



## **Overview of Weekly Proceedings for the Missing Women Commission of Inquiry**

*By Robyn dean Gervais, Independent Counsel for Aboriginal Interests, Missing Women's Commission of Inquiry*

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The purpose of this overview is to provide readers with a brief summary of the proceedings of the Missing Women Commission of Inquiry for the week of January 24 to January 26, 2012. Readers are welcome to distribute this summary to any person or organization they think may benefit from it.

Readers are also welcome to follow my Twitter feed at RobynGervaisMWI, or to visit the website of Harper Grey LLP (<http://www.harpergrey.com>), the firm of Bryan Baynham, Q.C., who is providing *pro bono* counsel.

### **A. ADDITIONAL COUNSEL**

This week, two new lawyers appeared as counsel for Vancouver Police Department ("VPD") officers. The new lawyers and the officers they represent are as follows:

1. David Neave is acting for retired VPD Inspector Fred Biddlecombe;
2. Rick Henderson is acting for retired VPD Deputy Chief Constable Gary Greer.

### **B. COMMISSIONER OPPAL'S PROCESS MANAGEMENT DIRECTIVE #2**

Earlier in the week, Commissioner Oppal issued a process management directive that addressed the principal factors that he will keep in mind as he develops his recommendations for the conduct of future major criminal investigations. The Commissioner stressed the importance of uncovering the institutional and systemic failures that hampered the missing women investigation, and indicated to Commission Counsel that to this end, he wished to prioritize the testimony of three of the lead investigators in the case. These investigators are as follows: current VPD Detective Constable Lori Shenher ("Shenher"), retired Royal Canadian Mounted Police ("RCMP") Staff Sergeant Mike Connor, and retired RCMP Inspector Don Adam.

The full text of Commissioner Oppal's *Process Management Directive # 2* can be found at the following link:

<http://www.missingwomeninquiry.ca/process-management-directive-2/>

## **CROSS EXAMINATION OF DR. KIM ROSSMO**

On Wednesday, January 25, 2012, I cross-examined Dr. Kim Rossmo (“Rossmo”). Rossmo was an officer in the Vancouver Police Department (“VPD”) for 21 years. He is an internationally renowned criminologist with expertise in serial predators, and is best known for pioneering an investigative technique known as geographic profiling, in which the locations of multiple crime scenes linked to a single perpetrator are analyzed in order to interpolate the geographic area in which the offender is most likely to be found. The Commission has qualified Rossmo as an expert witness to provide an opinion on criminology, geographic profiling, and statistical analysis. Dr. Rossmo also provided first hand testimony about his involvement in the missing women investigation.

During the missing women investigation, Dr. Rossmo tried unsuccessfully to draw the attention of senior VPD officers to the possibility that a serial killer was responsible for the disappearance of women in the Downtown East Side.

Dr. Rossmo prepared a comprehensive PowerPoint presentation for the Commission that provided an outline of his analysis of the failings of the missing women investigation. His presentation has been the subject of extensive cross-examination and media attention over the past week, and can be viewed at the following link:

<http://www.missingwomeninquiry.ca/wp-content/uploads/2011/10/EXHIBIT-67.pdf>

During my cross-examination, Rossmo indicated that he was aware that roughly half of the missing women were of Aboriginal ancestry, and that many of these women were in regular contact with community support organizations in the Downtown East Side. He agreed that it is critical for investigators to maintain contact with these organizations because they can be excellent sources of information about the habits and routines of specific victims, and he stressed that “victimology” is a key component to any criminal investigation. He elaborated that liaisons between the police and community groups can also help the police to determine if and when a problem has arisen that requires their attention. Such liaisons can also lead to the identification of suspects, and can facilitate the dissemination of public safety warnings to the community.

Dr. Rossmo disagreed with the assertion that a letter sent to the VPD in 1995 by Don Larson (“Larson”) of C.R.A.B. – Water For Life Society gave the police their first indication of the possibility that a serial killer was preying on women of the Downtown East Side. Rossmo maintained that at the time the VPD received Larson’s letter, it would’ve appeared to them that Larson was mistakenly interpreting the Downtown East Side’s higher-than-average murder rate as proof that a serial killer was on the loose, since there was no evidence at the time of linkages between the cases he cited.

Rossmo testified that he had not seen a letter written in February of 1997 to then-Attorney General Ujjal Dosanjh by the First Nations Summit, in which the author requested an investigation into the death and disappearance of 48 Aboriginal women. Although he did agree that the letter predated his initial awareness of the Downtown East Side disappearances, he disagreed that it should’ve drawn the police’s attention to the matter earlier, since it appeared to refer mainly to unsolved murders rather than unexplained disappearances. He admitted that he was familiar with several of the names on the First Nations Summit list, including Rose Peters and Maureen Riding-At-The-Door.

Rossmo further testified that several strategies put forth to the VPD by Constable Jerry Wickstead in May of 1999, such as meetings held between police, community organizations, and potential victims, might have provided police with a source of new ideas on how to approach old problems. Such meetings would also have served to demonstrate to the community that the police are open to new approaches. Rossmo informed the Commission that these strategies would remain useful in future criminal investigations.

