

# 8

## **“Only the Silence Remains”: Aboriginal Women as Victims in the Case of the Lower Eastside (Pickton) Murders, Investigative Flaws, and the Aftermath of Violence in Vancouver**

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### **Introduction**

The effects of past discrimination have resulted in the poor socio-economic situation applicable to most Aboriginal women, but it is also attributable to the demeaning image of Aboriginal women that has developed over the years. North American society has adopted a destructive and stereotypical view of Aboriginal women. (Chartrand et al. 1999)

The status of Aboriginal women within Canadian urban culture can be characterized on one hand by desperation and despair, and on the other hand, as largely invisible to the average Canadian. The first group's interaction with street culture is characterized by both legal and illegal drug abuse, poverty, violence, involvement in the sex trade, health issues, and frequent interaction with agencies of social control and treatment programs through a “revolving door” of jail, court, and release. This paper is focused upon individuals drawn from street life and the sex trade, specifically the victims of Robert Pickton. However, we believe it is important to balance our subject matter with a clear recognition that the victims in this case are a specific group of Aboriginal woman, and should not form for the reader an overarching portrait of urban Aboriginal women in general. The integration of Aboriginal women into the major urban landscapes of Canada has reflected the general trend of off-reserve residence. Approximately 71 percent of Aboriginal people reside off-reserve, with 59 percent residing in large cities or smaller urban centres (Dickson-Gilmore 2011, 75). A broader view of the lives of the overwhelming majority of Aboriginal women in the urban landscape is provided by the Urban Aboriginal Task Force (2007) and Howard-Bobiwash's (2003) research on women's class struggles in Toronto during the period between 1950 and 1975.

As early as 1974, in a chapter concerning Aboriginal immigration to the major cities of Canada, Frideres concluded that while the federal government was encouraging persons to acculturate into urban centres, the “municipal governments are not prepared to extend or continue this help (with migration) and there is continual conflict” between the various levels of government (100). Thus Aboriginal people found themselves in an environment where they were “more exposed to alien ways of thought and direct discrimination.” In this analysis, he found that there was a “compartmentalization of whites’ activities,” creating the well-understood condition of “two solitudes,” in which there is a lack of communication across barriers (100). The end result was the production of a loosely tethered existence for some urban Aboriginal people and a high degree of transiency. However, the overwhelming majority of Aboriginal persons, whose lives are lived within the “mainstream,” do not live risky lifestyles nor are they involved with the criminal justice system (see generally Urban Aboriginal Task Force 2007).

Other researchers have commented upon the problems Aboriginal women, and Aboriginal peoples in general, have when integrating into urban communities (Abbott 2004; Balakrishnan and Jurdi 2007). More recently, Voyageur (2011) has provided an excellent overview of the multitude of barriers Aboriginal women face in Canadian society. While Frideres’s work is important, it does not specifically address the issue of Aboriginal women caught in this alien world, and the effect this has upon their social capital and “life chances” (Dahrendorf 1979). Fleming’s (1993a) work on homeless street youth and homeless persons is instructive in providing depth to our understanding of how some Aboriginal women have little in the way of social capital to spend in a major city environment, and how their life chances are severely affected by their sense of alienation in the urban interstices.

Members of the second group of Aboriginal women mentioned above, those who are largely “invisible” to most Canadians, are individuals who live and work in cities with little or no awareness or acknowledgement of their Aboriginal status by the community. The overwhelming majority of these women live “normal” lives, as do the majority of Canadians, generally unnoticed and unrecognized by wider society. Some reach the heights of professional or artistic achievement. In other words, their lives and accomplishments contribute positively to Canadian society and Aboriginal society.

It is women drawn from the first group described above who are partially the concern of this paper. Our focus in this paper is police investigative failures in the Robert Pickton serial murder case (referred to as the Missing Women Investigation), with respect to the Aboriginal women victims of his crimes; the treatment of the families of these murder victims by investigators and government during and after the discovery of multiple bodies at the Pickton farm; and the aftermath of the crimes, specifically the value, or lack of value, of a public inquiry into the disappearances and deaths of the women. Our paper develops a critical analysis of the investigative failures in the case, which we link with the status of many of the

victims as Aboriginal women and sex-trade workers. We argue for more informed approaches to dealing with serial murder victims and their families, recognizing the vulnerability of Aboriginal women working in the street sex trade in the urban context, and acknowledging the unique nature of dealing with Aboriginal peoples (Chartrand et al. 1999). We conclude with some recommendations for the conduct of future investigations of linked missing persons/serial murder cases.

