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**VANCOUVER, B.C.**

**NOVEMBER 30, 2007**

**(PROCEEDINGS AT INQUIRY)**

THE REGISTRAR: Order. The hearing is now resumed.

THE COMMISSIONER: Mr. Cowper.

MR. COWPER: Yes, Mr. Commissioner. The next witness is Donna Lister, and I believe she wishes to be affirmed.

THE REGISTRAR: Good morning.

THE WITNESS: Good morning.

THE REGISTRAR: I need you to stand, please. I understand you wish to be affirmed.

THE WITNESS: Yes.

**DONNA LYNN LISTER, AFFIRMED:**

THE REGISTRAR: Would you state your full name, please?

THE WITNESS: Donna Lynn Lister.

THE REGISTRAR: Thank you. You maybe seated. Counsel.

**EXAMINATION BY MR. COWPER:**

Q Thank you. Ms. Lister, could you tell the commissioner what your current position is?

A I'm the regional manager for Liquor Control and Licensing Branch, Compliance and Enforcement Division of the Vancouver region.

Q And you're going to have to move that microphone in front of you if you're going to turn your head towards the commissioner. And in 1998, December

1 of 1998 what was your position?

2 A I was a coroner working in Vancouver.

3 Q Okay. Could you just give a thumbnail sketch of  
4 your background in policing and in forensics?

5 A I have -- I was with Vancouver City Police as a  
6 constable in the mid '70s. I've worked in welfare  
7 fraud with the Ministry of Social Services. I  
8 then completed a certificate program in forensics  
9 at BCIT and the Justice Institute, and then joined  
10 the coroner's service, and after the coroner's  
11 service joined the Liquor Control and Licensing  
12 Branch.

13 THE COMMISSIONER: I'm sorry, you joined what?

14 THE WITNESS: I'm sorry, sir, which?

15 THE COMMISSIONER: What did you say after the coroner?

16 THE WITNESS: After the coroner I joined the Liquor Control and  
17 Licensing Branch.

18 THE COMMISSIONER: Thank you.

19 MR. COWPER:

20 Q And am I correct in understanding that you have  
21 actually aboriginal ancestry yourself?

22 A Yes.

23 Q Now, if we can go to December of 1998, how did you  
24 respond as a coroner to notices of sudden deaths?

25 A I was on call that week, and during the week

1           you're on call you carry a pager and you're  
2           available 24 hours a day, and I received a page,  
3           called it in and was directed to the scene.

4           Q   Okay. Do you have any recollection of when you  
5           received the page?

6           A   It was very early morning. I believe it was  
7           between five and six in the morning.

8           Q   Okay. Now, I'm right in thinking that your notes  
9           of that morning are -- have gone missing. They're  
10          not in the file; is that right?

11          A   That's correct.

12          Q   And do you know what has become of them?

13          A   I have no idea.

14          Q   Okay. They're normally retained, I take it?

15          A   Yes.

16          Q   And you and I met yesterday morning.

17          A   Yes.

18   MR. COWPER: And you were kind enough to produce for me just to  
19               see the kind of form that would have been filled  
20               out a blank investigation worksheet.

21               Mr. Registrar, could you put that before the  
22               witness and a copy to the commissioner.

23   THE COMMISSIONER: Thank you.

24   THE WITNESS: Thank you.

25

1 MR. COWPER:

2 Q So I don't think I made copies for everybody,  
3 Ms. Lister, but I take it this is the form that  
4 would have been filled out at the time; is that  
5 right?

6 A Yes. It's the form that we used for each death  
7 that we attended.

8 Q Okay. And so it's a one-page form with room for  
9 information on the front and back?

10 A Yes.

11 MR. COWPER: Could I have that marked the next exhibit,  
12 Mr. Commissioner?

13 THE COMMISSIONER: Yes, you can. Exhibit number?

14 THE REGISTRAR: 52.

15 (EXHIBIT 52: Coroner's Investigation Worksheet -  
16 Blank)

17 MR. COWPER:

18 Q Was there any standard or policy relating to  
19 response times in December of 1998 in relation to  
20 sudden death calls?

21 A Just as quickly as we could get there.

22 Q Thank you. Do you recall when you arrived?

23 A Just from the notes that I saw in the file I  
24 arrived at about 6:30 in the morning.

25 Q Now, can you tell the commissioner what you recall

1 on your arrival at the scene?

2 A I remember -- it's been nine years, so forgive me,  
3 I'm a little foggy.

4 THE COMMISSIONER: Yes.

5 THE WITNESS: I just remember that it was really, really cold,  
6 that there were some police at the scene, the area  
7 where the body was laying was -- was taped off,  
8 and I was directed by the police to where the body  
9 was, and I went up and examined him.

10 MR. COWPER:

11 Q Okay. And what -- did you recognize the  
12 individual?

13 A Did I recognize him from any other time?

14 Q Right.

15 A No.

16 Q Okay. And you hadn't had any previous involvement  
17 with Frank Paul at all?

18 A No, not that I recall.

19 Q And what do you recall with respect to the  
20 condition of the body?

21 A That he was cold, that his clothing was wet, that  
22 his clothes were a bit -- they were askew, and  
23 that his shoes were apart from his body.

24 Q And what was the orientation of his body within  
25 the area his body was found; can you recall that?

1 A To be honest I recall him laying on the ground.

2 It wasn't until I looked at the photographs that I  
3 remember that he was on his back.

4 Q Okay. And which photographs are you referring to?

5 A They were shown to me. Those two photographs --  
6 well, there's two photographs in there that I  
7 took, but I saw a series of photographs I believe  
8 were taken by the police.

9 Q Okay. Now, I take it that -- I'm going to take  
10 you to the police photos, and it may be that  
11 people want these photographs marked, but there  
12 were three Polaroid photographs in your file; is  
13 that right?

14 A Yes.

15 Q And those were taken by you in the normal course?

16 A Two were taken by me. One of them was not taken  
17 by me. I believe the one --

18 Q I'm sorry, there's one at the autopsy?

19 A That's right.

20 MR. COWPER: Now, Mr. Commissioner, I'll show these to counsel,  
21 but I don't think they are either helpful or  
22 particularly useful for us to mark, and so counsel  
23 can look at them in the morning.

24 Q But if we could turn to Exhibit 17, Ms. Lister.  
25 And if you don't -- let us know if you have a

1                   recollection of this. You don't have any notes to  
2                   refresh your memory; correct?

3                   A    No, I don't.

4                   Q    Okay. And if you could turn -- open that body of  
5                   photographs there should be a photograph marked  
6                   A16. Can you find that in the collection?

7                   A    Yes.

8                   Q    Does that photograph show the alleyway where the  
9                   body was found?

10                  A    Yes.

11                  Q    Okay. And if you could go to the photographs  
12                  which include B5 through B8.

13                  A    Yes.

14                  Q    Does that show the orientation of the body as best  
15                  you can recall?

16                  A    Yes.

17                  Q    Can you recall whether the body was covered when  
18                  you arrived?

19                  A    No, I don't.

20                  Q    Okay. In your normal practice if the body was  
21                  covered by someone else would you have uncovered  
22                  the body in reviewing it?

23                  A    Yes.

24                  Q    Now, what else do you recall of the condition of  
25                  the body and the scene when you arrived, is there

1 anything else you recall? You've described his  
2 clothes being askew and the shoes being apart from  
3 the body. Other than that with respect to the  
4 condition of the body or the scene is there  
5 anything else you recall?

6 A There was nothing that stood out in my mind about  
7 -- about him that would make me -- I don't know  
8 what the word is, 'cause I didn't think that there  
9 was anything unusual about him.

10 Q Now, what was your role on that morning in  
11 relation to Mr. Paul's body?

12 A Basically to attend and confirm that the gentleman  
13 was deceased, and to examine him and then have him  
14 removed to the morgue for autopsy.

15 Q And in relation to investigation into the  
16 circumstances of his death, what role, if any, did  
17 you play in relation to the investigation of  
18 Mr. Paul's death?

19 A I'm sorry, can you --

20 Q In relation to investigating the circumstances of  
21 his death, what role did you play in that?

22 A I was directed by my regional manager to look into  
23 his manner of death and basically his condition at  
24 death, and a lot of it dealt with police doing  
25 their investigation and working with them in

1                   determining how this gentleman came to be there  
2                   and how he came to die there.

3                   Q   Okay.  Now, what then happens after you attend at  
4                   the scene, do you give directions with respect to  
5                   the body?

6                   A   Other than its removal?

7                   Q   Yes.

8                   A   No.

9                   Q   Okay.  So you direct it to be removed?

10                  A   Yes.

11                  Q   And then it's removed for autopsy?

12                  A   Yes.

13                  Q   Okay.  And is the autopsy formed under the  
14                  supervision of the coroner's office or on behalf  
15                  of the coroner's office?

16                  A   The coroner is never present during autopsy.

17                  Q   Okay.  So you didn't attend at the autopsy?

18                  A   No.  The coroner is just there to be the eyes for  
19                  the pathologist at the scene, and the pathologist  
20                  takes over from the point that the body arrives at  
21                  the morgue.

22                  Q   Okay.  Now, with respect to your attendance at the  
23                  scene, was there any other document prepared by  
24                  you other than the investigation worksheet which  
25                  is no longer in the file?

1 A No.

2 Q Okay. Now, when we met yesterday and we were  
3 reviewing what other involvement you might have  
4 had in the file we looked at Ms. Robinson's  
5 preliminary investigation report. Do you recall  
6 that?

7 A Yes.

8 MR. COWPER: Mr. Registrar, could I have that document before  
9 the witness?

10 THE COMMISSIONER: Thank you.

11 MR. COWPER:

12 Q Now, I'm showing you a two-page document, and in  
13 the normal course would these be attached to one  
14 another or are they separate documents?

15 A They're separate documents.

16 Q Okay. And they were attached when we looked at  
17 them yesterday in the file for some reason; is  
18 that right?

19 A Yes.

20 Q Okay. So we've kept them together stapled in  
21 that, although the order is unclear. The reason  
22 for showing you this is I take it she signed this.  
23 What do you have to say about the narrative  
24 concerning the circumstances of death on that  
25 page?

1 A I believe that -- that this is directly from or  
2 closely from my -- my worksheet.

3 Q Okay.

4 A It looks very similar. It basically explains what  
5 I had been told and information for the  
6 pathologist.

7 Q Okay. Now, in relation to that narrative, that  
8 narrative talks about the fact that the subject  
9 was picked up by the Vancouver Police Department  
10 the previous evening and transported to jail for  
11 intoxication. Do you see that?

12 A Yes.

13 Q Do you have any independent recollection of how  
14 that information was gathered by you?

15 A No. It would only be supposition on my part, and  
16 that would be that I spoke to police about it.  
17 That would be the only way that I would come by  
18 this information.

19 Q Okay. But you don't recall independently of this  
20 document, or your notes which aren't available,  
21 who you spoke to, when you spoke to them?

22 A No, sorry, I don't.

23 Q You don't have any notes of those conversations?

24 A No.

25 MR. COWPER: May I have that marked the next exhibit, please.

1 THE COMMISSIONER: Exhibit number?

2 THE REGISTRAR: 53.

3 (EXHIBIT 53: Coroner's Primary Investigation  
4 Report)

5 MR. COWPER:

6 Q Just a couple of other questions. Do you recall  
7 at the scene having your investigation as part of  
8 the coroner's office informed in any way by any  
9 direction from the police? Did they tell you what  
10 they were concerned about looking into or any  
11 other circumstance which you ought to be aware of  
12 when you reviewed the body and the scene; do you  
13 recall any of that?