Rossmo agreed that the police have a duty to warn the public about potential threats to their safety, and that this duty ought to include dissemination of warnings through community organizations, since these groups themselves maintain regular contact with people at high risk of victimization. Rossmo disagreed with the prior testimony given by VPD Deputy Chief Constable Doug LePard (“LePard”), in which LePard testified that the VPD’s failure to issue a public warning would not have changed the behaviors of the missing women because they were too entrenched in their drug addictions. Rossmo testified that the issue of whether or not such a warning would’ve changed their behavior is irrelevant, since the police have a positive duty to warn the public about potential threats. Whether an individual chooses to alter their behavior based on that warning is a matter of personal choice, but the duty to warn the public exists regardless of the political fallout that may entail. Rossmo also maintained that the police have a duty to warn *all* potential victims, regardless of their socioeconomic status, ethnicity or religion.

He also faced questions about the issue of whether senior VPD managers allowed “confirmation bias” to cloud their view of whether a serial killer was preying on the women of the Downtown East Side. In his book, *Criminal Investigative Failures*, Rossmo describes confirmation bias as being a psychological phenomenon in which a person focuses on evidence that tends to confirm their theory, while ignoring or refusing to search for evidence that contradicts it. The main components of confirmation bias include the failure to seek out evidence that might disprove a theory, the failure to utilize such dispositive evidence if it is found, the refusal to consider alternative hypothesis, and the failure to evaluate the diagnostic value of a body of evidence. He confirmed that many officers, and in particular Inspector Fred Biddlecombe (“Biddlecombe”), who commanded the VPD’s Major Crime Unit, held the baseless opinion that the missing women would be found. He conceded that confirmation bias played a role in preventing the VPD from accepting the possibility that a serial killer was at work, and he also agreed that other forms of cognitive bias may have played a role in the missing women investigation. However, he was careful to state that these biases did not include bias against certain ethnicities, gender or social status.

In response to questioning about how the VPD could effectively mitigate the threat of confirmation bias in future investigations, Rossmo stressed that because even those who are consciously aware of their cognitive biases may nonetheless succumb to them, there are several measures that police should take in order to counter its ever-present threat. He maintained that such preventative measures must be built into the organizational structure of the police force, on the recognition that all human beings are susceptible to “bias traps” and capable of making mistakes, regardless of skill, training or intelligence. Such measures include having a policy whereby cold cases are automatically referred to the “fresh eyes” of an outside police agency, instituting regular investigator brainstorming sessions, and maintaining an open-minded office culture in which constructive criticism is welcome. Rossmo also stressed that information and ideas ought to be shared openly and regularly across all ranks of the VPD, and should not be confined to following “the chain of command”.

### **C. THE RCMP ISSUES AN APOLOGY**

On Friday, January 27, 2012, the commanding officer of the RCMP in British Columbia, Assistant Commissioner Craig Callens (“Callens”), issued an apology for the role of the RCMP in failing to apprehend Robert Pickton earlier. Callens expressed his condolences to the family members of Pickton’s victims, and conceded that “with the benefit of hindsight and when measured against today’s investigative standards and practices, the RCMP could have done more.”

The full text of Callens' statement is as follows:

*Good morning. First - I would like to reaffirm that the RCMP is committed to fully cooperating with the Missing Women Commission of Inquiry. We are in the phase of the inquiry where investigators directly involved in the investigations are scheduled to testify. Recently, it came to my attention that during the examination of an RCMP witness, Commission Counsel raised the issue of an RCMP apology. It is clear to me that the issue of an apology remains in question. In August 2010 Deputy Commissioner Gary Bass, the Commanding Officer for the RCMP in "E" Division at the time, issued a statement in which he expressed deep regret that the RCMP was unable to gather the evidence necessary to lay a charge against Robert Pickton sooner than it did. Let me be clear. As the Commanding Officer of the RCMP in British Columbia, I believe that with the benefit of hindsight and when measured against today's investigative standards and practices, the RCMP could have done more. On behalf of the RCMP, I would like to express to the families of the victims how very sorry we are for the loss of your loved ones, and I apologize that the RCMP did not do more. We look forward to receiving meaningful recommendations that we can apply as a whole to improve our policing services to communities in BC and to refine and improve how we investigate and solve complex major crimes.*

#### **D. THIS WEEK: VPD AND RCMP MEMBERS**

Proceedings will re-commence on Monday, January 30, 2012, with the testimony of VPD Detective Constable Lori Shenher. Shenher was the first full-time officer to join the Missing Persons Unit in July of 1998, following the increase in women disappearing from the Downtown East Side. Shenher was supervised by Sergeant Geramy Field, who divided her time between the Missing Persons Unit and the Homicide Unit. Both the *LePard Report* and the *Evans Report* indicate that although Shenher worked tirelessly on the missing women investigation, senior VPD managers failed to provide her with the proper supervision, material and personnel support that was needed in order to conduct an effective and efficient investigation.

We expect that Shenher will remain on the stand for the entire week.

Following Shenher's testimony, the Commission will hear from retired RCMP Staff Sergeant Mike Connor, who began working with Shenher in August of 1998 when he was a corporal with the Coquitlam Detachment. Connor was the lead RCMP investigator in the investigation into Robert Pickton until he was promoted and transferred out of his unit in August 1999. The pace of the Pickton investigation slowed significantly after his departure.

I will continue to provide daily updates of witness testimony on my Twitter page. Please follow me at RobynGervaisMWI if you would like to receive daily updates.

Please feel free to contact me if you would like to offer any comments, suggestions or insight.

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