

1 Vancouver, BC

2 May 1, 2008

3 (PROCEEDINGS RECONVENED AT 9:3 A.M.)

4 THE COMMISSIONER: Thank you. Mr. Martland.

5 MR. COWPER: Mr. Commissioner, I'm here simply to turn the
6 reins over to Mr. Ward who is leading today's
7 presentation on Phase 4 issues on behalf of
8 United Native Nations Society.

9 THE COMMISSIONER: Thank you. Mr. Ward.

10 MR. WARD: Thank you. Can everybody hear me from here? With
11 me today is Peter Ritchie to my right.

12 THE COMMISSIONER: Mr. Ritchie.

13 MR. RITCHIE: Good morning.

14 MR. WARD: I suggested to him that he needs no introduction,
15 but he is a Vancouver lawyer practicing in the
16 areas of civil litigation and criminal defence
17 work and has done so for -- how many years,
18 Peter?

19 MR. RITCHIE: Too many. 38.

20 MR. WARD: And he has kindly accepted my invitation to come
21 today and assist me with a presentation on behalf
22 of United Native Nations.

23 Let me say at the outset that you may
24 recall, Mr. Commissioner, that one of my client's
25 principal concerns expressed in the opening was,

1 in effect, that dozens, certainly too many, of
2 aboriginal or First Nations people had died at
3 the hands of the police and nothing had ever been
4 done about it. That's essentially capturing it
5 in a nutshell. Frank Paul -- the case of Frank
6 Paul was merely the latest, one of the latest, in
7 a long, long line of cases which rankled and
8 still rankle the aboriginal community of this
9 province.

10 We thank you for the opportunity to make an
11 informal presentation, which this will certainly
12 be, and I should say that Mr. Rudin the other day
13 set the bar very high in terms of organization
14 and sophistication of the presentation. I won't
15 meet that bar. This will be very informal and --

16 THE COMMISSIONER: It's meant to be, Mr. Ward.

17 MR. WARD: Thank you. Thank you. I expect it will be. I
18 would welcome any questions. What I propose to
19 do today -- and I should say, just before I
20 introduce what I plan to speak about, that we
21 have also arranged for Dr. John Butt to return
22 and I believe he's going to come next week for a
23 half a day or so and he will address aspects of
24 the BC Coroners Service response to deaths in
25 police custody and they will be the two aspects

1 essentially that I alluded to some weeks ago when
2 he was here. Namely, he will, I expect, compare
3 our coroner-based system to the medical
4 examiner's system that is found in some other
5 provinces and express some observations and views
6 about the two types of models that are used in
7 Canada. Secondly, I expect he will express some
8 observations and views about the BC practice of
9 having the Coroners Service headed up by law
10 enforcement personnel. So I don't propose to
11 tread too much on that ground.

12 What I propose to do is to put on a
13 different hat today than the one I've had up
14 until now, and that hat is simply this, I propose
15 to -- I do this mindful of having seen that Mr.
16 Falzon is a scheduled speaker on behalf of the
17 OPCC. I plan to put on a hat that I appear today
18 as a representative of families who have lost
19 members as a result of police conduct. I was
20 going back over my memory in this regard and in
21 recent years I've been involved as counsel for 14
22 such families and I've had five cases go to
23 inquest and another three are currently
24 scheduled, so I have some experience as counsel
25 for the family of the deceased in coroner's

1 inquests arising from deaths that have occurred
2 as a result of police conduct. It's putting a
3 hat on as, in effect, the surrogate of those
4 families that I have dealt with over the last
5 number of years in making the observations and
6 suggestions that I'll make today. I could have,
7 I suppose, brought several representative family
8 members here to vent but I felt that perhaps the
9 better course would be to distill their
10 experiences, to offer them to in a fairly
11 measured and hopefully somewhat restrained way.

12 I can say at the outside that the universal
13 view of the family members who have lost people,
14 loved ones, at the hands of police is that the
15 system doesn't work for them, that the system
16 fails them in every respect, and I will elaborate
17 on that in a moment. Those of us who are parents
18 know that it must be the worst nightmare to have
19 someone knock on your door and tell you that your
20 son or brother has died suddenly. What my
21 experience has been in the area of police-
22 involved deaths is that after that happens the
23 family faces -- in attempting to manage the shock
24 and the grief that they have to deal with, they
25 then face an added burden and that burden is

1 trying to find out how the loved one died.

2 We know of course that in this province
3 police investigate the sudden death, though it
4 may have been caused by or resulted from actions
5 of their colleagues, and what the families
6 experience, in effect, is great difficulty --
7 here I'm using measured words -- in finding out
8 what happened from the homicide investigators.
9 That's essentially universal. They are given the
10 very minimum number of details about how the
11 loved one met their end. Sometimes those details
12 have proven to be inaccurate. Typically they may
13 be told in a force case, for example, he got -- I
14 say "he" because the vast majority of these
15 deaths are males -- he got into a fight with
16 police and force was used and he expired. They
17 might not learn anymore than that during the
18 investigative part of the exercise.

19 I've drawn a little chart on the white
20 board, and perhaps I'll turn to it now just to
21 explain what it is so I can tag some of my
22 comments on to these headings. What you have is
23 you have a sudden death happening in which police
24 have been involved in some fashion. You then
25 have what I've just been talking about, the

1 investigation of that sudden death, and it's by
2 the police of the police always. Usually it's by
3 the same police force, as we've seen in the Frank
4 Paul case, and that's been my general experience
5 as well. So if someone dies at the hands of a
6 Vancouver Police officer in an alley over here,
7 his colleagues will come and investigate it.

8 There has to be some notification of next of
9 kin, dealing with next of kin and there is but as
10 I say, it's very, very limited. So at this point
11 after the next of kin, the families receive the
12 notification of the death and the fact it's
13 happened at the hands of the police in some
14 fashion. In my experience one of their first
15 questions after getting over the shock and trauma
16 of it is: What happened? And that's the
17 question they have a hard time getting an answer
18 to and it takes them, in my experience, not
19 weeks, not months, but years to get an answer,
20 years. Sometimes up to four, five years to get
21 any substantive answer.

22 As I illustrate this or attempt to
23 illustrate this, I invite anybody to think of the
24 experience that a family might go through if it
25 was just a civilian-on-civilian death. In other

1 words, someone was the victim of a sudden death
2 caused by a civilian and ask yourselves based on
3 your collective experience in the room whether
4 the family of the deceased, the victim, would get
5 a little more information a little sooner than
6 they do in this context.

7 Having said that, let me carry on if I may
8 with the chart. What you have is an
9 investigation conducted by homicide
10 investigators. In my experience -- let me draw
11 an example out of the newspapers, one I'm
12 familiar with but wasn't involved as counsel in,
13 and that is the well-known Ian Bush case where
14 you had two people in a room, one was armed, one
15 wasn't, the armed one shot the unarmed one and
16 killed him. If it had been two civilians the
17 investigation into that event -- there are only
18 two people there in a confined space, one had a
19 gun, shot the other one in the head killing him
20 instantly. The one that fired the shot was
21 known. Using our collective experience as
22 lawyers, had those been two civilians the
23 investigation by homicide investigators
24 culminating in a report to Crown counsel might
25 have taken anywhere from 24 hours to perhaps a

1 week, something like that. In the Bush case it
2 took many months before there was a report to
3 Crown counsel.

4 What I have found in the circumstances in
5 which I've represented families of deceased in
6 these police-involved cases is that the first
7 step, the investigative step, takes an
8 inordinately long time. It takes -- it's
9 measured usually in months and sometimes in
10 years. Then the file or the report goes to Crown
11 counsel and it is, in my experience, as Detective
12 Staunton testified here, invariably a report that
13 differs from the type of report that is submitted
14 in a civilian case. It is a report that contains
15 no recommendations but summarizes the evidence
16 that has been gathered.