14 A No, I don't.

15 Q Okay. You said earlier from the notes that you'd  
16 reviewed that you saw that you arrived at 6:30.  
17 What notes were those?

18 A They were from the police report.

19 Q Okay. And independently of those notes you don't  
20 have a recollection of the time you arrived?

21 A No. I just remember that it was early in the  
22 morning and that it was really cold. Those are  
23 the things that struck me was that it was really  
24 cold.

25 Q Was it daylight?

1 A Daylight was just -- it had just broken.

2 Q Okay. Now, in relation to gathering evidence of  
3 the scene, and I'm going to include this broadly,  
4 did you take control or possession of anything at  
5 the scene, any of his clothing, any of the items  
6 found around the body?

7 A No.

8 Q Okay. Whose responsibility would that be?

9 A The police.

10 MR. COWPER: Okay. Those are my questions, Mr. Commissioner.

11 THE COMMISSIONER: Thank you. Mr. MacKenzie?

12 MR. MACKENZIE: Thank you, Mr. Commissioner.

13 **EXAMINATION BY MR. MACKENZIE:**

14 Q Ms. Lister, do you have a -- Mr. Registrar, if you  
15 could hand the witness this photograph.

16 A Thank you.

17 Q When Mr. Cowper, myself and you were together the  
18 other day when we went through the file, this  
19 photograph was there in the file; is that correct?

20 A Yes.

21 Q And that's a photograph that you believed to be  
22 Mr. Frank Paul; is that correct?

23 A Yes.

24 MR. MACKENZIE: I wonder if that could be marked as the next  
25 exhibit.

1 THE COMMISSIONER: Yes.

2 THE REGISTRAR: 54.

3 THE COMMISSIONER: 54. Thank you.

4 (EXHIBIT 54: Photograph of Frank Paul)

5 MR. MACKENZIE:

6 Q Now, Mr. Cowper was asking you questions around  
7 two exhibits, 52 and 53. Do you have those two  
8 documents still with you, Ms. Lister? Yes, that's  
9 the worksheet and the preliminary investigation  
10 report. Is it your belief that the information  
11 that would have been on your worksheet has in fact  
12 largely been transferred, likely by Ms. Robinson,  
13 to the preliminary investigation report, that is  
14 Exhibit 53?

15 A I believe so.

16 Q Now, I understand that when you were -- that your  
17 experience at the time was considerable in that  
18 when you were with the Vancouver Police Department  
19 for, I understand, five years; is that correct?

20 A Yes.

21 Q You, in fact, worked what's referred to as car two  
22 thirteen which at the time was known as the sudden  
23 death car?

24 A Yes. I worked in the Downtown Eastside.

25 Q In fact, even before you were a coroner you

1 attended many deaths in the Downtown Eastside?

2 A Yes.

3 Q And, in fact, in that area you attended perhaps  
4 hundreds of deaths over the years; is that  
5 correct?

6 A Certainly lots.

7 Q All right. And your evidence was then that this  
8 appeared to be similar to other perhaps homeless  
9 individuals that you'd found in alleyways or  
10 dumpsters or other places around the Downtown  
11 Eastside; is that correct?

12 A Yes, I didn't find it unusual in that manner.

13 Q And was it raining when you attended?

14 A I don't believe so.

15 Q Now, when you came up to the body you made a  
16 decision that he was deceased; correct?

17 A Yes.

18 Q And were some of the things that you identified  
19 there that -- that you said that he was cold.  
20 What about his eyes, could you describe anything  
21 about his eyes?

22 A Well, they were partially open and clouded over,  
23 which is an obvious indicator of death.

24 Q And was there anything about the skin, the hue of  
25 the skin that you observed?

1           A    Well, in my observation of many deceased people  
2                    they take on a -- it's a yellowish cast as the  
3                    blood leaves their face, and that's another  
4                    indicator to me, aside from the fact of course he  
5                    wasn't breathing or moving.

6           Q    Now, in fact while you made the initial  
7                    attendance, in fact the investigation was taken  
8                    over by Ms. Robinson; is that correct?

9           A    Yes.

10          Q    And that was shortly after your attendance; is  
11                   that correct?

12          A    It was some time after. I can't give you -- give  
13                   you an exact date, but her being senior, and there  
14                   was a lot to this investigation, she -- she took  
15                   it over.

16   MR. MACKENZIE:  Nothing further, Mr. Commissioner.

17   THE COMMISSIONER:  Thank you.  Mr. Hern?

18   MR. HERN:  No questions.

19   THE COMMISSIONER:  Mr. Crossin?

20   MR. CROSSIN:  No questions.

21   THE COMMISSIONER:  Mr. Woodall?

22   MR. WOODALL:  No.

23   THE COMMISSIONER:  Mr. Kelliher, do you have any questions?

24   MR. KELLIHER:  Mr. Commissioner, I may or may not have any  
25                   questions, and I'm asking if there's no objection

1 from any of the counsel or yourself that Mr. Ward  
2 precede me, and I think that might save some  
3 duplication if that were to occur.

4 THE COMMISSIONER: All right. Thank you. Mr. Ward.

5 MR. WARD: Thank you.

6 **EXAMINATION BY MR. WARD:**

7 Q Ms. Lister, my name is Cameron Ward, I'm counsel  
8 for the United Native Nations Society at this  
9 proceeding. And I have some questions for you  
10 first about your background, as well as the  
11 structure of the office of the coroner in 1998.  
12 First of all, I gather from the testimony you were  
13 with the Vancouver Police Department yourself for  
14 some five years; right?

15 A Yes.

16 Q When?

17 A In the '70s.

18 Q From when to when?

19 A Oh, gosh. '74, I believe it was June '74, to '79.

20 Q All right. And when were you with the B.C.  
21 Coroner's Service, what years?

22 A Oh, gosh. I believe it was '96 to '99. I'm just  
23 a little fuzzy, but somewhere in around that space  
24 of time.

25 Q All right. About three years?

1 A Yes.

2 Q Okay. And what academic background did you have?  
3 In other words, what level of education.

4 A Well, I had high school, and then I had some  
5 college, but then I went to BCIT to get my  
6 forensic certificate.

7 Q And with respect to the office, you worked in the  
8 Vancouver or Lower Mainland branch?

9 A Yes.

10 Q In what is now called the Vancouver Metro Regional  
11 Coroner's Office?

12 A Yes.

13 Q Is that what it was called in 1998 as well?

14 A I don't think so.

15 Q And how many coroners like yourself were employed  
16 in the Vancouver office in 1998?

17 A Five, I believe.

18 Q And who were the others?

19 A Stephen Fonseca. Oh, this is terrible. I feel  
20 very old just trying to remember all these names.

21 Q Janine Robinson?

22 A Janine was the supervisor. Cheryl Yeager was the  
23 deputy. Denver Snyder. There's two other women,  
24 and I'm sorry, but I simply can't remember their  
25 names.

1 Q All right. And did the other coroners, like  
2 yourself, all report to Ms. Robinson?

3 A Yes.

4 Q And she herself was a coroner as well?

5 A Yes.

6 Q And who did she report to; do you know?

7 A I believe she reported to Larry Campbell.

8 Q All right. And Mr. Campbell was the chief --

9 MR. MACKENZIE: Mr. Commissioner, I wonder if we're not getting  
10 into phase 2 here.

11 THE COMMISSIONER: It sounds like it.

12 MR. MACKENZIE: I'll have -- other witnesses will be called who  
13 are more qualified to answer the --

14 THE COMMISSIONER: Well, I'll ask Mr. Ward if he's going to  
15 pursue this question of the structure of the  
16 office and what bearing it has on this first  
17 phase. Mr. Ward?

18 MR. WARD: Well, it certainly has a bearing on the second  
19 phase, and my questions are not going to be very  
20 long on this area, but just to set the foundation,  
21 if you will, for what follows. If it's  
22 objectionable, of course I won't ask these  
23 questions.

24 THE COMMISSIONER: It's not that it's objectionable, it's just  
25 that we're taking time to do something that we are

1 going to be doing again in phase 2, I suspect.  
2 And if you're going to continue into the structure  
3 of the office I'd like to know what that bears  
4 upon this witness's evidence on phase 1 and what  
5 she did with respect to the death of Frank Paul.

6 MR. WARD: Thank you, Mr. Commissioner.

7 Q Ms. Lister, the coroner's office in Vancouver as  
8 of 1998 would investigate hundreds of sudden  
9 deaths in a year?

10 A Absolutely.

11 Q And virtually without exception when the coroners  
12 would go to the scene of those sudden deaths the  
13 Vancouver Police would be there as well?

14 A Yes.

15 Q And you would work together with the Vancouver  
16 Police on any investigation of a sudden death  
17 within the City of Vancouver?

18 A I don't know how much together. And I can give  
19 you an example of police attending a scene of a  
20 suicide. They'd call the coroner to come in, the  
21 coroner would then take over the investigation of  
22 that -- of that particular death. So initially,  
23 yes, because the police are always called to the  
24 scene of a death first, and then subsequently  
25 contact the coroner to attend that scene, but

1                   depending on the type of death, then the coroner  
2                   would take over the investigation.

3                   Q    Right.  And you've referred to suicide cases.  
4                   There were in 1998 five classes of death --

5                   A    Yes.

6                   Q    -- that the coroner's office would use; right?

7                   A    Yes.

8                   Q    And those were natural, accidental, suicide,  
9                   homicide or undetermined?

10                  A    Yes.

11                  Q    And on the homicide cases, is it fair to say that  
12                  you would work with the Vancouver Police  
13                  investigating officers in terms of completing the  
14                  investigation into what had happened?

15                  A    Yes.

16                  Q    And homicide, perhaps you can advise what the  
17                  coroner's definition of a homicide is and was in  
18                  1998?

19                  A    I would like to, and there is actual wording, and  
20                  I can't remember it.

21                  Q    All right.  I'll ask you if this accords with your  
22                  recollection.  Death caused by the act of another  
23                  human being, a neutral term that does not imply  
24                  fault or blame?

25                  A    Yes.

1 Q All right. Now, before testifying today did you  
2 go to some file in the coroner's service to  
3 refresh your recollection about the Frank Paul  
4 case?

5 A Yes.

6 Q And what was in that file?

7 A There was the police report, there were  
8 photographs, there was the preliminary  
9 investigation report. The file that the gentleman  
10 behind you showed me that he has all those papers.

11 MR. WARD: May I see that, Mr. Commissioner?

12 MR. MACKENZIE: Yes, Mr. Commissioner. In fact, the witness  
13 and Mr. Cowper and I met with the file, went  
14 through it, and Mr. Cowper -- actually the  
15 commission counsel was supplied with an entire  
16 copy of the file some quite considerable time ago,  
17 so the entire file is in the possession of  
18 commission counsel, and I understood it would be  
19 part of the disclosure perhaps for phase 2. So  
20 your counsel have had the file for quite some  
21 considerable time.

22 THE COMMISSIONER: Thank you, very much.

23 MR. COWPER: Yeah, I -- Mr. Martland looked at the file, I  
24 looked at the file briefly yesterday. We  
25 extracted, and we of course were looking for any

1 documents relating to phase 1. And as indicated  
2 in the evidence so far the one document that  
3 Ms. Lister prepared is not in the file. And we  
4 looked to try to find it, and we may look further.  
5 I produced the document which is now Exhibit 53,  
6 because although it really looks like a phase 2  
7 document which is how it was originally  
8 characterized, based on our interview yesterday it  
9 looks like parts of it may have come from the  
10 document she prepared so I thought it was  
11 important to mark that this morning. All of the  
12 file will be made available to counsel in the  
13 normal course for phase 2 disclosure. Most of  
14 that has not been disclosed, but we didn't think  
15 it was necessary to do so. I don't have any  
16 objection to Mr. Ward reviewing it, I just don't  
17 believe any other parts of it will assist with  
18 this witness.

