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Vancouver, BC.

January 7, 2008

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

THE REGISTRAR: Order. All rise. This inquiry is now resumed.

THE COMMISSIONER: Mr. Cowper.

MR. COWPER: Thank you, Mr. Commissioner. We have a number of matters which will require your direction this morning, and perhaps I can set the table for the most important question.

What we had scheduled for this week was primarily the evidence of Sergeant Sanderson and Detective Instant. The tentative schedule circulated before Christmas was that we would start this morning with Sergeant Sanderson and then go to Constable Instant later in the week, and they are both -- Sergeant Sanderson is present and available and Constable Instant can be available this week. A couple of issues have arisen and I think you'll have to hear from other counsel. Let me just try to set the stage. The first question is whether we commence this morning with the evidence of Sergeant Sanderson. There are two issues, and Mr. Woodall and I have just been speaking before you commenced the

1 hearing this morning with respect to it, and so
2 I'll let him speak his piece. The essential
3 issue from my point of view is that we have been
4 making inquiries of the Vancouver Police
5 Department respecting requests from other counsel
6 for the entirety of Sergeant Sanderson's
7 disciplinary file. His disciplinary file in
8 relation to the events concerning Mr. Paul have,
9 to my understanding, been disclosed some time ago
10 and those have been available for counsel. With
11 respect to the entirety of his career and he was
12 -- at this point had been serving for, I think,
13 over 15 years. There are some nine other matters
14 which were the subject matter of complaint or
15 otherwise, I understand, and which are noted in
16 his file as being resolved. We have not been
17 able as of this morning to review those nine
18 matters in any kind of detail. It may be they
19 are of no consequence. None of them relate to
20 Frank Paul or the events that are, strictly
21 speaking, the subject matter of Phase 1. I at
22 this point as counsel can't tell you that they're
23 clearly irrelevant or that there's any line of
24 inquiry and I don't think anybody else in the
25 room can venture any understanding of that.

1 There is certainly nothing at this point that
2 appears to make them directly relevant either to
3 his credibility in the broadest or his --
4 anything to do with matters we're embarking into.
5 Having said that, Mr. Woodall's position is that
6 he does not wish Sergeant Sanderson to commence
7 his evidence or to testify this week until he's
8 had a chance to review those and to decide
9 whether he objects to them being produced and to
10 respond to any other counsel who takes the
11 position they're relevant. Let me tell you that
12 the logistical reality I'm told by VPD counsel is
13 that they've been called back from storage, that
14 they were placed in storage some long period of
15 time ago and they understand that they were
16 placed in storage. We do not have either
17 confirmation that they --

18 THE COMMISSIONER: So they are to be produced?

19 MR. COWPER: As I understand it from Mr. Hern, he hopes that
20 they will be available for review by counsel
21 under the normal undertakings today. We don't
22 have a guarantee of that but that's the effort
23 that's under way. From my perspective as counsel
24 for the Commission, my preference would be to
25 start with Sergeant Sanderson this morning, Mr.

1 Woodall has asked for and I've given him leave to
2 lead Sergeant Sanderson's evidence in chief. At
3 its worst, Sergeant Sanderson will at some other
4 time have to deal with other disciplinary matters
5 which don't deal with Frank Paul at all, and I
6 think that's a distinctive enough subject matter
7 and it frankly seems to me unlikely to lead
8 anywhere, that we ought to get on with it. Now,
9 Mr. Woodall doesn't agree with that and you'll
10 have to give us directions. Let me tell you that
11 the option -- I have a couple of options that can
12 be available. We can stand down today, see if
13 those can be made available to counsel, come back
14 tomorrow morning and decide who is best situated
15 to testify. Constable Instant can testify
16 tomorrow morning, we can start with him rather
17 than Sergeant Sanderson, so that is, if I can put
18 it this way, another option for your
19 consideration. I think at this point that's the
20 central decision that I should identify that you
21 should decide, and other counsel will undoubtedly
22 want to be heard on it. I should indicate, since
23 we are opening this hearing, that there are other
24 applications that I should identify that you're
25 going to have to determine. Some of them may be

1 only in writing but just for the sake of the
2 record.

3 I've been notified by counsel for the
4 commissioners -- of the Police Complaint
5 Commissioner that there will be an application to
6 obtain a ruling that some or all of the
7 commissioner's files not be produced on the basis
8 of what I understand to be a claim of
9 deliberative privilege. I won't express it
10 because I haven't received the application yet
11 but I understand the position to be that a
12 commissioner's determination of what discretion
13 they're exercising under the statute and whether
14 -- and what decision to make in respect of a
15 particular complaint is covered by a deliberative
16 of privilege and that ought not to be inquired
17 into by you or the documents in relation to those
18 matters should not be produced by the current
19 commission. Mr. Ryneveld, the current
20 commissioner, has said he asserts no such
21 privilege and will produce at your direction any
22 or all of the files under his control subject to
23 any ruling in respect of a privilege asserted by
24 any of the other three commissioners whose
25 offices covered the timeframe that we're

1 concerned with.

2 There's also, I should say, some outstanding
3 documentary requests from Mr. Ward on behalf of
4 his clients. I understand, although I've not
5 seen it, that he has circulated a Notice of
6 Motion, and I don't know if he circulated an
7 application under the rules yet, but I expect
8 that that will also deal with some disclosure
9 documents from the VPD or other sources.

10 So that's -- the immediate need for your
11 direction is what we ought to do this morning,
12 and as I said earlier, my preference would be to
13 commence with Sergeant Sanderson, direct Mr.
14 Woodall to commence his evidence and then go from
15 there. The alternative would be to start with
16 either Sergeant Sanderson or Constable Instant
17 tomorrow. If you decide not to start today, my
18 preference would be to leave that option for
19 counsel to deal with after we find out the
20 logistics respecting the complaint files. If we
21 can get that decided today, then I think we can
22 start tomorrow morning.

23 There is one other thing which Mr. Woodall
24 dealt with me just before the hearing and maybe I
25 should, for the sake of completeness, address it.

1 As you know, there have been two recordings
2 circulated early in the piece respecting the
3 audio recording from the videotape camera and the
4 audio recording from the microphone at the
5 counter on the day in question. As I indicated
6 before the break, those have been circulated to
7 all counsel. They're very difficult to make out
8 and we have endeavoured, as Commission counsel,
9 to listen to those tapes and produce a suggested
10 transcript and I've circulated that over the
11 break to all counsel. I have not had any
12 response from any counsel either agreeing or
13 disagreeing with the transcript. It wasn't
14 intended on my part that we would be testifying
15 as to what was on the tape but that that would be
16 available and then hopefully we could work
17 towards an agreed upon transcript. There is no
18 agreement at present. Mr. Woodall's concern is
19 that that transcript or the tape may be put to
20 his client in cross-examination. My position on
21 that is that that is fair game. In other words,
22 the transcript is not evidence for anybody and
23 that the contents of the tape are fair to put to
24 the witness to the extent that there's a basis
25 for cross-examination, and Sergeant Sanderson can

1 agree or disagree with any suggestion that those
2 are on the tape. Ideally, we would have had some
3 CSI-like operation to produce a perfectly legible
4 tape. There have been several efforts to produce
5 a legible, an easily audible tape, and we have
6 not been able to get one that's anything other
7 than difficult. That may change but at this
8 point I don't think that prevents a witness from
9 fairly testifying in the context of their memory
10 as to what they recall.

11 THE COMMISSIONER: Is it suggested that Sergeant Sanderson is
12 on the tape?

13 MR. COWPER: There's no question that he's on the tape and the
14 question I think that Mr. Woodall -- I don't want
15 to misstate his position. I understand he may or
16 may not take any exception to the transcript. He
17 says he's listened to the tape and not been able
18 to make out the statements which were recorded.

19 THE COMMISSIONER: We heard the tape and that doesn't surprise
20 me.

21 MR. COWPER: Yes. Candidly, three of us listened to it on
22 many occasions to produce what we produced so
23 it's our best effort, and I'm not suggesting in
24 any fashion it's an easy undertaking. Having
25 said that, I think what Mr. Woodall's concern is,

1 if we move towards an agreement that that's the
2 transcript, then he can deal with that. What
3 he's having difficulty with is, or his issue is
4 other counsel advancing portions of the
5 transcript to a witness in the box, and I don't
6 think there's any alternative other than to say
7 the witness has to deal with it on the basis that
8 may or may not have occurred as set out in the
9 tape. Those are my submissions this morning.

10 THE COMMISSIONER: So I understand, the published notice
11 certainly given several weeks ago was that we
12 would be proceeding with Sergeant Sanderson this
13 morning, and you're prepared to proceed with
14 Sergeant Sanderson as his counsel, I take it,
15 this morning.

16 MR. COWPER: Well, as I understand it, Mr. Woodall's position
17 is that we cannot proceed with Sergeant Sanderson
18 until the two issues of his disciplinary record
19 and the tape are clarified.

20 THE COMMISSIONER: Apart from that, he's ready to testify.
21 But those are concerns of his counsel?

22 MR. COWPER: Yes.

23 THE COMMISSIONER: I see. Thank you. Mr. Woodall.

24 MR. WOODALL: Mr. Commissioner. Thank you. You may recall
25 that in November there were a number of instances

1 where, during examination or cross-examination,
2 witnesses were asked about the existence of
3 documents and then there were applications made
4 or perhaps less formal requests made for further
5 documents regarding those witnesses. In the
6 context of that, about half-way through the last
7 phase of the hearings, I rose and asked for a
8 direction that all of the documents that are
9 relevant to Mr. Sanderson be produced before he
10 has to testify. I pause to note that my friend
11 has drawn a distinction between examination and
12 cross-examination and in my submission it's not a
13 helpful distinction because obviously Mr.
14 Sanderson is going to want to address in direct
15 examination all of the points that are relevant
16 and have his opportunity to tell his version his
17 way before he's cross-examined. One of the
18 issues that has been outstanding is the
19 possibility that disciplinary files relating to
20 matters other than Mr. Paul might be produced and
21 might be put to Mr. Sanderson. What I very
22 strongly desire is to have that issue resolved
23 before Mr. Sanderson testifies. It's --

24 THE COMMISSIONER: Mr. Woodall, excuse me for interrupting.

25 The file with respect to Sergeant Sanderson's

1 involvement with Frank Paul has been disclosed;
2 is that correct?

3 MR. WOODALL: There is a separate issue with respect to that.
4 Part of that file was disclosed some time ago.
5 Yesterday evening I received a document from the
6 Vancouver Police Department, a very significant
7 document from that file, that my client has never
8 seen. He doesn't -- he doesn't recall ever
9 seeing it during the period when the disciplinary
10 proceedings were occurring and it is not part of
11 the disclosure that I have, and so that is
12 probably a relatively small issue. If we stood
13 down for a brief period of time, I would be able
14 to address that document with Mr. Sanderson. So
15 that is an issue. It's not the kind of issue
16 that would pull things to a halt but it would
17 require a brief 20-minute adjournment.

18 The larger issue is the other disciplinary
19 files. Mr. Sanderson has been shown what looks
20 like an eight-by-ten index card which has on it
21 eight or nine names and then a one-word caption,
22 such as "resolved" or "unsubstantiated" or
23 whatever. Those go back to the early '80s. Mr.
24 Sanderson is unable to remember what any of those
25 are about, and so it's not -- what he knows and

1 what I know is there are these issues that may or
2 may not be put to him, and before he begins his
3 examination I would like to know is that
4 something that he's going to have to be
5 confronted with at any point. If it is something
6 that is going to be open in cross-examination,
7 obviously it's something that counsel might wish
8 to put to him in direct examination. That's one
9 of the issues.