## The Pickton Murders: Background

From the early 1980s until 2002, women were disappearing from Vancouver's Lower Eastside. This area is well known as a "stroll" for prostitutes (Lowman 1987, 1992) and a location where drug use, drug dealing, and violent street crimes are part of everyday life. The women who were disappearing were all known prostitutes who had issues with heavy drug use (Rossmo 2011). During the 1990s, the rate of disappearance and the number of missing women began to escalate. A number of concerned groups, amongst them Aboriginal family coalitions, believed that there was a serial murderer at work, and called upon Vancouver Police Services to focus their investigation into the disappearances in this direction. Although various groups expressed concerns, the police steadfastly refused to seriously consider that a serial killer might be operating in the area.

This was more than disconcerting given that a Vancouver police detective, Kim Rossmo, had prepared a report in 1999 that concluded that the majority of the women were *dead*, not *missing*. Senior management in the Vancouver Police Department refused to accept the conclusions of Rossmo's report, or have him play a significant role in the investigation, even though he had recently become the first detective in Canada to receive a PhD in criminology, specializing in geographic profiling of serial offenders (LePard 2010). Although Rossmo was an internationally recognized expert in serial murder cases and the inventor of geographic profiling, he was effectively demoted for his efforts, as his unit was closed down. He subsequently sued Vancouver Police Services for wrongful dismissal, but did not prevail. At the time of his case in 2001, police spokespersons still denied the existence of a serial killer. Six months later, in February 2002, the RCMP executed a search warrant for another matter at the farm of Robert Pickton, and in the course of the search, pieces of identification and purses belonging to some of the missing women were discovered. Rossmo (2009, 33) wrote that these same pieces of evidence had been viewed four years earlier by an RCMP constable investigating another complaint at the farm.

After a missing woman's identification was positively identified at the Pickton farm, a large-scale investigation of the property ensued. During the initial stages, as the magnitude of the forensic investigative challenge was comprehended, it was determined that a full-scale archaeological dig of the farm would be required to recover possible relevant personal possessions, bone fragments, clothing, and DNA linked to victims. It was apparent to investigators that Pickton had disposed

of his victims by feeding their remains to his pigs. His intent was to destroy anything that could possibly be used to identify the women's remains. However, while the pigs ingested the flesh and crushed the bones of the victims, they also left behind bone fragments, which were used to establish the identity of victims by matching DNA to established records or to their family members.

Pickton was not fastidious in his disposal of identification cards or other personal items. Identification cards show a high degree of resistance to disintegration even when buried, so that readable information can be gleaned from them for decades. The dig at the farm involved forensic identification officers from the RCMP and other agencies, scientists, and anthropology students. The cost of the dig, which lasted more than a year, was estimated to be \$70 million and collected one hundred thousand exhibits (Rossmo 2009, 33). This estimate does not include all of the other costs associated with the prosecution of the Pickton case. It is not unreasonable to argue that more than \$200 million was spent to convict Pickton.

After more than a year of investigation, twenty-six individuals had been identified from materials found on the farm, with a twenty-seventh distinct victim remaining unidentified. Pickton was tried in six cases, and found guilty of second-degree murder in all of them. Crown prosecutors wisely chose to pursue the six cases in which solid evidence existed regarding the identity of the victims, and which were most likely to result in conviction. While the families of the remaining twenty victims initially believed that the Crown would pursue court cases in relation to these individuals, Pickton's life sentence, the cost of the cases to that point, and the possibility that the weakness of several of the remaining cases might result in acquittal in those cases, made pursuing prosecutions risky and potentially damaging to the victims' families. It could well be suggested that not prosecuting these cases, even for very compelling reasons, including the costs involved and the possibility of acquittal in some cases, left families without closure and perhaps with lingering doubts about the role police investigative flaws may possibly have played in the murders of their loved ones. It is significant to note that eleven of the thirteen identified missing women who were murdered after 1999 (and after Rossmo's report) were victims of Pickton.