19 THE COMMISSIONER: Thank you. Perhaps you could let Mr. Ward  
20 have a look at it after. You heard the  
21 explanation from Mr. Cowper, Mr. Ward.

22 MR. WARD: I did. I would like to at least have a look at this  
23 undisclosed file before I finish my questions of  
24 this witness to satisfy myself that anything she  
25 reviewed prior to giving her testimony here today,

1           that I've had the opportunity to question her on  
2           it. This is her only appearance here. As I  
3           understand it she won't be coming back in phase 2,  
4           unless I'm missing something. So I would seek  
5           that opportunity. And in the ordinary course in  
6           legal proceedings the file, any privilege that may  
7           or may not have attached to a file is lost when  
8           the witness takes the stand, and I would simply  
9           like to review what she reviewed before she gave  
10          her evidence.

11        THE COMMISSIONER: Well, we have -- the counsel for the  
12                           coroner's office and commission counsel have  
13                           indicated to you what was in the file. They have  
14                           told you the documents that had a bearing on phase  
15                           1 have been produced and the witness has reviewed  
16                           them. If you're not prepared to accept that, yes,  
17                           you may have a look at the file after, but I want  
18                           to proceed now with the evidence on phase 1,  
19                           please.

20        MR. WARD: Thank you. It's not that I'm not prepared to accept  
21                           what counsel are telling me. It is that on behalf  
22                           of my client I want to review the documents in the  
23                           file that the witness reviewed to refresh her  
24                           memory before she testified to satisfy myself and  
25                           my client that I have conducted a thorough

1 cross-examination. Simply that.

2 MR. COWPER: Maybe I can help. I'm just trying to be helpful,  
3 because the witness's evidence is pretty slight.  
4 I understand my friend's concern. He's going to  
5 get the entirety of the file. If we have to  
6 recall the witness with respect to something  
7 arising from the file, I don't have any difficulty  
8 with that if something arises. Nobody's perfect.  
9 If there's something we've overlooked and Mr. Ward  
10 sees something that has a material question he  
11 wants to examine of the witness that he's not able  
12 to do 'cause he hasn't reviewed the file, that's  
13 fair enough, and I'll facilitate that if he lets  
14 me know.

15 THE COMMISSIONER: Thank you.

16 MR. COWPER: I suggest we finish the witness and then if that  
17 arises we can deal with that later.

18 THE COMMISSIONER: I think that's adequate. I don't want to  
19 take any more time on it. You've heard what  
20 Mr. Cowper's had to say, Mr. Ward. You'll have an  
21 opportunity to review the file. If there's  
22 something that find you should explore further,  
23 you can advise Mr. Cowper of that and I'll ask the  
24 witness to be recalled.

25 MR. WARD: Yes. Thank you very much.

1 Q Now, something that was provided to me this  
2 morning are three -- they appear to be three  
3 Polaroid photographs, and I'll just hold those up  
4 from here. Are you familiar with these?

5 A The centre one I am not. I did not take it. The  
6 other two were taken by me at the scene. It  
7 appears that over the years they have gotten quite  
8 dark, but I did take those.

9 MR. WARD: I would ask just for completeness, and because they  
10 may become relevant, that the photographs taken by  
11 this witness also be entered as exhibits in this  
12 proceeding.

13 THE COMMISSIONER: Very well. Exhibit number?

14 THE REGISTRAR: 55. Two photographs.

15 THE COMMISSIONER: Two Polaroid photographs.

16 **(EXHIBIT 55: Two Polaroid Photographs)**

17 MR. WARD:

18 Q Ms. Lister, are you able to provide any estimate  
19 of the time that elapsed from the time you  
20 attended the scene where Mr. Frank Paul's body was  
21 and the time Ms. Robinson took over the  
22 investigation into the death, was it days, weeks,  
23 months?

24 A I believe it was a couple of months.

25 Q Were you involved in any way in the

1 decision-making process with respect to whether or  
2 not the coroner's inquest would be held?

3 A No.

4 MR. MACKENZIE: Mr. Commissioner, that question has nothing to  
5 do with the events --

6 THE COMMISSIONER: Pardon me, I can't hear you.

7 MR. MACKENZIE: Sorry, Mr. Commissioner, I apologize. That  
8 question has nothing to do with the events of  
9 December 5th and 6th, which is what I understood  
10 to be the subject of phase 1.

11 THE COMMISSIONER: It is the subject, it was the subject, and  
12 will continue to be, yes.

13 MR. MACKENZIE: Well, questions about whether or not there was  
14 going to be an inquest is not appropriate then, it  
15 is submitted.

16 THE COMMISSIONER: Thank you. Mr. Ward, please try and stay,  
17 if you would please, on the question of what  
18 happened to Frank Paul and this witness's  
19 involvement with that.

20 MR. WARD: Okay. I certainly will. I would ask, and just so  
21 Mr. MacKenzie understands this, because I cannot  
22 question this witness on the subject matter  
23 related to phase 2, I would ask that the witness  
24 come back then, and those are my questions.

25 THE COMMISSIONER: I couldn't hear you. I don't think the

1                   mike's on, Mr. Ward.

2   MR. WARD:    Oh, I'm sorry.

3   THE COMMISSIONER:   Thank you.

4   MR. WARD:    If I am precluded from asking this witness about any  
5                   subject matter that is going to be covered in  
6                   phase 2, I will make the request now, so that my  
7                   friend Mr. MacKenzie is aware of it, that she  
8                   return then so I can ask her those questions.

9   THE COMMISSIONER:   Mr. MacKenzie, is there a problem with that?

10  MR. MACKENZIE:   No, there wouldn't be if this witness is  
11                   required, however, it's likely there will be  
12                   witnesses better able to answer Mr. Ward's  
13                   questions of that nature than this witness, who in  
14                   fact was a junior person in the office for a  
15                   relatively short period of time.  So there are  
16                   more qualified witnesses to answer those sorts of  
17                   questions.  But if in fact it's required to have  
18                   this lady re-attend, have Ms. Lister re-attend, I  
19                   don't think that's a request that --

20  THE COMMISSIONER:   Thank you very much.

21  MR. COWPER:    I'm going to stand on the fact, I think we're  
22                   pretty much done, but I'll look at the question  
23                   and I'll talk to Mr. Ward.  And, of course, when  
24                   we're preparing our list of witnesses I'll  
25                   consider whether are or not this witness is

1 helpful. I think we actually had an answer on the  
2 record with respect to her involvement in that  
3 question which was no, and I'll not make that  
4 decision as to whether or not I call her in phase  
5 2 without discussing it with Mr. Ward and other  
6 interested counsel.

7 THE COMMISSIONER: Thank you, Mr. Cowper. Please confer with  
8 Mr. Ward then with respect to her evidence and how  
9 it might relate to the coroner's work with respect  
10 to Mr. Paul's death. Thank you. Mr. Ward.

11 MR. WARD: Thank you, yes.

12 Q Just so I understand your role in the death of  
13 Frank Paul, I'll summarize what I understand so  
14 far and please help me if I've got it wrong. You  
15 were called out in the early morning hours of  
16 December 6th?

17 A Yes.

18 Q Sometime what, around six, five, six in the  
19 morning?

20 A Yes.

21 Q And there were some police officers there?

22 A Yes.

23 Q You took some notes?

24 A Yes.

25 Q Which are no longer in existence. They vanished?

1 A I assume so.

2 Q You took some photographs which we've marked as an  
3 exhibit?

4 A Yes.

5 Q You've continued to handle the file for some  
6 months before you transferred conduct of it to  
7 Ms. Robinson of your office?

8 A Yes.

9 Q Who's in a supervisory role to you?

10 A Yes.

11 Q During the few months or so that you had conduct  
12 of the investigation into the death on behalf of  
13 the coroner's service, what other steps did you do  
14 to ascertain how this man came to his death?

15 A Requested an autopsy be held, toxicology be done.  
16 The usual standard things when a death -- when I  
17 request an autopsy to be carried out. Probably  
18 asked for a police report. Then checked into  
19 things like how as a coroner, and if I was going  
20 to make any recommendations on how to prevent this  
21 death, what would I think would be appropriate  
22 steps to take. For example, Safe Ride, rather  
23 than if he's not accepted into detox what other  
24 methods could be used, basically those types of  
25 things.

1 Q All right. Just on one of those then, the  
2 toxicology report, you got a toxicology report at  
3 some point, did you?

4 A I believe so. Like I say I don't have that, but I  
5 always requested it when there was a full autopsy.

6 Q And it would routinely be generated after a full  
7 autopsy was done, after fluids were taken and  
8 samples and sent to the lab; right?

9 A Absolutely, yes.

10 MR. WARD: Excuse me, Mr. Commissioner. Mr. Commissioner, I've  
11 been asking for the toxicology report for some  
12 time, and I don't yet have a copy, and I don't  
13 believe my friends from Civil Liberties or  
14 Mr. Paul's family, representing Mr. Paul's family  
15 have a copy of it either. I'll just make that  
16 observation.

17 MR. MACKENZIE: Mr. Commissioner, all of that material has been  
18 disclosed to your counsel. There's no claim of  
19 privilege, no anything that it's been provided.  
20 Now, again that is phase 2 material. And I  
21 understand perhaps at the end where one of the  
22 other witnesses, and this is going to be Dr. Gray  
23 I understand is on our witness list.

24 THE COMMISSIONER: I see.

25 MR. MACKENZIE: And she's the pathologist and it was her --

1                   it's her report.

2   THE COMMISSIONER:  It would be part of her report.

3   MR. MACKENZIE:  It would be, so I mean --

4   THE COMMISSIONER:  She will be called, Mr. Cowper?

5   MR. COWPER:  Yes.

6   MR. MACKENZIE:  So I mean for Mr. Ward to have that report  
7                   prior to having to cross-examine the pathologist  
8                   would seem appropriate, and I have no objection to  
9                   that.

10  THE COMMISSIONER:  Well, I'm sure it will be made available to  
11                   Mr. Ward.

12  MR. COWPER:  It may be just that as we get to the end of phase  
13                   1 it's obvious that we're trespassing into phase 2  
14                   matters and it's not maybe my -- I thought we  
15                   should have this witness testify about what she  
16                   saw that evening.  Dr. Gray's report has been  
17                   produced.  The toxicology report --

18  THE COMMISSIONER:  She can't apparently tell me anything more  
19                   than what she saw and what she did on that  
20                   evening.  She ordered an autopsy, and I understand  
21                   that's been done.  Part of that report would be --  
22                   the toxicologist's analysis would form part of the  
23                   pathologist's final report.

24  MR. COWPER:  Well, Dr. Gray is going to be called, and my  
25                   friend's concern is not about --

1 THE COMMISSIONER: Mr. Ward will have a copy of that.

2 MR. COWPER: Yes. Well, he has Dr. Gray's report already, I  
3 believe, but any underlying documents will be  
4 produced to him and we'll respond to that. I  
5 think we're probably spending more time than the  
6 concern is worth at this point, but as I said --  
7 said for the third time I'll talk to Mr. Ward  
8 about his concerns about this witness in relation  
9 to phase 2.

