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Vancouver, BC
February 1, 2008

(PROCEEDINGS RECONVENED AT 9:36 A.M.)

THE REGISTRAR: Order. This hearing is now resumed. Mr. Rothwell, may I remind you you're still under oath.

ROBERT ROTHWELL: Resumed

A Yes. Thank you.

THE COMMISSIONER: I think when we adjourned with Inspector Rothwell the other day you were next in line, Mr. Tammen. Am I correct in that?

MR. TAMMEN: Yes, I think that is correct, Mr. Commissioner. I just wanted to note for the record I was absent yesterday afternoon. I was back at my office clearing the decks to make myself available for the next two weeks of this hearing. That was the reason for my absence yesterday. I was adjourning other matters.

THE COMMISSIONER: Thank you. Ms. Pastine looked after the shop for you while you were away.

MR. TAMMEN: Yes, I am aware, thank you.

EXAMINATION BY MR. TAMMEN:

Q Inspector, you consider yourself to have a good memory, I take it?

A Well, I have a memory. I'm not prepared to

1 classify it as good or bad but I have a memory.

2 Q Would you say you have a better than average
3 memory?

4 A Really, I don't know how to qualify that, Mr.
5 Commissioner, "better than average".

6 Q Well, you seem to have tremendous detailed recall
7 of your first encounter with Mr. Paul
8 approximately 20 years ago. Do you agree?

9 A Yes, I agree.

10 Q That was a singular, important event in your
11 life; was it?

12 A I found it to be quite an interesting event in my
13 life, encountering Mr. Paul and having a
14 discussion with him around this haphazard piece
15 of gauze sewn onto his head in a very erratic
16 fashion, and it was just something that was
17 memorable to me.

18 Q You expect others to have reasonably good
19 memories; correct?

20 A Others as in --

21 Q Other human beings, other people.

22 A Some people have good memories and some have less
23 so, Mr. Commissioner. I can't comment on other
24 people's memories.

25 Q Well, yesterday you told this Commission that you

1 expected that the relatives of Mr. Paul receiving
2 a telephone call effectively out of the blue from
3 a police officer telling them that their loved
4 one was dead would at least remember the name of
5 the officer delivering the news. Do you remember
6 saying that?

7 A Mr. Commissioner, I remember some discussion
8 around thinking that if somebody were to phone
9 you to advise you that a relative was dead, that
10 that would be -- hold quite an impact on a person
11 and that they would probably remember more the
12 circumstances pertaining to the call.

13 Q That's not what you said. You said you would
14 expect them to at least remember the name of the
15 officer that phoned. Do you remember saying
16 that?

17 A I believe I said something to that effect.

18 Q It seems to me that what they'd be more likely to
19 remember is the shocking news that their relative
20 had passed away and perhaps the circumstances of
21 his passing, but you expect them to remember the
22 name of the officer that phoned; is that right?

23 A Mr. Commissioner, in going over this, I would
24 expect they would remember elements of that call
25 and certainly the fact that a loved one was now

1 dead would be memorable. You know, I would think
2 in giving the consideration that they would
3 likely remember if it was an RCMP member or a
4 Vancouver Police member they're speaking with,
5 but it's difficult for me to say precisely what
6 they would remember.

7 Q Let's break some of that down, inspector. These
8 questions are only directed at you because of
9 something you said in that witness box yesterday.
10 I don't have the exact quote and we can read it
11 back if need be. You said something to the
12 effect of: I would at least expect them to
13 remember the name of the officer that phoned. Do
14 you agree that you said something like that
15 yesterday in the witness stand?

16 A Something like that. Maybe you'd like to go back
17 and look at the transcript.

18 Q Would you?

19 A I have no problem with that.

20 Q You recall saying something along those lines?

21 A Mr. Commissioner, I've already indicated that I
22 recall something along those lines.

23 THE COMMISSIONER: I think you've covered that, Mr. Tammen.
24 His best recollection is he said something to
25 that effect.

1 MR. TAMMEN: Yes, all right. With respect, Mr. Commissioner,
2 I do intend to canvass this witness's memory.
3 I'm not going to spend a great deal of time on it
4 by it's important in my submission.

5 THE COMMISSIONER: All right. Go ahead.

6 MR. TAMMEN:

7 Q You have heard, Mr. Commissioner, in this inquiry
8 from countless members of the Vancouver Police
9 Department, past and present, more "I don't
10 remember anything" than I've ever heard in any
11 case. So I intend to canvass it with this
12 witness who gave us chapter and verse for five
13 minutes, self-serving evidence yesterday about
14 his first encounter with Frank Paul 20 years ago.

15 Let me get to the nub, inspector. Surely
16 you remember something of the conversation that
17 occurred over lunch with Police Complaint
18 Commissioner Morrison on August 30, 2001; surely
19 you remember something about that?

20 A I don't, Mr. Commissioner. What I recall is that
21 as a result of that conversation or that meeting,
22 I generated an e-mail indicating that the
23 commissioner had informed us that he did not
24 intend to call a public hearing into the Frank
25 Paul matter.

1 Q I'll come to the e-mail in a moment. That wasn't
2 what I asked you about. My question was, surely
3 you remember something that was discussed at that
4 lunch meeting and you say you recall nothing. Is
5 that your evidence?

6 A I don't recall the contents of the conversation
7 or what was said. I just recall the conclusion
8 that I drew at the end of it.

9 Q In the course of your career, inspector, how many
10 times have you attended a lunch meeting with the
11 chief of the Vancouver Police Department and the
12 Police Complaint Commissioner?

13 A Perhaps two.

14 Q What was the other one?

15 A I don't recall the specifics of that sitting here
16 today.

17 Q So maybe it was just one?

18 A Uhm, I don't think it was just one. I'm doing my
19 best to reflect back a number of years. There
20 were other issues that the police department was
21 dealing with that involved the Police Complaint
22 Commissioner's office so I know there were other
23 topics discussed at other meetings and so forth.

24 Q Attending a luncheon meeting with the chief of
25 police, your ultimate supervisor and the Police

1 Complaint Commissioner, you agree with me would
2 be a singular noteworthy event in your career?

3 A Honestly, I wouldn't call that noteworthy. I met
4 with the chief at least once a week. My meeting
5 with him certainly wasn't noteworthy. The
6 meeting with the Police Complaint Commissioner,
7 sure, it would have more significance, but
8 sitting here today reflecting back, I don't have
9 specific memory of those meetings or what they
10 entailed.

11 Q Did you take notes?

12 A No, I didn't, Mr. Commissioner.

13 Q Did you make notes afterwards?

14 A Only in the form of an e-mail that I have already
15 referred to.

16 Q You didn't submit a report or write a report
17 about that meeting?

18 A No, I don't believe so.

19 Q The time that you first encountered Mr. Paul on
20 the street about 20 years ago, did you make notes
21 of that event?

22 A Uhm, I haven't looked back in my notebooks to
23 determine that. Presumably I would have had some
24 notation about attending a call at that location
25 but, as I said, I haven't canvassed that in my

1 notebooks.

2 Q It wasn't the sort of call about which you would
3 have written and submitted a report; was it?

4 A No. I doubt there would be a written report.
5 There probably would be a notation in the
6 computer extract pertaining to the call of how it
7 was resolved and there probably would be, and I'm
8 guessing, but in my notebook the name of Mr.
9 Frank Paul, the date of birth and so forth from
10 having contact with him.

11 Q By the way, what was the purpose of that evidence
12 you gave yesterday about your first encounter
13 with Mr. Paul and your kindness towards him then
14 and thereafter?

15 MR. HERN: Mr. Commissioner, the purpose is that he was asked
16 a question about his knowledge of Mr. Paul and he
17 answered it. I don't think that it's for him to
18 speculate on the purpose of counsel asking him.

19 THE COMMISSIONER: Mr. Tammen.

20 MR. TAMMEN: I'm obliged to my learned friend for answering
21 the question for the witness but I'd like to hear
22 the witness's answer quite frankly.

23 THE COMMISSIONER: I can't remember the question that was put
24 to you yesterday but I'm going to ask Mr. Tammen
25 to ask the question again of you. Go ahead, Mr.

1 Tammen.

2 MR. TAMMEN: Sorry, you want me to repeat my question?

3 THE COMMISSIONER: Yes.

4 MR. TAMMEN:

5 Q What was the purpose of that long answer you gave
6 about your first encounter with Mr. Paul from 20
7 years ago, your kindness to him on that occasion
8 and your subsequent kindness to him while you
9 were the jail sergeant?

10 A Well, I was responding to a question from counsel
11 around my knowledge of Mr. Paul.

12 THE COMMISSIONER: You were asked if you knew him, if you knew
13 Mr. Paul.

14 A Okay. Yes. I was trying to give some context of
15 how I knew him, why I knew him, and to me I think
16 that's important. I wanted to share some
17 information in relation to -- just how much I did
18 know about Mr. Paul.

19 MR. TAMMEN:

20 Q That series of questions and answers was heavily
21 scripted between you and Mr. Hern; wasn't it?

22 A No, it wasn't.

23 Q The purpose of your answers was to cast yourself
24 in a good light to attempt to erode the fact that
25 you did such a woefully inadequate job of looking

1 into the circumstances under which the Vancouver
2 Police notified Mr. Paul's next of kin of his
3 death; correct?

4 A No, no, it's not correct.

5 Q Let's look at Exhibit 110, tab XX please.

6 A Is there a corresponding page number?

7 Q I'll get there. Let's look at page 6, please.

8 This is Mr. Bhullar's letter of May 10, 2002.

9 Did that letter accompany Mr. Morrison's letter
10 to you of May 13, 2002 which is at page 5?

11 A I'm really not sure, Mr. Commissioner, if it
12 accompanied it but certainly both of them were in
13 my office.

14 Q Sorry, both of them --

15 A Both of the documents were part of the file in my
16 office.

17 Q Okay, fair enough. I want to get the back-drop
18 to what's going on here in May of 2002. Mr.
19 Bhullar to your knowledge had made a third party
20 complaint about some aspect of the Vancouver
21 Police Department's handling of Mr. Paul's death.
22 Do I have that right?

23 A Yes, I would agree with that.

24 Q Okay. And, as I read this correspondence, and
25 I'm not sure that it's complete but in any event,

1 as I read the totality of this May 2002
2 correspondence, it appears that Mr. Bhullar's
3 initial complaint was summarily dismissed and he
4 was writing on May 10, 2002 to request a review
5 of the summary dismissal. Do I have that right?

6 A Yes, I believe you do.

7 Q This is the part that I'm unclear on but I'm sure
8 you can assist us with. What was the mechanism
9 by which Mr. Bhullar's initial complaint was
10 summarily dismissed?

11 A It was dismissed pursuant to the *Police Act* in
12 that the matter that he was committing a third
13 party complaint about had been investigated,
14 discipline had been rendered, and several courses
15 of action had been put into place by the Police
16 Complaint Commissioner, and his complaint really
17 offered -- it was more editorial, it didn't offer
18 anything to investigate that had not already been
19 investigated.

20 Q Who made that decision?

21 A I made the initial decision around dismissal
22 pursuant to the *Police Act* given those
23 circumstances I described, and then my decision
24 is forwarded to the Police Complaint Commissioner
25 for his review and either for his confirmation of

1 the dismissal or for his decision to have it
2 investigated further.

3 Q I concede, as I must, that the first paragraph of
4 Mr. Bhullar's letter is not particularly well
5 written but I'll read it and then you and I --
6 I'll ask you some questions about it.

7 The writer is in receipt of a letter from
8 Inspector Rothwell (Internal Investigation
9 Section) of the Vancouver City Police
10 Department. Inspector Rothwell in response
11 to your request that the matter be
12 characterized summarily dismisses the
13 complaint.

14 He has completely garbled the English language in
15 that second sentence but it seems to me that he's
16 referring to a letter that you wrote to him
17 telling him that you had deemed the complaint
18 summarily dismissed. Is that what happened?

19 A Yes. The first letter he would receive would be
20 one that characterizes his complaint either as a
21 public trust matter or a service and discipline
22 -- service or policy matter or an internal
23 discipline matter. But he would have received on
24 indicating that it was being characterized as
25 public trust.

1 THE COMMISSIONER: Who from?

2 A That would be from me. Then he would have
3 received a letter indicating that his complaint
4 had been summarily dismissed. I believe that
5 correspondence is in the binder somewhere and
6 articulated in that letter was the reasoning
7 around why it was being summarily dismissed and
8 also his right to appeal that decision to the
9 Police Complaint Commissioner.