17 Let me say another word -- here I will still
18 strive to be measured but these are my
19 observations and you should receive them for what
20 they're worth or not worth as such. They're
21 observations. They're based on, as I say, 14 of
22 these cases aside from Frank Paul -- and I should
23 say, everything I'm saying is irrespective of
24 anything I've encountered in the Frank Paul case,
25 it precedes the Frank Paul case, and I'd like you

1 to picture me as wearing my hat for victims'
2 families untouched by what we've heard here in
3 the Frank Paul case. The investigators in the
4 homicides in my experience conduct them
5 differently than they would had say two civilians
6 been involved. In my experience, based on my
7 review of the investigative reports, they focus
8 much of their energy on trying to come up with
9 evidence that will explain how the victim brought
10 the death upon himself. For example, again, in
11 the context of say someone who has shot a
12 deceased and the someone happens to be a
13 police-officer, I see time and time again the
14 investigators have done extensive interviews and
15 background checks and reviews of everything that
16 the victim did prior to the incident and all the
17 people they had contact with and everything that
18 was known about the victim but have made no
19 investigation whatsoever of the person who fired
20 the gun, absolutely none. That is the nature of
21 the report that goes to Crown counsel, this
22 so-called neutral report with no recommendations.
23 It gets there -- and Mr. Peck in his initial
24 letter to this Commission said something that was
25 -- I don't have it right in front of me but it

1 confirmed something I'd certainly seen and that
2 is that a different standard of charge assessment
3 is applied to persons who are occupied -- who
4 have the occupation of police-officer than is
5 applied to everyone else, and his letter says as
6 much. It's more rigorous and exacting I believe
7 were his words. You could question
8 philosophically, I suppose, whether every person
9 of every occupation should be treated equally or
10 not and that's a debate for others, but clearly
11 the charge approval process is very different and
12 Mr. Peck has conceded as much when the person
13 involved in the death has the occupation of
14 police-officer than if he had or she had any
15 other occupation. Having said that, this step,
16 the charge approval step, in my experience again
17 takes not hours, not days, not weeks, many, many,
18 many months, and sometimes more than a year for a
19 charge approval decision to be made. So you have
20 a lengthy investigation and a very lengthy charge
21 approval process arising from a police-involved
22 -- I'll call it homicide for want of a better
23 term. Meanwhile the family is essentially in the
24 dark. We'll call it the victim's family. There
25 are only two bodies they can really ask -- well,

1 three including the Coroners Service -- they can
2 ask the investigating officers: What are you
3 finding out? How did my son die? They will be
4 given no information or next to no information.
5 They can ask Crown counsel, and there's no
6 liaison in these cases in my experience between
7 Crown counsel and the family of the victim for
8 whatever reason.

9 When Crown finishes its work -- I've put
10 here a dotted line, charge question mark. The
11 reason I've put a dotted line is this is a
12 possibility, and the decision is whether to
13 charge or not charge, and we've seen in Exhibit
14 90, tab 51, that the Coroners Service has
15 generated statistics showing there have been 267
16 police-involved or in-custody deaths outside the
17 jails in the province since 1982. I asked a
18 question of the Criminal Justice Branch and the
19 letter was written to Geoff Gaul, now Mr.
20 Justice Gaul. The question was: How many times
21 in the Province of British Columbia have
22 police-officers been charged as a result of a
23 death occurring after the application of force?
24 And the answer was: We do not keep records like
25 that related to occupation. I'm paraphrasing. I

1 know of none in the history of British Columbia.
2 That was the reason for my inquiry. I've only
3 been here 25 years but I personally know of no
4 case in the Province of British Columbia where a
5 police-officer has been charged with a criminal
6 offence where the application of force resulted
7 in death. I know of cases where police-officers
8 have been charged where the driving of a vehicle
9 has resulted in someone's death, but I know of no
10 case, as I say, where the application of force
11 has resulted in death. That's not the experience
12 elsewhere in other provinces. Recently in New
13 York we saw some public concern over the
14 acquittal of a number of police-officers who were
15 alleged to have fired 50 shots at a bridegroom
16 leaving a wedding. They were charged, they went
17 through the trial process, they were acquitted,
18 and there was public concern apparantly over the
19 fact that members of the public felt the force
20 may have been excessive in the circumstances.
21 The point is, elsewhere the experience is that
22 police-officers are sometimes prosecuted. And
23 from the perspective of an advocate for the
24 victims' families, all the victims' families want
25 is in addition to finding out what happened to

1 their loved one is a system that works for them
2 fairly and in an unbiased manner. If a fatality
3 resulted as a result criminal conduct on the part
4 of a police-officer, and I'm not suggesting right
5 now necessarily that -- I'm certainly not
6 suggesting that's always the case, it may not
7 even often be the case, but I know it is
8 sometimes the case. If a police-officer has made
9 a mistake and say used excessive force and
10 thereby committed a criminal offence and violated
11 the Criminal Code, all the family wants is that
12 the justice system works for them and that person
13 is prosecuted under the law and they will accept
14 the result. But they feel today in British
15 Columbia that the system does not work, that for
16 whatever reason police-officers are not treated
17 like the rest of us and that they don't get any
18 measure of justice or accountability. So I put
19 charge question mark, in force cases I'm not
20 aware of it ever happening and certainly I'm not
21 aware of any trials.

22 The point of this flow chart is that you
23 have these two steps which by now have occupied
24 many, many, many months. Again, the family is
25 waiting for something, something to happen. They

1 may hear or may not that the investigation is
2 over and that the report has been submitted to
3 Crown counsel and they will hear usually that
4 Crown has decided not to lay charges. By now
5 years have usually elapsed. The coroner has an
6 unwritten policy that it will wait until the
7 Crown has finished its review of the file before
8 holding the mandatory coroner's inquest into the
9 death. What happens then, and we know that the
10 inquests are mandatory where someone is detained
11 by or in the custody of a police-officer when
12 they die, what happens then is that there is
13 necessarily or expectedly a period of time for
14 the coroner to arrange, schedule, prepare for the
15 inquest. And, again, that's months, it's always
16 months. Although the coroner has investigative
17 powers under the *Coroners Act*, what I have found
18 in my invariable experience is that they do not
19 exercise those beyond attending the scene of the
20 death. The coroner is obliged to go to the scene
21 of the death and to view the body and they take
22 some steps there, but invariably in practice in
23 these types of cases, what I've experienced is
24 that the coroner acts as a repository for the
25 work that has been done by the investigators

1 and/or the Crown. It receives reports that
2 others have generated. It announces the inquest
3 and it's months in advance and it usually posts
4 the schedule on its website. We've heard about
5 how these inquests unfold, five-person jury,
6 presiding coroner and evidence is led by
7 coroner's counsel. The police, in my invariable
8 experience, are represented by legal counsel at
9 the inquest and, again, invariably there are two
10 sets of legal counsel. There is counsel
11 representing the force from which the officer
12 came or of which the officer is a member of, and
13 there is separate legal counsel representing the
14 individual officer or officers. If there are
15 more than one there are more lawyers representing
16 the police directly involved in the death. In
17 many -- the family of the deceased will always be
18 given standing to appear through counsel if
19 desired at the inquest. But according to Legal
20 Services, the Legal Aid provider in this
21 province, counsel gets no -- the family gets no
22 Legal Aid regardless of their means. They are
23 not entitled to funding assistance to have
24 lawyers attend at coroner's inquest. In
25 practice, many families without resources simply

1 do not have a lawyer attend and the evidence is
2 led by coroner's counsel in the presence of
3 lawyers for the police-officers and the family
4 sits in the body of the room and watches.
5 Sometimes the family is able to get legal counsel
6 and then witnesses can be cross-examined and the
7 evidence can more fully be explored than
8 otherwise. These inquests, given the number of
9 lawyers involved, can become, in my experience,
10 mired in procedural issues of relevance, usually
11 of relevance, and take longer when the family has
12 counsel, significantly longer, than if they do
13 not. The point is that these inquests have
14 become -- and I expect Mr. MacKenzie can attest
15 to this -- typically of ten days or so in
16 duration where counsel is involved. Where
17 counsel is not involved they can be dealt with in
18 two or three days and in -- one could draw one's
19 own conclusions about whether the two or three
20 days adequately explores the facts.

21 In any event, an inquest as we know is a
22 fact-finding exercise and if the family has been
23 able to persevere to this stage of the inquest it
24 will finally learn usually for the first time
25 right here what has happened to the loved one.