10 THE COMMISSIONER: Thank you.

11 MR. WARD: I acknowledge what's been said and I just want a  
12 moment to respond. I had about two business days  
13 to prepare for the commencement of this inquiry.  
14 Normally as counsel I'd like a little more time  
15 than that. Now, we're in the last day of the  
16 third week, and I don't have the toxicology  
17 report, which would seem to me to be a document  
18 material to the subject matter of the inquiry into  
19 this man's death. I've been asking for it for  
20 some weeks. And I'm concerned that there are  
21 species and classes of documents that are material  
22 to this matter that I do not yet have, and given  
23 that phase 2 is starting I think the first full  
24 week in January, and that Christmas falls between  
25 now and then, I would really like as counsel to

1           have sufficient opportunity to review those  
2           documents that I yet have not been provided with  
3           in order to properly prepare, and perhaps have  
4           more than two days next time to prepare for the  
5           next phase of the inquiry, or this phase as the  
6           case may be, depending on which phase the  
7           documents are relevant to. So I'm concerned, and  
8           I'll leave it at that, and we'll have those  
9           discussions, Mr. Commissioner, and if necessary  
10          I'll bring an application for a remedy.

11          Q   Ms. Lister, in the couple of months before you  
12               handed over conduct of the file to Ms. Robinson,  
13               did you interview any persons you perceived to be  
14               witnesses who could shed light on the  
15               circumstances of Mr. Paul's death?

16          A   No.

17   MR. WARD: All right. Thank you. Those are my questions.

18   THE COMMISSIONER: Mr. Ward, I'm going to ask that you prepare  
19                    a memorandum of those documents that you're  
20                    seeking that you say you don't have, and would you  
21                    give that to Mr. Cowper if you can today.

22   MR. WARD: I've done it already.

23   THE COMMISSIONER: You've done it.

24   MR. WARD: Yes.

25   THE COMMISSIONER: All right. Thank you.

1 MR. WARD: Thank you.

2 THE COMMISSIONER: Mr. Tammen.

3 **EXAMINATION BY MR. TAMMEN:**

4 Q Do you still have, ma'am, Exhibits 53 and 17 in  
5 front of you? Seventeen are the photographs and  
6 53 is the preliminary investigation report.

7 A Yes, I do.

8 Q I just want to start with one line from Exhibit  
9 53. And you're as certain as you can be, as I  
10 understand it, that the typewritten text under the  
11 heading Circumstances of Death, although it was  
12 typed by someone other than you, must have been  
13 taken from your notes that you made at the time;  
14 correct?

15 A Yes.

16 Q Okay. So I'll refer to this then as your note.  
17 It says, one of them is the bottom line under that  
18 heading:

19 His jacket was underneath him.

20 You see that under the heading Circumstances of  
21 Death?

22 A Yes. Yes.

23 Q Okay. So you obviously made a note  
24 contemporaneous with your attendance at the scene  
25 that Mr. Paul's jacket was underneath him;

1 correct?

2 A Yes.

3 Q And if you look at Exhibit 17, please, those very  
4 same photographs that Mr. Cowper referred you to,  
5 B5 through B8, about five or six pages in. Do you  
6 have those?

7 A Yes.

8 Q So if we look at B7 and B8, it's the red garment  
9 that's partially underneath his left leg that  
10 you're referring to when you say his jacket was  
11 underneath his leg?

12 A Yes.

13 MR. TAMMEN: Okay. Thank you.

14 THE COMMISSIONER: Any questions?

15 MR. KELLIHER: Just one or two.

16 THE COMMISSIONER: I'll count. Go ahead.

17 **EXAMINATION BY MR. KELLIHER:**

18 Q Now, when you arrived at the scene would it be  
19 your expectation as a coroner that the body had  
20 not been moved?

21 A Not necessarily. If the ambulance people had been  
22 asked to attend to see if the gentleman was alive,  
23 they may -- they may have checked. They may have  
24 moved him to see if he was alive or not. There  
25 are times when -- when the body has been moved



1 THE COMMISSIONER: Mr. Martland.

2 MR. MARTLAND: Mr. Commissioner, the next witness, who I expect  
3 will be brief, is Tony O'Buck. This witness will  
4 take the Bible, please, Mr. Registrar.

5 THE REGISTRAR: Good morning. Would you remain standing,  
6 please, and would you take the Bible in your right  
7 hand. Thank you.

8 **TONY O'BUCK, SWORN:**

9 THE REGISTRAR: Would you state your full name, please.

10 THE WITNESS: It's Anthony Charles O'Buck.

11 THE COMMISSIONER: Mr. O'Buck, you may be seated if you're more  
12 comfortable.

13 THE REGISTRAR: Yes, counsel.

14 **EXAMINATION BY MR. MARTLAND:**

15 Q Mr. O'Buck, my name is Brock Martland, and I'm one  
16 of the commission lawyers on this matter. You and  
17 I only got in touch with each other earlier this  
18 week by telephone?

19 A Correct.

20 Q And had an occasion to review what recollection --  
21 what little recollection you have about December  
22 the 5th of 1998?

23 A Yes, sir.

24 Q All right. And now could you please describe  
25 where you currently work?

1 A Right now I'm currently employed for the British  
2 Columbia Liquor Board.

3 Q And what position do you hold with them?

4 A I'm a clerk.

5 Q And I take it in 19 -- December of 1998 you did  
6 some work that you had working at the Vancouver  
7 jail at 321 Main Street?

8 A Yes.

9 Q What work was that?

10 A I was employed in the capacity as a correctional  
11 officer overseeing the transition from the  
12 Vancouver City lockup to the corrections lockup  
13 that's presently located under 222 Main.

14 Q And who was your employer then?

15 A It would have been with B.C. Corrections.

16 Q Under corrections?

17 A Yes, sir.

18 Q How long had you been doing that job in December  
19 '98?

20 A Five and a half years.

21 Q And then did you continue doing that for some time  
22 after, let's say, the end of 1998?

23 A For approximately four more years after that, for  
24 a total of ten years altogether.

25 Q Okay. And so that -- and I take it you say

1                   there's a hand over. Could you describe what you  
2                   mean by that?

3                   A    It was the corrections branch taking over the  
4                   duties of the Vancouver City lockup.

5                   Q    Okay. So corrections takes over. Do you know  
6                   when that is?

7                   A    It would have been approximately a year and a half  
8                   after this incident. Approximately a year.

9                   Q    About a year?

10                  A    Yes.

11                  Q    Do you know any exact dates or are you giving an  
12                  estimate of the time?

13                  A    I'm giving an estimate.

14                  Q    All right. Now, before I recently made contact  
15                  with you had you ever been asked about Frank Paul?

16                  A    No, sir.

17                  Q    Had you ever been approached by police or anyone  
18                  asking you questions about either Frank Paul or  
19                  December 5, 1998?

20                  A    No, sir.

21                  Q    What kind of memory do you have about that, about  
22                  December the 5th, '98 and about Frank Paul?

23                  A    Pertaining to that incident not much. It was a  
24                  very hectic time where we were more or less going  
25                  over and watching the procedures at the jail at

1 the time.

2 Q What was hectic?

3 A Just the environment. It was a new environment  
4 for me. We were normally used to working across  
5 in a secure facility. This was very unsecure and  
6 mostly chaotic.

7 Q When you say unsecure, what was unsecure?

8 A Just the way that they were brought into the  
9 facility. They were brought in by elevator, and  
10 there was -- it was more or less an entrance lobby  
11 way where really it was unsecure in terms of  
12 anything could kind of happen when the doors open.  
13 Often the intakes were often agitated,  
14 intoxicated, combative. There was not a lot of  
15 glass pertaining to the booking counter. One  
16 could actually get off the elevator and run  
17 anywhere there, even jump over the counter. There  
18 was many occasions where staff would be forced to  
19 jump over the counter to assist in an individual  
20 that might have been a little bit obnoxious. So  
21 it was somewhat unsecure when you compare it to a  
22 maximum security lockup like Vancouver jail.

23 Q All right. Now, you worked in the jail, and I  
24 take it after it transfers to corrections it also  
25 moves locations; is that right?

1 A It moved across the street.

2 Q Across Cordova to Main Street?

3 A Yes, sir.

4 Q And that's part of the 222 Main Street Provincial  
5 Court complex?

6 A That's correct.

7 Q Is there a difference in terms of the chaos or  
8 level of security in the new facility? In the  
9 time that you worked there was there a change?

10 A No. The physical structure was a little bit more  
11 secure. There was more -- as opposed to the old  
12 setup where there was just a long walkway, you  
13 have open old-school prison bars on either side,  
14 you had a more secure environment with many more  
15 doors. It was somewhat more noise muffled as  
16 opposed to the open sort of brick building that  
17 would resonate noises and yelling and screaming at  
18 the old facility.

19 Q All right. And at the old facility at the end of  
20 1998 were there nurses who worked there?

21 A Yes.

22 Q Was there any facility for providing clothing to  
23 people who needed clothing, those who had been  
24 held in custody?

25 A I'm pretty sure -- we were on the fourth floor,

1 I'm pretty sure that third floor, that was  
2 abandoned and closed down and was used as a  
3 storage facility, and I believe there was a closet  
4 there that was full of a lot of clothes, yes.

5 Q And what were those clothes for?

6 A Those were given to inmates -- sorry, in-custody  
7 prisoners who required a change of clothes, I  
8 guess, due to the fact that maybe their clothes  
9 were soiled or damp or they were half clothed to  
10 begin with.

11 Q And can you say -- are you sure that that was  
12 something that was in place in December of 1998?

13 A I'm very positive it was in place. Whether or not  
14 it was always utilized, because resources I  
15 believe at the time were very scarce, they would  
16 often require an escort down to the third floor  
17 which would take an officer away from the present  
18 duties to escort with or without the nurse  
19 downstairs so he could get changed up or have  
20 these clothes brought up to him, so there was a  
21 bit of a resource issue at the time being on a  
22 different floor.

23 Q All right. When you and I spoke about this matter  
24 you mentioned that you knew Greg Firlotte because  
25 you worked with him?

1 A That's correct.

2 Q And, indeed, you mentioned about him coming  
3 forward and said to me you thought you may have  
4 been on the same shift with him that night?

5 A Yes, correct.

6 Q And then I suggested to you that the video -- you  
7 haven't seen any video apart from perhaps a small  
8 snippet on TV news?

9 A That's correct.

10 Q And what snippet had you seen, what had you seen  
11 on the TV?

12 A Just the grainy video black and white image which  
13 showed Mr. Frank Paul being dragged across the  
14 lobby area where the paddy wagon was located from  
15 the elevator into the wagon.

16 Q And I had suggested to you that the video seemed  
17 to suggest you may have been on duty not in the  
18 night shift with Mr. Firlotte, but on the day  
19 shift, and that you and a female staff member had  
20 removed clothing. Is that an accurate description  
21 of our conversation?

22 A Yes, sir.

23 Q And you said that that -- that helped your memory  
24 or at least sounded familiar?

25 A Yes, sir.

1 Q Now, what can you say about that? Again, first of  
2 all, before we had that conversation did you have  
3 any memory of Frank Paul on December the 5th?

4 A The only other memory prior to our conversation  
5 was being on a living unit at Vancouver Pretrial  
6 prior to that and I remember Mr. Paul on the unit  
7 as one that was very quiet, reserved, a gentleman  
8 who would sit and more or less just do his time,  
9 watch TV, and not really interact with a lot of  
10 staff. I remember him because of his quiet  
11 nature, and his name was quite unique, it stuck  
12 out in my head.