10 MR. TAMMEN:

11 Q All the correspondence you're just referring to
12 now is under your signature?

13 A Yes.

14 Q You were the one making the decision that his
15 complaint was summarily dismissed?

16 A I make a decision which then has to be actually
17 confirmed by the Police Complaint Commissioner.
18 I am making that decision as a delegate of the
19 police chief who in fact is the discipline
20 authority for the Vancouver Police Department,
21 but my decision -- really presumably application
22 for my decision is reviewed by the Police
23 Complaint Commissioner and really it's his
24 decision about whether or not he will confirm my
25 decision or overrule it.

1 Q Where is your correspondence that you say you
2 think is in the binder?

3 A I'll go through it and I'll find it.

4 MR. COWPER: Tab MM.

5 MR. TAMMEN:

6 Q I thank my friend for that. Mr. Cowper says it's
7 at tab MM. Tab MM. There's the form 1
8 complaint. Several copies of Mr. Bhullar's
9 original letter. The pages aren't numbered but
10 it's almost half-way through that tab, we see
11 your letter of May 7, 2002.

12 A Yes, that's to the Police Complaint Commissioner.

13 Q Then the next page is a letter of the same date
14 to Mr. Bhullar?

15 A That's correct, and you'll note that it
16 articulates the reasoning why and indicates what
17 his avenue of appeal is.

18 Q Let's just look at a bit of that correspondence.
19 The first one that's addressed to Mr. Morrison
20 concludes with: I have summarily dismissed the
21 complaint of Mr. Bhullar, and it's apparently
22 signed by you; correct?

23 A That would be correct.

24 Q You're the decision-maker; correct?

25 A In the first instance insofar as how the file

1 will be dealt with by the police department.

2 Q Well, you're not recommending to Mr. Morrison
3 that he summarily dismiss the complaint; you
4 purport to have summarily dismissed it; correct?

5 A That's correct. My understanding is that he
6 confirms that dismissal or chooses not to confirm
7 it but the dismissal actually takes place at my
8 level.

9 Q You were writing accurately when you dictated or
10 wrote the words or typed: I have summarily
11 dismissed the complaint of Mr. Bhullar; were you?

12 A Yes, I believe I was.

13 Q Then you're the one that writes to Mr. Bhullar,
14 the next letter, telling him that his complaint
15 has been summarily dismissed and advising him --
16 I'm looking at page 2, the final paragraph, that
17 he has the right to request a review by the
18 Police Complaint Commissioner; correct?

19 A Yes, that's correct.

20 Q But you're saying that your understanding was
21 even if Mr. Bhullar didn't request a review, the
22 Police Complaint Commissioner would automatically
23 review your decision. Is that what you're
24 saying?

25 A Yes, I would agree with that.

1 Q But, in any event, that's moot in this case
2 because that's May 7 and we know that within
3 three days Mr. Bhullar wrote to Mr. Morrison and
4 requested a review. We see that at page 6 of tab
5 XX; correct?

6 A Yes.

7 Q So he raises various issues there. Let's turn
8 then to page 5 of tab XX. That's the letter that
9 was addressed to the chief constable but the
10 letter that you ultimately received -- pardon me,
11 it's addressed to the chief constable but then
12 it's to your attention; correct?

13 A Sorry, can you -- I was looking at another
14 document.

15 Q Page 5 of tab XX. That's Mr. Morrison's letter
16 directed to your attention of May 13, 2002;
17 correct?

18 A Yes, and I believe that that's in response to a
19 letter that I forwarded to the commissioner in
20 relation to the follow-up complaint from Mr.
21 Bhullar.

22 Q No, no. This is clear, witness. The May 13th
23 letter is triggered by Mr. Bhullar's letter of
24 May 10, 2002 at page 6; right?

25 A Okay.

1 Q On May 10, 2002, the complainant requested a
2 review of the summary dismissal of this
3 complaint, and then Mr. Morrison writes to you;
4 right?

5 A Correct.

6 Q Let's look carefully at the final paragraph of
7 that letter to see what it is that Mr. Morrison
8 was asking you to do, "to assist me in making a
9 determination regarding that summary dismissal".
10 Let's pause there. He's referring to your letter
11 of May 7, saying: I summarily dismiss your
12 complaint; right?

13 A I agree.

14 Q To assist me in making a determination
15 regarding that summary dismissal of the
16 complaint, please provide a record of the
17 circumstances of death communicated to the
18 family of Frank Joseph Paul by the Vancouver
19 Police Department.

20 I've read that correctly, have I?

21 A Yes.

22 Q So that's your task; correct? Right?

23 A That is correct, although it should be read in
24 conjunction with, I think, the preceding
25 paragraph as well.

1 Q Okay. Please tell us how you interpreted your
2 task or, to put it another way, how you
3 interpreted the request that Mr. Morrison was
4 making of you?

5 A Well, in the preceding paragraph, Mr. Morrison
6 states that:

7 Although Mr. Bhullar is a third party
8 complainant and pursuant to section 53.1(2)
9 of the act, has none of the rights available
10 to complainants -- such as requests for
11 reviews or external investigations, I note a
12 reference in his letter: "the fact that Mr.
13 Paul's family is informed that the death was
14 the result of being hit by a cab".
15 To assist me in making a determination
16 regarding that summary dismissal of the
17 complaint, please provide a record of the
18 circumstances of the death communicated to
19 the family of Frank Joseph Paul by the
20 Vancouver Police Department.

21 So my interpretation is that the issue is a line
22 in Mr. Bhullar's complaint which was quoted by
23 the Police Complaint Commissioner with the
24 request to assist him in making a determination
25 regarding a record of the circumstances of the

1 death communicated to the family of Mr. Frank
2 Paul. I believe that's what we embarked upon
3 doing and worked very comprehensively in trying
4 to achieve it.

5 Q What did you take a record to mean?

6 A Well, it's fairly broad, I would suggest, in this
7 letter but what I took it to mean would be, first
8 of all, what is on file in relation to the
9 information communicated surrounding the cause of
10 death, and to whom and when and that sort of --
11 those sort of particulars.

12 Q You undertook to provide Mr. Morrison with as
13 best you could a record of what was said and to
14 whom by the police with respect to Mr. Paul's
15 death; correct?

16 A Yes, in relation to the Vancouver Police
17 Department.

18 Q It wasn't just this narrow notion of did anybody
19 say he was the victim of a hit and run or hit by
20 a cab or anything like that. It was broader
21 mandate to decide exactly what was said and what
22 was not said by the police to the relatives of
23 Mr. Paul concerning Mr. Paul's death; correct?

24 A Well, I go back to what he said here. He's
25 asking please provide a record of the

1 circumstances of the death communicated to the
2 family. So circumstances to me would indicate
3 who was advised and by whom and what was said.
4 It's clear from the preceding paragraph that the
5 conflict turns on this line in Mr. Bhullar's
6 complaint indicating the fact that Mr. Paul's
7 family is informed that the death was the result
8 of being hit by a taxi.

9 Q Your mandate was broader than just this, was he
10 hit by a taxi or was anybody told he was hit by a
11 taxi; you agree?

12 A Sure, I'll agree.

13 Q Let's look at your letter of page 7, October 10,
14 2002. Here's what you told in writing --

15 THE COMMISSIONER: At page?

16 MR. TAMMEN: Page 7, Mr. Commissioner.

17 Q This is what you told the office of the Police
18 Complaints Commissioner you had undertaken.

19 This office, in conjunction with the major
20 crime homicide section and the coroner
21 liaison office, undertook to establish
22 exactly what was said and to whom by the
23 police in relation to the death of Mr. Paul.

24 Correct?

25 A Correct.

1 Q So it was broader, that is, what you undertook,
2 whether it was part of your mandate or not, what
3 you undertook was a bit broader than even what
4 was said by the Vancouver Police, you attempted
5 to ascertain what was said by the RCMP as well;
6 correct?

7 A As we moved forward in the investigation, and as
8 I testified earlier, the initial thought was that
9 it would be very straightforward to make these
10 inquiries and answer the commissioner's concern.
11 As we conducted the investigation and it became
12 apparent that we needed to consult further than
13 just within the VPD records, and therefore we
14 consulted with the coroner's office and our Major
15 Crime Homicide Section.

16 Q We see -- we don't have to go there but we see
17 from some of the other documentation here that
18 you did attempt to provide the office of the
19 Police Complaint Commissioner with an account of
20 what was said by not just the Vancouver Police,
21 but also members of the RCMP; right?

22 A Yes, that's correct.

23 Q And in the course of that, you of course learned
24 that, as Mr. Cowper pointed out to you yesterday,
25 certain relatives of Mr. Paul believe they had

1 spoken with a member of the RCMP; correct?

2 A Correct.

3 Q And certain people, either his relatives or
4 members within the band, were claiming that
5 whatever they were told about his death, they
6 certainly were not told that he had been recently
7 released from police custody; you'd agree?

8 A Yes, I agree.

9 Q You don't in any way address that last point in
10 your letter of October 10, 2002; do you?

11 A No, I don't.

12 Q I want to just go over the next sentence in that
13 second paragraph at page 7. I won't repeat
14 things that Mr. Rudin said yesterday but I'll
15 read it and break it down:

16 This investigation was frustrated by faded
17 memories and an unwillingness by the members
18 of the Big Cove Band Council and relatives.
19 of Mr. Paul, some of whom are following the
20 advice of counsel representing them in a
21 civil claim for damages, to co-operate.

22 So frustrated by faded memories, obviously that's
23 something you'll concede is a problem with any
24 investigation; correct?

25 A Correct.

1 Q Memories are prone to fading, in fact, memories
2 are prone to disappearing; aren't they?

3 A Yes, it can happen.

4 Q I won't go over the unwillingness of the band,
5 Mr. Rudin covered that, but I want to focus on
6 the last part of that. You're referring to an
7 unwillingness by relatives of Mr. Paul to
8 co-operate; correct?

9 A Yes.

10 Q Which relatives were you referring to there?

11 A I'm not referring to -- I'm not referring to
12 specific relatives. What I am doing is including
13 in this document information that I received
14 around the difficulty that the investigators
15 following up this information were having. Now,
16 I wasn't the one actually conducting the
17 investigation. I was at the end of the day
18 looking at the totality of it and the documents
19 that came in.

20 THE COMMISSIONER: You were repeating what you got from
21 Ms. Leggett.

22 A Essentially, I was doing that. So, I mean, I
23 didn't speak to the relatives but I tried to
24 include in here a sense of the frustration felt
25 by the investigators.

1 MR. TAMMEN:

2 Q What exactly did Ms. Leggett say to you about
3 unwillingness to co-operate on the part of any of
4 Mr. Paul's relatives?

5 A I can't answer that. I don't have any memory of
6 it at this time. This was written in 2002 and
7 when I wrote it, Mr. Commissioner, I was
8 satisfied that I was conveying the most accurate
9 information I could to the Police Complaint
10 Commissioner and I stand by the fact that, at the
11 time when I produced this document, it was true
12 and accurate to the best of my knowledge.

13 Q I want to get this straight though. I want to
14 probe what, if any, memory you have. Is your
15 memory on this point faded or disappeared?

16 A I don't know.

17 Q Let's probe what memory you do have. Do you say
18 that you had some conversation with Constable
19 Leggett where she identified specific individuals
20 that were relatives of Mr. Paul and were
21 unwilling to co-operate with her in her
22 investigation?

23 A No, I'm not saying that. I'm saying today at
24 this point reflecting back, I don't know
25 precisely what Ms. Leggett may have said to me or

1 what Sergeant Boutin may have said in relation to
2 this investigation or anybody else. I do know
3 though, based on my documents, that one of the
4 overriding factors was that there was this
5 unwillingness to provide information to the
6 investigators. I wasn't conducting the
7 investigation and I can't unfortunately offer in
8 detail exactly what that was.

9 Q You keep saying you weren't conducting the
10 investigation. Let's go back to that. You were
11 requested to conduct this investigation by Mr.
12 Morrison; correct?

13 A Well, I was requested to have the matter
14 investigated.

15 Q You delegated to your underlings the task of
16 conducting the actual investigation; correct?

17 A That's correct.

18 Q You did take upon yourself the very important
19 task of reporting to the office of the Police
20 Complaint Commissioner; correct?

21 A Yes, that's correct.

22 Q So you're aware, I'm sure, of the famous plaque
23 that apparently stood on Harry Truman's desk:
24 "The buck stops here." You know about that;
25 right?

1 A I've heard of that, yes.

2 Q He bore ultimate responsibility for what went on
3 and went out of his office; right?

4 A I presume that's the interpretation.

5 Q You bore the ultimate responsibility for what
6 information got conveyed back to the office of
7 the Police Complaint Commissioner; correct?