## **Aboriginal Sex-Trade Workers and Police**

Despite assurances to the contrary, police in Canada have often failed to provide Indigenous women with an adequate standard of protection. (Amnesty International 2004, 2)

My Aboriginal sisters are not perfect victims in the eyes of the police and the courts, especially when they're considered vagrant, addicted, and sex workers. (Thompson 2010, 1)

One of the enduring issues that arises out of the Pickton case in relation to his victims is why police efforts in the cases of these missing women did not reflect the same commitment to resources and solution as other missing persons cases. The response of the Vancouver Police Department to the rising number of missing women on Vancouver's Lower Eastside can be put in perspective when we consider the existing research on victim selection and police response that has been generated over the past quarter-century. Serial murderers have demonstrated a propensity to select certain groups of individuals as the preferred targets of their murderous activities (Leyton 2005; Hickey 2006). In general, they are drawn to victims who have, or appear to have, little ability to defend themselves from physical attack or kidnapping. Thus, persons who are small in stature are preferable as victims to individuals who are larger. Male serial killers who select female victims, have much in common with rapists. Serial murderers hunt for victims who show obvious signs of alcohol or drug intoxication; who place themselves in isolated areas that are largely immune from police observation or other individuals who might intervene in a suspicious altercation; or who pursue "risky" lifestyles, of which street prostitution is one of the most dangerous (Fleming 2006; Hickey 2006; Leyton 2005). As criminologists Cohen and Felson (1979) demonstrated in their classic article on routine activities theory, when individuals' daily routines put them at risk of victimization, they are more likely to fall prey to crime. As Hickey relates, serial murderers' motivations can also include a desire to "destroy those who symbolize what they fear or loathe including gays, the homeless, prostitutes, the elderly, and the infirm" (Hickey 2006, 259). Research conducted by Jenkins (1994), as well as Kim Egger (1999, 8), has shown that cross-cultural and historical analyses of serial murder victims identify that the same groups are victimized again and again.

However, there are clearly other reasons why these specific groups, to which we have added Aboriginal women (Fleming and O'Reilly 2010a, 2010b, 2010c), are repeatedly targeted by serial killers. The answer lies in the police response, or more specifically the lack of police response, to the murders of persons in the above-mentioned groups. While homicide detectives should be recognized for their dedication, commitment, and service, there is certainly ample evidence arising from the study of serial murder cases that social class, race, sexual preference, age, occupation, and residence status play a significant role in determining what level of police resources will be invested in the solution of a homicide.

Murders in everyday life (Leyton 2005), as opposed to serial murders, pose considerably fewer investigative challenges to detectives. Serial murders typically involve strangers as perpetrators, and victims are selected at "random," with little or no evidence to connect the offender with the victim. When there is no pattern in the murders committed by the serial killer, investigators may believe they have a series of unrelated homicides committed by several perpetrators. Alternatively, they may erroneously focus on one suspect, when in fact two serial murderers are at work in their community. There is little doubt that the murder of a mother

of small children, who is of middle- or upper-class status, will receive considerably more investigative attention from police than the murder of a street prostitute (Rossmo 2011), since considerable political, legal, and media pressure would be brought to bear if a solution to the first case were not forthcoming. There is evidence that in England's Yorkshire Ripper case massive resources did not flow to the police until after the death of a non-prostitute victim. Sherry Lewis, then-executive director of the Native Women's Association of Canada, illuminated the systemic nature of discriminatory treatment of Aboriginal women victims of crime when she commented on the Highway of Tears case—in which five Aboriginal woman disappeared over a number of years, beginning in 1988—stating, “one non-Aboriginal woman goes missing and all of a sudden there was a media frenzy” (d'Entremont 2004).

Not all of Robert Pickton's victims were Aboriginal, but over half were of Indigenous ancestry. We have deliberately chosen not to separate the victims in our discussion, contending that all victims are of equal importance; however, our focus is more specifically those who were Aboriginal. These victims' “three-prong status” as Aboriginal women, substance abusers, and sex-trade workers placed them in categories that have been demonstrated in research into serial murder investigations to promote investigative inertia (S. Egger 2001; Fleming and O'Reilly 2010b). This failing was not unique to this investigation, as extant research clearly demonstrates, but does not diminish its total unacceptability.

Several prominent serial-murder cases in the United States involved members of the above-stated victim categories and defied solution for lengthy periods of time, measured in years or, in some cases, decades. Included in this list are the cases of Ted Bundy; Dennis Rader (the BTK Killer); Gary Ridgway (the Green River Killer); John Wayne Gacy; and Jeffrey Dahmer. Dahmer's selection of African American gay men as his victims ensured his immunity from suspicion. On one occasion, police returned to Dahmer's apartment a fourteen-year-old boy who had been seen running down the street naked. Police dispatchers were recorded laughing at and belittling reports of this incident when they came from African Americans, evidencing their racist attitudes. The intervening officers believed Dahmer when he told them that he and the boy were lovers, rather than observing the boy's sheer terror, or finding a qualified interpreter to question him. Minutes after police left, Dahmer murdered the boy.