13 Q You've described that you knew him on a living  
14 unit of Vancouver Pretrial. What is his custodial  
15 status if he is in a living unit, is he serving a  
16 sentence or on remand?

17 A He's on remand pending trial, I believe.

18 Q And do you know -- can you say anything more about  
19 when that was or what you knew about any trial?

20 A No. It was -- I believe it was my recollection  
21 just seeing him on the living unit interacting  
22 with little things. And I vaguely remember when  
23 he'd come into custody, perhaps even that night  
24 afterwards, just because I recognized his face  
25 from the living unit. But due to the time frame

1 of what was going on, you know, observing the  
2 duties and what went on, there was so much going  
3 on there was barely, you know, any real  
4 interaction other than observing and assisting the  
5 police with the procedures.

6 Q You say that you had some recollection of him from  
7 the living unit at Vancouver Pretrial. Can you  
8 say -- because you worked in corrections for some  
9 time before December '98, can you say where and  
10 when in that -- when it is that you saw him at the  
11 living unit?

12 A It would have been the year leading up to that  
13 incident. It was just short -- you know, it was  
14 just short time living unit stays, maybe one or  
15 two occasions at best, at most.

16 THE COMMISSIONER: In 1998, Mr. O'Buck?

17 THE WITNESS: Yes, sir. Between '97 and '98 prior to my going  
18 over to the Vancouver City lockup.

19 THE COMMISSIONER: Thank you.

20 MR. MARTLAND:

21 Q Now, what memory do you have -- again I had given  
22 you this suggestion, you said that that sounded  
23 familiar that you'd assisted in removing clothing.  
24 What can you say about your dealings -- what if  
25 anything can you say about your dealings with

1 Mr. Paul that day?

2 A Nothing other than when you mentioned that  
3 incident I do recall him coming off the elevator  
4 in that state, and I do quite remember assisting  
5 Mr. Paul with the change of clothes. And I  
6 believe -- I'm pretty sure I placed his clothing  
7 in a plastic bag and bundled up into his effects.

8 Q And I don't know if you can say on this specific  
9 occasion, but as a general approach in that period  
10 of time what would happen with someone's clothing  
11 if it's removed when they're brought in at the  
12 Vancouver jail?

13 A It would be bagged up, tagged, identified on his  
14 personal effect records, any jewellery or anything  
15 that was of monetary value would be itemized and  
16 placed separately, and it would be placed in a  
17 room with other bagged up clothing.

18 Q All right. And can you say whether you did that  
19 for Mr. Paul in this case?

20 A I'm very sure I did.

21 Q You're sure you did it. Okay. Is there anything  
22 else that you can say from your memory about your  
23 dealings with Mr. Paul that day?

24 A No, sir.

25 Q And, again, you haven't seen the video that

1 shows --

2 A No.

3 Q Let me put this question to you. You haven't seen  
4 any video that shows anyone dealing with Mr. Paul  
5 up on the booking desk floor?

6 A No, sir.

7 Q I wonder if Exhibit 1 might please be provided,  
8 Mr. Registrar, and I'll play a brief portion of  
9 that. For the record I'm playing the second  
10 portion of Exhibit 1, 11:33:36, a view of the  
11 booking desk on the upper floor. I'm going to  
12 suggest -- I'm going to direct your attention to  
13 the lower portion of the screen, and tell me if  
14 you see a person down there. And if you could  
15 just watch this, please, Mr. O'Buck, and describe  
16 if you see yourself or if you recognize anyone  
17 else or if this assists on anything you can  
18 remember about that day. That video seems to show  
19 a female removing a jacket. Tell me if you  
20 recognize yourself at any point?

21 A Yes, sir, that would be myself.

22 Q On the left-hand side?

23 A And Janet Ross.

24 Q All right. Can you say what you're doing there?

25 A I was helping him out of his wet clothing.

1 Q That's you on the right-hand side, 11:35:50?

2 A Yes, sir.

3 Q That's Frank Paul who's on the ground?

4 A Yes, sir.

5 Q And I'm going to pause there at 11:38:32. Please  
6 pay attention as I play this next portion, and if  
7 you can say anything about how Mr. Paul is moved  
8 that would be helpful. I don't know if you saw  
9 that or if you want me to replay it.

10 A Please.

11 Q Can you say anything about that?

12 A It would appear we have him by each arm.

13 THE COMMISSIONER: Who is we?

14 THE WITNESS: I'm assuming it's Ms. Janet Ross.

15 THE COMMISSIONER: You don't know whether it's Janet Ross?

16 THE WITNESS: It looks like a third person had come in. I  
17 believe it was the nurse on duty. It looks like  
18 she was there with some medications, something to  
19 drink.

20 THE COMMISSIONER: But when you're taking his arms, there are  
21 two people then that are taking him away by the  
22 arms?

23 THE WITNESS: Yes, sir.

24 THE COMMISSIONER: And you're one of them?

25 THE WITNESS: Yes, sir.

1 THE COMMISSIONER: All right.

2 MR. MARTLAND:

3 Q At that point in time was that an ordinary way of  
4 moving someone within the Vancouver jail?

5 A Yes, sir.

6 Q Okay. When would that manner of moving someone be  
7 used, essentially dragging them by their arms?

8 A Quite often. Unfortunately many times they'd come  
9 in and were just so inebriated they were incapable  
10 of removing their own clothing, standing, walking  
11 speaking, a lot of times just vomiting or  
12 defecated themselves, so they were in pretty bad  
13 shape a lot of times when they would come in.

14 Q Was there any equipment that was ever used back in  
15 1998 such as either a stretcher or wheelchair to  
16 move people around that couldn't move on their  
17 own?

18 A No, sir, I don't believe there was a wheelchair  
19 in the facility at the time. I do recall for  
20 really violent prisoners there was a hardboard  
21 with restraints, possibly another room that wasn't  
22 utilized many times.

23 Q What was the hardboard and restraints?

24 A That, I believe, was for really combative, very  
25 violent prisoners.

1 Q That was to physically restrain someone against --  
2 effectively buckle them into a stretcher?

3 A Effectively to prevent themselves from harming  
4 themselves or anyone else.

5 Q Now, having seen that video for the first time is  
6 there anything else by way of details that you can  
7 provide the commission about your dealings with  
8 Frank Paul?

9 A No, sir, I don't believe there is.

10 Q But that video, I understand from your evidence,  
11 confirms to you that you did deal with him about  
12 11:30 in the morning that day?

13 A That's correct.

14 MR. MARTLAND: I have no further questions. Thank you.

15 THE COMMISSIONER: What was your shift then, Mr. O'Buck, can  
16 you remember that?

17 THE WITNESS: I'm pretty sure it was seven to seven. It was a  
18 12 hour four on four off.

19 THE COMMISSIONER: You're talking about now seven a.m. to seven  
20 p.m.?

21 THE WITNESS: Yes, sir.

22 THE COMMISSIONER: Thank you. Mr. HERN, do you have any  
23 questions?

24 MR. HERN: No questions.

25 THE COMMISSIONER: Mr. Crossin?

1 MR. CROSSIN: No, thank you.

2 THE COMMISSIONER: Mr. Woodall?

3 MR. WOODALL: No.

4 THE COMMISSIONER: Mr. MacKenzie?

5 MR. MACKENZIE: No, thank you.

6 THE COMMISSIONER: Mr. Kelliher, do you have any questions?

7 MR. KELLIHER: Just one or two. Thank you.

8 **EXAMINATION BY MR. KELLIHER:**

9 Q Sir, did you return to your place of work the  
10 following day on the 6th?

11 A Yes, sir, to the best of my recollection that's  
12 correct.

13 Q And I suppose there was much discussion about  
14 Frank Paul's death at the workplace on the day  
15 following?

16 A I honestly don't recall very much discussion at  
17 all, it was more or less business as usual. I  
18 don't recall much talk or feedback about the  
19 incident at all.

20 MR. KELLIHER: All right. Thank you very much, sir.

21 THE COMMISSIONER: Mr. Ward?

22 MR. WARD: Yes. Thank you.

23 **EXAMINATION BY MR. WARD:**

24 Q My name is Cameron Ward, I'm counsel for United  
25 Native Nations Society at this inquiry. And your

1 testimony was the first, at least according to my  
2 recollection, indicating that Mr. Paul was in  
3 custody at what you've described as the living  
4 unit. Can you please tell me what the living unit  
5 was and where it was?

6 A It was located at Vancouver Pretrial. Every floor  
7 was named after a living unit, so there was one,  
8 two, three, four, five, sixth floor, and on each  
9 floor it was divided into east and west.

10 Q And where -- what was the civic address or street  
11 address of that building?

12 A 375 East Cordova.

13 Q So in behind 222 Main Street?

14 A Yes, sir.

15 Q And your evidence, as I noted it, was that you had  
16 been working there in the period 1997 to 1998 and  
17 had met Frank Paul there?

18 A Yes, sir.

19 Q And you recall him as being quiet?

20 A A very quiet individual.

21 Q Very quiet?

22 A Yes, sir.

23 Q All right. And this living unit was a place where  
24 prisoners were housed for longer periods of time  
25 than just 24 hours, is that --

1 A Sometimes 24 hours, or in some occasions it could  
2 be up to a year.

3 Q Right. Are you able to recall when you saw  
4 Mr. Frank Paul there anything about the duration  
5 of his residency? In other words, was he there  
6 for several days, weeks or longer; do you recall?

7 A I'm very positive it was on a very short term  
8 basis, on just one or two occasions, but the name  
9 does strike. I recall very vividly dealing with  
10 him, but it was a very, very short time. It was  
11 just more or less just in and out, one or two  
12 days.

13 Q All right. And was that living unit a place that  
14 was frequented by members of the Vancouver Police  
15 Department in the course of their duties?

16 A Never to the best of my knowledge. Very rarely  
17 there would be sometimes detectives come in the  
18 building, but generally the police didn't like to  
19 come into the remand centre at all.

20 Q All right. And based on your experience there at  
21 the living unit, there would be records in  
22 existence somewhere of Mr. Paul's detention?

23 A Yes, sir.

24 Q You referred to the fact that a hardboard or  
25 stretcher with a hardboard might be used on

1 occasion for violent, very combative prisoners.

2 Do you recall saying that?

3 A Yes, sir.

4 Q And based on your dealings with Mr. Paul he was  
5 not one of those type?

6 A No, sir.

7 Q He was very quiet, compliant, co-operative?

8 A Yes, sir.

9 Q Never saw him act aggressively towards any person  
10 in authority?

11 A Never, sir.

12 Q Never saw him raise a fist and attempt to strike a  
13 person in authority?

14 A Never. No, sir.

15 Q Never saw him lash out or attempt to kick someone  
16 in authority?

17 A No, sir.

18 Q He would do what he was told?

19 A Yes, sir.

20 Q To the extent he was able?

21 A Yes, sir.

22 Q Now, we heard from Mr. Greg Firlotte earlier in  
23 this inquiry, and as I recall his testimony he  
24 indicated that he thought all guards were asked  
25 for statements after Frank Paul died. Now, were

1           you asked to provide a statement to anybody, a  
2           written statement?

3           A    Never any written statement, and I don't believe I  
4           was even asked any oral questions.

5           Q    All right. I want to ask you -- there is a list  
6           in evidence -- Exhibit 12, Mr. Registrar. A list  
7           in evidence of people on duty December 5 and 6,  
8           and I'm just going to ask you about Squad 3, which  
9           would appear to have been your squad according to  
10          this exhibit.