10 The next issue is the audio transcript.
11 Again, what I wish to know is what the status of
12 that transcript is going to be. I'm presuming
13 that at some point somebody is going to suggest
14 that transcript should become an exhibit and
15 should serve as evidence of what the tape which
16 is, to my hearing at least -- to my hearing, I
17 can't understand anything that's on it. But at
18 some point I presume that somebody is going to
19 suggest that transcripts should become an
20 exhibit. I would simply like to know the status
21 of that. I don't know if there's consensus in
22 the room that it is more or less correct or
23 violent opposition it is more or less correct,
24 but there are some statements in it that are
25 likely going to be said to be Mr. Sanderson and I

1 would like to know if those statements in the
2 form they are in this transcript are going to
3 become the evidence of what he actually said,
4 then I would like to know that so that I can have
5 him address it. That's the second thing I would
6 like to have addressed before he testifies. And
7 I don't know, it may be that there isn't great
8 debate. It may be that people are going to say
9 no, the transcript says other things, that some
10 counsel in the room might dispute what the
11 transcript says, and I would simply like to know
12 before Mr. Sanderson is called upon to testify
13 what is the case against him that he has to --
14 what are his statements and actions that he has
15 to explain.

16 A third issue is that I received -- sorry,
17 on Friday I had the opportunity to review a file
18 that I had not reviewed before from the Vancouver
19 Police Department and there are documents in that
20 that I believe are potentially relevant. I have
21 discussed those documents with Mr. Sanderson but
22 he has not seen them because I did not obtain
23 them myself, copies of them myself until
24 yesterday. Mr. Sanderson has seen them at some
25 distant point in the past but he hasn't seen them

1 at any point relevant to this hearing. If I lead
2 those documents through Mr. Sanderson,
3 undoubtedly other people will wish to see them as
4 well, and I don't know whether the other parties
5 have seen these documents, I believe they have
6 not seen them, and that's an issue that I think
7 needs to be resolved, not from Mr. Sanderson's
8 perspective but from the perspective of other
9 counsel. In short, Mr. Sanderson has documents
10 he may wish to refer to in his examination that
11 other parties have not yet seen.

12 In summary, I go back to the application for
13 directions that I made back in November that
14 there be a determination of all the documents
15 that Mr. Sanderson is going to have to deal with
16 in his testimony and that those determinations be
17 made before he's asked to testify. And related
18 to that is the possibility of documents going in
19 after he testifies that will bear directly on his
20 evidence. In that context I'm referring
21 specifically to the audio transcript. It would
22 be unfortunate from Mr. Sanderson's perspective
23 if he were to testify in chief and cross and then
24 at some later point there be a determination that
25 a statement he disputes in the transcript was in

1 fact made by him. And so I would like to know if
2 there's some factual certainty so far as that can
3 be as to what the status of this document is.
4 I've been calling it a transcript. What it is is
5 a document, as I understand it, prepared by
6 Commission counsel and there are two of them
7 relating to two different presentations of the
8 same audio interchanges and they're not even
9 consistent between them entirely, and that's not
10 surprising because what may be heard from one
11 microphone may be heard differently from a more
12 distant microphone or there may be other issues.

13 THE COMMISSIONER: From what Mr. Cowper tells me, I don't
14 think, Mr. Woodall, it should be referred to as a
15 transcript at this point. It's merely a
16 suggestion as to what may be on the tape. For me
17 to accept that as a transcript and to accept it
18 as an exhibit, I would have to be satisfied that
19 it's accurate and I may not be satisfied it's
20 accurate after I hear it. Certainly I can't make
21 much out of the tape at all. So I gather that
22 Mr. Cowper is saying we've done the best we can
23 to try and assist counsel by what we take from
24 the tape. It may or may not be accurate.

25 I think the first point that you raise is

1 that you require a short adjournment in order to
2 talk to your client with respect to a document
3 which has just come to light from the Vancouver
4 Police Department and I think counsel should see
5 that document once you have it past your client.
6 Yes?

7 MR. HERN: Mr. Commissioner, on behalf of the VPD, I'd like to
8 address the four points Mr. Woodall has made with
9 respect to these documents. The first is with
10 respect to the first point that he made regarding
11 this document that allegedly was not produced.
12 An important distinction is what the VPD has
13 produced to Commission counsel and what
14 Commission counsel has produced to all the
15 counsel in the room. So there should be no
16 mistake that the VPD has produced all the
17 documents that it has as they've obtained them to
18 Commission counsel that are relevant to Frank
19 Paul. For example, all the documents relevant to
20 Phase 1 were produced but also all the documents
21 that we had that were relevant to Phase 2 were
22 produced. That includes Detective Staunton's
23 investigation and major crime investigation and
24 Don Boutin's internal investigation documents.
25 The document that Mr. Woodall is referring to is

1 a memorandum from the internal investigator,
2 Sergeant Don Boutin, regarding the discipline,
3 explaining the discipline sanctions that he was
4 recommending, and that is at the very beginning
5 of his file and that was in the hands of
6 Commission counsel. I understand that they took
7 that to be relevant to Phase 2 and therefore did
8 not send it out with the Phase 1 disclosure and
9 they may wish to speak to that. The reason it
10 was provided to Mr. Woodall to ensure he had it
11 is that it bore some relevance on whether the
12 discipline records and the Human Resources file
13 records were relevant.

14 So that brings me to the second point. With
15 respect to -- Mr. Ward made a request of
16 Commission counsel some time ago asking for the
17 Human Resources file on these two officers,
18 Constable Instant and former Sergeant Sanderson
19 and for the discipline records. The VPD has
20 always stated that we have documents like that.
21 Whether they are relevant or not is an issue that
22 needed to be worked out as between Commission
23 counsel and Mr. Woodall and Mr. Crossin.

24 THE COMMISSIONER: Some of those files haven't yet been
25 produced or parts of them.

1 MR. HERN: Exactly. Because the relevance of a personnel
2 file, for example, including things such as
3 leaves of absence and sick time is marginal at
4 best, if relevant at all. And it's important of
5 course that it contains personal information
6 about Mr. Instant and Mr. Sanderson that they
7 should need to vet those first. Those two things
8 are separate, the Human Resources file and the
9 discipline file. The Human Resources file, Mr.
10 Woodall had an opportunity to review it on
11 Friday, I understand, and that he has had
12 discussions with Commission counsel and there's
13 been some resolution as to how those are to be
14 dealt with. The files are here in this room for
15 distribution to other counsel. That can be
16 resolved very easily. With respect to the
17 discipline files, those are old disciplinary
18 records. For example, former Sergeant Sanderson
19 was sworn as an officer in 1980 so various
20 complaints naturally come in over an officer's
21 career and are typically resolved. In this case,
22 we understand they're all resolved. The only
23 indication as to how they were related to the
24 Frank Paul file is that the internal
25 investigator, when he was considering what

1 discipline to recommend for former Sergeant
2 Sanderson, looked at a card which stated that
3 there were these nine complaints and that they
4 had been resolved. It doesn't appear anywhere
5 that he actually looked at the files. They don't
6 appear anywhere in the Frank Paul investigator's
7 files. So that's an issue that we have the
8 record, again, it wasn't something we would have
9 produced at the outset but we advised that we can
10 produce it subject to Commission counsel's
11 direction as to relevance and any objection from
12 Mr. Woodall. And so those will be in, we
13 understand, hopefully by noon today.

14 The third item Mr. Woodall mentioned was the
15 audiotape and what to do with the circulated
16 document, and we take the same position as Mr.
17 Cowper on this, that it ought to be put to a
18 witness and if a witness can identify it, then
19 fine, but otherwise it should only be identified
20 as an exhibit for identification.

21 The last thing that I've already touched
22 upon which Mr. Woodall mentioned at the end is
23 with respect to that Human Resources file.
24 Again, I have that here, and I don't believe
25 that's an issue that's going to delay former

1 Sergeant Sanderson's testimony. The VPD's
2 position on this would be that Mr. Sanderson
3 should go ahead today.

4 THE COMMISSIONER: Thank you. Did you wish to say something,
5 Mr. Ward or Mr. Kelliher?

6 MR. WARD: Yes, please. Mr. Commissioner, I support the
7 submissions of my friend Mr. Cowper and it is my
8 client's view that we should proceed this morning
9 with Sergeant Sanderson for the reasons Mr.
10 Cowper has explained. I do wish to say a word
11 about the state of document production because I
12 was listening to my friend a moment ago and my
13 name came up with respect to triggering some of
14 these documents that have newly been produced. I
15 have since sometime in November been making
16 requests for documents that I perceived would be
17 relevant and in the hands of the Vancouver Police
18 Department and I have met with limited success
19 such that I did prepare a notice of application
20 seeking by category a number of documents that I
21 expect are in the hands of Vancouver Police
22 Department and are relevant to this inquiry. I
23 just realized, and I apologize to all, that when
24 I attempted to circulate the Notice of Motion by
25 e-mail, I actually neglected to attach it to the

1 e-mail document so I will rectify that error
2 immediately once I have the opportunity. Suffice
3 it to say, I have been concerned for many weeks
4 about the state of Vancouver Police Department
5 document production and I remain very concerned
6 in light of what I heard just now that, as Mr.
7 Woodall said, a very significant document has
8 just come to light, and in my respectful
9 submission there's no reason why this should be
10 happening at this stage of this inquiry given the
11 time that's been spent preparing for it and I'm
12 very concerned about that. But, as I say, I do
13 feel that we're all here. I know counsel is here
14 from Toronto as well, we should proceed as
15 scheduled, in my submission.

16 THE COMMISSIONER: That certainly is my wish that we proceed
17 but I'm concerned with Mr. Woodall's statement
18 that this document has recently come to light and
19 his client hasn't had an opportunity to see it.
20 I understand that that could be accomplished in a
21 very short period of time. Then what about the
22 distribution of that document to other counsel?
23 So they'll have that for the benefit of
24 examination if they wish.

25 MR. COWPER: Just a couple of comments, if I may, Mr.

1 Commissioner, just to clarify a couple of things.
2 Firstly, I should indicate, because Mr. Hern I
3 think felt he was under fire on one of these
4 matters, the small document which Mr. Woodall
5 referred to -- I shouldn't say small but the
6 document referred to that I believe is a
7 memorandum dated January 10, 2000 was produced in
8 the fall by the Vancouver Police Department as
9 part of their general production, and it was
10 circulated to all counsel we believe in November.
11 I don't think in fairness --

12 THE COMMISSIONER: It's just that Mr. Sanderson hasn't seen
13 it; is that correct?

14 MR. COWPER: I think what happened was -- I don't think we
15 should overstate the production issues of this
16 document, I just think frankly the relevance of
17 it in his evidence wasn't brought home to Mr.
18 Woodall and it may have been slipped between the
19 cracks somewhere but we believe that it was
20 produced to all counsel earlier as part of the
21 Phase 2 disclosure. I think it is fair and he
22 ought to have an opportunity to review it before
23 he testifies.