One of the predominant theories to explain why serial killers choose individuals from certain groups as victims is that they view them as “less dead” (S. Egger 2003). Serial killers view victims as less than human and not deserving of life, requiring them to dispatch the victim. They are “less dead” because they are initially seen as less than alive, less than human. Serial killers who choose to victimize prostitutes may do so because they view themselves as carrying out a service to society by ridding the streets of individuals whom they believe are a blight upon the community. Such “mission-oriented” killers see themselves in heroic terms as saviours of society, although there is no evidence Pickton fit into

this analytic category (Holmes and Holmes 2010). It is much more reasonable to assume that as an individual familiar with policing, he recognized that prostitutes were a lower investigative priority and much easier prey, since their disappearances might not be noticed for a considerable period of time. As Steven Egger (1990, 2) argues, “These groups lack prestige and in many instances are unable to alert others to their plight. They are powerless given their situation in time, place, or their immediate surroundings.” Norris and colleagues’ (1994, 62) assertion that “the quantity and quality of law enforcement the citizens receive, both as victim and suspect, reflects the underlying pattern of social stratification in society” (cited in Dickson-Gilmore 2011, 75) is instructive. Further, if one accepts that this will produce a pronounced lack of societal reaction, reflecting both the status of the Pickton victims and their race, then agitation for police action will not be forthcoming. Both institutional and investigative inertia appear to have plagued the Missing Women Investigation. As Hickey (2010, 303) instructs, “victims of (serial) crime are often perceived as losers...victims get what they deserve.”

The LePard report (*Missing Women: Investigation Review*), prepared by Deputy Chief Constable Doug LePard of the Vancouver Police Department, argues to the contrary. It acknowledges that there were “poisoned” relations with some victims’ families, but that the Vancouver Police Department did not investigate the missing prostitutes’ case any differently than it would have if the victims were women from an upper-class neighbourhood. This is in contrast to clear evidence from numerous serial murder cases around the world (see generally S. Egger 1990, 2001; Hickey 2010) that this is a repetitive trend:

Bias against sex-trade workers was not the reason for the deficiencies in the Missing Women Investigation. However, barriers to reporting marginalized persons as missing... poisoned relations with families of some of the missing women. These factors did compromise the investigation by creating, at the least, a lack of trust in the VPD [Vancouver Police Department]. (LePard 2010, 325)

Street prostitutes inhabit a very dangerous world punctuated by violence, drug use, and risky lifestyles (Comack and Seshia 2010; Lowman 2000; Shaver 1995). They are at once visible, plying their trade on the street, and invisible to others in the community, who either do not frequent this type of area or who ignore street persons when they encounter them, a common phenomenon (Fleming 1993a; Davis and Shaffer 2004). Prostitutes are often viewed in negative terms by members of the wider community as engaged by choice in an activity that is fraught with risk. Victims are often blamed for their victimization. In this light, it can be argued that victims have precipitated attacks upon themselves. Hickey (2006, 260) states that “prostitutes were far more likely to be targets than any other group of victims.”

Street prostitutes are vulnerable to attack because they enter the vehicles of “johns,” or customers, and accompany them to alleyways, back parking lots, private residences, and other isolated locations. Drug addiction provides a tool that serial killers can use to lure victims to remote locations—their so-called “killing grounds”—with a promise of drugs. The Vancouver Police argued that the missing women were “transient,” and that their absence could be explained by theories other than that of a serial killer (LePard 2010, 324). However, if the families of the women reported them missing, and expressed fears that they were dead, why would the Vancouver Police dismiss their concerns and offer alternative theories about where they were and what they were doing (for example, in another city working in the sex trade)? (Rossmo 2011).

Incidentally, the ploy of serial killers luring victims with the promise of alcohol or drugs is not new by any means. In 1827, Scottish serial murderers Burke and Hare lured their victims back to their rooms to kill them by befriending them and promising them liquor. The liquor they gave their victims was meant to stupefy them, rendering them defenceless so they could be suffocated.