11          A    That's correct.

12          Q    And I appreciate you may not have a recollection  
13          of this after all these years, but are you able to  
14          say whether you recall the persons listed under  
15          Squad 3, and I'll just provide their full names as  
16          I go down the list; Janet Ross, Catherine Kanis,  
17          Shawn Hallums, Mike Enns, Tammy Policnik as the  
18          guards. Now, can you recall whether they were in  
19          fact on duty with you on that shift?

20          A    I cannot recall if they were on duty with me. I  
21          had worked so closely with Mr. Hallums and  
22          Mrs. Ross. The other names that you mention were  
23          auxiliary police constables, and I was somewhat  
24          unfamiliar with working with them and knowing them  
25          socially. Very possible I was with them working

1           that night.

2           Q   All right.

3           A   I can't actually say 100 percent for sure, but I  
4           do know Mrs. Ross and I were absolutely working  
5           together, I do recall that.

6           Q   All right. And you also said you worked closely  
7           with Shawn Hallums?

8           A   Yes, sir. However, I don't recall if Shawn  
9           Hallums was actually physically there. I do  
10          recall him being involved in a lot of the records,  
11          so it's very likely he would have been the records  
12          officer behind the counter.

13          Q   Do you have any recollection of having any  
14          discussions with your colleagues to the effect  
15          that they had been asked to provide statements to  
16          a homicide detective in relation to Frank Paul's  
17          death?

18          A   No, sir.

19          Q   And, lastly, sir, do you recall whether at the old  
20          jail facility at 312 Main there were video cameras  
21          mounted in the cells depicting the interior of the  
22          cells?

23          A   Only some of them were. I do recall the majority  
24          of them were not. There was a couple that were  
25          set up for a violent or --

1 Q Suicide watch perhaps?

2 A Yeah, maybe just only one or two actually in the  
3 cells, but they weren't really with the cells  
4 because you couldn't have cameras physically on  
5 the living bunk area. So I believe that there  
6 was -- towards the back there was a room that they  
7 would be kept, close to the fingerprinting booking  
8 counter. But generally speaking, no, there was no  
9 cells physically -- sorry. Excuse me. There was  
10 no cameras physically on the inmates in the cell.  
11 We were required to do checks every 15 minutes  
12 looking for any particular mood swings behaviour,  
13 but more importantly for breathing, making sure  
14 that they appeared to be breathing and fit. And  
15 those checks I believe were done and noted every  
16 15 minutes on a sheet on the wall somewhere down  
17 the hallway.

18 Q And then retained somewhere?

19 A Yes, sir.

20 Q In the records of the jail?

21 A Yes, sir.

22 MR. WARD: All right. Thank you, sir, those are my questions.

23 THE COMMISSIONER: Mr. Tammien, do you have any questions?

24 MR. TAMMEN: No, thank you.

25 THE COMMISSIONER: Re-examination?

1 MR. MARTLAND: None, thank you.

2 THE COMMISSIONER: May the witness be excused then,

3 Mr. Martland?

4 MR. MARTLAND: He may. Thank you.

5 THE COMMISSIONER: Thank you, Mr. O'Buck, you're excused.

6 **(WITNESS ASIDE)**

7 MR. MARTLAND: Mr. Commissioner, there's one further witness.

8 I expect we can conclude that witness after the

9 break before the midday break.

10 THE COMMISSIONER: Thank you. We will then take the morning

11 break a little early. We'll break for 15 minutes.

12 THE REGISTRAR: Order. The hearing will now recess for 15

13 minutes.

14 **(BRIEF ADJOURNMENT)**

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

16 THE COMMISSIONER: Mr. Martland.

17 MR. MARTLAND: Mr. Commissioner, the next witness is David

18 Kelly, who will affirm.

19 THE REGISTRAR: Good morning, sir.

20 THE WITNESS: Good morning.

21 **DAVID WILLIAM KELLY, AFFIRMED:**

22 THE REGISTRAR: State your full name, please.

23 THE WITNESS: David William Kelly.

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

25

1     **EXAMINATION BY MR. MARTLAND:**

2             Q     Mr. Kelly, I understand you work now as a mental  
3                     health therapist?

4             A     That's correct.

5             Q     And in 1998 what work did you do?

6             A     I was group home manager for Western Human  
7                     Resource. They run group homes for individuals  
8                     with cognitive disabilities.

9             Q     And what ages were those people, youths?

10            A     They were adults.

11            Q     On December the 6th of 1998 I understand that you  
12                    were at a house party in the area of 300 East 1st  
13                    Avenue in Vancouver?

14            A     That's correct. I don't recall the address, but  
15                    that sounds correct.

16            Q     In that area of town, in any event?

17            A     Yes.

18            Q     All right. And could you please describe when you  
19                    went to the party and what happened?

20            A     Well, I guess we had arrived at the party, I'm  
21                    going by my statement, it was a while ago so I  
22                    don't recall exactly, but it was around nine  
23                    o'clock. I had gone with a friend named Victor  
24                    and one of his friends named Colin. It was a  
25                    birthday party for someone by the name of Janine,

1           who I think I might have met a couple of times  
2           before, but wasn't a good friend of mine. And  
3           sometime after midnight, I think in my statement  
4           it says one or two o'clock, the woman whose house  
5           it was had lost her cat so everybody had gone to  
6           look for the woman's cat. I had gone out -- I  
7           think there was a smoking area out on the top  
8           floor somewhere, I had gone out there to see if  
9           the cat was out there, and had a cigarette as  
10          well. When I'd returned and come inside, I  
11          believe it was Colin who'd come inside and had  
12          stated that he had found a body outside, and I  
13          believe he was actually on the phone calling 911  
14          at the time. And when I overheard that I had  
15          asked how do you know if the -- if the person was  
16          dead or not, like did you check for a pulse? And  
17          he said no, or perhaps the other person had said  
18          no. Somebody said no. And I said well, I'd just  
19          been recently trained in CPR, that's part of what  
20          we have to do for the job that I was doing.

21          Q    At the group home?

22          A    At the group home, correct. So I said I would go  
23               down and check.

24          Q    All right.

25          A    And then I believe --

1 Q Let me first pause there before you leave the  
2 apartment. First of all, had you been drinking  
3 that evening?

4 A Yes.

5 Q And were you intoxicated?

6 A You know, I probably wasn't -- I probably wouldn't  
7 drive.

8 Q Fair enough.

9 A But, you know, I wouldn't drive after I have, you  
10 know, one beer or two beers, so.

11 Q Okay.

12 A But I had been drinking. You know, I wasn't  
13 stumbling around slurring my words drunk, but  
14 certainly I had a few beers.

15 Q And now you've referred to a statement, and  
16 perhaps I can simply see if I'm speaking about the  
17 same thing. I wonder, Mr. Registrar, if tab 38 of  
18 binder one, if that might please be provided to  
19 this witness.

20 A Thank you.

21 Q Mr. Kelly, I recently sent you a statement. Is  
22 that the same -- have a look at what's put before  
23 you and see if you can explain if that's the same?

24 A It looks like the exact same statement you sent.

25 Q All right. What is the statement?

1 A Oh, I'm sorry, for --

2 Q What does it reflect? Let me put it to you this  
3 way. Is it an interview that you had with the  
4 police?

5 A Oh, yes. Yes, it's a taped interview by the  
6 police at the group home that I was working at at  
7 the time.

8 Q Okay. It refers to a date at the start of it. In  
9 the transcript part it refers to 912 hours, 15th  
10 day of December, 1998. Is that the date the  
11 statement was given?

12 A I honestly couldn't say offhand. I did notice  
13 that at the very top it says that the date was  
14 December 16th.

15 Q Yes.

16 A And in the -- in the statement Detective Staunton,  
17 I believe that's how it's pronounced, says the  
18 15th day, but I honestly couldn't say which day it  
19 was.

20 Q Okay. And this is an event on December 6th, so  
21 roughly within approximately ten days --

22 A Yes.

23 Q -- is that when you recall giving a statement?

24 A Yes, that's correct.

25 Q Do you remember Detective Staunton coming and

1           seeing you then?

2           A    Yes, I do.

3           Q    Do you remember if you were called or notified of  
4           this before he attended?

5           A    I honestly don't remember. I don't recall if he  
6           just showed up or if he called and asked if he  
7           could come by. I'm sorry, I don't recall.

8           Q    Sure. Now, you've had a chance recently to read  
9           over this statement. Is it accurate?

10          A    Yes, it is.

11   MR. MARTLAND: I'd ask this become the next statement, please.

12   THE COMMISSIONER: Exhibit number?

13   THE REGISTRAR: 56.

14                   **(EXHIBIT 56: Kelly Statement to Staunton)**

15   MR. MARTLAND:

16          Q    In part in your answers previously to some of my  
17               questions to you you seem to say well, from my  
18               statement. As an example I think you said from my  
19               statement we went to the house party at about nine  
20               at night; is that right?

21          A    That's correct.

22          Q    Okay. I take it you may not have a memory today  
23               of some of these facts?

24          A    Yeah. There's -- certainly there's lots of  
25               elements in it, like people's names and stuff I

1                   didn't remember. And Victor is the person I knew  
2                   and we maintained friendship for quite some time.

3                   Q    Okay.

4                   A    The other people I don't know, but there's like  
5                   there's small details in here that I don't really  
6                   recall.

7                   Q    All right. So the statement has assisted you in  
8                   remembering some of those details?

9                   A    That's correct.

10                  Q    Do you know Colin's last name?

11                  A    I don't.

12                  Q    As you -- before I interrupted you you explained  
13                  that you had indicated to Colin that you knew CPR  
14                  and then I think were describing leaving the  
15                  apartment. Do I have that right?

16                  A    That's correct.

17                  Q    All right. Please continue and tell me what  
18                  happened next?

19                  A    Okay. I think it was Janine's boyfriend who had  
20                  brought me down to the alleyway and he showed me  
21                  where the body was. So I approached the body  
22                  going towards his feet.

23                  Q    Right. And describe, if you could please, what is  
24                  the -- where is the alleyway that you described?

25                  A    I'll try to describe it best I can, because not

1           knowing exactly I don't know the orientation.

2           Q    Sure.

3           A    We went out through the front door of the building  
4           and turned left.

5           Q    Front door of the building.  Were you in an  
6           apartment building?

7           A    Yeah, it was something like an apartment building.

8           Q    Do you remember how high it was, how tall the  
9           building was?

10          A    I don't recall it being especially high, maybe  
11          four floors or something like that.

12          Q    Okay.  So you leave the front door and turn left?

13          A    Correct.  And then I think we turned left again,  
14          and then left again into the alley -- into the  
15          alleyway.

16          Q    All right.  And where is the body?

17          A    The body was sort of in the middle of the  
18          alleyway.  He was on his back, so face up, and I  
19          believe he was on a slight angle away -- with his  
20          head away from the building.

21          Q    So rather than parallel to the building with the  
22          head slightly to the lane side; do I have that  
23          right?

24          A    Yeah.  So if the building was right here.

25          Q    Yes.

1           A    I think his head was sort of tilted away from the  
2                building.

3           Q    And you're describing with your hands that the  
4                head would be out further away from the building?

5           A    Correct.

6           Q    All right. Now, what else can you say about the  
7                body and what you noticed?

8           A    His pants were pulled down I think around by his  
9                hip area. I mean just at that time I think his  
10              lips were retracted a bit from his teeth. And  
11              around the area I noticed a clothes tag and a part  
12              of an eaves trough.

13   THE COMMISSIONER: Part of what?

14   THE WITNESS: Part of an eaves trough.

15   MR. MARTLAND:

16           Q    And can you say where those, first of all the  
17                clothing tag, where that was?

18           A    Yeah, the clothing tag was I think within a couple  
19                of feet of his head, you know, directly above his  
20                head. And I think the eaves trough was -- or the  
21                piece of the eaves trough, whatever it was, was  
22                several feet away from there.