24 With respect to the audio transcript, I
25 actually would ask formally that the parties who

1 are interested in this review the transcript and
2 indicate to me by e-mail or otherwise whether
3 they take exceptions to the transcript. We have
4 listened to the tape dozens of times in order to
5 try to obtain a fair transcript from. My
6 understanding as of sort of press time this
7 morning is that neither -- no other counsel has
8 taken that effort. Obviously in the normal
9 course of evidentiary process that would give us
10 a basis on which to reasonably suggest something
11 to a witness but nothing further. It is, I
12 think, preferable for all parties that if we
13 could reach some agreement on at least portions
14 of the transcript, that would be preferable. I
15 don't with respect think that the matter has to
16 be adjourned generally for that purpose.

17 THE COMMISSIONER: No, we don't need to come to that agreement
18 before Mr. Sergeant Sanderson testifies. He can
19 accept what's on there or deny it.

20 MR. COWPER: I do have, just to give you options in which to
21 operate, I understand his evidence in chief is
22 likely to be half a day and it may be, given the
23 timing that we have, that if we stood down this
24 morning, that that would give Mr. Woodall an
25 opportunity to review both the document that he's

1 spoken about from 2000 and an opportunity for us
2 to clarify the existence of these other files and
3 then we would have overnight in all likelihood to
4 deal with the issue of the disciplinary files, if
5 necessary. That's an option. So I'll leave it
6 with you on this basis. I think we could stand
7 down for the morning, we could go ahead this
8 morning as I've suggested, or we could stand over
9 until tomorrow morning for Constable Instant.
10 Those are really the three choices I can offer
11 you.

12 THE COMMISSIONER: I don't see any real need to stand down
13 this morning. As far as I understand from the
14 audiotape, there has been no general agreement
15 with respect to the suggested translation that
16 you have produced for counsel to consider from
17 the tape. Sergeant Sanderson can either accept
18 or deny what's on that tape if he so wishes once
19 he hears it. Counsel can certainly make
20 suggestions to him as to what they believe is
21 indicated, and he can deal with that when it's
22 put to him.

23 As far as the file is concerned, the
24 disciplinary files that are going to come up, if
25 -- I understand they're to be produced later

1 today or can they be, Mr. Hern.

2 MR. HERN: That is our hope. They're coming in from an
3 off-site storage. I understand the only party
4 that has asked for those is Mr. Ward from an
5 earlier request and he wishes to proceed so
6 perhaps --

7 THE COMMISSIONER: If we proceeded on the basis that once
8 those files are produced and if they are
9 determined to be relevant as far as this inquiry
10 is concerned, then we may consider having
11 examination with respect to those files or
12 portions of those files at another time and if
13 Sanderson has finished testifying recall him, and
14 deal with that narrow issue only. Would that be
15 acceptable?

16 MR. WOODALL: It's certainly not very desirable because there
17 are other issues that are related -- potentially
18 related in an indirect or even direct way to
19 those disciplinary files. If Mr. Sanderson, for
20 example, is talking about his career and what he
21 has done in his career up to that point, which
22 would be relevant to the Commission's examination
23 of what sort of person he is which in turn may be
24 relevant to any judgment the Commission might
25 make about whether he is likely to be a person of

1 callous character which, as I understand it, is
2 at least one of the accusations he's facing, then
3 before he describes his successes and other
4 aspects of his career he should have a right to
5 know what he's going to face. Now, I note that
6 Mr. Ward is the only one who has asked for these
7 documents, is content to go ahead this morning.
8 It seems to me that there is, in essence, an
9 election. If Mr. Ward is content to go ahead and
10 we're content to go ahead, then perhaps the
11 ruling should be that those disciplinary records,
12 which go back in one case 24 years ago, simply
13 ought not to be considered. It strikes me that
14 they're relevance is, from what I can tell, would
15 be marginal at best.

16 THE COMMISSIONER: It certainly sounds that way.

17 MR. WOODALL: Yes. It is usually the case that by analogy to
18 criminal or civil proceedings a person might be
19 cross-examined on convictions that he has
20 sustained but if a person was charged, for
21 example, but not convicted, then you would not
22 put those matters to him. That is essentially
23 what I understand the issue is with the file. I
24 am not conceding at all that they would be
25 relevant. All I'm saying is that before Mr.

1 Sanderson testifies, I think in fairness he ought
2 to know what he's going to be confronted with.

3 THE COMMISSIONER: All right. That's fair. Mr. Ward, can we
4 proceed?

5 MR. WARD: In my view we certainly can but if there's some
6 suggestion that by proceeding, the right, if any,
7 to review the disciplinary files and use them, if
8 relevant, is lost, then I would elect not to
9 proceed. In other words, if Mr. Woodall's
10 submission that I be put to some sort of election
11 is accepted, then my election would be to wait
12 for those records but just so it's clear -- and I
13 don't know frankly whether the contents of these
14 file are going to be relevant to the Paul matter
15 or not because I didn't have any dealings with
16 the witness. But if, for example, the witness
17 takes the stand and testifies in glowing terms
18 about his career as a police officer and it turns
19 out that in the nine complaints that we're aware
20 of there were complaints about his actions as a
21 member of the jail staff that impact upon how he
22 dealt with Mr. Paul, then clearly that evidence
23 should be subject to being tested and probed and
24 the records provide the ability to do that, so
25 they may well be quite relevant. But in my view,

1 the witness's evidence in chief, if you will, is
2 likely to be fairly long, although Mr. Woodall
3 would be a better judge of that than I, and if
4 that were the case we could certainly in my
5 submission proceed with that initial evidence at
6 least rather than lose the entire day today.

7 THE COMMISSIONER: Thank you. All right.

8 MR. WOODALL: I think Mr. Ward's last point is agreeable. If
9 the desire was that he would commence his
10 examination in chief and get through as much as
11 of it as I can without addressing the issues
12 which may or may not touch upon the disciplinary
13 files, and I am content to do that, and it may be
14 that sometime during the day we may have those
15 disciplinary files and we may be able over the
16 lunch hour -- hoping more optimistically than is
17 likely -- but if they were to come up over the
18 lunch hour and deal with them. My expectation is
19 it's not going to take long to deal with them but
20 I just feel I would not be doing my client a
21 service if I were to rush him onto the stand and
22 have him conclude his evidence in chief without
23 having an opportunity for him to address
24 documents that he may be cross-examined on.

25 THE COMMISSIONER: I think that's sensible, Mr. Cowper, that

1 we proceed with the evidence of Sergeant
2 Sanderson after a brief break so that you can
3 discuss with him this last document that's come
4 to light, Mr. Woodall. If after the documents
5 concerned are delivered, that is to say, the
6 missing file or portions thereof, I'll make a
7 determination as to the relevance and then we can
8 maybe deal with that after those files are
9 produced with your assistance.

10 MR. COWPER: That's fine. I take it that we'll take a
11 15-minute break now and maybe commence at quarter
12 to 11:00 if that's enough time.

13 THE COMMISSIONER: I think that's appropriate. Certainly Mr.
14 Woodall has asked for a break for a valid reason
15 and I propose to grant that and then we'll
16 proceed with the evidence of Sergeant Sanderson
17 at a quarter to 11:00.

18 THE REGISTRAR: We will now recess until quarter to 11:00.

19 (PROCEEDINGS ADJOURNED AT 10:22 A.M.)

20 (PROCEEDINGS RECONVENED AT 10:46 A.M.)

21 THE REGISTRAR: Order. All rise. This hearing is now
22 resumed.

23 THE COMMISSIONER: Mr. Woodall.

24 MR. WOODALL: Mr. Sanderson is in the witness box.

25 THE COMMISSIONER: Thank you.

1 THE REGISTRAR: Good morning, sir. Do you wish to be sworn or
2 affirmed?

3 A Affirmed.

4 **RUSSELL SANDERSON: Affirmed**

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

6 A Russell Sanderson. S-A-N-D-E-R-S-O-N.

7 THE REGISTRAR: Thank you. Be seated. Counsel.

8 **EXAMINATION BY MR. WOODALL:**

9 Q Mr. Sanderson, on the 5th of December, 1998, were
10 you the sergeant in charge of the jail at the
11 Vancouver Police Department at 312 Main Street,
12 Vancouver?

13 A For the night shift, yes.

14 Q What were the hours of that shift?

15 A It was 1800 to 0600.

16 Q 0600 on December 6, 1998?

17 A Correct.

18 Q You're no longer a member of the Vancouver Police
19 Department; is that correct?

20 A That is correct.

21 Q When did you leave the Vancouver Police
22 Department?

23 A February of 2001.

24 Q Are you presently employed as a police officer?

25 A No, I am not.

1 Q When did you become a police officer?

2 A In July of 1980.

3 Q Can you describe the assignments that you had
4 within the Vancouver Police Department between
5 the time that you joined and the 5th of December,
6 1998 in a general way?

7 A I worked at the warrant squad, all four districts
8 of patrol, communications centre, both as a
9 constable and as a sergeant, and in the jail,
10 both as a constable and a sergeant.

11 Q When you say "all four districts", does that mean
12 throughout the entire City of Vancouver?

13 A That was the entire City of Vancouver, patrol for
14 the entire city, yes.

15 Q Did you work for a time as a wagon driver?

16 A I did, in all districts again.

17 Q And in the context of your duties as a wagon
18 driver, did you have occasion to take people to
19 the Vancouver Detox Centre?

20 A On numerous occasions.

21 Q And based on that experience, did you have an
22 understanding of the policy of the detox centre
23 regarding those who they would or would not
24 accept for admission?

25 A Yes, I did. They would only accept those people

1 that were intoxicated by alcohol or drug and
2 those people that were not violent, although they
3 did have a list of people that they had banned
4 from actually being delivered there.

5 Q Did you have an understanding of whether the
6 detox centre was a place of shelter for people
7 who were not intoxicated but might need somewhere
8 to come out of the cold?

9 A Definitely not.

10 Q Moving ahead a little bit, we'll come back to
11 some of the intervening events, but moving ahead
12 a little bit. On the 5th of December, did you
13 have an understanding of whether Mr. Paul was
14 welcome at the detox centre?

15 A I believe that he was not allowed at detox, he
16 had been banned.

17 Q Do you recall how you came to that understanding?

18 A No, I don't.

19 Q Now, I'd like to turn to another topic and that
20 is the nature of your work as a jail sergeant.
21 To begin with, I'd like to ask you about your
22 training to be a jail sergeant. First of all,
23 when did you become a jail NCO, a jail sergeant?

24 A In April of 1998.

25 Q Did you receive any formal training prior to

1 becoming the jail sergeant?

2 A There was no classroom or any other formal
3 training. Training was basically based on,
4 before you could become promoted that you would
5 have to write a promotional exam which meant you
6 were questioned on the law, detention, policies
7 and procedures, it was a very thorough exam. I
8 had also worked as a constable in the jail in
9 1983, taken every position except that of the
10 NCO, worked every position, and just prior to my
11 taking over the jail in April, I had
12 approximately one week of being on-the-job
13 training with the then- existing jail NCO who
14 showed me what to do on the various shifts.

15 Q You've referred to a promotional exam. Is that
16 the exam to become eligible for promotion to the
17 rank of sergeant?

18 A That's correct.

19 Q Is that the exam that had a number of questions
20 about policies and procedures within the
21 Vancouver Police Department?

