was active or not, Evenhanded had to focus on that issue with far greater urgency. In hindsight, it was not sufficient for that question to be left to the VPD's small and overstretched MPU; Evenhanded needed to recognize the importance of the issue, and demand that substantial resources be devoted to it.
181. At the very least, Evenhanded should have realized that the killer was very possibly active by April 5, 2001, which is when the VPD reported that there were four new women missing. With that information, Evenhanded should have changed its operational plan to become more proactive much earlier than it did.
182. This issue is obviously an important one for future investigations. The VPD submits that, in future, when investigators are faced with the issue of whether a serial offender is active or not, it should be incumbent upon the investigators to

¹²⁹ Transcript, May 24, 2012, p. 132, l.8 – p. 133, l.6 (J. McKnight, in cross by J. Gratl).

¹³⁰ Transcript, February 29, 2012, p. 147, l. 22 – p. 148, l. 21 (D. Adam in cross by T. Dickson).

assume that he is. That is, police ought to take what could be called a “precautionary approach” on this issue. Where it is uncertain if a killer is active or not, the appropriate approach is to assume that he is and to advance the investigation on that basis until such time as the opposite is demonstrated, or he is caught. A precautionary approach properly prioritizes the safety of the public.¹³¹

The Move to a Proactive Investigation

183. After the Evenhanded team realized that the killer might be active in August of 2001, the team came to the recognition that it needed to move to a proactive approach. That approach was only implemented in January of 2002. Respectfully, the VPD says that the recognition and implementation of this approach should have occurred much more quickly than it did.
184. Insp. Adam appeared to concede that it was a live question as to whether these steps should have happened sooner, although he was not willing to agree outright that they should have. Sgt. McKnight, to his credit, was much more candid. He testified as follows:¹³²

Q. Now, I take it that today you'll agree that the gap of five months between August of 2001, when Evenhanded realized it had an active serial killer on its hands, and January of 2002, when the proactive team was deployed, that gap is far too long; isn't that right?

A. I'd have to agree with that, yes.

Q. It should have been done on a very urgent basis, that deployment should have been done very quickly?

A. I just dis -- we were urgent. We were looking at these files. We were actively working. I don't like that terminology that we weren't urgently looking. Should it have been done faster? Absolutely.

¹³¹ On this point, see Transcript, March 7, 2012, p. 70, l. 6 - p. 71, l. 11 (D. Adam, in cross by T. Dickson).

¹³² Transcript, May 24, 2012, p. 157, l. 12 – p. 158, l. 1 (J. McKnight in cross by J. Gratl).

185. There is no question that the Evenhanded team worked hard, and the team completed an enormous amount of excellent work. This aspect of the investigation, however, needed to occur much faster.

The Assessment of and Response to the Pickton Information

186. The third weakness of the Evenhanded investigation that the VPD will address relates to Pickton. Until the Dinah Taylor information came up in the beginning of 2002 (the significance of which was not apparent until after February 5, 2002, when the team got onto the farm), the Evenhanded investigation did not and would not have advanced the investigation into Pickton whatsoever. There are at least three points which demonstrate this shortcoming.
187. First, as Insp. Adam conceded, the original operational plan would not have added anything at all to the investigation of Pickton. The original operational plan focused on reviewing historical files to build up a DNA databank against which the DNA of persons of interest could be compared so that they could then go and target persons of interest who matched the historical crimes. In hindsight, however, this would not have added anything to solving the investigation because it was already known that Pickton had attacked Ms. Anderson. He was already a ripe suspect for investigation. Evenhanded's original operational plan was not required in order to demonstrate that Pickton should be investigated, and it would not have added anything to the investigation of him: there was no other crime that would have been linked to Pickton. To the contrary, the effect of the original operational plan was to distract attention away from Pickton.
188. A second shortcoming of the Evenhanded investigation in relation to Pickton is that it failed to properly obtain and assess all of the information pointing to him. As Sgt. McKnight testified, Evenhanded never took any action to obtain the Coquitlam RCMP's file on Pickton until after his arrest¹³³ (and nor did Evenhanded seek to consult with key investigators, such as Sgt. Connor). That is, they did not obtain the file of the lead agency investigating Pickton. And while

¹³³ Transcript, May 24, 2012, p. 112, ll. 8-11 (J. McKnight in cross by J. Gratl).

it was asserted by some witnesses, like Insp. Adam, that the VPD file contained all the information, that is simply not true: the VPD file did not contain any information on the interview of Pickton, or of the steps the Coquitlam RCMP planned to take in the investigation but failed to take because of a lack of resources or urgency. The Coquitlam RCMP's file would have revealed the actual state of the investigation in 2001 far more accurately than the VPD's file from 1998/1999.

189. It appears that the reason Evenhanded did not obtain the Coquitlam RCMP's file is that they did not think they needed it, because the VPD file had all the information necessary to categorize Pickton as a Priority 1.¹³⁴ That point is linked to Evenhanded's third shortcoming in relation to Pickton, which is its determination not to investigate suspects until the file reviews were completed. It can be reasonably debated whether Evenhanded should have targeted specific suspects earlier in its investigation, but what is clear is that, where persons of interest were already being investigated by other agencies, Evenhanded should have leveraged those resources by requesting that the investigations be pursued with some vigour and to report back on progress.
190. In April of 2001, Sgt. Connor – who had been the lead investigator on Pickton in 1997 through the summer of 1999 and was now the officer in charge of Coquitlam Major Crime Section – called Evenhanded's File Coordinator, Wayne Clary, a number of times to advocate that Pickton be prioritized as a suspect. The Coquitlam RCMP's failure to investigate Pickton in a sustained and aggressive manner is addressed in Part F of these submissions. The point for Evenhanded is that it appears no one on the team advocated to Sgt. Connor that the Coquitlam RCMP re-invigorate its investigation of Pickton. Had that been done, then Sgt. Connor might have indicated that they had too few resources to be able to do so, which might have led to Evenhanded securing assistance for Coquitlam from "E" Division or PUHU or from within itself. We can only speculate.

¹³⁴ Transcript, May 24, 2012, p. 112, ll. 12-19 (J. McKnight in cross by J. Gratl).

The point is that it would not have disrupted Evenhanded's operational plan to encourage other agencies to advance open investigations into Priority 1 persons of interest while Evenhanded's historical review proceeded.

Conclusion

191. Project Evenhanded did an enormous amount of excellent work, and the investigation after February 5, 2002 is a model for future major investigations. As with almost every aspect of the police investigations into the missing women, however, mistakes were made. Those mistakes were made in good faith by investigators who were highly dedicated and skilled. But those mistakes deserve to be identified in the hope that they will never be repeated.

I. LEARNING FROM UNSUCCESSFUL INVESTIGATIONS

192. This Inquiry has a mandate to make recommendations about homicide investigations and investigations of missing women. That issue is largely the subject of the Study Commission, and the VPD and the Vancouver Police Board have made submissions in that regard.
193. One recommendation deserves to be mentioned here, however, which is that police agencies ought to conduct reviews of unsuccessful investigations and learn from their mistakes in order to become better policing institutions. Police agencies must be learning institutions. They must be accessible and accountable to the public.
194. The responses of the police forces involved in the missing women investigations are in stark contrast with one another in terms of acknowledging mistakes and fixing identified problems.
195. The only internal review produced by the RCMP in this case is the Williams report. In its cross-examination of Mr. Williams, the Department of Justice understandably attempted to distance the RCMP as far as possible from that report, indicating that its only purpose was to assist the Department of Justice in current and future civil litigation cases relating to the missing women investigations, and it was not intended to be a “lessons learned” type of review.¹³⁵
196. That the RCMP wishes now to distance itself from the Williams Report is not surprising, because there are statements made in that report which are embarrassing. It is inexplicable that an experienced police officer could look at what occurred in Port Coquitlam and conclude that if the Coquitlam RCMP had to do the Pickton investigation all over again, nothing would be different.¹³⁶ In the

¹³⁵ Transcript, January 11, 2012, pp. 128-131 (Insp. Williams in cross by J. Brongers).