23           Q    Do you recall on which side?

24           A    I don't.

25           Q    Okay. You described that the pants were pulled

1 down, I think you said to the hips?

2 A I believe that's correct, yes.

3 Q Or near the hips?

4 A Yeah.

5 Q Can you say anything more about that, was it to  
6 the point where you could see his genitals, for  
7 instance?

8 A You know, I don't have a clear -- for some reason  
9 I think that -- that we could, but it was such a  
10 long time ago I don't know if I could say.

11 Q You don't have a clear memory of that?

12 A Yeah, I don't. When I think of the incident I  
13 remember his face quite clearly.

14 Q What can you say about his face?

15 A Well, I guess it was just mainly around sort of  
16 his grimace on his face that I recall correctly.  
17 I believe his eyes were partially open as well.  
18 But certainly it's mainly the mouth area that I  
19 recall.

20 Q Okay. What did you do when you got there?

21 A I kneeled down. I checked for a pulse. I checked  
22 for a pulse for a bit. I remember my fingers  
23 being quite cold, and I remember learning in CPR  
24 that sometimes a pulse can be quite faint, so I  
25 held it there and pressed quite hard to see if I

1           could feel anything in case it was faint. And I  
2           remember going well, you know, he seems cold, but  
3           my fingers are cold too, so I was kind of losing  
4           sensitivity in my fingers as well.

5           Q    Was it cold out?

6           A    Yes.

7           Q    Can you say anything about that?

8           A    Yeah. Well, I remember it was quite chilly out,  
9           and it was kind of -- I think in my statement I  
10          had said -- and I remember it being sort of wet.  
11          I remember the ground being wet. It was sort of  
12          drizzling outside. It wasn't -- you know, it  
13          wasn't pouring rain or anything like that, but I  
14          remember it being sort of moist and drizzly  
15          outside, and I remember it being cold. I remember  
16          saying in my statement too, it was around four to  
17          five degrees, which when I think back I think that  
18          seems kind of warm now, and as I explained when we  
19          talked in the past that I had recently moved from  
20          Ontario so my estimation of the temperature might  
21          be a little bit of an overestimation at the time,  
22          but I remember it being cold outside. I remember,  
23          you know, not having a good feeling in my fingers.  
24          So I checked for his pulse.

25          Q    Did you find a pulse?

1 A No, I did not.

2 Q Okay.

3 A And then I put my head down towards his mouth to  
4 see if I could hear any breathing, and was looking  
5 for a rise and fall in his chest, and there was  
6 neither.

7 Q And what happens at that point?

8 A I remember thinking -- sometime afterwards I know  
9 the paramedics had arrived. It was fairly quick  
10 after that. I don't remember -- I remember, you  
11 know, when you're sort in one of those surreal  
12 moments time kind of stops, and I remember  
13 thinking about am I going to give him CPR or not.  
14 And I didn't, and I felt very badly for not having  
15 done that. But, anyway, so that's what I  
16 remember. But fairly quickly, I'm not even sure  
17 if I had stood up yet, but I remember the  
18 paramedics coming quite quickly.

19 Q Do you remember the police attending?

20 A I don't remember them specifically. I'm fairly  
21 certain they were there. I remember in my  
22 statement saying that -- I believe they had taken  
23 a statement from Colin, but I don't have a  
24 specific memory of them being there. I remember  
25 quite clearly the paramedics being there, but

1                   that's because I was quite relieved that they were  
2                   there.

3                   Q    I bet.  If I suggest to you your statement makes  
4                   reference to the police arriving in perhaps about  
5                   two minutes of you getting there, does that seem  
6                   accurate?

7                   A    It could very well be.

8                   Q    And you just don't have any recollection of  
9                   specific police or what --

10                  A    Yeah, I don't.  Sort of the thing that I remember  
11                  the most is the paramedics getting there, again  
12                  because that was my main focus 'cause -- you know,  
13                  so I couldn't say when the police got there.  And  
14                  I don't remember -- I know I didn't give them a  
15                  statement, they might have taken my name or  
16                  something like that, but I don't honestly have a  
17                  good recollection of that.

18                  Q    Okay.  And so then on the evening in question, or  
19                  the morning at least, you don't give a statement  
20                  at that point?

21                  A    No.

22                  Q    Do you have any dealings with police before you  
23                  make contact and then meet with Detective  
24                  Staunton?

25                  A    No.  None.

1 Q How about since then?

2 A None.

3 Q Between the starting point of Detective Staunton's  
4 interview with you shortly afterwards and my  
5 making contact with you recently have you ever  
6 been asked for a statement or interview?

7 A No.

8 Q By anyone?

9 A No.

10 Q When you saw this body in the lane way, can you  
11 describe how -- I think you said laying with face  
12 up, but can you describe how the body was  
13 positioned?

14 A He was laying on his back, and I believe his arms  
15 were at his side, and I'm fairly certain that his  
16 legs were straight out. Like straight out. So he  
17 was just, you know, perfectly straight. Like I  
18 don't recall his arms being flayed out or his legs  
19 being flayed out at all.

20 Q Okay. Do you remember the legs being bent in any  
21 way or knees bent?

22 A Not that I recall.

23 Q Did you see his body moved in the time you were  
24 there?

25 A I believe when the paramedics arrived they had

1                   turned him over onto his side.

2                   Q    Okay.

3                   A    But certainly we didn't --

4                   Q    You didn't move him?

5                   A    -- move the body at all.  And I don't remember him  
6                   being sort of moved anywhere other than maybe  
7                   being moved over to the side.  And the only reason  
8                   I remember him being moved over to the side,  
9                   'cause I remember seeing some scratches on his  
10                  back or buttocks.

11                  THE COMMISSIONER:  You didn't move him though, Mr. Kelly?

12                  THE WITNESS:  No, no.  No, I did not.

13                  THE COMMISSIONER:  When you say you remember him being moved  
14                                    you're referring to the paramedics, are you?

15                  THE WITNESS:  That's correct.

16                  MR. MARTLAND:

17                         Q    When you say moved to the side do you mean --

18                         A    Sorry.

19                         Q    -- rolled over?

20                         A    Rolled over onto his side.

21                         Q    Okay.  Not moved to a different location?

22                         A    That's correct.  He was not moved to another  
23                                    location that I witnessed at all.  The only  
24                                    movement of the body was him being turned over  
25                                    onto his side.

1 Q Did you ever see this man's body in a seated or  
2 slumped up semi-upright position?

3 A No, I did not.

4 Q Did you notice anything about this man's clothing?

5 A Other than his pants being down, I would say  
6 perhaps just that his clothing appeared wet.

7 Q Do you remember anything about his feet or any  
8 footwear?

9 A I'm sorry, I don't.

10 Q Mr. Kelly, you mentioned a clothing tag. Do you  
11 remember why you noticed that?

12 A I think that the paramedics had arrived and we  
13 were standing around I guess expecting, you know,  
14 to give a statement, and just looking and sort of  
15 surveying the area, I don't know, I guess, you  
16 know, sort of playing armchair police officer,  
17 crime scene detective, I don't know, but just sort  
18 of looking at the area and we were just kind of,  
19 you know, just looking at the area and I noticed  
20 the tag. And also when I noticed the eaves trough  
21 too, I just thought it was strange because I  
22 remember looking up the buildings and go, there  
23 isn't any there. I don't know if that's  
24 significant at all, but --

25 Q There were no eaves troughs that you noticed that

1 in relation to the building. Which building?

2 A To the building to the left. Now, I seem to  
3 recall there being something to the right as well.  
4 When I'm saying to the left, that's the building  
5 that we were at.

6 Q That you were behind?

7 A Yeah. But I looked to both left and right, and I  
8 remember there being some structure to the right  
9 as well. I don't recall what that was, but I  
10 don't remember seeing any eaves troughs on any of  
11 those buildings.

12 Q Okay. I wonder if this witness could please be  
13 shown Exhibit 17, the photographs. Perhaps before  
14 I direct your attention to any specific photos,  
15 can you say anything more about where the clothing  
16 tag was?

17 A Yeah, it was -- from what I recall it was above  
18 his -- above his head, maybe within a couple of  
19 feet.

20 Q Do you know which side of the head?

21 A I don't.

22 Q If you could please have a look at these photos,  
23 and if you'd look in the lower -- about the fourth  
24 page in, I believe, the lower right-hand photo  
25 would be A24. Do you have that photo?

1           A    A24?

2           Q    A24, yeah.

3           A    Yes.

4           Q    Now, can you describe -- first of all, can you say  
5           anything about that photograph?

6           A    Yeah, the --

7           Q    First of all leaving aside any white blanket,  
8           perhaps, is that the position of the body that you  
9           saw?

10          A    You know, the angle looks correct, but, you know,  
11          again it was ten years ago, so, and it was dark  
12          outside, but I don't remember the body being that  
13          close to the building.

14          Q    Okay. And we can look at some other photos.

15          A    Okay.

16          Q    But for now have a look at A24, and in particular  
17          in the foreground before the body.

18          A    Yeah, I note the eaves -- that piece of eaves  
19          trough that I mentioned, I don't recall that being  
20          there, I remember it being above his head.

21          Q    You remember it being closer to the head?

22          A    Correct.

23          Q    Why don't you flip over perhaps one page, in the  
24          lower left-hand corner, photograph A19 -- sorry,  
25          my sequence may be off again.

1 A Okay.

2 Q Do you have that photo?

3 A Yes.

4 Q It would seem to be a different view of the same  
5 thing. Does that -- does that seem -- the  
6 distance there may be easier to see. Does that  
7 accord with your memory or is your memory  
8 different?

9 A No, my memory's again -- as far as the position of  
10 the body or the eaves trough?

11 Q Both. Sure.

12 A You know, again it would be nice if I had a photo  
13 looking at from -- coming from the alleyway.

14 Q Why don't I suggest photograph A16 then, please.  
15 And I'm afraid in my book it may be out of order  
16 so I don't have the page number to give you.  
17 That's a photo in the lower right-hand corner of  
18 one of these pages.

19 A Yeah, I see A16. You know, if I'm being perfectly  
20 honest it's not the way I recall it. I remember  
21 the body being more in the alleyway and not close  
22 to the building at all.

23 Q Okay.

24 A That's just my recollection. Again, you know, it  
25 was ten years ago.

1 Q I appreciate that. Now, if you might have a look,  
2 please, if you're able to find B11, which is in  
3 the lower left-hand corner. I'm sorry, these  
4 pages aren't numbered, Mr. Commissioner.

5 A Okay. I'm looking at the 11.

6 Q Do you see the clothing tag you've described at  
7 all there?

8 A Well, I see one sort of little -- I don't recall  
9 if that's the clothing tag that I had seen.  
10 There's something to the -- to the left of him.

11 Q At about the level of the head?

12 A At about the level of the head. I don't recall if  
13 that's the clothing tag I saw, but if it is it's  
14 certainly not where I would have seen it. I saw  
15 it above his head.

16 Q Above the head. Okay. Do you remember whether  
17 the body was lying on gravel?

18 A That's not my recollection at all. My  
19 recollection is that he was on the asphalt.

20 Q Have a look, if you could please, at photograph  
21 B1, which is an upper left-hand corner photograph.  
22 It should be I think six pages into this booklet.