1 It has taken in my experience as much as four and
2 a half years to get to this point. Incidentally,
3 in this stage, my experience is when the family
4 asks the coroner for the autopsy report, a copy
5 of the autopsy report which reveals how the
6 person met their end, the coroner's office
7 refuses to provide it throughout this stage and
8 only provides it just before the inquest upon
9 request and upon agreeing, the family or the
10 family's counsel agreeing to keep the contents
11 confidential. In my experience it's taken as
12 much as two and a half, three years for a
13 deceased mother to look at the autopsy report,
14 for example. That often is the end of the
15 exercise, the family now having gone through the
16 coroner's inquest is enlightened as to what
17 happened and that -- they take that knowledge
18 away and they have some closure.

19 While I'm on the subject of the inquest --
20 and, again, I expect Dr. Butt will say some more
21 things about this, I don't query or impugn the
22 integrity of anybody who is employed by the
23 Coroners Service, but I can say that the families
24 feel that they do not get a fair shake in the
25 coroner's process, including the inquest, and

1 they perceive or apprehend that it may be because
2 the Coroners Service in British Columbia
3 traditionally is under the direction, supervision
4 and control of career police-officers. The only
5 mandatory inquest conducted by the Coroners
6 Service is into police-involved deaths. The
7 majority of the inquests it conducts are into
8 RCMP deaths because the RCMP police most of the
9 province. The last four chief coroners of the
10 province have gone to the post after serving in
11 the RCMP. The current holder of the office had
12 35 years' of experience as we know and is on an
13 RCMP pension and his deputy had 25 years'
14 experience and is also on an RCMP pension. The
15 families -- again, I'm not suggesting that these
16 individuals conduct their work with other than
17 the utmost integrity, but the families perceive
18 that the playing field isn't level, that it's
19 heavily weighted in favour of police interests
20 and they perceive that from the fact it's headed
21 up by career police-officers and by the fact
22 that, as I say, the coroner receives police
23 investigative reports from the police and then
24 offers those up, in effect, as the evidence at
25 the inquest. That's problematic for the

1 families.

2 When in say the case -- we're getting away
3 from Frank Paul here intentionally -- but say in
4 the case of an RCMP officer who fatally shoots a
5 civilian, the shooting is investigated by the
6 RCMP officer's brother officers within the RCMP,
7 they submit a report which is headed up by two
8 career RCMP officers and then that evidence is
9 offered at an inquest. The family perceives
10 there isn't any arm's length, there isn't any
11 independence and they are not getting a fair
12 shake and they are not getting the true facts.

13 Let me offer -- because we're supposed to
14 address suggestions for reform -- with respect to
15 the Coroners Service, before I leave this
16 subject, I would offer a couple of suggestions
17 right off the top and they would be that nobody
18 take my word for this, but that a review of the
19 Coroners Service or an audit of it be conducted,
20 similar to the audit that was recently conducted
21 of the Police Complaint Commission. That, for
22 example, families who have experienced the
23 process be questioned about that experience, that
24 files be audited, reviewed and considered by
25 someone truly independent, perhaps a retired

1 judge such as yourself, Mr. Commissioner -- I'm
2 not suggesting you do it but a retired judge like
3 Mr. Wood did with the OPCC, something like that,
4 because to my knowledge, unless I missed it,
5 there hasn't been a review of the Coroners
6 Service. This is one area where I suggest these
7 in-custody deaths are reviewed -- given the
8 numbers too that have recently come to light in
9 the exhibit I referred to -- that a review is
10 overdue to see if it is effectively discharging
11 the public interests in this area. There have
12 been, of course, other concerns expressed about
13 other aspects of the coroners service work in the
14 media, I'm mindful of child deaths and the like,
15 and in my view, again, it's based on my
16 experience, it may well be helpful for someone to
17 take a good, close look at the Coroners Service's
18 day-to-day work to determine if it is effectively
19 discharging its role, someone independent.

20 I'll leave that now, and I'm not going to be
21 much longer I don't think, I'll turn the floor
22 over to my friend Mr. Ritchie in a moment. I'll
23 turn next to the Office of the Police Complaint
24 Commission. I've drawn a dotted line here
25 because I'm focusing in on police-involved

1 deaths. Not every death is the subject of a
2 Police Complaint Commission review. Far from it.
3 The Police Complaint Commission is complaint
4 driven. If there is a complaint by someone about
5 police conduct it will open a file and discharge
6 its function under the Police Act. If there is
7 no complaint, it won't. From time to time in
8 cases of public notoriety the commissioner
9 himself or his office may open a file of his own
10 initiative, and I've had that occur in cases that
11 I've been involved in, but it is complaint
12 driven. Mr. Wood as he now is, Mr. Justice Wood
13 as he once was, observed that only about I think
14 30 percent of the police-involved deaths he was
15 aware of had resulted in OPCC files, had resulted
16 in complaint files handled by that organization.
17 So I would suggest if that is accurate, he did
18 the audit so I'm sure it is, that the majority of
19 police-involved deaths do not make their way to
20 the OPCC at all. If they do, then what the OPCC
21 does under the statute as we've seen is it
22 reviews the investigation that was done by the
23 police and then it will either, in effect,
24 endorse the results of that investigation or not.
25 If it does not, it may order an external review

1 or send the matter back for further review and it
2 may in very unusual cases order a public hearing.

3 MR. FALZON: Cameron, if I could interrupt for a second just
4 to clarify, the criminal investigation gets done,
5 then the provincial standards investigators in
6 the professional standards department review it.
7 As we know from the evidence, they rely very
8 heavily on the criminal investigation and it's
9 when professional standards has done their work
10 and produced a final investigation report that
11 the PCC gets notified. Is that an accurate
12 description?

13 MR. WARD: Exactly, and I'm grateful for you pointing that out
14 because I've meant to include that in the chart
15 and I've done so now as you've been speaking. As
16 Mr. Falzon correctly points out -- I apologize
17 for the printing, I'm a Luddite so I'm not using
18 PowerPoint -- coming back to this part of it, the
19 death is investigated by homicide investigators,
20 they submit a report to Crown counsel and the
21 same report to Internal Investigations, here I've
22 called it the IIS, Internal Investigation
23 Section, which is the Vancouver nomenclature.
24 They have a different role. Their role is not to
25 -- homicide investigators usual role is to

1 investigate whether a charge should be laid
2 against someone and make a recommendation to the
3 Crown. In these cases they have a different
4 role. Internal's role is to assess whether an
5 officer has committed a disciplinary default
6 which is a very different question. Whether the
7 -- in effect, whether the officer should be
8 disciplined. That's their role. It's an
9 internal investigation. What they do in practice
10 in these death cases is they receive the homicide
11 report, the same one that goes to Crown, as well
12 as the Crown's decision not to lay charges and
13 it's almost always that decision. They then take
14 that and they often, in my experience, or they
15 always in my experience, where the Crown has
16 declined to lay charges, use that as the basis
17 for concluding that no disciplinary default has
18 been committed. So they ride on the coattails of
19 the Crown decision. I'm leaving the Frank Paul
20 experience aside as I said I would as it was
21 slightly differently there. So that is
22 effectively the end of Internal's work, and if
23 there is a complaint about the death their report
24 goes to the OPCC and is reviewed by it, as I can
25 see from Mr. Falzon's nodding head agrees. The

1 OPCC either, in effect, endorses it and that's
2 the end of the matter, or isn't happy with the
3 result and may order an external review and may,
4 as I was getting to, in extraordinary cases,
5 order a public hearing. Very few public hearings
6 have been held. I've been involved in two, I
7 think there has been six since '98, where
8 evidence has been led.

9 My clients have problems with that process
10 and it's been litigated and Mr. Falzon knows, one
11 of the -- well, the problems are similar as with
12 the coroner's inquest. First of all, the family,
13 in the case the complainant, can have legal
14 counsel at the public hearing but there is no
15 Legal Aid again so they have to fund it
16 themselves. More importantly, their counsel,
17 according to the court of appeal now in a case I
18 litigated, cannot ask questions at the public
19 hearing, they can observe, unless the adjudicator
20 exercises his discretion to allow counsel for the
21 complainant family to participate but the state
22 of the law is such that there is no right on the
23 part of the complainant to participate at all in
24 this hearing process.