¹³⁶ Exhibit 2 (Williams Report), p. 27: “Although this was a complex review, with very unique circumstances, based on our experience and from the interviews conducted, it is suffice [*sic*] to say nothing would have changed dramatically if those involved had to do it over again.”

face of 27 women being murdered, most of them at a time when the Coquitlam RCMP were investigating the offender as a suspect in multiple homicides, the brevity and superficiality of Mr. William's analysis is unacceptable.

197. Moreover, following the 2002 Dateline episode (which cast all of the blame for the Pickton investigation onto the VPD and in which the RCMP stated that it had solved the case based on a review of the VPD file), the RCMP's unwillingness to even publicly acknowledge that it was involved in the Pickton investigation – let alone step up and inform the public that it was in fact *leading* that investigation – is an example of an institution which does not take responsibility for its actions.
198. Public agencies that refuse to acknowledge mistakes, examine deficiencies and make changes to practice are agencies which will not earn the public's trust, and that affects all policing agencies in British Columbia.
199. It is similarly surprising that the Minister for Public Safety and Solicitor General would not have accepted the invitations extended to review the LePard Report in 2006 and 2009, in order to consider what changes and improvements might be made to policing in British Columbia. If the Minister felt that a review of the report would have been problematic in view of the ongoing criminal case against Pickton, the review could easily, and appropriately, have been delegated to the Police Services Division of the Ministry to ensure lessons were learned in a timely way.
200. Since the period in review, the VPD has demonstrated that it is a proactive learning institution. The LePard Report is but one example of the VPD's willingness to frankly and critically investigate its own performance and make improvements.
201. The effect of the VPD's willingness to critically examine its own conduct was also evident in the diversity of perspectives that the VPD witnesses expressed to the Commission. Each presented their own unique analysis of their roles in the investigations, freely criticizing or commending the VPD's actions wherever they

deemed appropriate. By contrast, the RCMP witnesses held a defensive, unified line, denying or minimizing problems which were plainly apparent. This was most starkly evident in the testimony of former Constable Yurkiw (now Chapman), whose statement to Deputy Chief LePard, which she acknowledged was truthful when given in 2004, is of a very different tone and content than her evidence at the Commission hearings. Only RCMP Corporal Mike Connor of Coquitlam demonstrated a capacity for critical self-examination and expression of regret for a failed investigation with such disastrous consequences. His conduct was commendable.

202. Moreover, within the Hearing Commission the VPD put forward DCC LePard as a representative of the current Department as a whole, so that this Commission could know clearly the position of current VPD management on the issues raised by the Terms of Reference. DCC LePard was vigorously cross-examined over the course of 14 days on many topics, including (but certainly not limited to) his report on the missing women investigation, current practices within the VPD, and recommendations for future change. Within the Inquiry proceedings, DCC LePard accepted, on behalf of the Department, responsibility for the shortcomings of the VPD's investigation, and apologized to the families and the community.
203. By contrast, the RCMP did not put a representative forward within the Hearing Commission. While this Commission will receive the submissions of counsel for the RCMP, it has not had the benefit of hearing within the Hearing Commission from a member of current RCMP management who could present the RCMP's position. While RCMP management representatives participated in the Study Commission to speak to possibilities for future change, they have not come forward within the Hearing Commission to accept responsibility for the errors of the past and only issued a very qualified apology outside of the Inquiry process.

204. The VPD hopes that its willingness to face up to mistakes and proactively improve will be recognized and assist in building on public confidence in the VPD.

J. ALLEGATIONS OF SYSTEMIC BIAS, SEXISM AND RACISM

Introduction

205. Some participants in this Inquiry have suggested that issues of systemic bias against sex workers, or sexism, or racism toward Aboriginal peoples were present within the VPD during the relevant time period, and that these contributed to the VPD's inadequate response to the tragedy of the missing women. This Part of the VPD's submissions addresses these allegations.
206. In short, the VPD's position is that there were a number of systemic issues within the VPD that precluded an adequate response to the missing women problem, but these systemic issues did not include bias, sexism or racism. To the contrary, generally the investigators on the case demonstrated exemplary dedication and compassion, but for a variety of reasons these investigators were unable to engage sufficiently with VPD management to receive the necessary resources. The reasons for management's disengagement were explored at length in DCC LePard's report and in his evidence, and are further discussed in the submission below. Those reasons do not include bias or sexism or racism, but rather revolve around management's lack of understanding of the nature of the problem it faced. This distinction is made very plain by the VPD's response when it was presented with clear evidence of a crime against a sex worker; in such cases, the VPD quickly devoted all necessary resources to the case, and achieved a very high solve rate.
207. The submission below addresses the following issues:
- a. The distinction between systemic *policing* issues, and systemic bias, racism and sexism;
 - b. The lack of proper methodological and evidentiary bases in this Inquiry for an analysis into systemic bias, racism and sexism; and
 - c. The unreliability of the anecdotal evidence of bias, sexism and racism heard in this Inquiry;

- d. The evidence of the *absence* of bias, sexism and racism; and
- e. The evolution of the use of the word “hooker”.

Systemic problems in policing versus systemic bias, racism and sexism

208. The term “systemic” has been used repeatedly in the Inquiry in association with the problems with the police investigations. As used by Commission counsel, the term has largely reflected the theory that no single individual was responsible for the problems in the investigation or caused its failure. Instead, there was a combination of factors that contributed to the problems, many of which were linked to the structure of policing in place in the VPD and RCMP, and to the structure of policing in Metro Vancouver.
209. Policing issues which can be described as “systemic” include:
- a. The lack of a major case management or equivalent structure being put in place for the missing women investigation and the Pickton homicide investigation in Coquitlam.
 - b. The absence of mandatory internal reviews of investigations that are unsuccessful for a certain period of time.
 - c. The lack of a policy that managers of major crime have significant investigative experience.
 - d. The absence of a media strategy with respect to the missing women investigation.
 - e. The severity of the rank structure, which can allow one weak link in the chain of command to stymie information flow and hamper decision making.
 - f. The patchwork policing in the Metro Vancouver area, which can inhibit communication regarding important investigations and prevent the appropriate setting of priorities.

- g. The absence of a structural trigger for JFOs.
 - h. The lack of formal communication forums to discuss investigations that bear upon multiple jurisdictions.
 - i. A missing persons office structure which was inadequate.
 - j. And a lack of coordination in respect of missing persons investigations provincially.
210. These were all important contributing factors to the problems in the investigation. Resource shortages and personality conflicts may have aggravated their influence, but these systemic problems prevented the system from overcoming challenges that are always presented when personalities do not meld perfectly and resources are inadequate.
211. The use of the word “systemic” in relation to policing issues must be contrasted with its use in association with “bias”, “racism” and “sexism”. In the latter form, it is used to describe prejudices entrenched in an institution either by their prevalence in the institutional culture, or where structural aspects of the institution create bias, racism, or sexism. That is what this section of the VPD’s submissions will now address.