22 A Most definitely.

23 Q Did it also have questions about powers of arrest
24 and detention?

25 A Yes, that was very predominant in the exam.

1 Q Now, what is the purpose and function of the jail
2 at the Vancouver Police Department?

3 A The Vancouver Police jail is a place of
4 incarceration for those people that are lawfully
5 arrested until they could be dealt with according
6 to the law.

7 Q Are there laws or rules or policies that govern
8 the power of the police department to hold people
9 in the jail?

10 A Yes, there are. Primarily, the *Charter of Rights*
11 *and Freedoms* would be the overlying document that
12 would govern that, people that were incarcerated.
13 It would be the -- the document would basically
14 say that people have to be lawfully arrested and
15 that there had to be a lawful means of detention
16 that they -- to continue the arrest. In
17 addition, there was the various powers under the
18 *Immigration Act*, *Criminal Code*, other Federal
19 acts and various Provincial acts.

20 Q What were the main duties of the sergeant, the
21 jail sergeant, rather, in 1998?

22 A The main duty was to ensure that those people
23 that had been arrested and delivered to the jail
24 were in fact lawfully arrested and that there was
25 a valid reason for them to be detained in the

1 jail. That was one reason. The other reason
2 would have been to ensure that the prisoners that
3 were detained were processed for either court or
4 for other departments, whatever the warrants or
5 other status they had. The third thing would
6 have been for the safety of the jail staff and
7 the prisoners themselves.

8 Q As the jail sergeant, did you have any powers or
9 duties under the *Criminal Code of Canada*?

10 A Yes. As an on-duty jail sergeant, the sergeant
11 was assumed to be the officer in charge for the
12 Vancouver Police Department at that time.

13 Q Is the officer in charge a defined position
14 within the *Criminal Code*?

15 A It is.

16 Q What are the responsibilities of the officer in
17 charge as carried out by the jail sergeant?

18 A The officer in charge is responsible to ensure
19 that those people that were eligible for release,
20 be it on a promise to appear, an undertaking or
21 any other type of release, were so released in a
22 timely manner.

23 Q Can you give other examples of decisions that you
24 as jail sergeant was required to make concerning
25 the custody of individuals in the jail?

1 A It would all depend on the reason for the arrest.
2 For example, if a person had been arrested on a
3 warrant, the jail sergeant would have to
4 determine whether it was endorsed or unendorsed.
5 If it was unendorsed, of course the person would
6 have to stay in jail. If it was endorsed, then
7 there would have to be exigent circumstances why
8 that person would not be released. There was a
9 reverse onus at that point, so that the person
10 had to be released, whether it be a recognizance,
11 undertaking. There were also the warrant of
12 committals where the prisoner would have to stay
13 in custody until dealt with by the various -- the
14 Federal or Provincial detention facilities.

15 MR. WOODALL: Mr. Commissioner, I would like to show the
16 witness a document that was disclosed as a
17 Vancouver Police Department policy. It was
18 disclosed as tab 3 in a disk that -- the folder
19 called Vancouver Police Department Policies.

20 THE COMMISSIONER: Very well.

21 MR. WOODALL:

22 Q For the record, this is policy 77.1 and the cover
23 sheet that we have been provided is entitled
24 Prisoners - Authorities Detained.

25 Now, Mr. Sanderson, could you turn to the

1 second page of the document that I've handed you.
2 Can you read the paragraph and subparagraphs, can
3 you read that, and then I'll ask you some
4 questions.

5 A I have.

6 Q Is that consistent or inconsistent with your
7 understanding of your authority to detain
8 prisoners in the jail at the Vancouver Police
9 Department in December of 1998?

10 A Yes, it is.

11 Q Now, if you look at paragraph A -- sorry, the
12 introduction is as follows:

13 The following persons only are to be
14 detained in the detention annex.

15 Then there are a number of subparagraphs.

16 Paragraph (a) is as follows and I'll ask you a
17 question about it.

18 Paragraph (a):

19 Those arrested within the provisions of the
20 *Criminal Code of Canada*.

21 Did you understand that Mr. Paul had been
22 arrested within the provisions of the Criminal
23 Code of Canada?

24 A No.

25 Q Paragraph (b) is as follows:

1 Those arrested for other departments where a
2 charge has been laid and arrival of escort
3 with warrant is awaited.

4 Within that paragraph, does "other departments"
5 refer to other police departments or law
6 enforcement agencies?

7 A It does.

8 Q Did you consider that Mr. Paul had been arrested
9 within the meaning of that paragraph, that he had
10 been arrested by another department and escort
11 from that department was being awaited?

12 A No, he had not.

13 Q Now, paragraph (c) is as follows:

14 Those arrested or held for processing by the
15 Immigration Department.

16 Did you understand that Mr. Paul had been
17 arrested or was being held for processing by the
18 Immigration Department?

19 A No, he was not.

20 Q Paragraph (d), I'm going to ask you a number of
21 questions about, but I'll read it and ask you a
22 summary question, and then we'll look at that in
23 more detail. Paragraph (d) is as follows:

24 Those arrested for being in a state of
25 intoxication in a public place that are

1 violent and require restraint or are refused
2 admittance to the detox centre.

3 Just in a summary manner, can you say whether you
4 believed that Mr. Paul was intoxicated in a
5 public place?

6 A No, he was not.

7 Q Now, what then with those conclusions did you
8 understand about your power to hold Mr. Paul in
9 the jail?

10 A At that point, Your Honour, I believe that he had
11 been arrested in error and the arrest was
12 unlawful which meant that there were no power to
13 detain Mr. Paul and that he should be released
14 immediately as it was contrary to his rights and
15 freedoms.

16 Q Did you understand whether there was a VPD policy
17 that allowed you to incarcerate people simply
18 because they had nowhere else to go?

19 A There was not.

20 THE COMMISSIONER: Would you repeat the question again,
21 please, Mr. Woodall?

22 MR. WOODALL:

23 Q Yes. Did you understand whether there was a VPD
24 policy that allowed you to incarcerate people
25 simply because they had nowhere else to go?

1 A No, there was no policy.

2 MR. WOODALL: I'm going to ask if that document could be
3 marked as the next exhibit, Mr. Commissioner.

4 THE COMMISSIONER: Exhibit number?

5 THE REGISTRAR: 57.

6 THE COMMISSIONER: Thank you.

7 **(EXHIBIT 57: VPD Policy 77.1)**

8 MR. WOODALL:

9 Q We've heard about a policy that's been used for
10 which there's a shorthand called SIPP or H/SIPP.
11 In the acronym H/SIPP, what does the acronym
12 stand for?

13 A Hold, state of intoxication in a public place.

14 Q What was the nature and purpose of that policy?

15 A It was to be able to arrest people that were in a
16 state of intoxication in a public place.

17 Q Was there a key criterion or consideration that
18 engaged that policy?

19 A Yes. The person actually had to be intoxicated
20 by alcohol or a drug at that point.

21 Q What was your understanding of the legal basis
22 for that policy?

23 A The legal basis was -- started with the *Liquor*
24 *Control and Licensing Act*. There was a section
25 there which would allow people to be arrested if

1 they were in a state of intoxication in a public
2 place. There were two basic ways that the
3 section was used, the first being a person that
4 was intoxicated and creating a disturbance. The
5 person would be arrested and taken to jail under
6 the H/SIPP. Probably that person would be better
7 arrested under creating a disturbance or breach
8 of the peace.

9 The second situation would be where a person
10 was so intoxicated by alcohol or drug that they
11 were unable to care for themselves and they would
12 be brought into the jail so that they would be
13 sobered up to the point that they could be
14 released.

15 THE COMMISSIONER: Just give me a moment. You say that under
16 SIPP, the policy was that any persons who were so
17 intoxicated that they would be retained until
18 such time as they were sober and then released;
19 is that correct?

20 A To a point where they were somewhat sober to be
21 released. They didn't have to be directly sober.
22 There was no blood tests or anything like that.
23 As long as they would be able to care for
24 themselves, they would be released.

25 THE COMMISSIONER: Thank you.

1 MR. WOODALL:

2 Q Now, as to the second category, those people who
3 were not creating a disturbance but were arrested
4 until they could care for themselves, what was
5 your understanding of the legal basis for that
6 power?

7 A It was a very gray area. The power to arrest was
8 there under the *Liquor Control and Licensing Act*
9 but there was no real power to detain. There was
10 a power to charge under the *Liquor Control and*
11 *Licensing Act* but there was nothing there that
12 really allowed the police to detain a person for
13 any reason.

14 Q With that understanding, what onus does that put
15 on the sergeant in charge of the jail?

16 A The sergeant is then relying on the policy of the
17 Vancouver Police Department rather than relying
18 on the law and it was up to the sergeant to
19 ensure that the policy was strictly adhered to,
20 that the person was actually intoxicated to the
21 point where he was unable to care for himself or
22 had been creating enough of a disturbance that he
23 should be held.

24 Q And more narrowly, what onus did that put on the
25 jail sergeant concerning the criterion you

1 described a moment ago that the person was
2 intoxicated by alcohol or a drug?

3 A It meant that the jail sergeant had to make sure
4 the person was actually intoxicated, was
5 intoxicated by one of those two substances and
6 had to be strictly enforced at that point.

7 Q And based on your understanding, did the police
8 have the power to incarcerate someone who's not
9 intoxicated by alcohol or drug simply for their
10 own good?

11 A Definitely not.

12 MR. WOODALL: Mr. Commissioner, I'd like to show the witness
13 another policy that's been disclosed by the
14 Vancouver Police Department. This is from the
15 electronic folder tab of Vancouver Police
16 Policies, tab 1, and the heading is 128.1, Arrest
17 Hold, state of intoxication in a public place.

18 THE COMMISSIONER: Thank you.

19 MR. WOODALL:

20 Q Now, Mr. Sanderson, have you had an opportunity
21 to look at this document in recent days?

22 A Yes, I have.

23 Q Does this appear to be the policy regarding
24 H/SIPP in application with the Vancouver Police
25 Department in December of 1998?

1 A I can't say this is the exact document but it
2 certainly conveys the policies as I knew it.

3 Q I'm going to ask you to turn to the second page
4 of the document I've just handed you, under the
5 heading 128.1, and there's sub (1), and I'm going
6 to read that to you and ask you to comment. I'm
7 going to ask you about that full paragraph in due
8 course but for the moment I'm just asking you
9 about the opening words which are as follows:

10 Only those persons who are intoxicated by
11 alcohol or drug to the extent that they are
12 unable to care for themselves will be
13 arrested H/SIPP.

14 Does that coincide with your understanding of the
15 policy that was in force in 1998?

16 A Yes.

17 Q Can you comment on the policy as written in the
18 context of your understanding of the criteria for
19 holding people who were arrested H/SIPP?

20 A The primary criteria was that those people had to
21 be intoxicated by alcohol or a drug.

22 Q Now, given that criterion, or requirement, I
23 guess is a better word, what were the duties of
24 the jail sergeant with respect to assessing
25 people who had been arrested under the H/SIPP

1 policy?

2 A The assessment started as soon as the person
3 arrived at the jail. The assessment wasn't
4 performed by the jail NCO as such. It was
5 performed by the staff of the jail. The person
6 was brought in H/SIPP, he would be booked in by a
7 jailer so that the jailer would be examining his
8 condition as he's being booked. He would also be
9 searched. So the searching jailer would be
10 checking him out as well as his physical
11 condition, his mental abilities. Every hour the
12 nurse would be making rounds where again his
13 state of intoxication would be assessed. So it
14 was a continuing process that the jail NCO was in
15 charge of and was made aware of at all times.