25 Another problem my clients have had with the

1 process is that if there is no public hearing and
2 the Police Complaint Commission relies on a
3 report, whether it's an external report, internal
4 report, their own report justifying the rejection
5 of the complaint, the policy of the office is not
6 to provide that report to the complainant. So,
7 again, trying to put yourself in the shoes of the
8 family here, the delay -- again, this office
9 defers to everything that is above it on the
10 chart, so this office only becomes involved and
11 reaches the conclusion once all of these other
12 steps have finished. So if there's been a
13 decision not to charge, then a coroner's inquest,
14 and by now we're often many years after the
15 event, then this office is engaged. It may take
16 many, many months, it usually does, and it may be
17 another year or two delay here, then it will
18 generate a final report and then its position is
19 -- it's a discretionary issue, but it has been
20 the case in situations I've been involved in
21 where it will not deliver the report to the
22 complainant. So the family has been through this
23 ordeal and at the end of it all, many years
24 later, in response to the question, "What
25 happened to my loved one?" is denied the

1 comprehensive report into what actually happened
2 and how the investigation was conducted.

3 Now, they will have had the benefit of the
4 inquest, but the problem here, if I can just move
5 away from the death cases, is where there's no
6 inquest and perhaps none of these steps, just an
7 investigation and then a file and so on, they can
8 have a very important matter where they know what
9 the conclusion is but they don't know how it was
10 reached because they don't get the report and
11 that they perceive is a problem. The principal
12 problem that the families in these death cases
13 encounter are really two-fold. The process takes
14 too long and is unfair to them in a nutshell.

15 Mr. Commissioner, I brought a couple of
16 things with me, and I'm going to wrap up now, but
17 I will leave these with you with a couple of
18 additional comments. Mr. Falzon, as I understand
19 it, is going to make a presentation a little
20 later on Mr. Wood's review of the Police
21 Complaint Commission process and I made a
22 presentation to Mr. Wood, both orally and in
23 writing, and I'm going to leave the written
24 presentation with you in the event you're
25 interested and I'm also going to refer to in an

1 anticipatory way his discussion of the death
2 cases, because I'd just like to highlight a
3 couple of things and then we may get into this
4 more when Mr. Falzon returns.

5 MR. MARTLAND: Let me just indicate, Mr. Ward, I'll make sure
6 we circulate that to everybody electronically, if
7 I have copies I can do that.

8 MR. WARD: The Wood report is available electronically. I
9 don't know if I have enough available to go
10 around but I just want to say, because I expect
11 Mr. Falzon will rebut this, what I told Mr. Wood
12 and what I'll repeat now and say that I don't
13 resile from in the two years since I said it,
14 because I said it on March 31, 2006, I said in
15 the preliminary part of my 14-page letter to him
16 that I have come to the considered opinion that
17 the current system for dealing with serious
18 complaints about police conduct is an unmitigated
19 failure and it would actually be preferable to
20 have no system at all. The present regime is
21 dangerous because it provides the illusion of
22 police accountability and civilian oversight when
23 in fact neither effectively exists. In the
24 result, municipal police-officers in British
25 Columbia are free to exercise extraordinary,

1 untrammelled powers. Where such untrammelled
2 powers exist, abuses of them are sure to follow
3 putting citizens at risk. Then in the remaining
4 13 or so pages of the report, which you can read
5 at your leisure, I endeavour to substantiate that
6 opening comment and today I don't retract any
7 part of it. I feel that the current OPCC is a
8 failure and it actually would be better not to
9 have anything at all. For some time I've been
10 telling people who approach me, and many, many do
11 unfortunately, I say don't make -- I cannot
12 recommend that you make a complaint to the OPCC,
13 I cannot in good faith as legal counsel recommend
14 that you embark on that process, it is
15 unsatisfactory, and I explaining why and I
16 endeavoured to explain my concerns in this
17 letter.

18 If I can say one thing, one thing that I
19 would change if I could that would go a long way
20 towards satisfying the families of people who die
21 in police custody, it is that the deaths be
22 investigated by independent people, preferrably
23 civilians. Mr. Marin from Ontario will be here
24 to present the Ontario experience. I acknowledge
25 that the Ontario experience is not without its

1 detractors and not without its problems, but that
2 would be the one thing that would go a long, long
3 way in my view to providing some accountability,
4 and then by extension, restoring public trust in
5 the systems that operate here and in the police
6 themselves.

7 The Wood report -- I'm taking a little
8 longer than I thought I might but I'm almost
9 done. Mr. Commissioner, if you could turn please
10 to -- this is only a tiny portion of the report
11 itself -- if you could turn to page 7, the second
12 page in. Mr. Wood conducted an audit of the
13 process, and I would highlight the fact that
14 appears in paragraph 21, and in the second
15 sentence he says:

16 As we'll be seeing, the audit revealed that
17 there were material flaws in the
18 investigations conducted in 48 out of the
19 288 files in the audit sample of lodged
20 complaints which were subject to processing.

21 In addition --

22 So bringing the total to 56.

23 -- there were eight files in which
24 notwithstanding a relatively complete
25 investigation, the ultimate conclusions were

1 wrong in that the complaints which should
2 have been were not concluded as
3 substantiated.

4 That is, 56 or 19 percent of the complaint files
5 in the audit sample did not meet the reasonable
6 and appropriate standard imposed by the
7 investigative audit team. Then the next sentence
8 I suggest is really important: Of the 56 --
9 so something like a fifth of the sample -- the
10 investigations -- these are not deaths, just
11 complaints -- the investigations were flawed. Of
12 those all but four were serious abuse of
13 authority complaints, and I should say
14 parenthetically this report was on the complaint
15 system as a whole and the OPCC handles complaints
16 about police conduct that range from the very
17 trivial, "The officer was rude to me," to the
18 very, very serious, "The officer shot and killed
19 my son," and the vast majority I think of what it
20 handles are the less serious of police/civilian
21 interactions. What Mr. Wood is saying -- none of
22 these were deaths but he's saying all of the ones
23 in which I found -- all but four of the ones in
24 which I found the investigations to be flawed
25 were serious cases. He deals with the deaths in

1 the next part of the excerpt, and if you could
2 turn please to page 54, third page in, I'll
3 invite you to read later, and I'll try to
4 summarize this, from paragraph 220 down to 224 on
5 the next page, and among the things he has
6 pointed out is that the death cases -- I'm now on
7 page 55 -- are the natural breeding ground for
8 suspicion and distrust and when the answers to
9 the questions appear to come only from those
10 whose conduct is under investigation, reasonable
11 and right thinking people are occasionally left
12 to wonder whether those whom we entrust with the
13 right to use deadly force are in fact properly
14 accountable in all cases of abuse. Thus, there
15 is a need to assure that complaints arising from
16 such incidents are investigated and resolved as
17 much as possible in a manner that not only
18 enhances but is perceived to enhance
19 accountability.

20 Now, he concluded for the time being -- I'm
21 paraphrasing -- there's no reason to depart from
22 the status quo, that is, to have the current
23 system where police investigate themselves and
24 the PCC provides civilian oversight of that role.
25 I respectfully disagree with that conclusion.

1 The bases for it appear to be that there really
2 isn't a need, there aren't enough deaths, and I
3 suggest that as a result of statistics that came
4 out subsequent to his report there are a lot of
5 deaths that would justify a self-standing unit to
6 investigate these matters, and another basis put
7 forward was that it would cost too much to create
8 such a self-standing unit and I would
9 respectfully disagree again and Mr. Marin can
10 perhaps address this, but it may well be cheaper
11 to have a self-standing unit to conduct
12 investigations efficiently as a priority than to
13 go through this very protracted series of steps
14 all handled by the public purse. In any event,
15 that the benefit to the public of having an
16 independent investigation system that they can
17 put trust in would, in my view, outweigh the
18 financial costs to the public purse in any event.

19 That's all I have to say, subject to any
20 questions that may come up later, and I would
21 like Peter Ritchie to add any observations he may
22 have coming from his experience. I know that Mr.
23 Ritchie is one of the few other lawyers crazy
24 enough -- I say that advisedly -- to represent
25 people like the ones I have. It's a very, very

1 difficult thing to do for many reasons but I've
2 only done it because I feel it's an important
3 thing to do. There are very few rewards to this
4 type of work and I would welcome a career change
5 -- I don't know if Mr. Ritchie would endorse that
6 view, but it's a very difficult area for a lawyer
7 to deal with. Mr. Ritchie, for example, I know
8 handled an inquest into the death of an
9 aboriginal man who was shot and killed by a
10 Vancouver police-officer and no charge was laid.
11 The officer fired in self-defence I gather
12 because he thought the walkman in the man's
13 possession was actually a weapon and Mr. Ritchie
14 brings that experience and others to the table in
15 offering his comments. Peter.