Whether this Commission has the bases to examine systemic bias, sexism and racism

212. It should be noted that the Commission’s terms of reference are not so broad as to embrace a general study of sexism or racism in the VPD or RCMP. For these issues to be relevant to the Commission’s work, there has to be evidence that sexism, racism or bias affected the conduct of the missing women investigations in some verifiable way. As discussed below, there has been no reliable or compelling body of evidence of that nature. In fact, the evidence has been almost entirely to the contrary.

213. To the extent these issues are relevant to the Inquiry, as matters of both accuracy and procedural fairness they must be studied using some kind of reasonable, objective methodology. No participant has introduced any such methodology to accomplish this, such as an expert report, survey evidence or testimony from a statistically relevant random sample of officers. In the absence of an identifiable methodology, all that the Commission is left with are anecdotes and impressions of questionable reliability from a few witnesses. Anecdotes are not sufficiently comprehensive or reliable to make any findings of fact on these issues.
214. Some participants might suggest that an “effects based analysis” is sufficient, but this is clearly not the case. It is not possible to apply an “effects based analysis” to assessing whether there is sexism, racism or bias. It would be wrong to suggest, for example, that because women make up only 23% of the VPD’s work force, the VPD is a sexist organization. That analysis ignores the social history of the policing, how it compares across other professions (such as law) and work places, generational changes that are occurring, and the experience of the women who were in the police force and who have testified that at no time did it feel like a sexist environment.
215. Similarly, the facts that sex workers are marginalized persons who suffer higher incidents of violence and underreport violence to police do not prove that police are biased against them. The circumstances of sex workers’ lives and their relationship to police and other institutions are very complex and are linked to the variety of laws that impact them, the social stigma of their work and their lifestyle, the pressures they face from their addictions and their constantly changing rejection of and need for police services. To conclude the police are biased because the women are marginalized and have a difficult relationship with police is overly simplistic.

Anecdotes and impressions have been shown to be unreliable

216. Instead of a proper methodology to study systemic issues, anecdotes and impressions about police conduct and attitudes have been elicited from various witnesses. These have often been extremely vague and comprised of hearsay and double hearsay. Rarely have witnesses been able to identify the dates – even the *years* – when events occurred, and often they could not specify locations or details which could allow the VPD to identify, verify and respond to the allegations. As discussed below, whenever the VPD has been provided with sufficient information to identify the event that has been the subject of testimony, the VPD has shown that the witness' memory or account of the event is highly inconsistent with objective facts and records.
217. For example, Mr. Ward elicited sensational accounts of VPD conduct from witness Rae Lynn Dicks, a communications centre operator who had worked at the Department for approximately 2.5 years. Much of her evidence was extremely vague, as she testified to what she heard other officers talking about around the Department, but could not recall any names or details (other than relating to Sgt. Joyce and Sgt. Yeomans).
218. Ms. Dicks did, however, recall a specific incident, which involved taking a 911 call from a teen-aged sex worker who was reporting a sexual assault. Ms. Dicks held that case up as an example of the bias and contempt VPD officers had for sex workers and said it was an incident that she “would never forget”. Her story was that when one of the officers was headed to investigate the call, he sent Ms. Dicks a message on her computer terminal which said the victim was just a hooker who “can’t be raped”. Unfortunately for Ms. Dicks’ credibility, she provided sufficient detail of this incident so that the VPD was able to positively identify exactly which call Ms. Dicks was referring to and was able to obtain the investigative file and all associated information, including records of every electronic transmission relating to the call, as well as the audio recording of the

911 call.¹³⁷ What the records showed was that Ms. Dicks' testimony was false – there was no electronic message sent to her of any kind. Moreover, Ms. Dicks had misstated the facts on almost all of the material issues in the case, and in fact the investigation that was conducted by the VPD was of the highest professionalism, quickly leading to an arrest of the offender who was charged and then convicted. The victim was treated with respect and compassion and her family thanked the officers for their conduct. The victim ended up leaving the sex trade behind and reconciled with her family. The irony of Ms. Dicks selecting this investigation as an example of VPD bias and contempt is that if the VPD had to choose an investigation to demonstrate its professionalism, it could not have chosen a better example.

219. In another instance, witness Jane Smith, a former sex worker, alleged that she had only negative interactions with the VPD during the eight months or so she worked the street, and that as a result she had never reported any crimes to the VPD.¹³⁸ When the VPD checked its records in this regard, they showed that in fact Ms. Smith had in fact made a number of calls to the police to report crimes. In each case, the reports were taken seriously, were responded to quickly and resulted in thorough investigations, and, where appropriate, charge recommendations were made. In cross-examination,¹³⁹ Ms. Smith acknowledged that, contrary to her earlier assertions, she recalled each of these interactions. Ms. Smith's evidence generally had no air of reality, such as her description of alleged involvement with Pickton or being driven in a police wagon with a sound system blaring so loud as to damage her hearing. As with Ms. Dicks' allegations, Ms. Smith's evidence demonstrated that vague allegations and stories against the police should be received with great caution.

¹³⁷ Transcript, April 23, 2012, p. 90, l. 18 – p. 92, l. 13 (S. Cameron and R.L. Dicks, in chief by K. Brooks); May 18, 2012, p. 17, l. 17 – p. 22, l. 7, p. 23, l. 10 – p. 26, l. 19, p. 32, l. 7, p. 34 – l. 4 (DCC LePard, in chief by S. Hern).

¹³⁸ Transcript, May 17, 2012, p. 137, l. 12 – p. 138, l. 16 (B. Fournier and J. Smith, in cross by S. Hern).

¹³⁹ Transcript, May 17, 2012, p. 139, l. 22 – p. 142, l.6, p. 153, l.9 – p. 157, l. 10, p. 159, l. 5 – p. 160 l. 20 (B. Fournier and J. Smith, in cross by S. Hern).

220. Another example was the evidence of former VPD constable Dave Dickson. Dickson criticized the VPD in regards to a specific investigation into reports from sex workers that they were drugged and tortured in certain locations in North Vancouver. Dickson said the investigation was poorly handled by VPD management and “went down the toilet”, and that one of the sex workers was not well treated by police.¹⁴⁰ Unfortunately for Mr. Dickson’s credibility, that too was a case in which the investigation could be identified and the files accessed. What the files showed was that in fact a very thorough initial investigation was conducted by the VPD, followed by a comprehensive review in response to concerns that Dickson had raised. There was no evidence at all that any sex worker had not been treated well, or that the investigation had in any way been conducted poorly. Instead, the evidence showed that Dickson himself had been leading – and therefore obscuring – some of the evidence, particularly in relation to a witness who was psychotic. The investigation was then transferred to the North Vancouver RCMP, as that was the location of the alleged crimes, and that police agency completed a thorough investigation which did not lead to any substantiation of the offences, although the files remain open.¹⁴¹ Dickson’s testimony is another example of how problematic it is to rely on unsubstantiated allegations for the purposes of making any findings of fact.
221. Wherever allegations have been made against it the VPD has endeavoured to ascertain the specific incident and review its records of it. In many cases this has not been possible due to the vague nature of the information provided. For example, in Susan Davis’ testimony, she recounted how, in the winter of 1990-1991, on an evening in which it had snowed,¹⁴² she was raped at knifepoint by a man. She went back to the hotel she was staying at with some others. She took cocaine to try to calm down¹⁴³ and phoned the police. She did not want the police to come to the hotel room because there was a lot of illegal activity

¹⁴⁰ Transcript, March 12, 2012, p. 13, l. 22 – p. 15, l. 1 (D. Dickson, in cross by C. Ward).