8 A I certainly was responsible for communicating
9 with that office as a delegate of the chief
10 constable and I believe I did so on every
11 occasion in the most forthright manner I could,
12 and that I supplied the information that was
13 requested, and you have to remember that attached
14 to this document were other documents describing
15 some or all of the steps that had been taken and
16 some of the difficulties encountered therein.

17 Q We won't see in any of the documents at tab XX of
18 Exhibit 110 something written by Constable
19 Leggett or any member of the Vancouver Police
20 Department saying a specific relative, and giving
21 a name, of Mr. Paul has been unwilling to
22 co-operate with us. We don't see that anywhere
23 here, do we?

24 A No, not a specific name.

25 Q We don't see anything about relatives being

1 unwilling to co-operate in writing here; do we?

2 A I believe there is a line in which she describes
3 their response was less than satisfactory.

4 Q Did you probe that with her, what she meant by
5 that?

6 A I don't recall probing that specific line with
7 her, no.

8 Q Did you make notes of whatever it was Constable
9 Leggett or Detective Boutin said to you about
10 this unwillingness to co-operate?

11 A No, I don't believe I have notes of that.

12 Q So it wasn't important enough to make notes of?

13 A I wouldn't describe it as not important enough,
14 but in the course of the day-to-day activity
15 within the internal investigations section, it
16 wasn't something that I noted. I felt the file
17 was comprehensive as it was and that the
18 information that was being provided to the
19 commissioner addressed his request and, if it
20 didn't, I felt that he would certainly be back in
21 touch with what else he may have requested to be
22 done.

23 Q But if he had followed up with you and said, I've
24 read all your documents but I want to know a
25 little bit more about which relatives and how

1 they were unwilling to co-operate, could you have
2 responded?

3 A I can't tell you today what my response would
4 have been then because that would have been at
5 the time and of course all of this would have
6 been contemporaneous and I would presumably have
7 had a better understanding. Now, if I was unable
8 to answer his question, I definitely would engage
9 the investigators to conduct further
10 investigation around whatever issue it was that
11 he felt needed to be explored further.

12 Q Clearly, this notion of relatives being unwilling
13 to co-operate was important enough to occupy the
14 better part of one paragraph of your four
15 paragraph letters to Mr. Morrison; correct?

16 A Well, I thought it was important enough to note
17 in the report to Mr. Morrison.

18 Q To note in the report but not to make notes of;
19 correct?

20 A Well, you're asking me whether it was important
21 enough to make notes of, and I explained my
22 issue, my answer around notes, that on a regular
23 basis it wasn't note-making to the file that I
24 would undertake. The notes to the file were
25 generally placed in there by the investigator or

1 investigators, the lead investigator, and I was
2 briefed on the circumstances.

3 Q You were putting the best spin on this for the
4 Vancouver Police Department, the worst spin for
5 the Paul relatives in the hope that Mr. Morrison
6 would simply read your letter and not even look
7 at the underlying documents; correct?

8 A No. Sorry.

9 Q At the time you were part of the internal
10 investigation section of the Vancouver Police
11 Department?

12 THE COMMISSIONER: He's told me that several times. When this
13 was on?

14 MR. TAMMEN: Yes.

15 Q Yes, you were?

16 A At which point?

17 Q 2002.

18 A Yes, that's correct, Mr. Commissioner.

19 Q So you were used in your role as member of that
20 section to dealing with complaints about police
21 officers from members of the public; correct?

22 A That was my purpose for being in the office, yes.

23 Q Yes. And you were trained in that role to be
24 objective and not discount out of hand things
25 that members of the public reported to you about

1 members of the police; correct?

2 A That's correct. I always -- I believe I always
3 tried to exercise objectivity in any sort of
4 complaint and I understood the whole concept of
5 impartial and independent investigation and was
6 supportive of the concept of civilian oversight
7 of our investigations.

8 Q And you wouldn't simply dismiss out of hand as
9 being not credible an account made by a member of
10 the public about misconduct on the part of a
11 police officer; correct?

12 A Correct.

13 Q If you had a very specific complaint from a
14 member of the public about an officer and you
15 spoke with that officer who said i don't remember
16 and I have no notes, therefore it couldn't have
17 happened, you wouldn't just shut down your file
18 and summarily dismiss the complaint; would you?

19 A It's improbable.

20 Q That's exactly what you're doing in the final
21 paragraph of your letter, page 8; correct?

22 A No.

23 Q When you say:

24 I am satisfied from attached documents that
25 there does not exist any credible basis for

1 believing that members of Mr. Paul's family
2 or the Big Band Council, were the recipients
3 of deceitful information from the police in
4 relation to the death of Mr. Frank Paul.

5 Let's leave the word "deceitful" out of it
6 because that wasn't part of your task. You were
7 simply tasked and what you undertook to do is to
8 find out what they were told and by whom;
9 correct?

10 A Correct.

11 Q Was there misinformation conveyed to them;
12 correct?

13 A Correct.

14 Q I would categorize part of your task as being
15 were they underinformed, that is, what Mr. Cowper
16 took you through yesterday, were they advised
17 that he'd been in police custody prior to that,
18 but in any event, you had in these reports
19 accounts from various people that they had not
20 been told that Mr. Paul had been in police
21 custody prior to his death; correct?

22 A Sorry, do you want to just give that to me again?

23 Q You had various accounts, various accounts from
24 members of the band and members of Mr. Paul's
25 family that they had not been informed completely

1 and accurately about the circumstances of his
2 death, namely, that he'd been in police custody
3 just prior to it; correct?

4 A Well, we had some indications of those and some
5 reports and so forth but, as I mentioned, we
6 could not establish any -- we couldn't
7 corroborate any of that. We were at a loss to
8 determine how the family came to that conclusion.

9 Q So because you could not corroborate through
10 physical evidence or accounts of police officers
11 who apparently kept no notes, because you
12 couldn't corroborate the accounts of the Paul
13 relatives that way, you deemed their accounts to
14 be not credible; correct?

15 A I deemed that we couldn't find any credible
16 evidence to support their account and what we did
17 determine was that it seemed if some information
18 -- misinformation had been delivered that was
19 then circulated through a series of phone calls
20 by one of Mr. Paul's relatives, and in addition
21 it seemed that the information we were getting
22 back wasn't always consistent about what they had
23 been told in relation to whether he was hit by a
24 cab or not and whether he had spent a month in
25 the ditch and so on, so there just didn't seem to

1 be any clear rendition of what they were told
2 that was consistent from individual to
3 individual.

4 Q You agreed that that's not unusual in the course
5 of an investigation, that people remember things
6 differently, memories fade, memories change over
7 time; correct?

8 A Correct.

9 Q So that's not unusual, that there might be
10 slightly differing accounts of what they were
11 told; right?

12 A Correct.

13 Q You deemed their accounts to be not credible;
14 correct?

15 A I deemed there to be no credible basis for
16 believing that members of Paul's family or the
17 Big Band Council were the recipients of deceitful
18 information from the police. That is clearly
19 what I wrote and that is what I deemed.

20 Q Unless you want to carry on, those are my
21 questions, but you seem to want to go on in your
22 answer. Is there anything more you want to say?

23 A No, thank you.

24 THE COMMISSIONER: Mr. Tammen, I want to be clear on what all
25 this has given me. As I understand it, from

1 listening to the inspector yesterday and again
2 today following your questions, what he is able
3 to say is I couldn't really establish what the
4 family was told and also I can't say whether or
5 not they were given any misinformation because I
6 really don't know what they were told. Isn't
7 that correct?

8 A That is correct, Mr. Commissioner.

9 THE COMMISSIONER: That's what I take from it all is that
10 unfortunately there was no note made as to what
11 they were told and so he can't really say to me
12 they were told this or told that. We do know
13 that some members of the family, at least one
14 member of the family, was told that Mr. Paul was
15 hit by a -- died as a result of a hit and run.
16 We don't know where that came from, at least
17 that's what I take yesterday from Constable
18 Leggett and also from the inspector. The family
19 says that's what we were told and we were told by
20 a police officer but they can't confirm that and
21 they can't tell me it didn't happen and they
22 can't tell me it did happen. Is that fair?

23 A I would agree, Mr. Commissioner, it's a fair
24 characterization.

25 THE COMMISSIONER: That's what we're left with.

1 MR. TAMMEN: I understand that, Mr. Commissioner, but my point
2 is a bit narrower than that.

3 THE COMMISSIONER: I thought that's what you --

4 MR. TAMMEN: My point, I thought it was -- I'll retract that.
5 My point is this, that he writes this brief
6 letter to Mr. Morrison after his exhaustive
7 efforts, the department's exhaustive efforts to
8 track this down, and my submission is that these
9 efforts were not exhaustive but that's a
10 different issue, and he lays all the blame for
11 their inability to corroborate these accounts at
12 the feet of the band members and the family and
13 makes no mention of the inadequacy of the
14 note-keeping, the record-keeping and the efforts
15 made by his department. This is a cover-up in my
16 submission, this letter.

17 THE COMMISSIONER: I don't know what you would call it, but
18 certainly I have from Constable Leggett in answer
19 to the questions yesterday, she said, yes, we
20 should have asked more questions and got more
21 answers to what we had there and we could have
22 done more. Is that fair? You weren't here but
23 isn't that what you took from what she said
24 yesterday? I think that answers your question,
25 yes, they should have done more. They didn't

1 pursue it.

2 MR. TAMMEN: Well, I haven't heard any of that kind of mea
3 culpa from this witness, with respect, Mr.
4 Commissioner.

5 THE COMMISSIONER: No, but when I heard it from the constable
6 yesterday who was actually conducting the
7 investigation on the instructions from the
8 inspector.

9 MR. TAMMEN: I wasn't being facetious with my
10 cross-examination about Harry Truman. This
11 officer has to bear responsibility for the
12 inadequacies.

13 THE COMMISSIONER: Yes, he was in charge.

14 MR. TAMMEN: He was exercising a quasi-judicial function when
15 he purported to summarily dismiss the first
16 complaint. Now he's urging the Police Complaint
17 Commissioner to confirm that summary dismissal
18 and in my submission he had a duty to do more
19 than what we see in this letter, and that's where
20 I was trying to get at with this
21 cross-examination. I guess I didn't do a
22 particularly good job.

23 THE COMMISSIONER: No, no, you did a good job, I thought. You
24 can ask him that question if you wish to do so.
25 I got it from the constable who was actually

1 doing the job yesterday, but you could ask the
2 inspector, see what he has to say. Do you not
3 think more could have been done here to follow up
4 on this?

5 A Well, I think you can always find more to do. At
6 some point you have to decide in an investigation
7 have you gone far enough to make some
8 determination or not, and clearly I was of the
9 view that we had gone far enough. To go further,
10 I'm not sure what else we would do other than
11 sending an investigative team out there ourselves
12 and conducting further inquiries. We had
13 examined all of the records within the VPD,
14 canvassed the coroners office for their records,
15 canvassed the RCMP in New Brunswick for their
16 records, checked all the CPIC transmissions and
17 had the RCMP in New Brunswick make multiple
18 inquiries for us multiple times. So where more
19 probably could have been, should have been done
20 on reflection, would be in our investigators
21 having more contact with Paul's family and
22 perhaps noting more clearly what the response was
23 from them.

24 THE COMMISSIONER: That's what Constable Leggett told me
25 yesterday, that should have been followed up now

1 that she looks back on reflection. What Mr.
2 Tammen was getting at, as I understood it, was
3 this: He was saying in his line of questioning
4 to you, you were asked to determine what in fact
5 the Paul family were told and he's saying in your
6 reply and report you didn't deal with that. You
7 simply dealt with what you got from Constable
8 Leggett who was doing the investigation for you
9 and didn't deal with the specifics. Is that what
10 you're saying?

11 MR. TAMMEN: That's part of it, yes.

12 A Well, I think that the documents that we went
13 through yesterday supporting the investigation
14 would indicate that the goal wasn't just to focus
15 on the taxi issue but in fact who said what to
16 whom and more broadly. So I think that that was
17 explored, and at the end of what had been done, I
18 guess eventually you draw a line and say, okay,
19 we've made the inquiries, we've got to this
20 point, there doesn't seem to be much likelihood
21 of getting anything further or getting anything
22 more definitive than what we've got, and that
23 line, I guess it's a judgmental determination
24 when and where that line gets drawn, but based on
25 the documentation that I had reviewed and my

1 awareness of the steps that had been taken, I
2 felt that we had -- that we were exhaustive in
3 our queries around the commissioner's questions.