16 THE COMMISSIONER: Before we hear from Mr. Ritchie, Mr. Ward,
17 do you have any suggestions for change in the
18 procedure of informing the family of the death
19 when it occurs in an in-custody situation, for
20 example?

21 MR. WARD: Yes, and I come back to my overarching concern and
22 suggest this -- and again, I've stayed away from
23 the whole concept of independent civilian
24 investigation as opposed to oversight and there's
25 a very important distinction there. But if we

1 had independent civilian investigation, what that
2 means is there would be, like in Ontario, like in
3 the United Kingdom, there would be a body on
4 call, maybe only a couple investigators on staff,
5 but it is on call 24/7 and if someone dies in the
6 streets of Vancouver as a result of police action
7 then there is a statutory obligation, as there is
8 in those jurisdictions, to immediately notify
9 that body and they come to the scene right away
10 and they seal it, secure it, interview the
11 witnesses and take over all facets of the
12 investigation. If we did that here, then the
13 notification of next of kin problem would
14 disappear because that body -- those independent
15 civilian investigators would not be constrained
16 by any notions of loyalty to brother officers,
17 loyalty to the department. They would be
18 constrained only by any concerns that they might
19 compromise the case that may ensue.

20 My experience -- my belief, whether well
21 founded or not, is that currently the next of kin
22 does not receive timely and usually -- timely or
23 accurate information about how the death happened
24 because they feel constraints that are unrelated
25 to whether or not the case against the

1 perpetrator may be compromised related to other
2 factors. So that's the obvious answer to me. If
3 we weren't to go there, again, I draw the
4 parallel of comparison with the sort of
5 civilian-on-civilian homicide situation.
6 Thankfully I've never had a loved one die in
7 those circumstances, but based on what I know
8 about the criminal justice system -- and here Mr.
9 Ritchie would have more experience -- I would
10 expect some degree of liaison between the
11 investigating officers, their victims' services
12 support people and the family of the victim, but
13 what I find in practice happens in these
14 situations is that everybody clams up and the
15 victim's family when the death has been caused by
16 a police-officer doesn't have the support or the
17 liaison with the police representatives that they
18 otherwise would. How to make that happen, I have
19 no idea. I see Inspector DeHaas is here, maybe
20 he might have an idea, but it really comes down
21 to this: I see, rightly or wrongly, I see the
22 investigating officers in an intractable conflict
23 of interest and they have a real interest or a
24 real -- they have loyalty to their department and
25 to some extent to their brother officers and from

1 officer to officer those perceptions or duties of
2 loyalty may supersede any obligation they may
3 feel they have to the victim's next of kin. I
4 don't have a solution.

5 MR. MARTLAND: Maybe I can ask a follow-up question. It seems
6 to me thematically you're describing on the one
7 hand a problem with communication. So whether
8 behind the curtains there's a very thorough
9 process that's going on and it's running well or
10 not, from the family's point of view they're not
11 getting good information early or ever.
12 Secondly, you have what I think you described is
13 a problem of substance, which is, it's not a
14 thorough investigation, these processes aren't
15 unfolding as they should. Can you comment, is
16 that a fair distinction to draw and are the two
17 inextricably linked? In other words -- I think
18 you hinted or gave your answer on that. In other
19 words, if you resolved any concerns about
20 substance, if the police are doing a really
21 thorough investigation, Crown, OPCC, coroners,
22 everyone is discharging their functions properly
23 and thoroughly, it is then -- is what remains a
24 problem of communicating to the family or do you
25 think -- to put it differently, even if you

1 solved the communication problem would you still
2 be left with what you would call a broken system?

3 MR. WARD: Yes and yes are the answers to both of those. If
4 you make the assumption that the system does in
5 fact operate fairly, thoroughly, objectively, all
6 those things, you're still left with the
7 communication problem. I can't make the
8 assumption that you've asked me to make and I
9 won't because it's not been my experience. If
10 you had an open channel of communication that
11 would certainly, certainly go a long way to
12 providing some comfort to the families who find
13 themselves in these situations.

14 Let me respond with an example that's a real
15 life example that Mr. Falzon would be well aware
16 of, and it arises from a death in a Vancouver
17 rooming house. This has gone to inquest and this
18 has gone to the OPCC and is still in the course
19 of its investigation. It happened in June of
20 '04. The police advised the -- the evidence was
21 that the police advised the deceased's mother
22 that he died of a drug overdose. A month later
23 it was drawn to the family's attention from
24 someone who was watching on television that the
25 police revealed at a news conference that the man

1 was shot with a taser weapon before he died.
2 That was unknown to the family for a month and it
3 came to their attention only through media
4 accounts. A month after that, the police held
5 another news conference revealing by way of
6 explanation, because the fact a taser was used
7 and the man had been in police custody generated
8 some concern, they held another news conference
9 in which they endeavoured to explain that the
10 reason he was tasered was that the police faced
11 an emergency in that the building was on fire and
12 they needed him to get out right away. That was
13 a two-month process to get that information into
14 the hands of the family through means that I
15 would suggest are less than ideal. As a result
16 of those things occurring in the public domain,
17 Mr. Ryneveld ordered two investigations: One, an
18 investigation into taser use generally in the
19 Province of British Columbia; and secondly, an
20 external investigation into the actions of the
21 Vancouver Police Department that may have
22 resulted in the death of the deceased, and both
23 those investigations were conducted by the
24 Victoria Police Department and the latter, the
25 one into the death, remains ongoing today nearly

1 four years after the death occurred. So the
2 family continues to await a result in terms of
3 whether or not any of the 13 police-officers on
4 the scene, two of whom used taser weapons just
5 prior to the man's heart stopping, did anything
6 wrong. We had the inquest in which facts came
7 out, but the inquest was fact finding, not fault
8 finding, and they had the benefit, if you will,
9 of Crown review and the decision no charges were
10 laid against anyone, but they do not have the
11 report -- they may not get the report but they do
12 not have a result from the OPCC which has
13 extended and extended and extended its
14 investigation to allow the interim processes to
15 take place. That's a real-life example touching
16 on not only the notification of next of kin
17 problem you asked me about but the systemic flaws
18 that I perceive having represented people in that
19 position. I tend to go on and it's an
20 occupational thing. Sorry.

21 THE COMMISSIONER: Thank you, Mr. Ward. Mr. Ritchie.

22 MR. RITCHIE: Mr. Commissioner, I have no idea how long you
23 want to hear from me but I don't think I'm going
24 to be very long. Mr. Cameron Ward phoned me a
25 couple days ago and asked me if I would speak

1 here. I can give you a little bit of background
2 as to how I perceive this matter.

3 I've been involved in the courts for many
4 years, closing in on four decades I guess. I've
5 acted as Crown counsel many times. I started out
6 with the coroners office a million years. I've
7 acted for the Crown throughout the '80s and I
8 still act for the Crown from time to time, as I
9 am this week in another matter. I also have
10 acted as defence counsel in many cases over the
11 years. I've also acted civilly both for
12 plaintiffs and defendants over the years. I've
13 acted many times in matters suing the police over
14 the years, perhaps more than most, maybe more
15 than anybody except for Cameron Ward who I'm
16 going to say a few words about here.

17 I believe that we have an excellent system
18 here in Canada and in British Columbia,
19 especially in this province where we encourage a
20 lack of polarity between the defence bar and the
21 prosecution bar, criminal bar. I believe the
22 better that lawyers can get along and the lesser
23 polarity and less division it is better for our
24 system. I think the Ontario system where defence
25 counsel and prosecutors knock heads all the time

1 is not a better system. I think we have a better
2 system here and it works daily in our courts
3 imperceptively and advances the cause of justice
4 through the criminal justice system often for
5 those of who have a chance to see that work.

6 From the perspective of being plaintiff's
7 counsel for matters relating to your Commission,
8 I have -- I don't know if I can keep track of the
9 number of times but I have acted for many, many
10 plaintiffs who have brought lawsuits against the
11 police. There are few lawyers that do that
12 because it basically is pro bono sort of work and
13 it is very difficult work to do, and it is pro
14 bono in the sense that awards that are often
15 awarded by the courts are so low that they don't
16 justify the legal input and the costs that go
17 into the modern day running a law firm, and a lot
18 of lawyers won't take that on. Let me give you a
19 little bit of background about that because it
20 speaks in part to the imbalance of resources that
21 Cameron Ward was referring to here. It's not a
22 fair fight, not even close to being a fair fight.