16 Q If at any time during any of those assessments
17 you concluded or staff brought to your attention
18 the conclusion that the person was not
19 intoxicated or was no longer intoxicated, what
20 were your duties?

21 A He was immediately released from custody.

22 THE COMMISSIONER: That is, if any one of them came to you and
23 suggested that he was not intoxicated?

24 A Correct.

25 MR. WOODALL:

1 Q Who bore the ultimate responsibility for the
2 determination of whether a person could be
3 incarcerated under the H/SIPP policy?
4 A It was the responsibility of the jail sergeant.
5 Q Was there any initial assessment that was done
6 typically or on some occasions when a person
7 first arrived at the jail?
8 A He would be assessed immediately as part of the
9 process.
10 Q If upon the immediate assessment it was brought
11 to your attention that a person was not
12 intoxicated or if you formed that conclusion
13 yourself, what was your duty?
14 A To release him or her.
15 Q Had you ever declined to admit somebody to the
16 jail before Mr. Paul on December 5th, 1998 who
17 had been arrested as an H/SIPP?
18 A Yes.
19 Q Can you describe those circumstances?
20 A It didn't happen often, maybe one or two times a
21 month. More often in the summer where a person
22 would be brought in and at the best he would be
23 borderline matching these conditions, and by the
24 time he was processed he would be placed in the
25 holding cell. A busy night it might take a while

1 to get to the person. If by that point he had
2 sobered up to the point he was not really
3 intoxicated, he would be released without being
4 lodged in the jail.

5 Q In 1998, was there any policy that required all
6 people arrested under the H/SIPP policy to be
7 assessed by a jail nurse?

8 A No, there was not.

9 Q What was the policy regarding contacting jail
10 nurses or consulting jail nurses?

11 A The jail nurse was contacted or consulted when a
12 person appeared to need urgent medical attention.

13 Q Now, what was the ordinary practice, if there was
14 one, for how long people would be kept if they
15 were in fact intoxicated when they were admitted?

16 A The ordinary practice was to keep them for four
17 hours. Sometimes they're kept longer if they
18 were very intoxicated but in general they were
19 released after four hours.

20 Q Was it contrary to the practice in the jail to
21 release persons who were still under the
22 influence of alcohol?

23 A No, it was not. There were numerous people,
24 typically known chronic alcoholics that would
25 never really become sober while they were in

1 custody, it would have taken a long time, and it
2 would have actually been deleterious to their
3 health to actually have them completely sober by
4 the time they were released due to the DTs or
5 seizures that can result in drying right out.

6 Q Can you describe the layout of the drunk tank,
7 please?

8 A The drunk tank was a large room -- I'm going by
9 memory here -- it was approximately 12 feet on
10 each side, concrete, with tiles on the walls,
11 steel door at one side, a urinal in the corner, a
12 drain on the floor, and along the south facing
13 wall there was a -- I'll call it a window along
14 the very top that was just opened to the
15 elements. It had a heavy wire mesh over it and
16 steel bars. There was no glass in that window.
17 Wind could blow in at any time.

18 Q There have been some questions asked in this
19 inquiry about whether the jail had a heated
20 floor. Can you comment on that?

21 A I was not aware of that. I would be surprised if
22 it had been heated. It was a very old facility
23 that we were working in.

24 Q What was the typical temperature in the drunk
25 tank in the winter as compared to the rest of the

1 jail?

2 A It was a lot colder than the rest of the jail.

3 Q I want to turn to a slightly different topic
4 which is how you would deal with prisoners who
5 were unable to walk to some extent. If you had a
6 prisoner who was unable to walk by himself or
7 herself, how would they be moved about?

8 A They would typically be dragged along the floor.
9 All the floors were polished concrete so it's
10 easy to slide along. The reason for this was
11 that if you had a person that you were escorting
12 that was unsteady on their feet and that person
13 -- and you were supporting them and then that
14 person went to fall, you had an option at that
15 point whether to let that person fall and result
16 in an injury to that person; try to stop the
17 person from falling, which would typically result
18 in injury to whoever was trying to do the
19 supporting of the person; or in the ultimate
20 case, injuries to both people. It was better to
21 have the person on the floor and move them that
22 way.

23 Q Now, I want to turn to another topic and that is
24 your dealings with Mr. Paul prior to the 5th of
25 December, 1998. Had you had any dealings with

1 Mr. Paul prior to that date?

2 A Numerous occasions. He was probably in the jail
3 every second or third day as an arrest for SIPP.

4 Q Now, in those arrests were there occasions when
5 Mr. Paul did appear to you to be intoxicated?

6 A Oh, definitely. On most occasions or on all
7 occasions that I can recall, except for the one
8 on December 5th, he was -- would either be
9 unconscious or virtually unconscious when he
10 arrived at the jail.

11 Q When you say he was unconscious or virtually
12 unconscious, would he be able to answer questions
13 if you asked him?

14 A No, he would not.

15 Q Were there occasions when -- I'll step back a
16 moment. Are you familiar with the process of
17 using pain stimuli to determine the state of
18 consciousness of an apparently unconscious
19 person?

20 A Yes, I am.

21 Q Can you describe what that is?

22 A If a person appears to be uninjured and
23 unconscious, such as intoxication, by applying
24 pain by either rubbing a knuckle on the breast
25 bone, a thumb behind the ear in the little hollow

1 or under the jaw, it would elicit a large pain
2 response but it would not injure the person, and
3 that would arouse the person from their stupor so
4 that you could make sure that they were actually
5 just physically passed out.

6 Q Were there occasions when you were required to
7 employ those techniques with Mr. Paul?

8 A Definitely.

9 Q Now, I want to ask you what -- when Mr. Paul was
10 intoxicated, can you describe his demeanour in
11 cases where he was intoxicated but not
12 unconscious?

13 A He was usually very surly, if he was saying
14 anything, but he had the tendency to be violent,
15 he would try to take a swing at various police
16 personnel, be uncooperative, brushing hands away
17 when he was being searched. Just generally being
18 uncooperative.

19 Q Can you describe how Mr. Paul appeared, what his
20 general presentation was, at the end of a period
21 of incarceration when he was sober enough to be
22 released?

23 A To some people he would still appear intoxicated.
24 He was usually very passive at that point. He
25 would sleep a lot if you would let him. He was

1 able to communicate but not a lot. He would talk
2 back to you with one word answers or very short
3 answers. Physical appearance would not be
4 differing that much from the time he was actually
5 booked into the jail. It would just be his
6 physical demeanour and his reactions that would
7 be different.

8 Q Can you describe his voice, whether he was easy
9 or difficult to understand when he was speaking?

10 A He was very difficult to understand even on
11 release. He had a very gruff, hoarse voice. I
12 assumed that it had been damaged by the amount of
13 alcohol that he was consuming but very difficult
14 to understand.

15 Q Can you describe Mr. Paul's ability to walk when
16 he was sober enough to be released?

17 A Mr. Paul always had difficulty walking. Most of
18 the time he would -- I use the expression "crab"
19 along the wall. He would use the wall for
20 support as he moved along it. If he had to cross
21 an opening he would lurch to the side, almost
22 throw himself to the other wall and then he would
23 grab on to that. On occasion, Mr. Paul was
24 observed to crawl to a wall so that he could pull
25 himself up on the wall.

1 Q Now, I want to turn to the evening of December
2 5th. Can you tell the Commissioner when you
3 first saw Mr. Paul on that date?

4 A I first saw Mr. Paul at approximately 5:30 p.m.
5 as I was arriving for work. Mr. Paul was in the
6 wagon bay, he was sitting against the wall,
7 directly across from the elevator doors, and he
8 was eating a bag of potato chips.

9 Q Did you have an understanding as to why Mr. Paul
10 was there at that time?

11 A I had assumed that he had been just released from
12 custody as he was a constant person in the jail.

13 Q Did it surprise you to see him there?

14 A No, it did not.

15 Q Now, you may have just answered this a moment ago
16 but, just to be sure, was Mr. Paul standing or
17 sitting or in some other posture?

18 A He was sitting with his back to the wall, facing
19 the elevator doors.

20 Q Did it surprise you to see him sitting down
21 leaning against the wall?

22 A No, it did not. As I said, Mr. Paul had a great
23 deal of difficulty standing at the best of time.
24 I would assume that if he's enjoying potato
25 chips, it would be best for him to sit down so he

1 did not have to support himself at that time.

2 Q What time did your shift begin?

3 A The shift actually began at six o'clock but we
4 would usually show up about a half hour early so
5 that we could talk to the jail NCO that was
6 working at that time to see if there were any
7 tasks that had to be performed, swap information,
8 et cetera.

9 Q Were you aware of any dealings between jail staff
10 and Mr. Paul between the time when you started
11 your shift and the time when Mr. Paul arrived
12 back at the jail later that evening?

13 A Yes. At approximately 6:15 p.m. I was asked by a
14 member of the jail staff if it would be okay to
15 take Mr. Paul a cup of coffee. At that time he
16 was still in the wagon bay. I gave my permission
17 and a large scalding hot cup of coffee was
18 delivered to Mr. Paul.

19 Q Do you know when it was that Mr. Paul left the
20 wagon bay?

21 A No, I don't. I could only assume that if he had
22 been drinking coffee for 15 minutes, it would be
23 around 6:30 or so but that would be only an
24 assumption on my behalf.

25 Q When did you next see Mr. Paul?

1 A I don't recall the time exactly. It was
2 somewhere between 8:00 p.m. and 9:00 p.m.

3 Q How was your attention drawn to Mr. Paul?

4 A One of the jail staff alerted me to the fact that
5 Mr. Paul was in the elevator as it arrived on the
6 fifth floor of the jail.

7 Q Now, did that person appear to have a reason for
8 telling you about Mr. Paul's return?

9 A There was a disbelief at that point why Mr. Paul
10 would be back in custody as he had just been
11 released at the beginning of the shift.

12 THE COMMISSIONER: This came from a staff member?

13 A A staff member, yes, sir.

14 MR. WOODALL:

15 Q Did you yourself have a view about Mr. Paul's
16 return to the jail at that time?

17 A I also shared the same disbelief. I felt it
18 would have been extremely difficult for Mr. Paul
19 to have left the jail in a period of around two
20 hours to go somewhere and to obtain enough
21 alcohol to become intoxicated again.

22 Q Did you have an understanding or were you told
23 why he was arrested and brought to the jail?

24 A I asked Constable Instant why he had been brought
25 to the jail and he indicated that he had been

1 arrested for H/SIPP.

2 Q What was your reaction to that?

3 A I found it very difficult to believe. Disbelief.

4 Q Did you believe that an error had been committed?

5 A Most definitely. I found it extremely difficult
6 to believe that, as I said, that Mr. Paul was
7 actually intoxicated and therefore he should not
8 have been arrested.

9 Q Why was it significant to you at that point
10 whether Mr. Paul was intoxicated?

11 A If he was not intoxicated there was no legal
12 grounds to hold him, that would have been a
13 violation of his *Charter* rights, against the law,
14 and it was contrary to the Vancouver Police
15 policy.