It was only after the arrest of Pickton and the issuance of a study by Amnesty International on violence against Aboriginal women (*Stolen Sisters: A Human Rights Response to Discrimination and Violence Against Indigenous Women in Canada*) that the victims began to emerge from “invisibility” to “visibility” (Culhane 2003; Amnesty International 2004). It is a reflection of the kind of public interest that serial killers elicit that we know the name of and are familiar with Robert Pickton about whom countless news articles and a book have been written, while we are almost totally unfamiliar with the identities of his victims.

## Investigative Failures in the Pickton Case

Virtually every interjurisdictional serial killer case including Sutcliffe, . . . Ted Bundy, and the Green River Killer in the United States and Clifford Olsen (sic) in Canada, demonstrate the same problems and raise the same questions. And always the answer turns out to be the same—systemic failure. Always the problems turn out to be the same, the mistakes the same, and the systemic failures the same. (Campbell 1996, 2)

Most of these problems (in the Missing Women Case) are systemic and [identifying them] could help lead to improvements in policing. (Rossmo, quoted in Kines and Bolan 2002)

To inform our discussion of investigator interaction with Aboriginal families of Pickton’s victims, we have provided an analysis of why the Missing Women Investigation did not move forward based upon the groups from which the victims were drawn. In this section of the paper, we wish to address the systemic errors

that played a significant role in the investigative errors that plagued this case, and that acted as a catalyst, prompting victims' family members to perceive that their concerns were not being addressed by either the Vancouver Police Department or the RCMP. Given the extensive inquiry conducted by Justice Campbell into the investigative problems encountered in the Bernardo/Homolka serial murder case, the question may be why systemic errors once again prevented an effective investigation from being conducted.

Previous studies have identified a series of recurring issues in the investigation of serial murder cases that either prolonged the period over which the murderer continued to operate, or otherwise resulted in a flawed investigation. These issues—adapted from the work of Steven Egger (2003) and others (Hickey 2006; Jenkins 1994; Leyton 2005)—include:

1. A lack of commitment on the part of police service(s) to the idea that a serial murderer is operating in their jurisdiction, or is at least possibility.
2. Recurring problems coordinating serial murder investigations as a result of misdirection and the lack of a clear major case management model.
3. Problems inherent in managing a large number of cases and the data they produce.
4. Detective inexperience in serial murder cases, given their rarity.
5. Internal issues in police investigations caused by cognitive biases and organizational traps (Rossmo 2009, 9–34).

We will provide a brief analysis of each of these issues below. Serial murders, as we have indicated, are rare events in Canadian society. From 1981 to 2011, Canada experienced three cases of “mega murder” (Ashburner and Soothill 2002; Soothill et al. 2004) or, in other words, serial murder cases that generated an enormous number of media accounts over a long period of time (Fleming 1993b, 2007). The Olson, Bernardo/Homolka, and Pickton cases dominated media coverage, in terms of the number of reports concerning their cases. Some twenty thousand news items in Canada were generated in relation to Bernardo and Homolka, either individually or together, from the time of their arrest in 1993 to 2007 (Fleming 2007).

Given their rarity, police chiefs and senior management are naturally reluctant to declare that a serial killer is at large, since this type of announcement has immediate ramifications and is met with high public expectations that an arrest will be forthcoming. The lack of relationship between most serial killers and their victims can result in frustrating, extremely expensive investigations that yield few or no results, while sapping major resources from other policing priorities. The Toronto case of Jane Doe (2004), a woman who was the victim of a serial rapist and who sued the Board of Commissioners of Police, demonstrates the extreme dangers that can be created when police do not inform the public that a serial predator is operating in a particular area. While the decision to announce such an investigation is difficult, we argue that the safety of potential victims should be

the priority when making decisions as to how to proceed in these cases. Later in this paper, we will return to this topic with regard to the Missing Women Investigation to illustrate that even when research pointed to an overwhelming likelihood that the women were dead, police still did not accept this possibility (LePard 2010, 332), and argued that “were there a dead body, no doubt the information would have been treated differently.” However, analysis of existing serial murder cases would have demonstrated that serial killers develop “dumping grounds” and, as a result, no bodies may be found for a considerable period of time extending over months, years, or even decades (Fleming 1993a; Leyton 2005; Hickey 2006). Surely the non-discovery of bodies cannot be viewed as having prevented police from considering the possibility of a serial killer when so many women were missing.