¹⁴¹ Transcript, May 18, 2012, p. 34, l. 22 – p. 43, l. 20 (DCC LePard, in chief by S. Hern).

¹⁴² Transcript, October 31, 2011 p. 133, ll. 23-25 and p. 134, ll. 1-5 (S. Davis, in cross by T. Dickson).

¹⁴³ Transcript, October 31, 2011, p. 28, ll. 20-22 (S. Davis, in cross by C. Ward).

there,¹⁴⁴ so she arranged to meet the police on the corner of Main Street and 2nd Avenue.¹⁴⁵ She said she waited for an hour and the police did not arrive. She left because she had to make money for her room.¹⁴⁶

222. Because the call was taken and a police unit was dispatched, this incident would have caused the VPD's 911 operators to create an electronic record of this incident and give it an incident number. DCC LePard was a Chief Dispatcher in the Communications Centre in that period of time and he endeavoured to verify Ms Davis' account from VPD records, but was unable to due to the lack of specificity, or perhaps the inaccuracy of the account. His evidence was as follows:¹⁴⁷

Q. All right. And so you referenced high priority calls. Would a call such as Ms. Davis's be characterized as a high priority call at that time, 1990 to 1991?

A. Absolutely a report of a sexual assault would have been a high priority call.

Q. Would it have been normal for the dispatcher to ask the complainant to meet the police officers on the street?

A. No, not unless that was what the complainant wanted for some reason.

Q. All right. And her estimate of an hour long wait before anybody showed up, from your recollection

A. No, that would just be incredibly unusual. Normally what we would do if we received a complaint like that is that every single call to 9-1-1 and the non-emergency numbers are taped. Now it is digital, at the time it was big reel-to-reel tapes. So every communication was taped, every dispatch was taped, all the conversation with the 9-1-1 operators was taped. Every word entered into the computer aided dispatch system is a matter of permanent record. So if it was close enough to the time that it occurred we would simply go back to the tapes and find out exactly what happened and if there had been a mistake to fix that.

¹⁴⁴ Transcript, October 31, 2011, p. 27, ll. 2-7 (S. Davis, in cross by C. Ward).

¹⁴⁵ Transcript, October 31, 2011, p. 136, ll. 6-8 (S. Davis, in cross by T. Dickson).

¹⁴⁶ Transcript, October 31, 2011, p. 27, ll. 19-25 (S. Davis, in cross by C. Ward).

¹⁴⁷ Transcript, November 22, 2011, pp. 82-85 (DCC LePard, in cross by S. Hern).

So I did look to see whether we could find this call, but unfortunately the tapes from that time they were only kept for 30 days so there was no way to review the actual voice communications. What I did do is I had our information technology people produce for me every single report to 9-1-1 of a sexual assault the last two months of 1990 and the first two months of 1991, and then scanned through that information to see whether Susan Davis's name appeared in any of those calls. It did not. There was one report from a sex trade worker at that same motel around the same time, even somewhat similar circumstances, but it was not her. That call was dispatched in three minutes and police were on scene eleven minutes after that. That would be a typical response.

Q. So obviously we don't -- we can't know exactly what happened in this instance because you haven't -- weren't able to identify this specific incident, but suffice to say from someone who was there it was contrary to policy and practice for that kind of event to have happened?

A. Yes. And if an operator had actually told her or they had agreed where she was to meet then she would have created a call that would have gone to the dispatcher in the computer aided dispatch system, and so had that occurred we would have been able to look and see exactly what the time delay was down to the second and so on, but clearly there was no call ever created by a 9-1-1 operator or it would be in our computer aided dispatch system even though the tapes of the conversations would be gone.

223. Ms. Davis' testimony on this recollection is another example of an account which is so vague that the VPD cannot access its records on the matter and is precluded from being able to respond. No doubt some participants will hold up this account as evidence of systemic bias against sex workers. The VPD says this story is not sufficiently reliable to be the foundation of any finding at all.
224. Similarly, testimony from Elaine Allen may be held up by some participants as indicating systemic bias within the VPD, but that evidence was very far from reliable. Her evidence about calls not being taken by 911 when they originated in the Downtown Eastside was addressed by DCC LePard as follows:¹⁴⁸

¹⁴⁸ Transcript, November 22, 2011, pp. 86-87 (DCC LePard, in cross by S. Hern).

Q. All right. Returning to Elaine Allan's testimony, she said that she experienced dropped calls from 9-1-1 from E-COMM. I say dropped calls, but in the examples she had given she had suggested that contact was made with the communications operators, and that when they found out that she was trying to report incidents of violence from the Downtown Eastside that those calls were discontinued. Is that kind of complaint something that you've heard before?

A. No. As I said everything is taped. It's a very accountable system. Our communication services since 1999 have been provided by E-COMM. That would be a very significant issue for someone to allege that someone was just hanging up on them. And why would a 9-1-1 operator do that considering that, like I say, everything is taped. I would have expected if that was a problem to have heard about it in other cases or to have received a complaint about it to E-COMM or the Vancouver Police or to the police board or something like that, and it absolutely would have been investigated and taken very seriously. It's not that mistakes are never made. But in terms of calls from the Downtown Eastside, we receive tens of thousands of calls from the Downtown Eastside and investigate tens of thousands of incidents as a result of those 9-1-1 calls, so it's not like a call from the Downtown Eastside is something unusual. We have more frontline resources in that district of the city than any other district because of the volume of calls and the problems in that community.

Q. So given the volume of calls if there was a pervasive practice or bias against calls coming from those areas we would be talking about discontinued calls in the hundreds or perhaps thousands I assume?

A. Yes. And I can tell you having received the occasional complaint from a member of the public that they weren't happy with the service of a 9-1-1 operator for example, that's treated very seriously, and the first thing they do is go and review the tapes and find out exactly what happened, what was said, what information went into the commuter aided dispatch system. So it's a very, very accountable system.

Q. So taking her evidence in the context of the practice that you know is it your view that it just doesn't have any merit?

A. No.

225. In view of the unreliability of this type of evidence, the VPD submits that anecdotes and impressions cannot form the basis of a finding of systemic bias, racism or sexism. In many cases the allegations were so vague that it is not

possible to verify their accuracy, but where verification could be made, the evidence has shown the testimony to be unreliable. Accordingly, unverifiable anecdotes should not form the basis of any findings of fact.

226. This is particularly important in the event participants attempt to rely on the studies of Dr. Lowman and Dr. Shannon as factual evidence. In some of their studies, the professors surveyed the views that sex workers have about the police. The professors asked questions about the sex workers' experiences, but did not test the veracity or reliability of any of the answers given. For example, in most of the studies there is no indication of when or where events occurred, who the officers were, or even which police force was involved. The interviews were anonymous. For their reports, the professors then extracted the quotes they liked and analysed them and drew conclusions from the discourse. Accordingly, their work cannot be used for any fact-finding purpose, such as whether the VPD during the terms of reference was a biased, racist or sexist institution.