16 Q Now, can you expand upon your reasons for
17 thinking that not enough time had elapsed between
18 Mr. Paul's departure from the wagon bay and his
19 return for him to become intoxicated by alcohol?

20 A As I stated, Mr. Paul had difficulty getting
21 around. He would not be sprinting to the nearest
22 liquor store. In addition, Mr. Paul did not
23 usually have any money on him. It would be
24 difficult for him to go to a licenced premise to
25 be able to obtain alcohol, and the premises in

1 Q Can you comment generally on the clothing that
2 you saw him wearing?

3 A Mr. Paul was wearing a winter-style jacket, it
4 was fairly bulky, pants, but other than that, I
5 have no recollection of what he was actually
6 wearing.

7 Q Did the fact that his jacket was wet seem unusual
8 or set off any alarm bells for you?

9 A Definitely not. It was fall in Vancouver, the
10 rainy city.

11 Q At that time of year was it unusual to see other
12 people with wet outer garments?

13 A No. We would be continuously getting prisoners
14 in that were in wet jackets, wet clothing,
15 policemen were coming in that were soaking wet,
16 ambulance. Everybody that was working outside
17 would be wet at that time of the year. It was
18 not unusual.

19 Q If someone was actually admitted to the jail and
20 they had a wet jacket on, what would happen to
21 it?

22 A It would depend on the jacket. If it was a light
23 jacket that did not have any drawstrings or ties
24 on it or was thin enough to be able to adequately
25 search, the person would be left with the jacket.

1 If it was a big, bulky jacket where you could
2 conceal items or if it had drawstrings like a
3 hood string or a waist string on a winter jacket,
4 then that jacket would be seized and would be
5 bagged.

6 Q What kind of bag was used for that purpose?

7 A It was a large plastic bag that was heat sealed
8 by the jail staff.

9 Q By heat sealed, you mean that it was essentially
10 welded shut with heat?

11 A Yes, that's right.

12 Q If a person's clothes were wet when they were
13 removed, what state would they be in when given
14 back to that person for that person's release?

15 A Just as wet as when they were taken off.

16 Q Were you aware of whether Mr. Paul's inner
17 clothing was also wet?

18 A No, I was not. There was no opportunity to
19 examine Mr. Paul's clothing as he was not going
20 to be booked into the jail; therefore, he was not
21 going to be searched so there was no reason to
22 check it.

23 Q Was there a Vancouver Police Department policy
24 requiring you to verify whether a person's
25 clothes were wet before they were released?

1 A No, there was not.

2 Q Now, did you have any conversation with Mr. Paul
3 to determine whether he was sufficiently
4 intoxicated to be held in jail?

5 A Yes, I did, while he was in the elevator.

6 Q And --

7 THE COMMISSIONER: Sorry, Mr. Woodall, could you repeat the
8 question again please?

9 MR. WOODALL:

10 Q Yes. Did you speak with Mr. Paul to determine
11 whether he was sufficiently intoxicated to be
12 held in jail?

13 THE COMMISSIONER: Your answer to that?

14 A Yes, I did.

15 MR. WOODALL:

16 Q Were there other people nearby or within ear shot
17 when you had that conversation?

18 A At a minimum, there would be Constable Instant
19 who had brought Mr. Paul to the jail, and I
20 believe Guard Firlotte was also standing in the
21 entrance or just inside the elevator itself.

22 Q What did you discuss with Mr. Paul?

23 A I asked Mr. Paul if he had had anything to drink
24 since he had been released from the jail and he
25 replied no.

1 Q Did you believe him?

2 A Yes, I did. It was sort of a mixed question --
3 that's a mixed question, in that if you ask an
4 alcoholic if he's had anything to drink, the
5 tendency is to say no even if he has, but based
6 on what he had said in his response to the
7 question and my belief in his inability to obtain
8 alcohol, I did believe him that he had not had
9 anything to drink.

10 Q Did it appear to you that he was sufficiently
11 alert to understand the question?

12 A Definitely. His response was immediate after my
13 question. There was not a long pause as if he
14 was trying to understand what the question was.
15 It was question, then answer.

16 Q And did that affect your assessment of whether he
17 was intoxicated to the point of justifying his
18 incarceration under the H/SIPP policy?

19 A Again, it supported my disbelief that he was
20 actually intoxicated and, therefore, I did not
21 believe that he should have been arrested.

22 Q Can you describe his manner of speaking?

23 A It's quiet, a very gruff, hoarse voice. If you
24 had not heard it before you would have had a
25 great deal of difficulty understanding what he

1 was saying, but due to my numerous interactions
2 with Mr. Paul, I could certainly understand what
3 he was saying.

4 Q Can you compare his ability to speak on that
5 occasion to his ability to speak ordinarily when
6 he was being released when he was sober enough to
7 be released after arrested H/SIPP?

8 A It was the same. He was able to talk the same
9 amount as when he would normally have been
10 released.

11 Q Did you have other conversation with Mr. Paul?

12 A Yes, I did. I asked Mr. Paul where he lived. He
13 then immediately replied that he lived at
14 Broadway and Maple.

15 Q Did it appear to you that he understood the
16 question that you asked?

17 A Yes, and his response was again immediate.

18 Q Did you draw any other conclusions about the fact
19 that he answered that he lived at Broadway and
20 Maple?

21 A In my time in the District 4 area of Vancouver I
22 had occasion to work in the area of Broadway and
23 Maple, and on numerous occasions I observed a
24 group of aboriginal males that frequented that
25 area. Based on my observations and Mr. Paul's

1 answer, I believed that he had a place of -- that
2 he could go to to get out of the elements,
3 whether it was his home or just the home of an
4 associate.

5 Q Now, when you saw him in the elevator did he
6 appear to be awake?

7 A Yes, he did.

8 Q Did he appear to be nodding off or passing in and
9 out of consciousness?

10 A No, he did not.

11 Q Did you consider it necessary to use pain
12 stimulus to determine whether he was conscious or
13 unconscious?

14 A Definitely not.

15 Q If you were advised that a toxicology report said
16 that Mr. Paul's blood level was significantly
17 above the legal driving limit, would that
18 surprise you?

19 A No, it would not. Typically with a long-term
20 alcoholic I don't believe they could even survive
21 without some alcohol in their blood but that's
22 conjecture on my behalf. But at all times when
23 we were releasing people that were chronic
24 alcoholics, I am sure that they had alcohol in
25 their blood.

1 Q I specifically asked the question about blood
2 level significantly above the legal driving
3 limit.

4 A Again, a functioning alcoholic would exhibit a
5 high level of alcohol in their blood but appear
6 normal to most people.

7 Q Had you in other duties other than the jail
8 sergeant encountered people who would have a very
9 high level of alcohol in their blood?

10 A Definitely.

11 Q Could you describe that, please?

12 A Most people that had an extremely high level of
13 alcohol in their blood would have been -- if it
14 was really high, would have been totally
15 unconscious and only responsive to pain. There
16 were a lot of people though that we had contact
17 with where they had a high concentration of
18 alcohol in their blood. An example, impaired
19 driving where they exhibited very slight symptoms
20 of intoxication. This is just based on their
21 propensity for alcohol that they could function
22 with a high level in their blood at all times.

23 Q Now, Mr. Sanderson, do you still have in front of
24 you the VPD policy 128.1 regarding the H/SIPP?

25 A I do.

1 Q I'm going to ask you to turn again to the second
2 page of that under paragraph 1. A little while
3 ago I read the passage that I'll just read for
4 the record:

5 Only those persons who are intoxicated by
6 alcohol or drug to the extent that they are
7 unable to care for themselves will be
8 arrested SIPP.

9 The next paragraph under that is:

10 Members will consider other more appropriate
11 charges when dealing with intoxicated
12 persons displaying violent behaviour.

13 Did you consider whether that provision applied
14 to Mr. Paul?

15 A No, I did not consider that it applied because,
16 one, I did not believe he was intoxicated and,
17 two, he was certainly not violent.

18 Q Now, the next paragraph begins -- I'll read you
19 the paragraph and then I'll ask you some
20 questions:

21 Intoxicated persons who are found to be
22 medically questionable, injured, ill or
23 would require the use of pain stimuli to
24 elicit a response must be sent to the
25 hospital. Members are advised that an

1 individual may be unable, given the nature
2 of his or her injuries or the degree of
3 intoxication, to make rational decisions
4 with respect to medical treatment.

5 Dealing with the first paragraph, did you believe
6 that that part of the policy applied to Mr. Paul?

7 A Paragraph (a), no.

8 Q No. Paragraph (b).

9 A Paragraph (b). Sorry, repeat the question.

10 Q Looking at the paragraph generally, did you
11 believe that the paragraph that dealt with
12 intoxicated persons who were found to be
13 medically questionable, et cetera, applied to Mr.
14 Paul?

15 A No, I did not. Mr. Paul did not have the best of
16 health. He always looked poorly but he did not
17 look any more poorly at the time he was in the
18 jail elevator other than he did on numerous other
19 occasions.

20 Q Did he appear to you to be medically
21 questionable?

22 A Not anything different than his usual state of
23 health.

24 Q Did he appear to be injured?

25 A No, he did not.

1 Q Did he appear to be ill?

2 A No.

3 Q I think you've already answered this but for the
4 sake of completeness, did it appear to you that
5 he required the use of pain stimuli to elicit a
6 response?

7 A No, he did not require any pain.

8 Q So with those conclusions, what did you determine
9 considering the legal power to arrest Mr. Paul
10 under the H/SIPP policy?

11 A I concluded that Mr. Paul had been arrested in
12 error and that the provisions of the H/SIPP
13 policy did not apply and that he should not be
14 held in custody and we would have to seek a
15 remedy for that mistake.

16 MR. WOODALL: I have no further questions regarding that
17 policy. Would it be appropriate to have it
18 marked as an exhibit?

19 THE COMMISSIONER: Yes. We'll have it marked as an exhibit.

20 THE REGISTRAR: 58.

21 THE COMMISSIONER: 58.

22 (EXHIBIT 58: VPD Policy 128.1)

23 MR. WOODALL:

24 Q Now, we've been told that an autopsy report
25 determined that hypothermia was the cause of

1 death. Do you have any training in recognizing
2 the symptoms of hypothermia?

3 A I have no formal training in recognizing the
4 symptoms of hypothermia. I've gathered some
5 information from various first aid courses I've
6 taken but there's been nothing specifically
7 formal for hypothermia.

8 Q Given that informal understanding, what was your
9 understanding regarding the symptoms of
10 hypothermia?

11 A Persons in hypothermia would exhibit
12 uncontrollable shivering, heavy shivering, would
13 be lethargic and would have difficulty putting
14 their thoughts together.

15 Q Did you see Mr. Paul shivering?

16 A No.

17 Q Did Mr. Paul appear to you to be displaying
18 symptoms of extreme lethargy?

19 A No, he did not. Although he was very passive, he
20 did not appear to be lethargic.

21 Q Was he any different in the quality of passivity
22 from what you ordinarily saw when Mr. Paul was
23 sober enough to be released?

24 A No, he was not.

25 Q Did Mr. Paul appear to have an inability to put

1 thoughts together?

2 A No. His answers were succinct and to the point
3 when he was asked a question.

4 Q Did you have discussions with any other jail
5 staff about their views of whether Mr. Paul could
6 be held under the H/SIPP policy in jail?