23 Let me give you a bit of background about
24 that because in my experience in acting in
25 matters such as this inquest or in these civil

1 sorts of cases, typically what occurs is you face
2 a group of lawyers as opposing counsel who are
3 experienced, highly regarded, well-funded, and in
4 the case of especially Cameron Ward who has taken
5 on more cases than anyone I know in this area,
6 it's not a fair fight financially. Cameron is
7 not going to like me telling you this, but he has
8 put himself in a position where he has made
9 personal sacrifices to do these cases time and
10 time again, inquest sort of cases and other
11 related cases. He perceives maybe himself that
12 all of his efforts aren't well regarded but they
13 certainly are by the bar that are knowledgeable.
14 We know that when we walk into the rooms where
15 opposing counsel is well funded and you have no
16 resources at all that the difficulty starts there
17 and probably started long before then, taking a
18 retainer, interviewing the witnesses, trying to
19 keep your plaintiffs together because you must
20 realize in these sorts of cases that these aren't
21 west side families, they're often marginalized,
22 and it's a difficult challenge for counsel to
23 marshall the resources, evidentiary or whatever
24 to advocate the cause, and it's very difficult to
25 do that, were it not for people like Cameron Ward

1 with a deep-set passion for justice perhaps a lot
2 of these cases would never surface and go
3 anywhere.

4 My background might speak to that somewhat.
5 In acting in these plaintiffs cases for many
6 years, late '70s, '80s, not so much in the '90s,
7 I would do case after civil case suing the police
8 on behalf of relatively marginalized plaintiffs
9 to find this imbalance of resources, as I
10 mentioned, and I reached the point in my own
11 practice where I thought that I couldn't sustain
12 doing it any more and went to various subsections
13 of the criminal bar and of the civil lawyers and
14 implored pro bono assistance from other lawyers,
15 they should take a turn, they should take a shot
16 at it, and only a few stepped forward. Because
17 once they contacted me -- I would get calls a lot
18 from potential litigants. They contacted me and
19 I would say you might want to speak to this other
20 lawyer, and I would refer them to this other
21 lawyer because I thought I had done at least my
22 share, and these other lawyers would find out how
23 difficult it would be to advocate a cause and the
24 pool of pro bono lawyers dried up. You people
25 might put yourself in those shoes and have a look

1 at what it takes to be plaintiff counsel or
2 inquest counsel in these cases because it takes a
3 lot of office resources and you're alone out
4 there in doing this work and there are procedural
5 and substantive legal disadvantages that
6 plaintiff's counsel has and perhaps that inquest
7 counsel has in advocating a cause and trying to
8 achieve a just result. I won't go into all of
9 those. You're probably familiar with the *Police*
10 *Act* and the procedural requirements and the
11 Vancouver Charter and these things that are
12 restrictive can be often very difficult for
13 lawyers who don't do a lot of that work.

14 The easy thing for this Commission to
15 realize, in my respectful view, is that there is
16 a gross imbalance in resources for circumstances
17 such as inquests involving police -- where police
18 are involved in the death of citizens. That is,
19 without question in my experience -- and I
20 noticed in hearing Cameron's presentation that he
21 did use measured tones as he usually does but
22 there's a deep passion running in his cause here
23 and he didn't maybe speak as bluntly as I will
24 speak about this imbalance of resources. It is
25 preposterous that there is such an imbalance of

1 resources and that ought to be fixed right off
2 the bat. That's the first thing I wanted to say.

3 It came to the point when no lawyers would
4 be forthcoming to assist these people in the
5 various civil matters against the police that
6 eventually there were no more cases that came
7 forward despite the fact our office was inundated
8 for quite a few years and my secretary was
9 instructed to try to deal with these incoming
10 calls about complaints against the police, some
11 of which were marginal, some of which may have
12 been well founded, some of which were clearly
13 well founded and to try to screen them out to
14 deal with them eventually as we weren't able to
15 cope with it in our office. I can't give a
16 treatise as to what happened to all of these
17 cases. The problems didn't go away but the
18 potential solutions may have. We reached the
19 point in our office and certainly in my practice
20 in dealing with these cases and dealing with
21 central issue of whether the police should police
22 themselves -- the thorniest question out there
23 maybe -- where it became my practice, as I told
24 Wally Oppal at his Commission long ago, that our
25 office and lawyers I worked with or worked under

1 me, the first instruction we would give to
2 potential plaintiffs in actions against the
3 police is: Whatever you do, do not go to the
4 police internal investigations and lay a
5 complaint because that will not assist your cause
6 and will work counter-productive to your cause.
7 That's my perception from dealing with these
8 case. I think I have my eyes fairly wide open
9 about that without any prejudgments, given the
10 background of prosecuting and respecting the
11 police for the most part in how they act in our
12 society. That became the first piece of advice
13 that we would give, whatever you do, do not go to
14 the police internal investigations. I know
15 that's not central to the issues before you here
16 but that became not only the theme, but in the
17 question of who will guard the guards themselves,
18 Mr. Ward's views as he just expressed them
19 certainly accord with the views that I would form
20 about thorough and proper investigation,
21 objective investigation and one which would look
22 at the right things. In his chart here, look at
23 the various positions. You have, for example,
24 Crown counsel. If Crown counsel has to make a
25 determination -- this may be ground covered

1 already in this Commission -- but if Crown
2 counsel has to make a determination whether or
3 not there should be charges against the
4 police-officer, the Crown counsel relies only on
5 reports that are put in front of him, and those
6 of course are prepared by police-officers in the
7 same police force. That is an obvious limitation
8 in the system.

9 There have been many cases, for example,
10 that I dealt with advocating that a charge should
11 be laid where I would suggest to the Crown
12 counsel that you can't rely on these reports that
13 the police have prepared, there are important
14 aspects to the investigation that are not in
15 front of you or have not been emphasized or have
16 been skewed and I would encourage the Crown, I'm
17 sure this happened on many occasions, don't take
18 that witness statement at its face value. Get
19 the witness in your office, talk to the witness,
20 get the witness's view about what happened, and
21 I'm met almost always with the same response:
22 We're not investigators, we have limited
23 resources, we can't do that, we can only rely on
24 what is placed in front of us. So in my
25 respectful view that is an obvious systemic

1 problem with the system when the system looks at
2 whether or not Crown counsel is acting fairly,
3 and I impugn no motives of Crown counsel, but
4 there is a limitation in the system. So that
5 might be something which can be recognized in
6 dealing with these inquests as well. In fact, my
7 experience with inquests is probably limited. I
8 do remember the case that Cameron was referring
9 to, that was the case where the deceased was a
10 young man, a young Native man, his name was Frank
11 Bell -- it was quite a long time ago -- it was
12 1992 where young Mr. Bell was shot to death by
13 police-officers because he was thought to,
14 according to the police-officers, be having a
15 weapon him instead of the walkman that was found
16 in his hand in the parking lot after he died. My
17 memories of that inquest are fairly clear and
18 they accord with the observations generally that
19 Cameron is making. When you appear at the
20 inquests acting for the family, they have very
21 little information, they have been told very
22 little, they've been kept in the dark, the
23 procedural issues seem to prevail upon the
24 substantive empathetic communications that Brock
25 Martland was asking about here.

1 There seems to be a system in place where
2 the perceptions are as expressed by Cameron Ward
3 here. Larry Campbell was the coroner for that
4 particular inquest, ex-police-officer, and my
5 clients were aware of that, and when the going
6 got rough in the cross-examination -- in other
7 words, when I started cross-examining the
8 officers I remember Mr. Doust and others
9 appearing very quickly and it became a situation
10 where the cross-examination was limited by order
11 of the court and frustrations arose among
12 certainly the family that I was representing who
13 were certainly outresourced, maybe outmanned
14 here, but it's a real problem in the system when
15 a litigant for a family does not have the
16 resources that the other side has here to look
17 into the facts properly or perhaps do their own
18 investigations if they don't trust the
19 investigation done in this sort of thing.