The evidence of an absence of bias, sexism and racism

227. Even if anecdotes and impressions were sufficiently reliable to make findings of fact of systemic bias, sexism or racism, the evidence heard at the Inquiry overwhelmingly contradicted those suggestions.
228. In his report, DCC LePard considered the issue of systemic bias directly in Part II, chapter 3. There he considered whether the evidence of Ms. Cameron making remarks which could be considered racist or biased were indicative of a larger problem within the department. He concluded they were isolated to her conduct, stating as follows at pages 213-214:

While it appears that Ms. Cameron's behaviour was in some instances inappropriate and prejudicial, and that this was particularly detrimental to the reputation and relationship with the families of the Missing Women, the allegations do not sustain an inference of systemic bias throughout the VPD organization.

229. DCC LePard went on to consider whether other serious assaults or homicide investigations involving victims who were sex workers were under-resourced or

pursued with less vigour than other investigations. After reviewing 11 investigations of violent crimes being committed against sex workers, he found that this was not the case. Rather, he found that “the VPD conducted extensive investigations into each of them, and often displayed extraordinary efforts in solving these cases.”¹⁴⁹ He also reviewed the VPD’s solve rates for homicides of sex workers (not including the missing women), which were very high through the 1990s. Based on those findings, which were not challenged when he gave evidence at the inquiry, DCC LePard concluded that instances which might be viewed as bias against sex workers were isolated to individuals, and was not systemic or pervasive in the VPD during the relevant time period, and is not now.

230. In his testimony at the Inquiry, he reiterated and expanded on the subject as follows, which is worth quoting at length:¹⁵⁰

Q. Now, I want to turn to a different subject matter, deputy chief, and that's the relationship of the police and sex trade workers in the Downtown Eastside. One of the things that has often been said about the missing women investigation is that if the missing women had been from wealthier neighbourhoods there would have been many more resources allocated to the investigation. Do you agree with that statement?

A. Well, I agree to the extent that if there had been an assumption made about missing women from the west side of Vancouver, for example, I think they would have come to the assumption that if a bunch of women from the west side of Vancouver went missing much more quickly than they did with the Downtown Eastside women where they had great difficulty coming -- making that big leap that it was foul play involved because of the very different circumstances involved. What I wrote in my report is in the face of a murder of any person, whether it's a woman from the west side or a sex trade worker from the Downtown Eastside, that the VPD does not discriminate, that we put whatever resources that we need to, and in fact have had excellent results. The problem in the missing women investigation was that managers in the VPD did not come to the conclusion quickly enough that this was a matter of foul play, that that's what

¹⁴⁹ Exhibit 1 (LePard Report), p. 216.

¹⁵⁰ Transcript, November 22, 2011, p. 30, l. 7 – p. 36, l. 12, p. 41, l. 10 – p. 42, l. 18 (DCC LePard, in cross by S. Hern).

was responsible for the missing women. Contemporaneous with that same time, 1993 to 2000, I've given evidence before that 1992 or 1993 to 1999 we had ten murders of sex trade workers and solved by arrest and charge eight of them, which is quite a bit better than the national solve rate. And in fact there was another one, the murder of April Reock in 2000, so there was actually nine out of eleven murders of sex trade workers solved during that time, which is a very high rate of success for any kind of a murder investigation. And I think the record will show that even at that time the murder of April Reock was led by Sergeant Geramy Field and her homicide squad, that was a successful investigation and they put whatever resources they needed into solving that case. It makes no difference what the background of the victim was. It was a different problem with the missing women of the Downtown Eastside compared to, for example, if 20 women went missing from the west side there first of all would be --

THE COMMISSIONER: Yeah, excuse me for interrupting, but I'm going to ask you the question then, and I'm sure the other lawyers will -- the lawyers here will be asking you this question, and that is that -- and you've drawn this comparison as to whether or not the different type of investigation that ensued had the women been missing from the west side of town as opposed to the poor, disenfranchised women that were missing from the Downtown Eastside, and in fact from the evidence that we've heard so far is that that's precisely what did happen, didn't it? When you had Sandy Cameron saying things like we don't have time to look for hookers, why don't -- and making the racial comments that she made, isn't that an indication that at the time the Vancouver Police wasn't interested in listening to those poor women, the disenfranchised women who were living in poverty in the Downtown Eastside? I'll ask you that, because I know other people here will ask you. And the reason I'm asking you now is because you've brought this subject up right now that the Vancouver Police doesn't discriminate regardless of where the victim resides.

THE WITNESS: What I've said, Mr. Commissioner, is that when it's clear that a murder has taken place that the investigation precedes with no -- there is no difference depending on the victim typology. I agree, and I've written in my report, that there was an inadequate response to the reports of women missing from the Downtown Eastside, and I've written about issues that you have raised in terms of people being unreceptive to that information. But in terms of the dedication of investigators involved they were completely committed to it. The VPD as an institution, their response was inadequate and put inadequate resources into it. But there's no question in my mind that if their managers no

matter who they were, had they become satisfied, and they should have been earlier, that missing women had been killed, for example, if there had been a body found like April Reoch, who might not have been found, the killer tried to get her into a Smithrite can and she may never have been seen again and she would have been on the list of the missing women. All the resources necessary to solve that case and make an arrest were put into that investigation because it was clear what they were dealing with. In the case of missing women who were reported weeks, months, years after they were last seen it wasn't as clear what the problem was, and I've written it should have become clear sooner. Certainly by the time of Detective Inspector Rossmo's report of May 27th, 1999, because even he prior to that in February of 1999 said that Inspector Biddlecombe's theory that given enough time these women would also reappear, he said that had some merit to it so "I had to do more analysis. When I did more analysis his theory did not hold up." So clearly by May 1999 it was clear that the most likely reason for the missing women was a serial killer. And the response, and I've written about that, was inadequate. And there was, you know, the issues that you have raised, but what I was differentiating or describing as what would the response of the VPD have been to the known murder of a sex trade worker, and I think the record speaks for itself that the response is excellent.

THE COMMISSIONER: All right. Thank you.

MR. HERN:

Q. Just following up on that answer, deputy chief, is it right to differentiate between the three things of reporting issues in terms of a missing persons report coming in the door and whether that's taken, and taken properly and so on, and then the linkage issues as to whether absences of missing persons is linked to being a homicide as a separate link, and then third, response issues where it is identified there's a homicide, what steps are taken and are those appropriate. Is that a fair way to differentiate?

A. Yes.

Q. All right. And so in your Chapter 3 when you discussed the bias issue and when you asked yourself about whether bias was at the root of the shortcomings of the missing women's investigation, is it right then that one of the ways you went about that was to look at the response issue and examine the quality of the response when a murder was known of a sex trade worker?

A. Right. And what I said was when a murder was known of a sex trade worker the response was excellent. The problem in the missing women case is that there were people that found it very,

very difficult to make that conceptual leap that the evidence that they were the victims of a serial killer was the absence of the women without a plausible explanation. There were other issues that, Mr. Commissioner, that you raised about unprofessional conduct and taking missing persons reports and that sort of thing, but that wasn't the root of the problem. The problem was that there were people in roles of responsibility who did not understand how important the evidence of the absence of the women was.

[lengthy interjection from Mr. Roberts]

Q. Now, just to follow up on where we're at, I'm having trouble remembering, I think we had just spoken about the three separate issues of reporting, linkage and then the strength of the homicide investigations of sex trade workers where the homicide is known.

A. Right.

Q. All right. So am I right then, is it fair to suggest that when you approached the bias issue what you were doing was analyzing that third component of the quality of the homicide investigations of a known homicide?

A. Yes.

Q. And from that did you extrapolate that if there wasn't evidence of a systemic bias there it probably wasn't evident -- it probably wasn't a systemic issue with respect to the linkage and reporting problems that you identified?