4 MR. TAMMEN: One final question, if I may then.

5 Q Do you think that, on reflection, that maybe your
6 four-paragraph letter to Ms. Murphy at pages 7
7 and 8 ought to have included something, maybe a
8 separate paragraph or something in paragraph 2,
9 about your efforts being frustrated in part by
10 the fading memories of your members, their
11 failure to keep proper notes and the failure of
12 the RCMP to preserve records for what anyone
13 would think to be an acceptable period of time,
14 namely, more than two years? Do you think she
15 maybe should have known that?

16 A I certainly could have articulated that. It was
17 all contained within the attachments though,
18 which I'm sure would have been read by the
19 commissioner. In fairness, absolutely, that
20 could have been articulated more clearly.

21 MR. TAMMEN: Thank you. Those are my questions.

22 THE COMMISSIONER: Mr. Kelliher.

23 MR. KELLIHER: Just a few, Mr. Commissioner.

24 **EXAMINATION BY MR. KELLIHER:**

25 Q Not to beat a dead horse -- or a dying horse.

1 Sir, you had information as I reviewed these
2 materials, and I'm looking at page 18 of Exhibit
3 110, XX if you follow me.

4 A Yes.

5 Q You see that memo to Sergeant Bob Cooper from
6 Cheryl Leggett. What role did Mr. Cooper play in
7 this, by the way?

8 A He was the sergeant in charge of the major crime
9 homicide team and so essentially he was Cheryl
10 Leggett's supervisor because the coroner liaison
11 office falls under his responsibility.

12 Q So he's supervising Leggett in her field work in
13 the investigation; is that correct?

14 A Yes.

15 Q Then he's communicating the information to you;
16 is that right?

17 A Yes.

18 Q You see then on May 14th there were two leads in
19 this investigation. One apparently was Brian
20 Solomon was one potential source of information
21 as to the circumstances of Frank Paul's death, he
22 was communicating with the family, and we see
23 that, midway through the third paragraph down,
24 according to Peggy, Jordain was told to call
25 Vancouver to have the body released. Jordain

1 told Peggy it was the RCMP she spoke to but did
2 not remember the officer's name. Okay. So you
3 had a very warm lead on May 14, 2002 that Francis
4 Jordain spoke to a police officer, the police
5 officer gave her some advice as to how Frank Paul
6 died. Now, can you tell me, did somebody pick up
7 the phone and say to Francis Jordain: How did
8 you first come to know that your brother died?
9 And then ask perhaps this question: How did you
10 come to know? And if she said, an RCMP officer
11 called me, the next question might be: And what
12 did he say, Francis? Correct? That line of
13 questioning, is that outside the exhaustive terms
14 of the investigation that you've described?

15 A First of all, I would just like to confirm that
16 she wasn't spoken to through some of the
17 documents that are part of this.

18 Q Look at the next paragraph down.

19 I placed a call to Jordain. As well I have
20 asked Clement to have Brian Solomon phone
21 me. I realize that you need this
22 information now so I will add the results of
23 the phone calls when they come in.

24 Were there ever the results of those phone calls
25 provided to you through Cooper? Can you tell me

1 if those calls were ever made?

2 A If you just give me a moment to go through the
3 documentation here, it probably offers something
4 around that.

5 Q If you look at page 27, that may be of some
6 assistance to you. I suggest to you that that's
7 the only other reference in these materials with
8 respect to contacting Francis Jordain?

9 A Yes. Okay. So this page -- as you know,
10 Sergeant Ross White from the RCMP in New
11 Brunswick was working on our behalf in terms of
12 trying to further the investigation, and it does
13 state here in an e-mail from Cheryl Leggett that:

14 More information was received from Sergeant
15 Ross White in New Brunswick. He spoke to
16 Francis Jordain who is Frank Paul's sister,
17 she said she was told by her aunt Mary Jane
18 Francis that he was hit by a car and left in
19 the ditch and was found later. She doesn't
20 know who found him. As I had previously
21 determined, the first notification was done
22 by Brian Solomon who cannot remember any
23 details of the notification except that Paul
24 was a "brother" and had to come home.

25 It just ends with:

1 Debra Millier's involvement was handling the
2 return of Paul's body to New Brunswick.

3 Q Sir, can I take you back to page 18?

4 A Yes.

5 Q You'll see Leggett is advising Cooper that there
6 are two sources of information; one is Solomon
7 who communicated his information to Mary Jane
8 Francis; right?

9 A Yes.

10 Q Then we flip to 27, and Officer White is saying
11 Jordain told him that Mary Jane Francis told
12 Jordain that Frank Paul was hit by a car and left
13 in a ditch; right? So now what we've done, what
14 27 does, page 27 does, is determine the probable
15 source of information from Mr. Solomon; correct?
16 That's the route of information: Solomon, Mary
17 Jane Francis and Francis Jordain; correct? Do
18 you have me?

19 A Yes, I'm with you.

20 Q That leaves outstanding, doesn't it, Leggett's
21 announcement to you or to Cooper May 14, 2002,
22 that Francis Jordain had been spoken to by an
23 RCMP officer. That was still an outstanding
24 question; wasn't?

25 A I see.

1 Q Are you with me?

2 A Yeah, I'm with you.

3 Q Did you at any time say to anybody, call up
4 Francis Jordain and ask her did an RCMP officer
5 speak to you and, if he did, what did he say?
6 Was that question ever asked?

7 A Well, I mean, I would presume that that question
8 would have been asked by Sergeant Ross White
9 during his discussion with her to find out how
10 she learned of the event, and in addition, the
11 RCMP were canvassed about whether they had any
12 involvement in making a next of kin and all of
13 them had indicated they didn't.

14 Q Sir, you know what would have happened if one of
15 your officers would have called Francis Jordain
16 and said to her, how did you find out, first of
17 all, about Frank Paul's death, do you know what
18 she would have said?

19 A No, I don't.

20 Q An RCMP officer called our house. And if you
21 then said to her, well, what did he say, she
22 would say to you --

23 MR. HERN: Is this going to be evidence that's brought into
24 this hearing or is Mr. Kelliher giving new
25 evidence again?

1 MR. KELLIHER: This is in the nature of cross-examination.

2 THE COMMISSIONER: Is it hypothetical, that's what Mr. Hern is
3 asking about, or are you stating something about
4 which we're to accept as fact?

5 MR. KELLIHER: I expect that evidence to be heard in this
6 hearing but if my friend feels more comfortable
7 for the moment I'll cast it as a hypothetical.

8 THE COMMISSIONER: You can do that.

9 MR. KELLIHER:

10 Q Sir, if -- we'll take what I've said in the
11 hypothetical sense and the second question was:
12 Well, Francis, what did he say to you? And she
13 said, he told us that Frank Paul died in a hit
14 and run, would that evidence be helpful to you in
15 the course of your investigation?

16 A Uhm, I think it would be helpful. I'm not sure
17 to what extent in that it still leaves some
18 question about who the RCMP officer was for us to
19 follow up on.

20 Q Do you mean to say that, if Francis Jordain told
21 you that, you would still be suspicious if it
22 were true?

23 A No, I -- I would want to, uhm, go the next step
24 so that we could close the loop on this and find
25 out where that information came from. The only

1 way -- what would be helpful from Ms. Jordain,
2 now that we're speculating, would be if she were
3 to say it was Constable XYZ that told me that.

4 Q I see. You'd want to follow up a little and
5 corroborate what she said?

6 A We are speculating again and I don't really care
7 to do that. I wasn't the investigator. I had a
8 different role than the investigators so I just
9 want to ensure that the message I leave is that I
10 believe that the investigation that was done was
11 done so in good faith and thoroughly to try and
12 make some determination about if the family had
13 been misinformed and who may have misinformed
14 them.

15 Q Sir, do you think one of the first steps in such
16 an investigation, if it were being done in good
17 faith, first of all, you identify the family
18 members -- and Francis Jordain you know is Frank
19 Paul's sister, right? You've got it that far?
20 Then you say to her: Francis, how did you find
21 out about your brother's death and what were you
22 told? Why isn't that the first step taken in
23 this investigation?

24 A Again, Mr. Commissioner, I wasn't actually
25 conducting the investigation. I was sending the

1 request out to have the investigation conducted
2 pursuant to the commissioner's letter, so I
3 wasn't micro-managing the investigation, nor
4 telling people who to call and how and what
5 questions to ask. So I see the point and, of
6 course, there could have been tremendous value in
7 doing that and it's regrettable that it wasn't.
8 However, I just don't want to characterize it as
9 the fact that it was in any way intentionally
10 done on the part of this organization.

11 Q No, no, not intentionally, but would you agree
12 with me that it was grossly incompetent?

13 A No, I wouldn't agree with that because I think
14 that we took quite a number of steps in trying to
15 validate one way or the other this information.

16 Q Tried to give the appearance of an investigation
17 without ever really inquiring into the heart of
18 the issue, that's what you were doing; wasn't it?

19 A No, I don't agree with that whatsoever.

20 Q Sir, in the materials before you there's a letter
21 of yours dated May 7th to the Police Complaints
22 Commissioner. I am sorry, I have an electronic
23 version and can't identify it any better than
24 that for Mr. Commissioner or counsel. It's dated
25 May 7, 2002 -- oh, I am sorry, no. It's to Mr.

1 Tony Bhullar and it's under your signature. Tab
2 MM, please. Do you have that, sir?

3 A I'm getting to it, I think. Sorry, yes, May 7?

4 Q Yes. Do you see the third paragraph down, it's
5 Re Form 1 Complaint Regarding the Death of Mr.
6 Frank Paul. Third paragraph down. Do you have
7 me beginning, "The investigation into," do you
8 have that paragraph?

9 A Yes.

10 Q The investigation into the death of Mr.
11 Frank Paul was closely scrutinized by the
12 office of the Police Complaints
13 Commissioner?

14 Was that true?

15 A I believe it is, yes.

16 Q What do you recall were the efforts that the
17 Police Complaints Commissioner's office took to
18 scrutinize the VPD investigation into Frank
19 Paul's death?

20 A I believe both Mr. Bill MacDonald and Dana Urban
21 from their office had a keen interest in this
22 file and closely followed the progress of it.

23 Q How would they follow the investigation, sir?

24 A In my experience, as the inspector in charge, I
25 know that Mr. Bill MacDonald would regularly

1 Q All right. You're saying that there wasn't any
2 formal designation of anyone to scrutinize this
3 investigation; is that correct?

4 A I'm not sure if the commissioner designated
5 anybody within his office to formally scrutinize
6 this but I do know that Bill MacDonald was
7 assigned as the liaison with the Vancouver Police
8 Department and he was very thorough and took an
9 interest in all of our files and I believe that
10 this was an important one to him.

11 Q All right. You don't know if someone was
12 designated to scrutinize this investigation but
13 when a person -- you've used the word "closely
14 scrutinize". When a person is designated to
15 scrutinize a Vancouver City Police Department
16 investigation, there is correspondence between
17 the investigators and that individual; isn't that
18 correct?

19 A Well, not necessarily. The correspondence
20 generally goes between the commissioner, which
21 may be directed to another person on his behalf,
22 and in terms of scrutinizing, as I mentioned,
23 Bill MacDonald regularly attended our offices and
24 would peruse files so the scrutinization wasn't
25 so much done through correspondence. It was more

1 done on scene by Mr. Bill MacDonald.

2 Q All right. Are you aware of any notes VPD kept
3 on the office of the Police Complaints
4 Commissioner's involvement in scrutinizing this
5 investigation?

6 A Uhm, I am aware that there was a report produced
7 by Sergeant Don Boutin, written to me, which
8 outlined some of the steps taken by the office of
9 the Police Complaint Commissioner around this
10 investigation in terms of re-examinations by
11 Crown, expert opinion evidence by Mr. Ferris and
12 so forth.

13 MR. KELLIHER: Those are my questions, Mr. Commissioner.

14 THE COMMISSIONER: Thank you. I take it you have some
15 questions, Mr. Ward?

16 MR. WARD: Yes, I do.

17 THE COMMISSIONER: We'll take the morning break then and I'll
18 ask you to have any questions when we return.

19 THE REGISTRAR: This hearing will now recess for 15 minutes.

20 (BRIEF RECESS TAKEN)

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

22 MR. KELLIHER: Mr. Commissioner, may I be permitted to ask
23 just one more question of this gentleman?

24 THE COMMISSIONER: Yes.

25 MR. KELLIHER:

1 Q Sir, we have been provided in the Vancouver City
2 Police Department disclosure materials an
3 electronic version of a document, a computer
4 print-out, and I can't show it to you, and it
5 says this on it: Frank Paul, hit and run. Do
6 you have any knowledge of such a document?

7 A I don't have that document and I don't have
8 knowledge of that document. It seems to me there
9 may have been some discussion about four years
10 prior to the event that -- something around a hit
11 and run but I don't have that, I don't have any
12 more knowledge than that.