7 A There was a general consensus, I can't recall an
8 exact discussion with an individual member of the
9 staff, but there certainly was a consensus that
10 Mr. Paul should not be in the jail, that he was
11 not in fact drunk and that he should be released.

12 Q Now, are the views of the jail staff relevant to
13 your decision about whether Mr. Paul should have
14 been admitted to the jail?

15 A The decision was mine, solely my decision to
16 make, but certainly I would take advice and
17 comments from the other jail staff. Most of
18 them had worked in the jail a lot longer than I
19 had.

20 Q In that discussion did anybody express to you
21 their reasons for believing that Mr. Paul was not
22 intoxicated?

23 A Yes. Their basic reason was that he had just
24 been released and there was no time for him to
25 become intoxicated.

1 Q Now, did you consult with the jail nurse about
2 Mr. Paul's state of intoxication or his condition
3 generally?

4 A No, I did not.

5 Q Why not?

6 A He was not in need of emergent medical care. By
7 my observations alone, I decided not to contact
8 the nurse.

9 Q Now, given that you had determined that he was
10 not to be admitted to the jail, what did you
11 decide to do?

12 A I decided that the best thing to do would be to
13 transport Mr. Paul to a place of shelter, being
14 at his stated residence at Broadway and Maple.

15 Q Were you able to confirm whether Mr. Paul in fact
16 had a residential address in that part of the
17 city?

18 A No, I did not. Mr. Paul was frequently -- well,
19 was continuously booked in as NFA, no fixed
20 address. The question I don't think was ever
21 asked to him whether he had an address.

22 Q Assuming he was in fact -- that he in fact had no
23 fixed address of his own, would that mean that he
24 had no place to take shelter in the Broadway and
25 Maple area?

1 A No, it would not. I would assume at that point
2 that he would be able to go and stay with friends
3 or associates and get out of the rain.

4 Q Now, was it consistent with the H/SIPP policy to
5 take someone who had been arrested H/SIPP to the
6 area where they lived?

7 A No, it was not part of the policy, and again, it
8 was not the policy to arrest people that were not
9 intoxicated.

10 Q So why then did you choose that as the course of
11 action?

12 A Well, the decision was to release him because he
13 was not intoxicated. The easiest way to do that
14 would have been to send him back down to the
15 ground floor in the elevator and release him into
16 the back alley of the jail. It was raining out,
17 it did not make any sense to me that if I have a
18 wagon and a wagon driver standing right next to
19 me, that it would be much better for Mr. Paul to
20 take him to where he stated that he lived so that
21 he could find shelter and get out of the
22 elements.

23 Q Did you consider other alternatives to taking him
24 to the area where he lived?

25 A The other alternatives weren't acceptable. As I

1 said, releasing him to the back alley did not
2 seem like the right humane thing to do. He was
3 not a candidate for detox because he was not
4 intoxicated and I believed he was banned from
5 there. He did not seem to need emergent medical
6 care so sending him to hospital by the ambulance
7 did not seem to be an appropriate measure.
8 Saferide I did not consider because Saferide was
9 another taxi and basically I had a wagon at my
10 disposal and a wagon driver to take him back to
11 -- up to Broadway and Maple.

12 Q Now, what did you expect Constable Instant would
13 do if he got to the area of Broadway and Maple
14 with Mr. Paul?

15 A I expected Constable Instant to take him to that
16 area, open the wagon door and ask Mr. Paul if
17 this was in fact the area where he lived and
18 obtain further directions, ensure that, if
19 necessary, driving him half a block closer to his
20 residence or whatever it called for, and release
21 Mr. Paul and ensure that he was well on his way
22 or in shelter before leaving.

23 Q What actual instructions did you give Constable
24 Instant?

25 A Unfortunately, my instructions were quite vague.

1 I asked Constable Instant to take Mr. Paul to
2 Broadway and Maple. I did not give him any
3 further specific instructions. He had listened
4 to what was going on in the elevator and I
5 assumed that he would understand what to do.

6 Q Now, with the benefit of hindsight, would you
7 change anything in the way that you gave
8 instructions to Constable Instant?

9 A Most definitely. I would have certainly been
10 more specific in what I expected Constable
11 Instant to do at the Broadway and Maple area. In
12 addition, I would have ensured that, if Constable
13 Instant had difficulties in carrying out the
14 task, that he would either contact the on-duty
15 NCOs in the various patrol areas, the duty
16 inspector who was on 24 hours a day or find a
17 telephone and contact me by telephone for further
18 instructions.

19 Q But you did not give Mr. Instant those
20 instructions; did you?

21 A I did not give him those instructions, no.

22 Q You've testified about Mr. Paul's difficulty with
23 walking. How did you anticipate that Mr. Paul
24 would get from the wagon to wherever that shelter
25 would be, if he got to the Broadway and Maple

1 area?

2 A The same way as he got around all the time, using
3 walls, fences, whatever was appropriate to assist
4 him to move along the street.

5 Q Now, I want to talk to you about a slightly
6 different topic and that is the Vancouver Police
7 Department policy regarding transporting people
8 in connection with breaches of the peace. Can
9 you describe your understanding of that policy?

10 A I've forgotten most of it but the major part of
11 the policy was that if anybody was breached,
12 arrested for breaching the peace, that they would
13 have to be dropped off within the boundaries of
14 the City of Vancouver. Other than that, I'm at a
15 loss as to what the rest of the policy was.

16 Q Was that the policy that you had in mind when you
17 asked Constable Instant to take Mr. Paul to the
18 area of Broadway and Maple?

19 A No. I did not consider Mr. Paul under arrest at
20 that point. It was a ride to a place of shelter.

21 Q Is it possible that you had a discussion of some
22 sort with Constable Instant that left him with
23 the impression that that was a policy applicable
24 in those circumstances?

25 A There's a possibility. I don't recall one

1 exactly but if Constable Instant had needed that
2 assurance that it was done within departmental
3 policy, I would have acquiesced to that.

4 Q Now, we've been given a document, Mr. Sanderson,
5 that is a record of Commission counsel's
6 interpretation of an audio transcript of
7 conversations that occurred in the jail, and I'm
8 going to ask you some questions about Commission
9 counsel's interpretation of that conversation.
10 For the record, the document we've received has
11 an entry at two minutes and two seconds and then
12 an answer at two minutes, four seconds. I'll
13 read the question and answer, then I'll ask you
14 some questions about them. What is recorded on
15 the document is this:

16 So you can -- uh, authorize a breach?

17 What appears to be the answer:

18 Oh yeah, not a problem.

19 Do you recall being part of such a conversation?

20 A Not directly, no.

21 Q If there was such a conversation, would you as
22 the jail sergeant be the one who would have
23 approved or not approved employing the breach
24 policy?

25 A Definitely. It had to be a supervisor of some

1 sort that would approve the breach.

2 Q And I appreciate you do not recall such a
3 conversation. Is it possible that you were one
4 of the people involved in that conversation if it
5 indeed occurred?

6 A It is possible.

7 Q The document that we have been given has an entry
8 at 22 seconds in which someone appears to ask the
9 following:

10 When was the last time you had a drink,
11 Frank?

12 If such a comment was in fact recorded on the
13 tape, can you comment on whether you or other
14 people may have been the one to make such a
15 comment?

16 A That could well have been me making that comment.
17 That would be the question I asked him.

18 Q There is also an entry on this document at 51
19 seconds where it's recorded, the following
20 question is recorded:

21 Frank, have you been drinking since we
22 kicked you out of here today?

23 Again, if that accurately records what is on the
24 audio, can you comment on whether you or someone
25 else may have been the person who made that -- or

1 asked that question?

2 A It could well have been asked in the same context
3 as the original, that trying to find out if he
4 had been drinking. I don't recall asking either
5 if anybody else in fact had asked it.

6 Q The document we have has recorded at 58 seconds
7 in brackets the word "groaning". Did Mr. Paul
8 groan at any time that you dealt with him?

9 A Not that I am aware of, no.

10 Q Now, there's a recording at one minute and 13
11 seconds as follows:

12 Frank, you're back.

13 If that indeed accurately records what was on the
14 audio portion, can you say whether you or other
15 people would have asked that question?

16 A It doesn't sound like a question that would be
17 asked, "Frank, you're back," but it could well
18 have been by myself or one of the staff. As I
19 said, there was lots of staff that were milling
20 around there.

21 Q There is a recording or at least the document has
22 recorded as occurring at one minute and 26
23 seconds the following statement:

24 How you doing in Kitsilano, Frank?

25 If that accurately records what was on the audio

1 recording, can you comment on whether you or
2 someone else would have asked that question or
3 one similar to it?

4 A That question doesn't make any sense to me. "How
5 you doing in Kitsilano" -- somebody could have
6 said it but it doesn't make any sense.

7 Q Then there's a number of seconds later, 1 minute
8 and 31 seconds, the document records a question
9 being asked:

10 What's the address?

11 If that in fact records what's on the statement,
12 can you comment on whether you or someone else
13 present would have asked such a question?

14 A Well, certainly one of us could have asked the
15 question trying to determine where Mr. Paul
16 actually lived.

17 Q Then at 2 minutes and 7 seconds, this documents
18 reports a statement as follows:

19 Take him to Broadway and Maple if you don't
20 mind.

21 If that was in fact properly recorded, can you
22 comment on whether you or someone else in the
23 jail likely made that comment?

24 A It was likely that I made that comment -- request
25 to Constable Instant to take him to Broadway and

1 Maple.

2 MR. WOODALL: Mr. Commissioner, I'm going to show the witness
3 a document that was disclosed as part of the
4 initial disclosure in this matter. I think it
5 was tab 13 of the first binder. I may be
6 inaccurate on that but, in any event, it has at
7 the top the title Vancouver Police Department
8 Miscellaneous and Supplementary Report.

9 THE COMMISSIONER: Thank you. Exhibit 13.

10 MR. WOODALL: Yes, it appears to be from tab 13 of the first
11 binder.

12 Q Can you identify this document, Mr. Sanderson?

13 A Yes, it's called a VPD 19 Miscellaneous
14 Supplementary Report that I wrote on December
15 6th, the morning after Mr. Paul was in the jail.

16 Q Can you describe the circumstances that led you
17 to write this report?

18 A I had received a telephone call from Major Crime,
19 I don't recall who, asking me to write up my
20 dealings with Mr. Frank Paul from the night
21 before.

22 MR. WOODALL: I'd ask this be marked as the next exhibit.

23 THE COMMISSIONER: It's already been marked, has it not?

24 THE REGISTRAR: No, it's at tab 13 in binder 1.

25 THE COMMISSIONER: Next exhibit number?

1 THE REGISTRAR: 59.

2 (EXHIBIT 59: VPD 19 Miscellaneous Supplementary
3 Report)

4 MR. WOODALL: Mr. Commissioner, I'd like to direct the
5 witness's attention to another document that was
6 also found at tab 13 of the first binder.

7 THE COMMISSIONER: Thank you.

8 MR. WOODALL:

9 Q This is a document dated the 17th of February
10 2000. Can you identify this document, Mr.
11 Sanderson?

12 A Yes, I do -- yes, I can, sorry. It's a document
13 that I prepared on that date addressed to Chief
14 Constable Terry Blythe.

15 Q What were the circumstances that led you to
16 prepare this document?

17 A I had heard through the grapevine that there was
18 an internal investigation underway regarding the
19 death of Mr. Frank Paul. At that point I had not
20 provided any other information to anybody other
21 than the VPD 19 we discussed previously. So I
22 prepared this report and forwarded it to the
23 Chief Constable.