A. Yes.

Q. All right. And the key issue on linkage in your view in your report was that it wasn't understood that what Rossmo, [Detective Inspector] Rossmo, was writing about in terms of statistical numbers was in fact -- should in fact be taken as evidence and not just as opinion or statistics?

A. Yes, it should have had more force than was given it.

Q. All right. And so as opposed to there being -- as opposed to you finding systemic bias against sex trade workers or marginalized people you found that there were other problems with the inability to make the link that these disappearances were most likely homicide?

A. Correct.

231. DCC LePard's view of the efforts that were put into homicides and other investigations of serious crime against sex workers was corroborated by the first-

hand knowledge of homicide investigators Sgt. Field, Det. Chernoff and Det. Lepine.¹⁵¹

232. Det./Cst. Shenher, even when writing in her most bitter, difficult period following the arrest of Pickton, did not associate systemic bias, sexism or racism as the cause of the problems in the investigation. The issue was put to her many times in cross examination, and while she was critical of the rigidities of the chain of command and the management in the late 1990s, she was clear that to the extent that sexism, racism and bias existed in the VPD, it was no more or less present than in society generally and all other institutions in society.¹⁵² She was clearly speaking in the most general terms and on every occasion where specifics were requested or suggested to her, Det./Cst. Shenher clarified that they were isolated incidents, not indicative of a broader or systemic problem.
233. Former S./Sgt. McKay-Dunn suggested that there were some people in the VPD who treated sex workers as second class citizens, but the remarks have to be read in the context of what he was endeavouring to express.¹⁵³

I do believe there were elements within the organization at the time that considered the missing women, those individuals involved into the sex trade to be what Nietzsche referred to as the Ubermensch or the second level, second-tier individuals. That did not have an impact in terms of the police response to the issues, but if we're going to invest significant resources, that may have been an issue. I'm not suggesting it was. I wasn't in the room when the decisions were made, but I can only tell the commission this, and I said the same thing to Deputy Chief Evans: I heard over and over again, "Oh, they're just prostitutes and they're probably travelling or doing something else and they're transients..."

¹⁵¹ Transcript, April 25, 2012, p. 209, l. 23 – p. 214 l. 4 (G. Powell, F. Biddlecombe, D. Dureau, in cross by S. Hern); May 11, 2012, p. 187, l. 14 – p. 188, l. 14, p. 190, l. 3 – p. 191, l. 7 (R.H. Lepine and M. Chernoff, in cross by S. Hern).

¹⁵² Transcript, February 1, 2012, pp. 43-44, 89, 91 (L. Shenher, in cross by C. Ward).

¹⁵³ Transcript, March 6, 2012, p. 114 (C. Beach, D. Dickson, G. Greer and D. McKay-Dunn, in chief by K. Brooks).

234. It may be seen from this comment that Mr. McKay-Dunn was referring not to systemic bias, but to the erroneous belief on the part of some officers that the women were transient and would therefore be found.
235. All of the other VPD witnesses, women and men alike, rejected the allegations that there was systemic or pervasive sexism or racism in the VPD or bias against sex workers. These included: Sgt. Field, Communications Operators Bonnie Thiele and Dawna Marshall-Cope, Cst. Tamara Hammel, Det. Lepine, Det. Constable Chernoff, Insp. Biddlecombe, DCC McGuinness,¹⁵⁴ DCC Unger,¹⁵⁵ Det./Insp. Rossmo,¹⁵⁶ Sgt. Ted Yeomans, and Sgt. Ron Joyce.
236. Finally, as DCC LePard explained on May 18, 2012 in response to a number of isolated allegations relating to this issue:
- a. the first female officer sworn into the VPD was in 1912;
 - b. the first female VPD inspector was appointed in 1974, the same year that the RCMP first allowed women to join that force.
 - c. there were no men-only dinner events held by VPD management; and
 - d. during the relevant time period there were women officers present at the inspector level and there was a woman on the executive: Deputy Chief Carolyn Daley.

The use of the word “hooker”

237. During the inquiry proceedings, it was suggested that the use of the word “hooker” in police documents during the terms of reference period was indicative of bias against sex workers. This suggestion was made by Mr. Gratl to DCC LePard, who responded that the use of the word “hooker” was quite common in the late 1990s, but that language evolves and now the term is often considered

¹⁵⁴ Transcript, April 27, 2011, pp. 132-135 (DCC McGuinness and DCC Unger, in cross by S. Hern).

¹⁵⁵ Transcript, April 27, 2011, pp. 134-135 (DCC McGuinness and DCC Unger, in cross by S. Hern).

¹⁵⁶ Transcript, January 25, 2012, p. 174 (K. Rossmo, in cross by T. Dickson).

pejorative. He testified that, given that evolution in the shadings of its meaning, the use of the word had to be considered in its full context, understanding the attitude of the person using the word and the context of the communication. As a result, the mere use of the word hooker could not be used to draw an inference of bias against sex workers.

238. Sergeant Field's use of the word in her reports was put to her, and she explained that she did not mean offence or derision in using the word:¹⁵⁷

Q The word "hooker" is a word that you used in some of your reports and notes?

A Yes.

Q Did you intend the use of that word to be derogatory of sex trade workers?

A No, I didn't, and I don't ever mean to demean them by calling them any kind of name. Unfortunately we all get tagged with names. We get called cops. I think there's a different level -- cops is sort of equivalent to hooker, whereas if you want to go down to another level we get called pigs, we don't like that, and prostitutes don't like to be called whores. I think hooker was a generic, same level comment. I realize now it's not professional and shouldn't be used.

Q Reflecting back from now is it your view that that word has then evolved in the sense that it was more acceptable then and is not acceptable now?

A Yes.

Q But when you used it you weren't intending to be derogatory?

A No, I wasn't.

239. The fact that the word "hooker" was in common use at the time is demonstrated in Exhibit 48, which is a collection of media articles and media headlines showing

¹⁵⁷ Transcript, April 25, 2012, pp. 214-215 (G. Powell, F. Biddlecombe, D. Dureau, in cross by S. Hern).

the hundreds and hundreds of newspaper headlines in which the word “hooker” was used.

K. THE ROLE OF THE VANCOUVER POLICE BOARD

240. The Police Board panel testified on May 16, 2012. The panel consisted of Mayor Owen, who was mayor throughout the terms of reference period; Kinder Mottus, who was on the Board from 1995 until June of 2000; and Elizabeth Watson, who was on the Board from 1992 until 1998, and who is an expert in corporate governance.
241. In British Columbia, municipal police departments are governed, in part, by police boards. Under the *Police Act*,¹⁵⁸ the police board must establish a police department, which, under the direction of the police board, is mandated under section 26 of the *Act* to do the following:
- (a) enforce, in the municipality, municipal bylaws, the criminal law and the laws of British Columbia,
 - (b) generally maintain law and order in the municipality, and
 - (c) prevent crime.
242. During the terms of reference period, the issue of the missing women was brought before the Board. Relatives of the missing women – particularly Sarah DeVries’ sister, Maggie – and other concerned citizens wrote to Mayor Owen and Ujjal Dosanjh and urged them to approve a reward for the investigation, and to initiate a task force. The issue was put on the Board’s agenda for its meeting on April 28, 1999.
243. In advance of the meeting, the VPD provided the Board with an April 22, 1999 memorandum¹⁵⁹ from Sgt. Field outlining the state of the investigation. The memorandum included considerable detail on the background to the investigation, on current investigative practices, and on planned investigative steps. Among other things, the report stated:

¹⁵⁸ RSBC 1996, c. 367 (as the Act existed in July 1998).