13 Q Sir, would it be possible for you to investigate
14 the existence of such a document as that?

15 A Sure.

16 MR. KELLIHER: Good. Thank you very much.

17 MR. HERN: Just a moment. I think Mr. Kelliher stated that
18 this is a document that has been circulated with
19 the Commission. He asked me a moment ago, and I
20 said I had never seen it. Perhaps Commission
21 counsel can inform us as to what document Mr.
22 Kelliher is referring to.

23 THE COMMISSIONER: I understand Mr. Kelliher to say it was
24 part of the police file.

25 MR. KELLIHER: Yes, Mr. Commissioner. I'm at a bit of a loss

1 here. I've seen it electronically, I believe,
 2 and I actually think I've seen a piece of paper
 3 but my filing system is going a bit askew here.
 4 I know it exists, I've seen it, and I think it
 5 would be important to the Commission to have that
 6 document produced and to be able to ask this
 7 police officer his knowledge of that document and
 8 what it means.

9 MR. COWPER: Mr. Commissioner, I can perhaps clarify what I
 10 understand to be the case. In the course of the
 11 disclosure by the VPD, we asked for production of
 12 any electronic footprint of CPIC records relating
 13 to Mr. Paul. One of those productions had the
 14 words "hit and run". I don't know if it's
 15 precisely as Mr. Kelliher has said but it had the
 16 words "hit and run" on that print-out. Mr.
 17 Martland at my request has followed up on that,
 18 and my understanding is that in relation to the
 19 CPIC stations within the Vancouver City Police
 20 Department at the time, various stations had
 21 various names and the traffic station was
 22 designated as the hit and run station. So, in
 23 fact, if you pulled out an electronic copy, as we
 24 had requested happen, it would have the words
 25 "hit and run" on it, not because it designated an

1 offence but because it designated an electronic
 2 location from which the CPIC record was drawn.
 3 At this stage what I've done -- and I'll come
 4 back to the appropriateness for this witness --
 5 we obviously immediately raised the question for
 6 ourselves whether this may have been the source
 7 of the information which was conveyed to the
 8 family. What we've done so far in our
 9 investigation, and I can indicate that I'm
 10 planning and hoping to call other witnesses in
 11 relation to the question that is at hand with the
 12 VPD witnesses, that is, what was the family told?
 13 We've been interviewing family members, we'll be
 14 calling family members either by video or
 15 otherwise on this question. Let me just say,
 16 though, we have followed up on it. The VPD have
 17 made their IT people available and we're seeking
 18 confirmation to our satisfaction as to what that
 19 electronic signature shows, who would see it and
 20 under what circumstances. I understand that the
 21 advice from the IT people is that someone using
 22 this station would not see those words, someone
 23 searching information on that station would not
 24 see those terms, and someone sending information
 25 to another would not send that information to

1 another person. But obviously it's very
 2 important that we be completely satisfied about
 3 that. What I am satisfied about is that what
 4 I've have just said is basically not known to the
 5 members of the VPD except outside of the IT
 6 section. What I need to do is -- and if we need
 7 to call an IT person to clarify that, we'll do
 8 so. At this point what we're doing is following
 9 up on that and the VPD made IT people and their
 10 contacts available and I'll certainly notify you
 11 with respect to that. I don't agree with Mr.
 12 Kelliher if he's suggesting Inspector Rothwell is
 13 a good person to ask about that. It wasn't
 14 produced in any of the investigations prior to us
 15 starting our work and I don't believe that
 16 Inspector Rothwell, unless he has a surprising IT
 17 capacity, can answer the questions and confirm or
 18 not confirm what I've just said. We will be
 19 dealing with it in evidence. If I'm not going to
 20 call a witness, I'll circulate an e-mail and tell
 21 counsel what our view of the facts are and give
 22 them an opportunity to comment or ask us to call
 23 evidence in respect of that question.

24 THE COMMISSIONER: Sounds like you have the matter in hand.
 25 Mr. Kelliher?

1 MR. KELLIHER: Yes. I have an electronic version of this
 2 communication Mr. Ward has provided me and I
 3 gather the document itself is going to be filed
 4 in due course. While this officer is here, I
 5 would like him to have a look at it and --

6 MR. HERN: Mr. Commissioner, what Mr. Kelliher is referring
 7 to, I believe, is an e-mail from Mr. Martland,
 8 and the e-mail from Mr. Martland contains an
 9 extract of the notation where the computer
 10 terminal that is registered with CPIC is
 11 identified. That notation that is extracted from
 12 a document that's probably five to 600 pages long
 13 of similar notations. So to place a reading like
 14 that out of context is a little unusual and so
 15 the witness should know that the proper context
 16 of the document is an enormous set of offline
 17 CPIC readings that was obtained from Ottawa,
 18 which is where CPIC is controlled, and a person
 19 from CPIC has been identified who can speak to
 20 it, as well as somebody from the VPD. Witnesses
 21 have been presented to Commission counsel to
 22 follow up on.

23 MR. KELLIHER: Mr. Commissioner, I don't know if this officer
 24 should have been here during all of these
 25 conversations. He's certainly well informed to

1 be able to deal with it now. The point this:
 2 The whole issue of the last series of witnesses
 3 has gone to whether or not the police, Vancouver
 4 Police Department, communicated to the Paul
 5 family that Mr. Paul died as a result of a hit
 6 and run, and we have a computer entry from the
 7 Vancouver City Police Department's computer that
 8 reads: "Frank Paul, hit and run". Now, it may
 9 be just a stunning coincidence that this is the
 10 computer's nickname or something like that or
 11 other viable explanations, but I don't think it's
 12 inappropriate to ask this witness how he thinks
 13 this might have -- these concepts of "Frank Paul"
 14 and "hit and run" could appear on an image in the
 15 Vancouver City Police Department. He may not
 16 have any knowledge of it at all but --

17 THE COMMISSIONER: I think he's told me that, Mr. Kelliher. I
 18 think what we want to do, subject to any further
 19 suggestions you may have, is I think the
 20 appropriate thing is to call someone in the
 21 Vancouver Police Department who handles that IT
 22 and find out how it was generated and under what
 23 circumstances it might have been used.

24 MR. KELLIHER: Or even if this officer's investigation took
 25 him as far as the VPD computers.

1 MR. HERN: Mr. Commissioner, you see, this is the problem with
2 not having the document that Mr. Kelliher is
3 referencing here. In fact, it's not a VPD
4 document. It's an RCMP CPIC Ottawa document.
5 It's not in the VPD's computer files.

6 THE COMMISSIONER: I see. I think we need to know more, Mr.
7 Kelliher.

8 MR. KELLIHER: It would seem so. Thank you.

9 THE COMMISSIONER: Mr. Ward, you said you had some questions.
10 But before you start, Mr. Cowper during the break
11 has handed me a letter addressed to me which
12 purports to be from your client, at least from
13 Mr. Dennis who is the vice president of United
14 Native Nations, raising some issues and
15 expressing some opinions. Mr. Cowper says that
16 you'd like to read this into the record. I don't
17 think, Mr. Ward, it's appropriate at this point
18 in our proceeding to read this letter into
19 evidence in our hearing. He does raise two
20 issues: One has to do with the video we have
21 watched, and whether and how that should be
22 classified. You can tell Mr. Dennis that I
23 propose to have that video remain private. If
24 the issue with respect to having that designation
25 changed should arise, I will invite submissions

1 from him or through him from you or from him
 2 should he wish to do so. I also invite you to
 3 call Mr. Dennis, at least, or you can speak to
 4 Mr. Cowper to arrange this, but when we finish
 5 this phase, not at this time, but when we finish
 6 the phase, if you still feel that you'd like to
 7 have Mr. Dennis make some kind of a statement on
 8 this particular -- on the points raised in his
 9 letter, I invite you to do so.

10 MR. WARD: Thank you. And just if I may clarify, because a
 11 couple of comments you made, Mr. Commissioner,
 12 concerned me. I just want to say that I advised
 13 Mr. Cowper, I think, late yesterday or perhaps it
 14 was this morning that my client had prepared a
 15 letter that was directed to you and that he
 16 sought to have the contents of the letter
 17 conveyed to you in this Commission, and I gave my
 18 friend Mr. Cowper a copy of that letter this
 19 morning, and the way it was left with my friend
 20 is that I thought we were discussing, he and I,
 21 how best to address this subject. I wasn't aware
 22 that it was actually then going to be immediately
 23 conveyed in any fashion. I make no criticism but
 24 I thought we were still in the course of
 25 discussing how we could address the subject

1 matter of the letter and whether those comments
 2 in it could be conveyed to this forum in some
 3 fashion. I wanted to just say that and, again,
 4 I'm not complaining or expressing concern with
 5 what has happened, just clarifying at least on
 6 the basis that I understood. One of the things
 7 Mr. Cowper and I had discussed was that perhaps,
 8 rather than I read the letter or he read the
 9 letter, perhaps at an appropriate time Mr. Dennis
 10 could take the witness stand, express some of,
 11 but perhaps not all of, the concerns expressed in
 12 the letter and then be subjected to questioning
 13 from others on the point if it were relevant and
 14 if it were properly to be put in evidence. So
 15 all of that is to say that I have your view and
 16 will convey it to Mr. Dennis and will continue my
 17 discussions with Mr. Cowper on how to address
 18 that subject.

19 THE COMMISSIONER: Fine, thank you. I think I've answered
 20 that. If you still wish to pursue the matter and
 21 have Mr. Dennis come, let me know at the end of
 22 this phase.

23 MR. WARD: Yes, thank you.

24 THE COMMISSIONER: You do have some questions of the
 25 inspector?

1 MR. WARD: I do. And just before I launch into those, for my
2 own purposes, I want to be clear or feel that I
3 have clarity on the fairly narrow purpose for
4 which this witness has been called at this time,
5 and my understanding is that he has been called
6 to address one of the *Police Act* complaints about
7 the Frank Paul matter; namely, the complaint that
8 there was improper or inadequate notification of
9 next of kin; that at this time this witness is
10 not here to address the other *Police Act*
11 complaint which is the circumstances in which Mr.
12 Paul died and whether any police officers --

13 THE COMMISSIONER: That's correct.

14 MR. WARD: Because that of course was the subject of an
15 internal investigation and, as I understood it,
16 is the subject, at least in part, of many new
17 documents that have come up and this witness may
18 be coming back to address the internal
19 investigation of the death. Is that correct? Do
20 I have it --

21 THE COMMISSIONER: My understanding is that you are correct.
22 That's how we've been proceeding.

23 MR. WARD: That's of assistance because I'm not going to go
24 into the other second matter which, as I
25 understand it, will be addressed later.

1 THE COMMISSIONER: If you can find any further questions to
2 deal with the notification of next of kin, I
3 invite you to do so.

4 MR. WARD: You've had some experience with counsel over the
5 years and it probably won't surprise you that
6 most lawyers can always find another question or
7 two to ask.

8 THE COMMISSIONER: That's quite all right.

9 **EXAMINATION BY MR. WARD:**

10 Q Sir, I represent United Native Nations Society in
11 this proceeding and, again, just to clarify
12 something, when did you actually join the
13 Vancouver Police Department? When did you start
14 with them?

15 A In May of 1979, Mr. Commissioner.

16 Q You've been with the VPD ever since?

17 A That is correct.

18 Q Coming up on 30 years next year?

19 A Yes, correct.

20 Q And you have achieved the rank of inspector?

21 A Yes.

22 Q And as inspector, what ranks are higher than
23 yours within the VPD?

24 A There is superintendent, which is a new rank that
25 was re-introduced just last year, and then

1 there's the deputy chief rank and the chief rank.

2 Q So three?

3 A Yes.

4 Q From, according to my notes, from June of 2000 to
5 about September of 2003 you were serving in the
6 Internal Investigations Section, or IIS?

7 A Yes, although from June 2000 to March 2001 I was
8 serving as an investigator within the section.

9 Q Then you became acting manager and then manager?

10 A Yes.

11 Q How do you measure success within the IIS, or is
12 there any way to quantify success?

13 A Well, I mean, it's very difficult to quantify
14 success in IIS. I measure it by the number of
15 investigations and the quality of those
16 investigations. I presume that probably would be
17 the most basic or fundamental means of measuring
18 it.

19 Q How about unsubstantiated complaints? The more
20 complaints that are unsubstantiated, the more
21 successful the IIS work has been?

22 A No, I don't view it that way. I view it that --
23 there's a high volume of investigations given the
24 small number of investigators, but I think
25 success is a fact that the files are, in my view,

1 properly investigated and they're scrutinized and
2 overseen by the office of the Police Complaint
3 Commissioner and we don't encounter many public
4 hearings as a result of investigations.