23 A Sorry.

24 THE COMMISSIONER: I'm sorry, where are we looking now?

25 MR. MARTLAND: I'm sorry.

1 Q B1, which I think is six pages in, upper left-hand  
2 part of the sheet.

3 A Okay. Yes, I'm looking at B1.

4 Q All right. Now, I don't know. Is that a  
5 photograph that you can explain where you recall  
6 seeing the body when you came around the corner?

7 A From my recollection his body should be on the  
8 concrete about, you know, three to four feet  
9 towards the roadway where the police car is below  
10 the eaves trough. It looks to me like the body's  
11 been moved several feet, four to five feet to the  
12 right from my recollection.

13 Q And I'm just sorry, I don't know if I have you  
14 clearly, 'cause when I look at that photograph I  
15 see the eaves trough to the left of the body but  
16 the police car is more --

17 A Correct. So the body should be -- when I was  
18 making reference to the police car saying that the  
19 body should be, you know, closer -- looks like the  
20 body's been -- I'm sorry, I'm not explaining  
21 myself very well. If I knew north, south, east  
22 and west it would probably be a little bit more  
23 helpful. It looks like the body has been moved to  
24 the right from the eaves trough of five feet, and  
25 moved up closer to the -- to the eaves trough or

1                   the eaves trough has been moved closer to the  
2                   body. I don't know.

3           Q    Okay. Tell me if I can -- if I have it right, I  
4                   may not.

5           A    Okay.

6           Q    On photograph B1 --

7           A    M'hm.

8           Q    -- where you saw the body is pretty close to where  
9                   the eaves trough is visible in that photo?

10          A    That's my recollection.

11          Q    All right. Have you ever been shown these photos  
12                   before this morning?

13          A    No, never.

14   MR. MARTLAND: I have no further questions. Thank you,  
15                   Mr. Kelly.

16   THE WITNESS: You're welcome.

17   THE COMMISSIONER: Mr. Hern?

18   MR. HERN: No, thank you.

19   THE COMMISSIONER: Mr. Crossin?

20   MR. CROSSIN: No, thank you, sir.

21   THE COMMISSIONER: Mr. Woodall?

22   MR. WOODALL: No, thank you.

23   THE COMMISSIONER: Mr. MacKenzie?

24   MR. MACKENZIE: No, thank you.

25   THE COMMISSIONER: Mr. Kelliher?

1 MR. KELLIHER: No, thank you.

2 THE COMMISSIONER: Mr. Ward?

3 MR. WARD: Yes, thank you.

4 **EXAMINATION BY MR. WARD:**

5 Q Sir, my name is Cameron Ward, counsel for United  
6 Native Nations Society in this proceeding. When  
7 you got to the position or the location where you  
8 encountered this body were there any police  
9 officers there?

10 A No.

11 Q And you're clear about that?

12 A Yes. There was nobody there.

13 Q And you've referred to both in your statement and  
14 your evidence today a clothing tag that you saw  
15 when you were doing your amateur CSI view?

16 A Right.

17 Q About what size of thing was that?

18 A I don't know if I could give you -- I didn't even  
19 remember seeing it -- or until I read my statement  
20 I had completely forgotten about it. It sort of  
21 cued my memory a bit, and I seem to recall it  
22 being sort of like a clothing tag at the back of  
23 your collar, so I would assume it would be about  
24 that size, but I honestly couldn't say. So that  
25 would be my recollection.

1 Q The sort of little label you find in the back of a  
2 shirt?  
3 A Correct.  
4 Q I'll ask you to look at A19 in that respect,  
5 please, in the photos that you have, and A18.  
6 A A18 and A19?  
7 Q Yes. And just before I ask you about this, where  
8 in relation to the body's head was this tag, can  
9 you say, when you saw it?  
10 A Yeah, it was just above his head, so maybe within  
11 about a foot or two.  
12 Q All right.  
13 A From what I recall.  
14 Q Now, in A19, just in the very foreground of this  
15 photo there seems to be a small square whitish  
16 object.  
17 A Okay. At the very bottom of the page?  
18 Q At the very bottom of the page.  
19 A Yeah.  
20 Q If you look directly below the white eaves trough  
21 corner.  
22 A Right.  
23 Q Does that resemble --  
24 A That resembles it, yes.  
25 Q And over on the A19, which in my copy is on the

1                   same page, photo A19.

2           A    Yes.

3           Q    That same object, kind of a small square white --

4           A    Right at the bottom in the middle?

5           Q    Yes.  The bottom right of the photo.

6           A    Yes.  Oh, sorry, the bottom right on A19.  In A19

7                   the little square that's at the very bottom of the

8                   photo in the middle --

9           Q    Yes.

10          A    -- kind of looks --

11          Q    And then I'm now taking you to A18.  I'm sorry.

12          A    Okay.

13          Q    And in the lower right --

14          A    Lower right.

15          Q    -- that would appear to be the same object?

16          A    Correct.

17          Q    Which to me looks like a square white object with

18                   a black sort of dot in the middle?

19          A    Correct.  That's the same one I'm looking at, and

20                   that's what I -- that looks what I remember.

21          Q    All right.  Now, sir, do you recall seeing the

22                   gravel area at all?

23          A    I don't have any recollection of that gravel area,

24                   and I'm pretty certain that if I had walked up on

25                   it to go to his body I would have remembered that,

1                   and I have no recollection of that, I just  
2                   remember the asphalt.

3                   Q   Okay. Now, sir, how long did you remain outside  
4                   after coming upon this body; do you have any  
5                   recollection?

6                   A   I remember being there for a while, and in my  
7                   statement I believe I said something about we  
8                   waited around for about an hour, and that seems --  
9                   that seems correct.

10                  Q   Okay. And you've testified about the paramedics  
11                  coming. Do you recall -- do you have any  
12                  recollection during the period of time you were  
13                  there of a number of uniformed police officers  
14                  coming?

15                  A   You know, I'm fairly certain the police were  
16                  there. I don't remember anything specific about  
17                  having any interactions. You know, it's very  
18                  possible that a police officer might have said,  
19                  hey, listen, stick around, we're going to want to  
20                  take a statement from you, but that's not what I  
21                  remember. I'm sure that they were there, I just  
22                  don't remember having any real either interaction  
23                  with them. Again, I think it was mainly with the  
24                  paramedics.

25                  Q   Do you have any recollection of someone stringing

1 yellow tape up of the kind we see in these  
2 photographs while you were there?

3 A I don't recall that.

4 Q Okay. And, sir, as I understand it, Detective  
5 Staunton from the Vancouver Police came to your  
6 workplace?

7 A That's correct.

8 Q And interviewed you?

9 A That's correct.

10 Q With a tape recorder?

11 A That's correct.

12 Q And it would appear that that interview was 13  
13 minutes given what he says about the times at the  
14 beginning and the end. Does that sound about  
15 right?

16 A It could be. It probably felt longer, but I  
17 couldn't say.

18 Q All right. And then he left with his tape  
19 recorder?

20 A Correct.

21 Q When he left did he say anything like make sure  
22 you let us know if you change your address or your  
23 phone number?

24 A No. The only thing I remember him saying to me, I  
25 think I was questioning just what this was all

1           about, and he had made mention that this  
2           individual may have been in police custody at the  
3           time. And that's the only thing -- that's the  
4           only thing I recall him saying. I don't recall  
5           him ever saying, you know, if he knew --

6           Q All right.

7           A I lived at that address and worked there for quite  
8           some time at that address for a while and so, no,  
9           I don't recall that.

10          Q Did he say anything to you about the possibility  
11          that at some later date you might be required as a  
12          witness at trial?

13          A He could have. Not to my recollection. To be  
14          honest I never even thought anything would come  
15          up. Every once in a while I remember, you know --  
16          you know, maybe a couple of years later or a year  
17          later I remember, you know, watching on the news  
18          sometimes and them talking about this individual  
19          that had been found in an alley, and I go that  
20          sounds a lot like what I was witness to, but  
21          didn't know if that was the same person, and was  
22          actually quite surprised when I was contacted by  
23          Mr. Martland.

24          Q And the typed document that has been marked as an  
25          exhibit, your statement, was that ever delivered

1 to you by anyone prior to your coming in to meet  
2 with Mr. Martland?

3 A No.

4 Q So that was the first time in the intervening nine  
5 or so years that you saw --

6 A The first time I saw that statement was about a  
7 week, possibly two weeks ago I think. That's the  
8 first time I've heard anything about this or seen  
9 that statement.

10 Q All right. Just a couple of last points, I'm  
11 sorry to jump around, but you testified about  
12 looking up towards the building roofs to see if  
13 you could see where the eaves trough piece came  
14 from; right?

15 A Correct.

16 Q And when you did that do you recall noticing that  
17 there were no overhanging eaves on the buildings?

18 A Yes, that's my recollection.

19 Q And would you agree that there were no sheltered  
20 areas in the vicinity, areas sheltered by, as I  
21 say, overhanging eaves?

22 A No, not that I -- I remember it going straight up  
23 and there was no sort of overhanging areas.

24 Q And, lastly, sir, do you recall when you came upon  
25 the body whether there were shoes on the feet, and



1 to have a hearing on documents, and I'll be  
2 consultation with him and you respecting --

3 THE COMMISSIONER: I'm sorry, Mr. Ward what?

4 MR. COWPER: Mr. Ward has an application he'd like to bring on  
5 documents, and I'm going to discuss with him the  
6 timing and the schedule with respect to that, and  
7 I'll let everybody know what is decided, and I'll  
8 of course obtain instructions from you with  
9 respect to that.

10 THE COMMISSIONER: But, in any event, that won't be before  
11 January the 7th?

12 MR. COWPER: Well, it may be, but I'll let people know if  
13 that's to occur. I haven't received the  
14 application yet, and I'm not sure that Mr. Ward  
15 and I have yet had a full opportunity to discuss  
16 what the subject matter of that application is.

17 THE COMMISSIONER: Well, it seems that Mr. Ward feels that he  
18 hasn't received all the documents that he would  
19 like to see or review.

20 MR. COWPER: I have gotten that point.

21 THE COMMISSIONER: Perhaps you can satisfy him by indicating  
22 what is available and what isn't available, and  
23 then if it's still necessary for him to make an  
24 application you can let me know.

25 MR. COWPER: Yes, I will. And the only closing remark I'd make

1 is the president of the CBA asked us to remember  
 2 today that there are hundreds of lawyers in jail  
 3 in Pakistan, Karachi. And I'm probably the only  
 4 person in this room whose father actually spent a  
 5 lot of his childhood in that prison, so I was  
 6 remembering it this morning. It's not a pleasant  
 7 place, and it's one of the few places in the world  
 8 in which lawyers are and have been arrested for  
 9 standing up to the rule of law, and I thought we  
 10 might remember that in today's hearing.

11 THE COMMISSIONER: Thank you for bringing that to our  
 12 attention. Counsel, have heard Mr. Cowper that  
 13 we're going to adjourn now until January the 7th.  
 14 We'll continue with further witnesses, as I  
 15 understand it, with respect to phase 1. There may  
 16 possibly be an application that we need to deal  
 17 with before then. If that should arise you will  
 18 be notified, and we'll have whatever sitting and  
 19 whatever time is required in order to deal with  
 20 that, otherwise we'll adjourn then until January  
 21 the 7th. That will be in the same place, the same  
 22 building, and at 9:30 in the morning. Thank you.

23 THE REGISTRAR: This hearing is now adjourned.

24  
 25

1 (PROCEEDINGS ADJOURNED AT 11:55 A.M.)

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

Peri McHale  
Official Reporter  
UNITED REPORTING SERVICE LTD.

EXHIBITS

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