20 I suppose the best way one can learn about
21 these things, to see whether Ward has it right or
22 not, is to try to do one, do one of these
23 inquests. Take one of these families on as a
24 client and recognize how draining it can be and
25 how difficult it can be, and if you really want a

1 full taste of it take on more than one or two or
2 three or four and you'll maybe appreciate how
3 measured Mr. Ward is in his presentation here,
4 because it is extraordinarily difficult, this
5 obvious imbalance of resources. The
6 investigations then that, at least in my
7 experience, that have been done are all the Crown
8 has got to look at to prefer charges and provide
9 little in an objective sense as to whether the
10 investigation was done right for the purposes of
11 the inquest.

12 I don't want to speak too long and take up
13 too much of your time here, but I do note that
14 from time to time, mostly because videos get
15 exposed to the public eye these things catch the
16 attention of the public, whether it's the video
17 at the airport for the Polish case or whatever,
18 the system burbles along until it reaches the
19 near the crisis point because of a particular
20 case or series of cases.

21 You'll remember the Commission that Wally
22 Oppal did years ago, Richard Peck as Commission
23 counsel came about as a result of the police
24 shooting the Posse lad in West Vancouver and a
25 number of other cases coming about at the same

1 time. There was a video of two Chinese people
2 being beaten and kicked on the street by
3 police-officers. I acted for those two Chinese
4 lads and as a result of a convergence of public
5 attention the problem gets focused on, and I
6 worry what happens when the focus is lost. There
7 were several excellent recommendations in the
8 Oppal Commission and some seemed to drift away.
9 One would be optimistic and hope that's not the
10 case with the public interest in this Commission
11 and with the political will to effect some
12 changes but they are very much needed in the
13 system. The system is badly akilter here. I
14 tend to agree at least in part with Cameron's
15 observations as to whether we would be better off
16 without anything because of the public thinking
17 that there is an illusion of oversight in the
18 manner in which the present system is contrived.
19 We may be better off without that illusion of
20 oversight.

21 We have a situation where no doubt the
22 police-officers doing the investigation are doing
23 their best and attempt to remain objective, but
24 it's extraordinarily difficult for a
25 police-officer to remain objective in the

1 brotherhood or sisterhood of their profession.
2 Lawyers might be better at doing it because we're
3 used to fighting each other. The Law Society can
4 look after us fairly well, but for
5 police-officers to investigate themselves -- we
6 shouldn't discount that it's an extraordinarily
7 difficult job. A fraternity amongst the
8 practitioners, the police-officers themselves, is
9 significant, it helps them get through their
10 jobs, get through their days and so it really in
11 my respectful view is too much to expect that a
12 police-officer can remain wholly and completely
13 objective when they face these same dangers on
14 the street that the police-officer who is the
15 target here may have faced that night, so
16 objectivity does not come easy. I don't impugn
17 motives more than that because I don't think they
18 occur, certainly don't occur regularly. I know
19 that they have occurred from time to time and one
20 hopes not to be naive. But it's extraordinarily
21 difficult for the investigating police-officers
22 to go about investigating another police-officer
23 and it is an entirely different kettle of fish
24 when it comes to investigating a regular, serious
25 offence. So in looking towards solutions, I

1 don't know what this Commission has heard about
2 that or what one feels about that, but in my
3 respectful view that should not be discounted at
4 all.

5 I think the only further thing I'd like to
6 comment on is that the efforts of lawyers such as
7 this fellow here should not be underestimated.
8 His contributions have been enormous, his
9 measured tones here in expressing the
10 frustrations and difficulties one faces in doing
11 these cases should not be ignored at all. He
12 knows what he's talking about and I would hope
13 that his presentation to you, what I've heard in
14 the last while, resonates long and deeply into
15 this Commission. I can answer any questions if
16 anyone has them.

17 THE COMMISSIONER: Thank you, Mr. Ritchie. Any questions of
18 Mr. Ritchie?

19 MR. WARD: I'm going to not ask a question but just, if I may,
20 and I think I may because it's my presentation,
21 taking a page out of Mr. Rudin's book who took
22 charge, make a couple of observations on what
23 Peter has said and invite comment from Peter if
24 he wishes to make any.

25 In terms of the complaint process, Peter

1 said that he would instruct his clients not to
2 lodge a complaint with internal investigations
3 with respect to potential police misconduct.
4 Under our Police Act, as we may know now,
5 certainly as Mr. Falzon knows, a citizen's
6 complaint can be lodged using the prescribed
7 form, Form 1, either with the police department
8 that is the subject of the complaint or with the
9 Office of the Police Complaint Commissioner or
10 both. I didn't say that I had counselled people
11 not to lodge complaints with the police
12 department really only because it, in my
13 experience, goes without saying. I have never
14 suggested that anyone lodge a complaint with
15 internal investigators because I share Mr.
16 Ritchie's view that that is fruitless. I've gone
17 further in recent years. As I said earlier, I
18 now counsel people that they shouldn't bother
19 lodging a complaint with the OPCC either because
20 that is fruitless, taxing and unfair and just a
21 waste of time. I tell people -- and I'm being
22 candid here -- that the only reason I can think
23 of to lodge a complaint with the OPCC is for
24 statistical purposes so they have a record of it
25 and they can compile statistics. But if they

1 want any result, if they want a fair process,
2 they should not bother. That is why I concluded
3 two years ago and conclude today that we would be
4 better off if we didn't have any civilian
5 oversight because the problems if they do exist
6 would be in sharp focus and something could be
7 done about them.

8 The second point on coroner's inquests, I
9 have been to five of them on behalf of the family
10 and I was measured but I've got three more
11 scheduled. I'm not looking forward to them at
12 all. I've been in the courts for decades and the
13 court system is fair, you get a fair hearing, you
14 may not like the result. I can't say that about
15 the coroner's inquest process. Counsel for the
16 family at a coroner's inquest, in my experience,
17 based on the five I've attended, is like the
18 skunk at the garden party. You've got an array
19 of police-officers' lawyers there, a coroner's
20 counsel there who is presenting the evidence
21 accumulated by the police to a coroner who from
22 time to time is an ex-police-officer but who
23 reports to certainly ex-police-officers, and it
24 is a venue in which I do not feel or perceive or
25 apprehend that fairness is administered in any

1 sense of the word, and that is quite aside from
2 the resource imbalance. I had to walk out of one
3 that went into its fourth week because I couldn't
4 afford to be there any longer and I had to leave
5 the deceased's family to their own devices to
6 wrap up because I just couldn't carry on without
7 being paid, and the court of appeal has said the
8 family chooses whether or not to have a lawyer
9 there and if they choose to have one they pay for
10 it. It's not a public-funding issue and fairness
11 isn't engaged. So that's the state of affairs.
12 I have witnessed another lawyer representing the
13 family of the deceased leave a coroner's inquest
14 shortly after it started in absolute disgust with
15 the way the process was unfolding. It is a most
16 difficult environment and I -- this is anecdotal,
17 but I can't say that I've ever had anything
18 resembling similar experiences in a courtroom.
19 There is no sympathy to the family of someone who
20 has died at the hands of police. I see Mr.
21 MacKenzie shaking his head, and this is my
22 opinion and it's based on five of them, and I
23 second Peter's remarks that any lawyer who
24 questions this should take one of these cases on,
25 represent the family of someone who has died as a

1 result of police conduct and go to an inquest and
2 see what happens. It is, again, using measured
3 words, it is one of the most difficult things a
4 professional can undertake. I have three coming
5 up and I question whether there is any good
6 reason for me to go to them in the circumstances
7 and put myself through that again. So that's
8 what I have to say about that. By the way, one
9 of them involves a man who was shot and killed by
10 an RCMP officer in the presence of no witnesses.
11 The shooting was investigated by his RCMP
12 colleagues. They will be the witnesses at this
13 coroners's inquest, which is being convened by a
14 Coroners Service headed up by two career RCMP
15 members drawing RCMP pensions with 60 years' of
16 RCMP experience. How does the widow I represent
17 feel about the fairness of going into that
18 process? Again, there will be at least two,
19 perhaps three, lawyers paid for by the public
20 purse representing the RCMP force and the
21 officers there to make procedural objections, to
22 interrupt the cross-examination, and if past
23 experience is any guide, all I can do, as I say,
24 is shake my head. Peter gave me the opening to
25 perhaps shed some of the restraint I've had but

1 the coroner's system in my measured view ought to
2 be the subject of a comprehensive, independent
3 review and in particular the way these police in-
4 custody deaths are conducted ought to be the
5 subject of such a review. Thanks, Peter, for the
6 opportunity.