5 Q All right. You knew Frank Paul and testified
6 that you accorded him some warmth, that was your
7 word; right?

8 A Yes.

9 Q Did you have a friendly relationship with him?

10 A You know, I would characterize it as such.

11 Q So you and he were friends of a sort?

12 A Depends how you define "friends". You know, I
13 have never spoken a mean word to Frank Paul,
14 never used any level of force in any of my
15 dealings with him. We were, in my view, always
16 on friendly terms, although sometimes he didn't
17 obviously instantly recognize me but I could
18 usually bring him back to the fact who I was and
19 he would.

20 Q You testified in some detail about your first
21 meeting with the man and the gauze he was wearing
22 and all of that. You recall that?

23 A Yes.

24 Q When and how was it that his death first came to
25 your attention?

1 A I'm not sure exactly. At the time of his death
2 in 1998, I was a patrol sergeant in District 1
3 which is the downtown core, which Frank really
4 didn't frequent down there, so I'm not sure if it
5 was spoken to me by somebody else or if I read it
6 somewhere. I'm not sure.

7 Q No recollection of how it was you learned of the
8 death of this man with whom you'd been on
9 friendly terms?

10 A I have no recollection of how I learned of his
11 death, that's correct.

12 Q By that point you'd known him for many years;
13 right?

14 A Well, I certainly had been aware of him for many
15 years, probably for somewhere in the range of 10.

16 Q So you'd known this man for 10 years, you had
17 been on friendly terms with him, had warm
18 feelings towards him, but you have no
19 recollection as you sit here today how or by what
20 means you learned of the fact he died?

21 A Correct.

22 Q Now, sir, would you accept that the police
23 responsibility to notify next of kin, where
24 someone has suddenly died through accident or
25 misadventure or homicide, is one of the most

1 difficult duties of a police officer?

2 A It certainly can be, depending on the
3 circumstances of the death.

4 Q And it certainly is a solemn and important duty
5 of a police officer to convey the notification of
6 a sudden death to a person's next of kin; isn't
7 it?

8 A Yes, I would agree with that.

9 Q And you're aware that, as with most areas of
10 police officer work within the Vancouver
11 department, there's a written policy on the
12 protocol for notifying next of kin?

13 A There is policy surrounding next of kin
14 notification, that is correct.

15 Q You're aware that it's very clear that there
16 ought to be personal notification by a police
17 officer?

18 A That is the ideal. Preferably, if the next of
19 kin reside within the jurisdiction of the agency
20 dealing with the death, for example, within
21 Vancouver, we would make that notification.
22 Outside of Vancouver, we would call upon the
23 assistance of the police agency of jurisdiction
24 to notify the next of kin.

25 Q And by personal notification, what I mean of

1 course is the physical presence of a police
2 officer, whether within Vancouver or without,
3 going to the next of kin and breaking the news
4 face to face?

5 A That is the ideal.

6 Q When it's out of the jurisdiction, according to
7 the Vancouver Police Department policy, the
8 protocol is to send or convey a message to police
9 in that other jurisdiction to make the request
10 that they notify the next of kin of the death on
11 behalf of the Vancouver Police Department; right?

12 A That is correct. There would be a CPIC
13 transmission to the agency of jurisdiction
14 outlining who the next of kin is, the fact that
15 there had been a death, there would be contact
16 information for the next of kin to return a call
17 to either the Vancouver Police Department or the
18 coroner, depending on the circumstances, to
19 receive more information.

20 Q And would you agree that sometimes, say a
21 homicide case that's under investigation, there
22 may be limitations on what can be disclosed to
23 the next of kin for investigative or evidentiary
24 reasons?

25 A It's possible that those circumstances could

1 exist.

2 Q But nonetheless, the object is to personally
3 notify the next of kin as fully as you can in the
4 circumstances and as accurately as you can in the
5 circumstances of the death?

6 A I agree, Mr. Commissioner, that is the ideal.

7 Q And the Vancouver Police Department has a
8 record-keeping policy and has practices in that
9 regard?

10 A Yes. We have policies pursuant to
11 record-keeping.

12 Q And because of the nature of police work, the
13 fact that many cases, if not any cases, can end
14 up in a courtroom setting, every police officer
15 is well aware of the obligation to make careful
16 and complete and accurate notes of every
17 important dealing; right?

18 A Well, the qualifier there is every important
19 dealing. Generally police officers are very
20 detailed in their notes when it involves a
21 criminal investigation because the probability of
22 attending court around that is very high. In
23 matters where there may not be an anticipated
24 court hearing, note-taking may not be as
25 comprehensive.

1 Q All right. In the spring of 2002, you're now
2 tasked with the responsibility of investigating
3 the manner in which Frank Paul's next of kin were
4 notified; right?

5 A Correct.

6 Q It's about three and a half or three years, four
7 or five months, after the death itself; right?

8 A Correct.

9 Q In the interim, it's reasonable, based on your
10 experience, to contemplate that some memories may
11 have faded; fair?

12 A Fair.

13 Q When you reported on the work you had done in
14 your letter of October 10, you said at the very
15 first sentence:

16 Some time ago it was reported in the media
17 that the police had advised next of kin of
18 Mr. Frank Paul that he died as a result of
19 being struck by a taxi-cab.

20 You recall writing that? I'm not sure which page
21 that is in tab XX.

22 A Okay. Yes.

23 Q And you set about -- your department set about in
24 investigating whether or not that had happened;
25 right?

1 A Yes.

2 Q You went to the records of the Vancouver Police
3 Department and the only record that you could
4 find in the Vancouver Police Department was --
5 and it was an electronic version -- is Exhibit
6 111; correct? Do you have that one?

7 A I'm not sure what document that is.

8 Q I'll ask Mr. Registrar to provide you with a
9 copy. I thought it might have been there.

10 A Just to clarify here, of course, I wasn't the
11 practitioner conducting the investigation. This
12 is the first time that I've seen this document,
13 to my knowledge, and, I'm sorry, your question
14 was --

15 Q Would you agree that this was the only record of
16 any kind that was located on the Vancouver Police
17 Department's records, files, or other
18 record-keeping mechanism, computers?

19 A I believe there was a record on -- I think it's
20 referred to as the access program that had a date
21 in which there's a notification made to Mr.
22 Akerman, I believe, or Akerson.

23 Q I'm going to suggest it's this very page. If you
24 look at next of kin name in the middle, James
25 Akerson.

1 A Yes.

2 Q Then note, "Notified 99 01 11". That's indeed
3 what you're referring to; isn't it?

4 A I presume it is. I'm not seeing where it says
5 "Notified 99 01 11".

6 Q There's a box -- if you've got the same document.

7 A Sorry, I see it now at the bottom.

8 Q Just so we're clear, your department internally
9 investigating how notification occurred to find
10 only this record in its records?

11 A I believe that to be true, other than I know that
12 the investigation report that was originally
13 written by the patrol officers also had a
14 reference to next of kin, and I believe again it
15 was the same name of Mr. James Akerson.

16 Q But with respect to notification, this is all
17 there was indicating that it occurred on the 11th
18 of January, 1999, and the recipient of the
19 notification was James Akerson of the Big Cove
20 Band, brother-in-law of the deceased?

21 A Yes.

22 Q So that we're clear, there were no records
23 indicating that anybody within the VPD had
24 contacted any other police force anywhere to
25 convey instructions to notify the next of kin;

1 correct?

2 A I believe that to be correct, yes.

3 Q This is actually corroborated by -- if you go to
4 tab XX, and turn to page 24 please, if you've got
5 page 24 of tab XX of Exhibit 110, you should have
6 there a photocopy of four standard telephone
7 message slips. Do you have that?

8 A I do have that on page 25 and page 26.

9 Q All right. My numbers may be a little off. In
10 any event, I want to direct your attention to one
11 that is in the upper left-hand corner with a date
12 January 11/99 and the time 2:20. Do you have
13 that one?

14 A Yes.

15 Q To Debra.

16 A Yes, I see it.

17 Q I'll just read this. It says:

18 January 11, 1999, 2:20. Message to Debra
19 from Dan Dickhout, Vancouver Police
20 604-717-2533. Re Frank Joseph Paul.

21 Right?

22 A Yes.

23 Q So when you look at that in the context of
24 Exhibit 111, you've immediately got apparently
25 written corroboration that the notification was

1 made on January 11, 1999, if this call was
2 returned that day?

3 A Yeah, and I understand it was Brian Solomon that
4 returned that call.

5 Q Let me just stop you here. Would you agree with
6 me that the Big Cove Band in New Brunswick had a
7 better record of the notification of Frank Paul's
8 death than did -- by better, I mean more
9 complete, more illuminative, than did the
10 Vancouver Police Department?

11 A I can't draw that conclusion from this slip here.
12 There's no reference on it to the fact that Frank
13 Paul had died or that there was a need to make a
14 notification. This document refers to a
15 notification and cites a date.

16 Q Yes.

17 A I mean, I think it's very difficult to do some
18 comparative analysis and decide one to be better
19 than the other.

20 Q Fair enough. But you can tell from -- you know
21 that Dan Dickhout on January 11, '99 was a member
22 of the coroner's liaison department of the
23 Vancouver Police Department; correct?

24 A Yes, I do.

25 Q And, thus, likely one of the VPD's employees who

1 may be engaged in next of kin notification;
2 right?

3 A Right.

4 Q Exhibit 111 on the other hand, the VPD document,
5 doesn't disclose who did the notifying; does it?

6 A No.

7 Q So in that sense, at least, the Big Cove Band's
8 record is better than the VPD's?

9 A I know how you're presenting this, and I have my
10 own thought on the meaning of these documents,
11 and that is that the notification was done as
12 documented on this form.

13 Q Well, let me just -- common sense. This
14 discloses that Dan Dickhout at a clearly
15 indicated telephone number of the Vancouver
16 Police telephoned Debra on January 11 of '99 at
17 2:20 in the afternoon. Do you see that?

18 A Yes.

19 Q That's a great deal more information than is
20 contained in Exhibit 111, the only available
21 record from the Vancouver Police Department;
22 right?

23 A Well, I mean, you can argue this back and forth
24 because the other one contains the name of
25 Frank's relative, James Akerson, the band, the

1 next of kin's phone number.

2 Q Sir, I don't want to argue with you. Is it the
3 case that your instinct after 29 years serving in
4 the VPD is to come to the defence of your
5 department whenever its integrity is questioned?

6 A No, that's not my instinct. My instinct here is
7 to try and answer accurately the question that's
8 posed to me. I'm a bit confused by what you're
9 trying to ask. You're asking the value of these
10 documents, which one is better and wanting me to
11 agree with you on something that frankly I'm
12 having trouble interrupting.

13 Q Because if you agreed with me, you would be
14 denigrating the Vancouver Police Department's
15 record-keeping?

16 A That's not my purpose for either agreeing or
17 disagreeing.

18 Q Can't you just agree with me there is more
19 information on the slip from the band than there
20 is on Exhibit 111?

21 THE COMMISSIONER: Let him finish the answer, Mr. Ward. Go
22 ahead.

23 A Honestly, Mr. Commissioner, I don't see more
24 information on this slip than I see on this
25 document that cites dates and times and names and

1 so forth. I don't feel comfortable just simply
2 agreeing with counsel on this.

3 THE COMMISSIONER: Then you can say that.

4 MR. WARD:

5 Q Thank you. Sir, if I can turn you back to your
6 letter of October 10th.

7 A Yes.

8 Q I'm not sure what page it is on Exhibit XX, so
9 I'll try to -- 7 maybe?

10 A Yes, the letter is 7.

11 Q Thank you. I want to ask you about a few of
12 these statements. First, I note in the second
13 paragraph there that you say, this is your letter
14 signed by you, that your department's
15 investigation, and I quote:

16 Was frustrated by faded memories and an
17 unwillingness by the members of the Big Cove
18 Band Council and relatives of Mr. Paul, some
19 of whom are following advice of counsel
20 representing them in a civil claim for
21 damages to co-operate.

22 Do you see that?

23 A Yes.

24 Q Now, that was something you just came up with;
25 was it? Was there a basis for saying that there

1 was a civil claim for damages?

2 A First of all, I think I've already testified --

3 THE COMMISSIONER: You have.

4 A -- as to the content here. So I'll leave it to

5 Mr. Commissioner if I should go over it again.

6 THE COMMISSIONER: The only difference that I can find, you've

7 been tested on this, or questioned on the wording

8 in this sentence on a number of occasions. I

9 don't think anyone has dealt with this, Mr. Ward

10 mentioned civil claim for damages, whether that

11 has any significance.