¹⁵⁹ Exhibit 194NR (Vancouver Police Board Panel – Document Brief (Commission)), Tab 7.

These cases are not being investigated any less strenuously because they involve women, nor are they taken less seriously because they are poor. The fact that they lack address books, known schedules, reliable routines and homes for us to search for clues makes this more difficult. It does not mean we value them less or consider them throwaways. Everything possible that can be done is being done in spite of the lack of information and evidence available to us.

244. The memorandum also addressed the issue of a reward. As outlined in DCC LePard's report,¹⁶⁰ the VPD's position was that a reward would be unhelpful, as there was not enough information to "hold back" and use to verify tips; without that screen for verifying tips, police resources would be wasted in chasing down the large number of bogus tips a large reward would generate. Ultimately, the Board met on April 28, 1999 and approved a reward of \$100,000 (with the City contributing \$30,000 and the Province \$70,000), against the Department's recommendation.

Should the Board Have More Actively Overseen the Investigation?

245. An issue that has been raised in this Inquiry is whether the Police Board should have done more to oversee the missing women investigation. It is unclear exactly what action is proposed in this regard, but the tenor of the suggestions is that the Board should have insisted that the VPD allocate more resources to the missing women investigation, or should have persuaded the VPD that a serial killer was the likely explanation for their disappearances.
246. Neither of these would have been appropriate. As the 1999 Police Board Handbook¹⁶¹ makes clear, the role of the Board is to set policy, while letting the municipal police department manage its day-to-day operations, including

¹⁶⁰ Exhibit 1 (LePard Report), at pp. 93-94 and 282-284.

¹⁶¹ "BC Police Board Reference Document on Responsibilities under the Police Act" (Ministry of the Attorney General, May 1999) (hereinafter, the "Handbook"). The Handbook is part of Exhibit 194NR.

investigations. The Handbook states very plainly that the Board is not to interfere with operational decisions.¹⁶²

Day-to-day professional operational decisions are matters for the department itself. The authority of the individual constable to investigate crime, to arrest suspects and lay information before the justice of the peace comes from the common law, Criminal Code and other statutory authority and must not be interfered with by any political or administrative body.

247. In contrast with the authority of the department to investigate crime, the Board's mandate is to set policy. Those policies are necessarily at a high level. The Handbook advised police board members as follows:¹⁶³

The board needs to spend their limited time and energy on their most important policy functions. These functions include:

Establishing the mission of the police department;

Outlining results, policies and values to which the board wants the department to adhere;

Developing the annual departmental priorities, goals and objectives in consultation with the Chief Constable;

Establishing board practices; and

Clarifying board/staff relationships.

248. As Ms. Watson – the expert on corporate governance – testified,¹⁶⁴ “policing is a complex governance process” that is “not like a widget company where you’ve got a board that is in control and can, if it wants to, guide every action that happens.” Rather, police accountability occurs through a number of mechanisms, which include police boards, but also include other bodies like the Director of Police Services. She stressed that the purpose of the Board is to set “high-level direction around goals and priorities within the policing area.” Its mandate does not include specific criminal investigations, as Ms. Watson stated:

¹⁶² Handbook, p. 35.

¹⁶³ Handbook, p. 34.

¹⁶⁴ Transcript, May 16, 2012, p. 8, l. 6 – p. 9, 24 (P. Owen, K. Mottus and E. Watson, in chief by K. Brooks).

... while the police board sets general objectives and priorities and policies that might guide the operation or the administration of the department, it does not get involved at all and it would be wrong – I think anyone would say it was wrong to get involved in specific investigations. So we don't tell the police, you know, how to do surveillance or if they've got enough people on the case or not. The police board members wouldn't even be qualified to do that, certainly under the custom and culture of how we appoint police board members in this jurisdiction and in most jurisdictions across the country.

249. What Ms. Watson was referring to at the end of this quotation is that Board members are civilian volunteers who, by custom, have no policing experience. The Board meets once a month for three hours or so, in addition to some time spent by Board members on committee work. During the terms of reference time period, the Board had the use of an Executive Assistant for only about 40% of her time.¹⁶⁵ In contrast, the Department had over 1,000 sworn members, plus civilian staff.¹⁶⁶
250. These practical realities underscore the larger point that the Board has no jurisdiction to direct the operations of the Department. As Ms. Watson stated in one of the quotations cited above, that impermissible zone very much includes particular criminal investigations. The Board may ask questions about an investigation if it becomes aware of community concerns about the investigation, as it did in this case. But even there, the Board has little authority to probe the Department about a particular investigation, and its questions will necessarily remain at a high level, as revealed in the following exchange between the Commission and Ms. Watson:¹⁶⁷

THE COMMISSIONER: Could you not as a governing body go to the police chief and say, "We've been receiving many complaints

¹⁶⁵ Transcript, May 16, 2012, p. 59, l.11 – p. 64, l. 6 (P. Owen, K. Mottus and E. Watson in cross by T. Dickson).

¹⁶⁶ Exhibit 1 (LePard Report), p. 226.

¹⁶⁷ Transcript, May 16, 2012, p. 69, l. 8 – p. 70, l. 1 (P. Owen, K. Mottus and E. Watson in cross by T. Dickson); emphasis added.

about poor women who are missing. What are you, the police, doing about it?" You could surely say that?

MS. WATSON: I think you could say that.

THE COMMISSIONER: "And tell us what you're doing." I recognize that it's a fundamental principle –

MS. WATSON: At a high level I think you could do that.

THE COMMISSIONER: -- of policing that you cannot interfere with an investigation or cause an investigation to take place, but -- but these are community priorities. You're the voice of the public.

MS. WATSON: I think you can ask at a high level. If they tell you, you know, they've got 55 officers working on it full time and they've -- you know, whatever else it is they tell you at a high level. I don't think you're going a level below that.

THE COMMISSIONER: Okay.

251. The Board witnesses made clear – and it is consistent with the *Police Act* and the 1999 Handbook – that the Board cannot direct the investigative operations of the Department. It cannot direct the Department to take certain steps, such as assigning more officers to an investigation.¹⁶⁸ That applies as well to the Board's jurisdiction over service and policy complaints. Ms. Watson agreed that "[t]he board could ask the chief in response to one of those complaints to provide a report and it could ask more questions, but the board can't order the department to take a particular operational step".¹⁶⁹ That means that the Board cannot direct that the Department assign more members to an investigation, and it cannot direct that the Department create a task force. Those decisions are for the Department alone.¹⁷⁰
252. Ultimately, the Board's real control over the Department lies in hiring and sometimes firing the Chief, which it did in respect of Chief Chambers,

¹⁶⁸ Transcript, May 16, 2012, p. 71, ll. 4-15 (P. Owen, K. Mottus and E. Watson in cross by T. Dickson).

¹⁶⁹ Transcript, May 16, 2012, p. 71, ll. 16-23 (P. Owen, K. Mottus and E. Watson in cross by T. Dickson).