7 THE COMMISSIONER: Any questions of Mr. Ritchie before I thank
8 him for coming this morning?

9 MR. COWPER: I have one question. Your observation about the
10 fraternity of police-officers, under the current
11 system the OPCC can order another police
12 department to investigate, and I know that Mr.
13 Ward's views on that are perhaps worth hearing,
14 how much is that concern of the fraternity of
15 police-officers addressed if other police
16 departments are investigating that?

17 MR. RITCHIE: My experience is somewhat limited. I have some
18 views. I had a client who had a complaint
19 against the Vancouver Police five, six years ago
20 about being beaten up on the streets. His father
21 was wealthy, his father retained me as counsel to
22 get to the bottom of this. I met with the Crown
23 initially about this and the Crown consulted with
24 the police and as a result the investigation that
25 was to follow was done by a member of the

1 Victoria Police Force, a senior member of the
2 Victoria Police Force that had the credentials to
3 do the investigation. He came over and
4 investigated the matter, and not to trouble you
5 with the equities of the situation, but I was
6 left with the impression -- I'm not sure if it's
7 right or not -- it maybe comes from a gut
8 feeling, that even though that officer had the
9 appearance of being objective and coming from a
10 different police force, he still comes from the
11 same background of police forces. He took a view
12 and the dealings with the witnesses and the
13 investigation left me unsettled. I don't see it
14 as an easy solution that you just get someone
15 from the Burnaby RCMP to investigate someone from
16 Richmond RCMP or someone from the Vancouver
17 Police Force to investigate someone on the West
18 Vancouver Police Force. All these people share a
19 common background, which is important, a sharing
20 of public background in their common jobs, and it
21 left me with an unsettled feeling. I don't see
22 that as an easy solution. It would be unfair to
23 say that one police force scratches their back
24 one time and they'll scratch their back the other
25 time. I don't have the evidence to substantiate

1 that view, but I'm left being unsettled with
2 that.

3 MR. FALZON: Just a follow-up, Mr. Ritchie, do you think that
4 the same perception might prevail where say a
5 complainant accuses a lawyer of misconduct and
6 that lawyer is being dealt by the Law Society?
7 Have you heard it suggested where you've got a
8 system where lawyers are policing themselves?

9 MR. RITCHIE: I've heard that suggestion and I've acted for
10 the members of the Law Society in various
11 disciplinary hearings and certain times
12 complainants have that view that lawyers are
13 looking -- maybe I'm being protective of our own
14 profession somewhat, but lawyers don't have the
15 same sort of out-there-on-the-streets-every-night
16 feelings that the police-officers have.

17 MR. FALZON: You know that, we know that, but just dealing
18 with it from the perspective of a member of the
19 public who has made a complaint and in the vast
20 majority of the cases these cases are dismissed,
21 as we know statistically, do you think sitting
22 down and explaining what you've just said to them
23 would assuage their concern about the system if
24 they come out on the loop again?

25 MR. RITCHIE: I think you've got the police-officers saying,

1 look, you lawyers look after yourselves, why are
2 we lesser humans that we can't look after
3 ourselves? If you can do it, we can do it. That
4 kind of notion is out there. But lawyers aren't
5 like police-officers. Even though you get that
6 notion for complainants to the Law Society, these
7 are lawyers looking after lawyers --

8 MR. FALZON: I'm not debating that point. I'm just talking
9 about the perception of the complainant.

10 MR. RITCHIE: Are you talking about the perception of the
11 complainant in matters involving a police
12 investigation?

13 MR. FALZON: Yes, and take the same person who made a
14 complaint against a lawyer and just dealing with
15 that.

16 MR. RITCHIE: I don't know if I can split it so finely here to
17 give you a clear answer on that, other than to
18 give you experience --

19 MR. FALZON: Don't get me wrong. I'm not in any way
20 questioning the substance of what you're saying
21 on either front. I'm just thinking of it about
22 it from the perspective of a complainant. As
23 lawyers --

24 MR. RITCHIE: Cameron Ward could properly parade a number of
25 complainants in front of this room to fill you in

1 on that one.

2 MR. WARD: I have a response, if I may. The obvious thing is
3 that there is a well-recognized and documented,
4 it's the subject of many papers and articles and
5 reports, a well-documented culture of solidarity
6 among police-officers, the so-called thin blue
7 line, that is not present in the legal
8 profession. Having said that, here's the
9 analogy, a complainant about a lawyer's conduct
10 would be well founded if the lawyer said, well,
11 look, I had a complaint about the conduct of this
12 guy at firm X, Baker Newby --

13 MR. MARTLAND: Not to use names.

14 MR. WARD: A big firm in a precise geographical area,
15 relatively big, and my complaint was investigated
16 by the guy down the hall in the same firm. Well,
17 the analogy is, I've got a complaint about the
18 Vancouver Police and his union brother
19 investigated it. And, hey, this was pretty
20 serious because my son received 10, 15 blows to
21 his head and expired as a result and was unarmed
22 at the time and I'm not convinced that this
23 investigation was objective.

24 MR. FALZON: Isn't that exactly what Joe Wood was -- getting
25 back to Mr. Cowper's question -- wasn't that what

1 Joe Wood was identifying in his report when he
2 talked about the culture of policing -- and
3 perhaps we'll talk about this more next week --
4 where he was suggesting that that is acutely of
5 concern within a department, but where external
6 investigators are assigned to deal with the file,
7 at least in Wood's view, the degree of that
8 concern is not as severe?

9 MR. WARD: I respectfully disagree and for this reason --

10 MR. FALZON: You disagree with Wood? You don't disagree that
11 was said?

12 MR. WARD: I agree he said it. I disagree with his
13 conclusion. Take Lower Mainland, you've got the
14 Vancouver Police, the Burnaby RCMP, the North
15 Vancouver RCMP, the West Van Police Department,
16 so on. They are united in catching the bad guy.
17 It's us catching the bad guys. Bad guys don't
18 stop their activity at boundaries. They work day
19 in and day out to catch the bad guy and it's us
20 against them, us against the bad guy. Lawyers
21 don't operate that way, to come back to your Law
22 Society example. Davis & Company and Fasken
23 Martineau aren't working together on some common
24 goal in a culture of shoulder-to-shoulder
25 brothers-in-arm solidarity. It's very, very

1 different. I disagree that having another police
2 force investigate the police conduct brings
3 sufficient distance to the exercise. I have to
4 fundamentally and respectfully disagree.

5 THE COMMISSIONER: I hesitate to interrupt, but our court
6 reporter has been at it now for well over an hour
7 and a half and I think she deserves a break. If
8 there are more questions we will come back, I
9 will ask you to come back. If not, I will thank
10 Mr. Ritchie and Mr. Ward. Your presentation, as
11 you can gather from the response, has been most
12 interesting. Are there any further questions?
13 Should we reconvene after we take the break?
14 That's it then. Thank you again for organizing
15 the day, Mr. Ward.

16 MR. WARD: There wasn't much organization as you've seen, and
17 I thank you for the opportunity and I hope that
18 it may in some measure be helpful and I expect
19 we'll be revisiting some of these issues later
20 with other presenters.

21 THE COMMISSIONER: Thank you once again. We'll adjourn. Mr.
22 Martland.

23 MR. COWPER: Mr. Commissioner, just for everyone's benefit,
24 including members of the public, we don't have
25 presentations tomorrow but next week beginning

1 Monday morning, Monday is Ambulance Service,
2 followed by Coroners Service, both will at least
3 start, and ambulance will be done within an hour;
4 Tuesday we have Vancouver Police Department and
5 Board for about half a day followed by Mr. Ward's
6 presentation of Dr. John Butt; Wednesday, May 7,
7 given over to BC Civil Liberties Association; and
8 Thursday, given over to Mr. Falzon on behalf of
9 the Police Complaint Commissioners Office; and
10 Friday will be closing submissions in this room
11 by Commission counsel but the week following that
12 we move to provincial court at Robson Square for
13 closing.

14 THE COMMISSIONER: Thank you, Mr. Martland. Any comments with
15 respect to the schedule that has been heard? If
16 not, we will adjourn and resume Monday morning at
17 9:30.

18 (PROCEEDINGS ADJOURNED AT 11:20 A.M.)

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