12 MR. WARD: I'll just be a little more specific.

13 Q You start your work three years and five months

14 after Mr. Paul died?

15 A Yes.

16 Q You know something about civil damage claims as a

17 result of your work in the police department?

18 A Correct.

19 Q You know, for example, you can go to the

20 registry, make a search, and find one; right?

21 A Right.

22 Q You know also that there's a two-year limitation

23 period that applies to most cases of wrongful

24 death?

25 A No, actually I don't. That's news to me.

1 Q The point is that you undertook or your
2 department undertook no investigation to see
3 whether there in fact was a civil claim for
4 damages; agreed?

5 A I would agree that I didn't ask that to be
6 investigated, and sitting here today and
7 explaining to you why I drew that conclusion at
8 the time, regrettably, I'm unable to do that.
9 I'm not sure if that was something apprised to me
10 by others or where that came from, or maybe it
11 was a conclusion drawn from the media, I'm not
12 sure, but I will concede to you that at this
13 point I can't really explain the presence of
14 that.

15 Q Here's another way you could have checked.
16 Vancouver has a law department that handles
17 claims against the police; right?

18 A The City of Vancouver, yes.

19 Q That's what I mean by Vancouver. You could have
20 run them and asked them to check to see if they
21 had a file on civil claim for damages by Frank
22 Paul's family; right?

23 A Yes, I will agree with that.

24 Q Nobody did that?

25 A Not that I am aware of.

1 Q So I put it to you, sir, that there was
2 absolutely no basis in fact for your assertion
3 that there was a civil claim for damages causing
4 a lack of co-operation; agreed?

5 A I'll agree that today I can't substantiate that
6 but definitely the family, I believe, did have
7 counsel representing them.

8 Q But not for a civil claim for damages?

9 A Not that I can point to today.

10 Q All right. Now, sir, the very -- I referred a
11 moment ago to the very first line of your letter,
12 and I come back to it, and overnight I -- or I
13 went to the media archives and I found what I
14 think you must have been referring to in that
15 sentence, and I provided three copies of it. I
16 have another. I've shown you a three-page
17 document from the archives of the Vancouver Sun
18 for Friday, April 19, 2002. The first page is
19 the first page of section B of that edition's
20 newspaper. Do you see it?

21 A Yes, I do.

22 Q I've reproduced the entire first page so that you
23 can confirm and see that the headline at the
24 bottom of the page below the fold in this section
25 of the Vancouver Sun was: Vancouver Police lied

1 about cause of man's death, family claims. Do
2 you see that?

3 A Yes.

4 Q If you turn over the page, I've reproduced that
5 so that we can read it and I want to draw your
6 attention to a couple of things. In this article
7 on page 2 here by Petti Fong, she writes this:

8 Paul's half brother, James Akerson, said
9 Thursday --

10 And you'll note that the paper came out on the
11 Friday, the 19th of April, 2002.

12 Paul's half brother, James Akerson, said
13 Thursday relatives were told by police he
14 died after a hit and run accident.

15 Do you see that?

16 A Sorry, where is that in the article?

17 Q Second paragraph.

18 A Okay, yes.

19 Q Have you got it?

20 A Yes, I see it.

21 Q Then if you go over to the next page, again,
22 first full paragraph, second paragraph, I guess:

23 Pauline Simon, another relative, said the
24 family never questioned Paul's death because
25 they were told he was killed in an accident.

1 "They told us he was hit by a cab so we
2 never asked anything more", she said
3 Thursday. "That's been the belief for years
4 until we found out new stuff a few days
5 ago."

6 Do you see that?

7 A Yes.

8 Q Now, you have a parallel career as a professional
9 journal yourself; correct?

10 A It's a part-time interest.

11 Q So you would appreciate that quoting someone like
12 this means it's a direct quote that the reporter
13 obtained from the person in question?

14 A Yes.

15 Q And this must have been, this front page, section
16 B article, must have been at least part of what
17 you meant when you said sometime ago it was
18 reported in the media that the police had advised
19 next of kin of Mr. Frank Paul that he died as a
20 result of being struck by a taxi-cab. Do you see
21 that?

22 A Yes. Sorry, and your question was pursuant to
23 that?

24 Q It's coming.

25 A Okay.

1 Q It's this: Again, with your journalistic
2 background, you would infer that Petti Fong on
3 Thursday picked up the telephone and spoke with
4 James Akerson and noted a direct quote from him
5 and with Pauline Simon and noted a direct quote
6 from her, and then published them in the article
7 that appeared the next day in the paper; right?

8 A Presumably, yes.

9 Q Can you show me in your investigative materials
10 where one of your department members phoned
11 Pauline Simon?

12 A Pauline Simon, no.

13 Q Didn't happen; did it?

14 A I don't believe it did, no.

15 Q Let me just -- April. This is what she said,
16 according to The Sun, that they told us he was
17 hit by a cab so we never asked anything more.
18 That's been the belief for years. The name is
19 right there in the paper, Petti Fong of the
20 Vancouver Sun apparently had been able to
21 telephone that person if she didn't go there
22 personally but your investigators didn't contact
23 this person; right?

24 A No, they didn't. I don't recall her name coming
25 up in the file whatsoever.

1 Q If any one of the Vancouver Police Department's
2 what, thousand members, or perhaps the public
3 affairs and marketing section had read the first
4 page of section B of the Vancouver Sun, they
5 would have seen the name; right?

6 A Yes.

7 Q Despite not calling the very person who said
8 they'd been told that he was hit by a cab, you
9 reported there does not exist any credible basis
10 for believing that members of Mr. Paul's family
11 or the Big Band Council were the recipients of
12 deceitful information from the police?

13 A Based on the information that our investigation
14 had generated and the fact that, rather than
15 phoning these people, we actually had the RCMP
16 try and make contact personally, I arrived at
17 that conclusion. That was based on, again, the
18 totality of the investigation.

19 Q I took it from your evidence in whole, please
20 correct me if I'm wrong, that you could neither
21 prove nor disprove that the family had been
22 misinformed about the way that Mr. Paul died;
23 fair?

24 A Fair.

25 Q And you resolved the doubtful question in favour

1 of your employer, the Vancouver Police
2 Department; right?

3 A I didn't view it that way. I resolved the
4 question which was, could we substantiate that
5 the Vancouver Police Department delivered that
6 information, that the family was told by a member
7 of the Vancouver Police Department that Mr. Paul
8 had been struck by a taxi and we couldn't do
9 that.

10 Q Sir, it was entirely plausible at the conclusion
11 of your investigation that, in fact, the family
12 had been misinformed; wasn't it?

13 A Well, I don't think it was entirely plausible
14 that they'd been misinformed by the Vancouver
15 Police Department. They may have been
16 misinformed by perhaps an RCMP member or some
17 other individual delivering news to them. I
18 don't think it's entirely plausible that they
19 were misinformed by a member of the Vancouver
20 Police Department.

21 Q I see. It was plausible they were misinformed by
22 the RCMP officer who acted as the Vancouver
23 Police Department's agent for the purpose of
24 notifying the next of kin?

25 A I do recall that the assertion, I believe it was

1 from several of the relatives, that they had
2 spoken to the RCMP in relation to receiving the
3 news of Mr. Paul's death.

4 Q The RCMP, as the Vancouver Department's agent,
5 was conveying information. They didn't have any
6 to begin with, they had to get it from somewhere
7 and convey it; right?

8 A Right. And the difficulty that we encountered is
9 that we couldn't find regrettably a record from
10 the Vancouver Police Department to the RCMP
11 asking them to make that notification so therein
12 lies a gap that couldn't be filled.

13 Q In your world or department or section I guess is
14 the actual correct term, internal investigation
15 section, credible evidence is police officer
16 evidence; right?

17 A No, not necessarily. Credible evidence is
18 essentially what it is. Credible evidence that
19 can generally be backed up or that can be
20 corroborated in some fashion, documented.

21 Q Is civilian evidence that's not backed up
22 credible evidence?

23 A It certainly can be. Again, this is somewhat
24 hypothetical. You have to examine each piece of
25 evidence and information and weigh it

1 individually.

2 Q All right. Let me move on. On this point that
3 it was entirely plausible that the Vancouver
4 Police Department had conveyed through the RCMP
5 wrong information to Frank Paul's next of kin, I
6 put it to you that you have had direct
7 professional experience with other cases of
8 deaths in Vancouver police custody where the
9 family was clearly misinformed by the Vancouver
10 Police about the circumstances of those deaths;
11 agreed?

12 A I'd like you to cite them.

13 Q I will. Would you like me to cite them first?
14 You were directly professionally involved with
15 the internal investigation into the case of the
16 death of Jeffrey Berg; correct?

17 A I was involved as again the inspector in charge
18 of the internal investigations section around the
19 examination of the conduct of David Bruce Thomas,
20 Constable David Bruce Thomas, pursuant to the
21 *Police Act*.

22 Q You know from your handling of the file that
23 while Jeffery Berg lingered in a coma in
24 hospital, his family was not told that Constable
25 David Bruce Thomas had kicked and beaten him

1 while he was unarmed in an alley in East
2 Vancouver; agreed?

3 A I'm not sure I can agree with what his family was
4 really said (sic), Mr. Commissioner. I just need
5 to read something to refresh that. Sitting here
6 today to tell you what Mr. Berg's family is told
7 is kind of difficult for me.

8 Q Sitting here today you can remember you fed Frank
9 Paul a hamburger in 1991?

10 A I can remember my interactions with Frank Paul,
11 that's correct.

12 Q I see. I see. You had direct professional
13 experience with the case of Robert Bagnall?

14 A Again, can you give me the dates of Robert
15 Bagnall?

16 Q Sure. June 2004, his family was told by the
17 Vancouver Police Department that he died of a
18 drug overdose. A month later, the Vancouver
19 Police Department held a news conference and
20 disclosed in fact he had been in police custody
21 and had been tasered; agreed?

22 A I wasn't involved in the Bagnall matter in 2004.
23 I had departed from internal investigations
24 section in September of 2003.

25 Q You agree from your knowledge of the Jeff Berg

1 case that you were directly involved and that it
2 took the family years to uncover the factual
3 circumstances of Mr. Berg's death through a
4 coroner's inquest that was held three and a half
5 years or so after the fact; agreed?

6 A I agree that certainly information was adduced
7 during the coroner's inquest.

8 Q Sir, I put it to you that, knowing what you know
9 about the Vancouver Police Department, its
10 internal culture and the functioning of internal
11 investigations, it's entirely probable that Frank
12 Paul's family was given wrong information about
13 the manner in which he met his death; agreed?

14 A No. I simply can't agree, Mr. Commissioner. To
15 me, it would be absurd for somebody, for a police
16 officer within the Vancouver Police Department,
17 to contact relatives of Mr. Frank Paul and
18 deceive them with information that he had been
19 struck by a taxi-cab and killed in spite of the
20 examination of Mr. Paul -- sorry, the results of
21 -- if he was struck by a taxi-cab, there would be
22 an accident report filed, there would be issues
23 around people being held liable or taxi
24 organizations being held liable, the autopsy
25 would reveal injuries consistent with being

1 struck by a taxi-cab. To me the notion that a
2 Vancouver Police member in the coroner liaison
3 office or elsewhere would concoct a story that
4 Mr. Paul was struck by a taxi-cab in order to
5 somehow have the department evade accountability
6 for what occurred to Mr. Frank Paul doesn't ring
7 true. There's too many other matters connected
8 with it to ever contemplate somebody doing that.

9 Q Vancouver Police Department members wouldn't be
10 that dumb; is that what you're saying?

11 A I'm not saying the Vancouver Police Department
12 wouldn't be that dumb. You're putting these
13 negative spins and I don't really appreciate
14 that. What I'm trying to say is that I find it
15 somewhat absurd to think that somebody in the
16 Vancouver Police Department would want to deliver
17 that news to the family. I'm sorry, I have a
18 tremendous amount of difficulty with that.

19 Q Let me just address one part of that last lengthy
20 answer a moment ago. You said if you were hit by
21 a taxi-cab, there would be an accident report;
22 right?

23 A If there was a hit and run of a pedestrian, then
24 there should be a complete investigation into the
25 accident itself, trying to determine what

1 happened, who was at fault, who was driving the
2 vehicle. We've seen that with a number of recent
3 pedestrian fatalities.

4 Q If his body was found and someone surmised that
5 perhaps he was struck by a vehicle of some kind,
6 there wouldn't be an accident report at all;
7 would there?

8 A Surmised that he was struck by a --

9 Q If they come upon a body and it's lying there,
10 someone could get the notion that maybe some
11 vehicle hit him and took off and there wouldn't
12 be an accident report setting out licence plate,
13 ownership, all those usual things?