24 Q What you've described as VPD 19, is that the
25 miscellaneous and supplementary report that is

1 now Exhibit 59?

2 A Yes, it is.

3 Q I'll ask you to turn to page 2 of that document.
4 I'm going to read two sentences from page 2 and
5 then ask you to comment on them. The pages are
6 as follows. U/S means undersigned; is that
7 correct?

8 A Correct.

9 Q The undersigned observed Constable Instant,
10 who was the wagon driver, bring Mr. Paul off
11 the elevator into the jail. Not
12 surprisingly Mr. Paul was pulled along the
13 floor by the wagon driver as he could not
14 walk.

15 Can you comment on that?

16 A That is in error. I wrote this report in absence
17 of any other supporting documentation or other
18 material. Since I've been able to review the
19 video, watching it on the media, I was in fact
20 wrong, that Mr. Paul was never taken off the jail
21 elevator, and I had to go into the jail elevator
22 to talk to Mr. Paul.

23 Q When you described now just a moment ago going
24 into the elevator, is that what you have
25 concluded from seeing the video or is that your

1 recollection having been refreshed by watching
2 the video?

3 A That is my recollection after being refreshed by
4 watching the video.

5 MR. WOODALL: I'm going to ask if that can be marked as the
6 next exhibit, Mr. Commissioner.

7 THE COMMISSIONER: Exhibit 60.

8 THE REGISTRAR: Exhibit 60.

9 **(EXHIBIT 60: Duty Report)**

10 MR. WOODALL:

11 Q Now, Mr. Sanderson, were you the subject of
12 disciplinary proceedings arising out of the death
13 of Mr. Paul?

14 A I was.

15 Q Can you describe what happened?

16 A Again, the first part of my dealing with the
17 disciplinary process was hearing it through the
18 rumour mill. I then contacted representation
19 from the Vancouver Police union and sought
20 advice. This was the first time I had --

21 THE COMMISSIONER: When was this, Mr. Sanderson? When did
22 this happen?

23 A I'm not exactly sure. It was sometime in late
24 2000, I believe.

25 THE COMMISSIONER: You heard by the rumour mill that you were

1 going to be subject to discipline?

2 A Yes.

3 THE COMMISSIONER: Thank you.

4 MR. WOODALL:

5 Q I don't know whether you can give a more precise
6 date or a more precise season of the year but
7 noting that your duty report, it is now Exhibit
8 60, is dated the 17th of February 2000, does that
9 assist you in narrowing the timeframe when you
10 heard about the disciplinary proceedings?

11 A It was sometime after that but I'm not too sure
12 in the time span. I'm sorry, I just don't have
13 that information.

14 Q Can you describe what happened once you became
15 aware that you were the subject of a disciplinary
16 proceedings?

17 A I was asked to -- by telephone from Sergeant
18 Boutin to attend an internal investigation.
19 Sergeant Boutin advised me that, as a result of
20 his investigation, that the department was
21 seeking a two-day suspension on a disreputable
22 conduct allegation.

23 THE COMMISSIONER: That's Sergeant Boutin?

24 A Boutin, B-O-U-T-I-N.

25 THE COMMISSIONER: And who was it that was seeking this

1 suspension?

2 A It would have been -- well, formally the Chief
3 Constable had authorized the suspension.

4 THE COMMISSIONER: Thank you.

5 MR. WOODALL:

6 Q Did you receive any advice from anyone about
7 whether you should accept that proposed
8 suspension?

9 A Yes. I had spoke to the union on numerous
10 occasions. They in turn stated that they had
11 spoke to Internal Investigation and the Chief
12 Constable and their advice to me was to accept
13 the two-day suspension.

14 Q Did you accept the two-day suspension?

15 A I did.

16 Q A moment ago you referred to it as disreputable
17 conduct. Could it have been discreditable
18 conduct?

19 A Yes, it could have been, I am sorry.

20 Q Did anybody tell you what errors you had
21 committed that constituted discreditable conduct?

22 A No, they did not.

23 Q Did anyone from the department tell you what
24 policies of the Vancouver Police Department you
25 were said to have violated?

1 A No, they did not.

2 Q Did anyone from the Vancouver Police Department
3 tell you that you had broken any laws?

4 A No, definitely not.

5 Q Did anybody from the Vancouver Police Department
6 tell you in what particular you were said to have
7 exercised bad judgment?

8 A No, they did not.

9 Q Why then did you agree to accept the discipline?

10 A There were two reasons mostly. The first was
11 this was the first time I had ever really been
12 involved in a disciplinary process such as this
13 one where there were allegations and finding of
14 fault. I went to the union, I had to listen to
15 the advice of the union as they were dealing with
16 this sort of instance on a continual basis. And
17 the second reason was that any time that somebody
18 dies, whether they're in police custody or have
19 dealings with the police, there seems to be a
20 real need for closure, and closure for myself as
21 well, and if this would -- accepting the
22 discipline would allow closure on this, then I
23 thought it would be the best thing to do for
24 everybody involved so I did accept the
25 discipline.

1 Q Now, I want to turn to a final topic and that is
2 your present assessment of what you did on the
3 evening of the 5th of December, 1998. With the
4 benefit of hindsight and based on the policies
5 and resources available in 1998, do you consider
6 your decision not to incarcerate Mr. Paul in the
7 jail to have been the correct decision?

8 A Yes, I do.

9 Q Why do you believe that?

10 A Because I believed that Frank Paul had been
11 arrested in error and that he was not
12 intoxicated. This would mean that there was no
13 place for him to be lodged at law, he was not
14 suitable for detox, he was certainly not suitable
15 for being lodged in the jail if he was not
16 intoxicated. The other options of medical
17 assistance, Saferide, as I stated before, they
18 did not seem to be options. It seemed to be the
19 right thing to do to take Mr. Paul to his stated
20 residence and have him delivered there by the
21 wagon.

22 Q Now, with the benefit of hindsight, is there
23 anything you did that night that you would do
24 differently?

25 A Certainly. My instructions to Constable Instant

1 would have been a lot more elaborate. I did not
2 realize at that time that Constable Instant was a
3 very junior officer. I would have instructed him
4 more on what to do when he got to Broadway and
5 Maple. I would have instructed him especially on
6 what to do if he could not in fact find a place
7 of shelter for Mr. Paul, how to contact a
8 supervisor to seek further advice and to make
9 sure that, at the end of it all, that Mr. Paul
10 was in fact taken care of and had shelter for the
11 night.

12 Q Who do you think is responsible for your failure
13 to give those instructions?

14 A It was solely my responsibility. I should not
15 have given -- I should have given him more
16 information, more instructions on what to do.

17 Q Now, with the benefit of hindsight, can you think
18 of any policy changes or changes in the resources
19 available to a jail sergeant that would have made
20 a difference had they been in force in 1998?

21 A Yes. One of the major issues in existence at
22 that time, and I don't know if they've been
23 addressed now, is that there is no place to take
24 people that need shelter from the elements .
25 There's no place where you can take a street

1 person, or a person that's living on the street,
2 and deliver him to a location where he will be
3 given food, clothing, bedding. That's the
4 primary gap in the entire process. In addition,
5 I would recommend that, on admission, all parties
6 that have been arrested SIPP be examined by
7 trained medical personnel instead of relying on
8 jail staff to assess their condition. Thirdly,
9 that the police be given formal training in the
10 symptoms of hypothermia and how to examine people
11 and tell if they are in fact hypothermic and at
12 that point in need of medical care.

13 THE COMMISSIONER: Sorry, the second point, you said you would
14 recommend that the policy of the police would be
15 that all persons arrested for H/SIPP would be
16 examined by a medical practitioner, did you say?

17 A Somebody trained in medicine, whether it be a
18 nurse or a doctor.

19 THE COMMISSIONER: Your third point?

20 A Was that there should be training for police
21 members in hypothermia.

22 MR. WOODALL: Mr. Commissioner, I have one other area to
23 canvass with this witness but it is related to
24 the question of the files that we're awaiting so
25 it would be appropriate to break for lunch now

1 and we can find out what the status of that is.

2 It is 20 minutes after 12:00.

3 THE COMMISSIONER: Yes, it would be, Mr. Woodall. I would
4 agree with that. Mr. Sanderson, you understand
5 that when we resume there will be further
6 questions asked of you and I caution you now,
7 sir, please do not discuss your evidence with
8 anyone during the noon break.

9 A Except for counsel.

10 MR. WOODALL: I have not closed my examination --

11 THE COMMISSIONER: No, no. I'm sorry, I meant, not counsel,
12 with anyone else. Thank you.

13 THE REGISTRAR: This hearing is now adjourned until 2 p.m.

14 (PROCEEDINGS ADJOURNED AT 12:19 P.M.)

15 (PROCEEDINGS RECONVENED AT 2:03 P.M.)

16 THE REGISTRAR: Order. All rise. This hearing is now
17 resumed.

18 THE COMMISSIONER: Mr. Cowper.

19 MR. COWPER: Yes, Mr. Commissioner. Just an update and a
20 suggestion of where we go from here. The
21 documents which were being retrieved are
22 apparently en route, they do exist and they're
23 going to be at VPD counsel's office sometime this
24 afternoon. They haven't yet been reviewed by
25 Commission counsel or others. Let me just

1 outline what I think the schedule will be for
2 this week and, as I've indicated to you and other
3 counsel, there are various calendaring issues
4 this week, but I anticipate based on the present
5 estimate that we will be able to complete
6 Sergeant Sanderson's evidence tomorrow. I think
7 it will take either all of the day or
8 substantially all of the day tomorrow and then we
9 will have available, and I think we can go on
10 Wednesday to Constable Instant, and we may be
11 able to get substantial of his evidence done. If
12 we can't finish on Wednesday because of
13 availability of other counsel, we're going to
14 have to finish on Friday. We had other witnesses
15 which were hoped to be heard and inserted on the
16 available Thursday. At this point none of them
17 are -- they're witnesses who we've not been able
18 to locate before and we're still unable to locate
19 them and in the absence of the sheriffs finding
20 them between now and Thursday, we're going to be
21 standing down on Thursday. We will have
22 completed by the end of Friday for sure the
23 evidence that we wanted to complete this week. I
24 have circulated an attendance schedule for other
25 witnesses and anybody interested can obtain a

1 copy of that.

2 THE COMMISSIONER: Thank you very much. Are we then going to
3 proceed --

4 MR. COWPER: I think we have to stand down -- the consensus
5 here is that everybody who is questioning
6 Sergeant Sanderson wants a chance to look at
7 those documents beforehand.

8 THE COMMISSIONER: I understand. There was that one document
9 that you were going to review with him but there
10 are others still to come, so what you're
11 indicating, I think, is that you wish to stand
12 down for the balance of the day and resume
13 tomorrow morning.

14 MR. COWPER: Yes, tomorrow morning at 9:30, if that's
15 satisfactory.

16 THE COMMISSIONER: All right. If there's nothing further,
17 we'll do that then and we'll resume at 9:30
18 tomorrow morning. Thank you.

19 THE REGISTRAR: This hearing is now adjourned until 9:30
20 tomorrow morning.

21 (PROCEEDINGS ADJOURNED AT 2:08 P.M.)

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