¹⁷⁰ Transcript, May 16, 2012, p. 75, l. 20 – p. 77, l. 20 (P. Owen, K. Mottus and E. Watson in cross by T. Dickson).

approximately two months after the April 28, 1999 meeting on which the Board approved the reward in the missing women investigation.¹⁷¹

253. Commission Counsel raised the suggestion that the Board could have treated as service and policy complaints the letters sent by community members to the Board advocating for a reward, and that doing so might have allowed the Board to inquire more closely into the conduct of the missing women investigations. None of those letters did amount to a complaint under the *Police Act*, but in any event, the Board did scrutinize the Department's operations as far as its mandate would allow. Indeed, the panel members testified that Sgt. Field's memorandum to the Board provided unprecedented detail on an investigation, including a summary of the issue, recommendations, the Chief's comments, policy and purpose statements, the background to the investigation, current investigative strategies, the reward, planned strategies for the future, social implications, personnel implications and financial implications.¹⁷² None of the panel members had ever received another memorandum with as much detail on a particular investigation.¹⁷³ Ms. Mottus agreed (and none of the other panel members disagreed) that the memorandum was akin to the kind of detailed analysis that Commission Counsel suggested the Board could have ordered the Department to perform.¹⁷⁴ Regardless of the mechanism that was used, the fact is that the Board scrutinized the missing women investigation to the level appropriate to its mandate and jurisdiction.
254. There remains a final point to mention. Since 2002 – really, since the *Sarbanes Oxley* laws were brought in the United States and transformed corporate governance – the Vancouver Police Board has been changing. As Ms. Watson testified, boards of all stripes are now more assertive, and the Board is no

¹⁷¹ Transcript, May 16, 2012, p. 71, l. 24 – p. 72, l. 21 (P. Owen, K. Mottus and E. Watson in cross by T. Dickson).

¹⁷² See Exhibit 194NR (Vancouver Police Board Panel – Document Brief (Commission)), Tab 7.

¹⁷³ Transcript, May 16, 2012, p. 74, ll. 7-18 (P. Owen, K. Mottus and E. Watson in cross by T. Dickson).

¹⁷⁴ Transcript, May 16, 2012, p. 74, l. 19 – p. 75, l. 1 (P. Owen, K. Mottus and E. Watson in cross by T. Dickson).

exception.¹⁷⁵ It also has greater capacity, as it has a permanent, full-time Executive Director, who is assisted by a full-time Executive Assistant.

255. If the current Board were put in the same position as between 1997 and 2002, however, it is not clear that anything would have changed. The Board would likely ask more probing questions of the Department, and that is appropriate. Ultimately, however, as Ms. Watson testified, the Board has to either trust the people in the Department or fire the Chief. In 1999, the Department provided the Board with an unprecedented level of detail on a particular investigation, and assured the Board that it was taking the investigation seriously and was pursuing all appropriate avenues. While the Board can ask questions, ultimately it must respect the answers the Department provides, and that is what it did.

Conclusion

256. The role of the Board in the narrative of the missing women investigation is necessarily small, given its limited mandate. In 1999, the Board took the highly unusual step of going against the Department's recommendation and approving a reward. It did so having heard from the community, and having reviewed an in-depth memorandum from the Department on the investigation. There is little else the Board could have done, given the legal and policy framework and the practical realities underlying its role. The mandate of the Board is to set general policy; the conduct of specific investigations is entirely the province of the Department.

¹⁷⁵ See Transcript, May 16, 2012, p. 48, l. 20 – p. 52, l. 14 (P. Owen, K. Mottus and E. Watson in cross by T. Dickson).

L. HELLS ANGELS, COVER-UPS AND OTHER SUCH ALLEGATIONS

257. On numerous occasions during the proceedings, Mr. Ward made unsupported allegations that the VPD had engaged in “a cover-up”. The theory morphed throughout the proceedings, but generally it involved the notion that in order to prevent anyone from learning that the details of the Pickton investigation were well known to senior managers in the VPD, all documents which demonstrated their knowledge were destroyed by DCC LePard and others. The theory is so ridiculous it hardly deserves rebuttal, but three points will be made here.
258. First, the allegations of documents being destroyed are totally unsupported and unsubstantiated by any evidence. In fact, they have been denied in the strongest terms every time they have been put to a witness. Moreover, no witness has said that there was a document or record in existence discussing the Pickton investigation with VPD management that is not part of the records produced to the Inquiry. As a result, the theory is simply a baseless and reckless allegation made by counsel.
259. Second, notwithstanding the absence of any evidence to support the theory, Commission Counsel interviewed Ms. Sarra and Ms. Michaels, two female VPD constables who in 2002 and 2003 gathered up documents relating to the missing women investigation. The officers confirmed that they were never asked to dispose of documents and were never prevented from obtaining any documents that they asked for.
260. Third, in any event, the alleged conspiracy lacks any air of reality, even as merely a theory. Such a conspiracy would require the cooperation of managers under three chiefs (some of whom did not get along particularly well), as well as many other sworn and civilian staff, all of whom would have to be united, now for ten years, in the common goal of hiding the knowledge of certain VPD managers who have long since retired. The proposition is ludicrous.
261. As a result, these allegations of a “cover up” were flippant, unsupported by any evidence, and unprofessional.

262. What the LePard Report in fact represents is the kind of critical analysis which one would have thought would have been greeted with appreciation by counsel who advocate for increased transparency and accountability from police agencies. The VPD did not expect that participants would simply accept the LePard Report as the final word on the VPD investigations and it has always acknowledged that other perspectives on the subject were important; indeed, that was one reason why the VPD called for this inquiry. But that counsel in this Inquiry have advanced and fed the media with groundless conspiracy theories has been unhelpful to any common goal of building trust, communication and understanding between members of the public and the police.
263. The alleged conspiracy revolving around the suggested linkages between the Picktons and the Hells Angels has also morphed over time, in a total absence of evidence that the police investigations of Pickton were linked to police investigations of the Hells Angels.
264. It is unclear exactly what the theory being advanced is, but sometimes the suggestion appears to have been that police turned a blind eye to the killings because they wanted to continue the investigations. Such a suggestion, again with no evidentiary foundation whatsoever, is deeply offensive. At other times, there seem to be allegations that surveillance on the Hells Angels must have caught images of Pickton at Piggy's Palace with sex workers. The only relevance to that suggestion is to suggest that the Coquitlam RCMP ought to have obtained the surveillance video tape from any Piggy's Palace surveillance and reviewed it. It was not established that any such surveillance was done, nor is it clear how video surveillance would be accomplished given the location of the building and the property. In any event, it was not a step that the Coquitlam RCMP considered or took, so at best it simply shows another option that could have been, but was not, pursued between 2000 and 2002.

M. CLOSING REMARKS

265. The VPD and the VPB wish to thank the Commissioner, Commission Counsel, participants' counsel, and all of the witnesses and the families of the victims for their commitment to this Inquiry, and for their efforts in seeing a difficult process through to completion. The VPD and the VPB look forward to receiving the Commission's report and to learning from it and implementing further changes to improve policing in Vancouver and in the Lower Mainland more broadly. The VPD and the VPB truly are committed to learning from the mistakes of the past and to ensuring that they are never repeated.
266. The VPD has expressed many times its regret for its part in the failings of the missing women investigations. The VPD is deeply sorry that the police did not catch Pickton sooner and that its response to the missing women was inadequate. The VPD offers this promise to the families: that it will continue to learn from this tragedy; that it will not forget it; and that it will do everything possible to ensure it never happens again.
267. The VPD and the VPB sincerely hope that the Commission's report will provide answers for the families, the communities and the police forces involved, and that it will offer a real contribution to the process of healing and of rebuilding trust. The VPD seeks healing and reconciliation with the families and the community, and will continue to seek opportunities to do so.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:



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