14 A There would be if the conclusion was or there was
15 evidence to believe that a pedestrian had been
16 struck by a vehicle and the vehicle had departed,
17 I can assure you there would be a very lengthy
18 investigation into it and we've seen that
19 recently with the pedestrian truck on Hastings
20 Street, and there would be to substantiate,
21 because in fact, in the case I'm referring to
22 recently on Hastings Street nobody witnessed that
23 but the autopsy showed injuries very consistent
24 with being struck by a vehicle.

25 Q I don't want to argue with you. Just one last

1 thing -- I never should say that. You think I'd
2 learn by now.

3 THE COMMISSIONER: No, I don't think you have.

4 MR. WARD:

5 Q One more thing. You did learn that some members
6 of Mr. Paul's family felt, rightly or wrongly,
7 that the police had lied to them or misinformed
8 them about the circumstances of Frank Paul's
9 death; right?

10 A Yes.

11 Q And, given the warmth you had for this man and
12 your friendly relationship with him over the ten
13 years that you had known him, did you phone those
14 family members to say, gee, I'm sorry, I knew
15 Frank, I'm sorry you got this bad information,
16 let me assure you I'm dealing with it and I want
17 to give you the true facts, and so on? Did you
18 do anything like that?

19 A No, I didn't, Mr. Commissioner.

20 Q Your relationship with him wasn't warm and
21 friendly enough for you to want to have any
22 contact with his loved ones; was it?

23 A You're just jumping to conclusions, and I
24 understand what you're trying to do and the way
25 you're portraying this, but I can reaffirm to Mr.

1 Commissioner my connection with Frank Paul and
2 not particularly in the way you're trying to
3 portray it or characterize it.

4 Q What am I trying to do? Tell me.

5 A Mr. Commissioner, shall I entertain this?

6 THE COMMISSIONER: I don't think it's necessary to do so.

7 A Thank you.

8 MR. WARD:

9 Q What you are referring to is that you thought by
10 that last question, confirming -- first of all,
11 let me confirm, you never had any telephone
12 contact with any member of Frank Paul's family;
13 correct?

14 A That's correct.

15 Q And you were contemplating in your mind that the
16 purpose of the questioning was to show that
17 number one, your evidence about the friendliness
18 of your relationship and the warmth toward Frank
19 Paul was somehow gilding the lily and putting you
20 and your department in the best possible light;
21 right?

22 A No, it wasn't. You know what? I testified
23 honestly before Mr. Commissioner about my
24 connection with Frank Paul, what I had done for
25 the man, how I had compassion for him, how

1 throughout those ten years I had -- I'm not
2 saying this to be painted -- to be gilded here as
3 a lily, but to point out that I harbour no bias
4 toward Mr. Frank Paul or his family. I believe
5 that I can stand proud of some of the things that
6 I did for Mr. Frank Paul in terms of helping him
7 out when he was alive. I feel that is being
8 mischaracterized now to suggest that I'm just
9 saying that with a lack of sincerity and I'm just
10 saying it in order to somehow enhance the
11 perception of my evidence.

12 Q I'm going to leave this in a minute but you
13 didn't have enough empathy for the man or his
14 family to phone them up and talk to them person
15 to person about your relationship with the
16 deceased Frank Paul and to clear up the concerns
17 they had about the way they'd been informed about
18 their next of kin; did you?

19 A Well, the whole point here was to try and clear
20 up the information around how they had been
21 informed or misinformed around Frank Paul, and
22 no, I didn't phone any of his relatives. I've
23 never met his relatives.

24 MR. WARD: Thank you.

25 THE COMMISSIONER: Mr. Hern?

1 MR. HERN: Two questions in reply.

2 MR. WARD: I'm sorry, Mr. Cowper has pointed out -- I meant to
3 mark the Vancouver Sun extract and I neglected
4 to. If I could, please.

5 THE COMMISSIONER: Yes. Exhibit number?

6 THE REGISTRAR: Marked as 113.

7 THE COMMISSIONER: Exhibit 113.

8 (EXHIBIT 113: Extract from the Vancouver Sun)

9 MR. TAMMEN: Mr. Commissioner, may I address you for one
10 moment? I don't know that there's a right of
11 re-examination of counsel who cross-examined the
12 witness, didn't lead him in chief.

13 THE COMMISSIONER: That's right, too. It was Mr. Cowper.

14 MR. HERN: That is true but questions have been permitted so I
15 ask your leave to ask a question that arises from
16 Mr. Ward's repeated attack on this witness'
17 character and there's a document that's in the
18 evidence already, Exhibit 90, that may assist
19 with your assessment of that so I ask leave to
20 put that to the witness.

21 THE COMMISSIONER: What is the document?

22 MR. HERN: Tab 8 of Exhibit 90, it's a newspaper report, and
23 it appears to have some quotations from Mr.
24 Rothwell commenting on Mr. Frank Paul.

25 THE COMMISSIONER: I did allow one further question. I don't

1 want to get into a marathon, that's all, of
2 everyone having a round and a round robin with
3 this witness, it's only going to prolong things,
4 but I did allow Mr. Kelliher to ask a further
5 question. I'll allow you to put this question,
6 one question.

7 MR. HERN: Thank you, Mr. Commissioner.

8 **EXAMINATION BY MR. HERN:**

9 Q Exhibit 90, tab 8.

10 A Tab 8. Yes.

11 Q That appears to be a newspaper report by Petti
12 Fong and the date is on the second page. It's
13 not particularly clear. This is a document
14 coming from records of the coroners service and
15 it appears May 21, 2002. You see that?

16 A Yes.

17 Q On the left-hand side, four paragraphs down,
18 there are some comments that appear to be taken
19 from an interview with you. Do you see that?

20 A Can you read the first sentence of the paragraph?

21 Q Vancouver Police Inspector Rob Rothwell -- the
22 left-hand side is cut off -- came into regular
23 contact with Paul.

24 A Right.

25 Q Something in the early 1980s. Paul stood out

1 among other alcoholics because he didn't
2 something spend probably much of his time on the
3 Downtown Eastside but hung out instead by a
4 liquor store near Broadway and probably Maple.
5 When I first knew him, Frank was a strapping,
6 good-looking guy, said Rothwell. His condition
7 rapidly -- I'm not sure what the next word is but
8 --

9 A Deteriorated, I think it was.

10 Q When the alcoholism got worse and his drinking
11 was a cycle that perpetuated over and over. He
12 was a victim of society that doesn't place much
13 emphasis on finding ways to help people something
14 him.

15 A Like him.

16 Q Over the years, Rothwell said Paul -- do you know
17 what the next word would be -- something from an
18 alcoholic who willingly exchanged his wine bottle
19 for hot coffee.

20 A Yeah. I know that I received this in the way of
21 an e-mail and the point was that when I would
22 deal with Frank and some of the others drinking
23 around Broadway and Maple, I had a bit of a deal
24 with them that they could go in and buy a coffee
25 and they always added a bit of food to that bill

1 in exchange for me pouring out their wine. What
2 I was saying here is that Frank could be cajoled
3 into that in those earlier stages but that over
4 time he became more difficult to deal with.

5 Q Do you recall making these recollections to
6 reporter Petti Fong in May of 2002?

7 A I do vaguely recall some discussion with her.

8 Q Do you have any reason to doubt that the
9 newspaper reporting of those comments in relation
10 to your recollection -- clarity of your
11 recollection with Frank Paul are inaccurate?

12 A No. I believe they're probably accurate.

13 MR. HERN: Thank you.

14 THE COMMISSIONER: Now Mr. Cowper.

15 MR. COWPER: I just had one question, Mr. Commissioner. It's
16 more for the record actually than completing this
17 witness but I can deal with it through the
18 witness.

19 **EXAMINATION BY MR. COWPER:**

20 Q There were a number of occasions, Inspector
21 Rothwell, where it was put to you that the
22 notification of next of kin appears to have been
23 done on the 11th of January and you had document
24 111 put to you to that effect.

25 A Yes.

1 Q If you turn to the report that was attached to
2 your letter from Cheryl Leggett in tab XX of May
3 29, 2002.

4 A Sorry, what page would that be under?

5 Q I think it's at page 11.

6 A I have here a report from Cheryl Leggett to Chris
7 Beach.

8 Q Yes. It appears to have been attached to your
9 report. If you go down to the third tab, it
10 says:

11 Paul's body was released to Thompson Funeral
12 Home in New Brunswick by the coroner on 1998
13 12/10.

14 That appears to be December 10, 1998; is that
15 right?

16 A Yes.

17 Q So one of the unanswered questions is what
18 communication was made that enabled the
19 identification of a funeral home in New Brunswick
20 to have been done in December, almost a month
21 before the notification of next of kin record and
22 the access records; correct?

23 A Right.

24 Q So, although there's no answer to it, it appears
25 to have been almost a month between some contact

1 being made which would enable that to take place
2 and then the later contact which Exhibit 111
3 represents?

4 A Yes.

5 MR. COWPER: No more questions, Mr. Commissioner.

6 Mr. Hern expressed the concern -- and I
7 didn't check it with counsel for the coroner --
8 my recollection, and we can get the exact dates,
9 was that there were records relating to the
10 identification of the funeral home earlier than
11 January 11, but I'll check that. I thought Mr.
12 MacKenzie said I was right but --

13 MR. MACKENZIE: Mr. Cowper is correct, the notification --
14 first notification was in January. It makes no
15 sense the body -- for one, the body had to be
16 dealt with long before that so just because of
17 the nature --

18 THE COMMISSIONER: Do we have any evidence to that effect?

19 MR. MCKENZIE: I don't believe there's any evidence.

20 MR. COWPER: We're going to go back to it. We had a number of
21 statements suggesting January 11th was the first
22 event and I don't think that's correct on the
23 record. We will follow up on that. We had a
24 substantial body of evidence around this through
25 the coroner's witnesses last week and I will

1 follow up

2 THE COMMISSIONER: I can't remember but certainly there was
3 mention made of January 11th. Mr. Ward, you
4 should have your say.

5 MR. WARD: Just at the risk of turning this into the marathon
6 that we were warned about, you'll see in the next
7 line of the same document, a little further down,
8 that the body remained in Vancouver until January
9 12, which is the day after the documented
10 notification of next of kin. So that is support
11 for the notion that the body did not move from
12 Vancouver, the crypt here where it stayed for a
13 month and several days, until next of kin were
14 notified.

15 THE COMMISSIONER: Which presumably was on January 11th.

16 MR. WARD: Yes. So I don't agree with my friend's suggestions
17 that next of kin notification could have happened
18 any time before the 11th of January.

19 THE COMMISSIONER: That's my note. If that is to change,
20 someone will have to give me further information.

21 MR. COWPER: The witness is sort of a victim of my questions
22 and perhaps Mr. MacKenzie's memory is mine, but I
23 will look into that.

24 THE COMMISSIONER: Thank you.

25 MR. COWPER: Nothing further.

1 THE COMMISSIONER: If there's nothing further, may I excuse
2 this witness then?

3 MR. COWPER: Yes.

4 THE COMMISSIONER: Mr. Rothwell, thank you, you are excused.

5 (WITNESS EXCUSED)

6 THE COMMISSIONER: I take it we're finished then?

7 MR. COWPER: Yes. We're finished for the day and we will
8 commence at 9:30 on Monday. Before we break,
9 though, because I've spoken to some counsel, I
10 spoke with Mr. Martland this morning. I'm
11 occupied in the Court of Appeal Monday and
12 Tuesday and he unfortunately has fallen ill, and
13 I spoke to him at the morning break and he's not
14 well. I'll let all counsel know that I'm trying
15 to make arrangements so that we can save Monday
16 and Tuesday, and I'll let the media know as well,
17 but at this point he's my backup for Monday and
18 it looks like the backup is sick, so we'll let
19 everybody know as soon as I can determine whether
20 we can save Monday and Tuesday.

21 THE COMMISSIONER: Very well then. Counsel have been so
22 advised, and I'm sure you'll advise counsel and
23 myself as soon as you can so we can make plans.
24 We'll adjourn then until Monday at 9:30 unless we
25 hear to the contrary.

1 (PROCEEDINGS ADJOURNED AT 12:20 P.M.)

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18
19
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21
22
23
24
25

INDEX OF WITNESSES

Robert Rothwell (for Commission)	
Exam by Mr. Tammen	1
Exam by Mr. Kelliher	39
Exam by Mr. Ward	62
Exam by Mr. Hern	95
Exam by Mr. Cowper	97.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX OF EXHIBITS

Page

EXHIBIT 113: Excerpt from the Vancouver Sun 94