The second factor connects to coordinating serial murder investigations. The coordination of a serial murder investigation, especially one that involves two distinct police jurisdictions, is a complex undertaking at best. The fact that Pickton picked up his victims on the Downtown Eastside of Vancouver, but murdered and disposed of them in the suburb of Port Coquitlam, meant that his crimes were committed in two different police jurisdictions, because of the RCMP’s mandate to police provincially in British Columbia. When we consider that the two police services involved in the Missing Women Case did not accept the possibility that a single serial murderer was responsible for the disappearance of the women, it is clear that the coordination of efforts and resources between the two was unlikely to occur. There is little evidence in either the report of the Vancouver Police Department (LePard 2010) or the RCMP (Williams and Simmill 2006) that a coordinated effort existed with regard to the cases, although there is some evidence that they exchanged information. As LePard has commented, “The bigger lesson is we need better communication amongst police,” while also citing training and staffing issues inside both the Vancouver Police Department and the RCMP (CBC reported on RCMP Watch, 6/9/2011). It is interesting to note that the RCMP did not become involved in the case until 2001, and that shortly thereafter, the case was solved (not, however, as the result of a serial murder investigation).

As Kim Rossmo states, “Police ignored Canada’s most prolific sex murderer for over three years because they did not want to believe, despite evidence to the contrary, that a serial killer was responsible for the missing women in the Downtown Eastside” (Rossmo 2009; 2011). Rossmo conducted what is described as a “statistical- and epidemiological-style” analysis of women reported missing between 1995 and May 1999. LePard’s (2010, 100–01) observations of this study are worth considering:

Using a variety of sources of data, [Rossmo] found that the number of women who had gone missing in the previous thirty months was significantly higher than what could be expected by chance. Further, he found it was statistically unlikely that any more than two of the missing women would be found. He reported that if the women had met with foul play, the fact that

none of their bodies had been found made the separate killer theory unlikely. He stated that “the rarity of serial murder, even in high-risk population groups, makes the separate, multiple predator option improbable.” Finally, he found that “the single serial murder (sic) hypothesis (which would include partner or team killers) was the *most likely explanation* for the majority of these incidents.” (LePard 2010, 101; emphasis added)

The fact that the women had disappeared from a geographically small area made the results of his analysis even more significant. By way of comparison, if there had been a similar number of persons diagnosed with a deadly disease in such a small area, it would have been cause to declare an epidemic. Interestingly, Rossmo is reported to have drafted a press release in September 1998 that would have alerted the public to the possibility that a serial killer was responsible for the disappearances on the Downtown Eastside (Kines and Bolan 2002).

The third factor is related to the management of the data generated by the high number of cases of missing women. The large amount of data—which includes reports, investigations, interviews, tips, suspects, and so on—associated with these cases poses a significant investigative challenge for detectives. This was particularly true in this case, since the serial murder theory had not been accepted. In fact, as late as July 2001, when Rossmo sued the Vancouver Police Department for wrongful dismissal, police spokespersons still denied the existence of a serial killer in the cases. The resources needed to conduct a proper investigation eluded police services until shortly before Pickton’s arrest, but were available in excess *after* his arrest. Rossmo suggested that police management’s insistence on treating the case as “a missing persons inquiry instead of a serial murder investigation” (Kines and Bolan 2002) meant that “they didn’t have the resources for this type of case.” He also noted that an arrest was made shortly after resources were dedicated to the case (Kines and Bolan 2002).

The fourth factor that hinders serial murder investigations in general (not only the Pickton case) is detectives’ lack of experience with this type of case. Information gleaned from previous inquiries and academic research literature suggests that there is little effort to educate investigators about the challenges of serial murder cases. At one point, the Vancouver Police Department did send representatives to meet with investigators from the Green River serial murder case in the United States (LePard 2010). We have argued elsewhere that there is a pressing need to find appropriate channels to pass on lessons learned in previous serial murder investigations, and to educate detectives in the complexities of these cases (Fleming and O’Reilly 2010a).

Finally, Rossmo (2009; 2011) has developed an insightful analysis of the cognitive biases and organizational traps that can occur in any major crime investigation, which we believe is of significant value when applied to understanding some of the flaws that occurred in the Pickton investigation. His analysis provides

the compelling argument that detectives may fall into a series of thinking traps that reinforce their own theory of a case, “while ignoring or refusing to search for contradicting evidence” (Rossmo 2009, 17). Thus, if detectives initially viewed these cases as missing women cases, they were more likely to ignore alternative theories, such as the one suggested by Rossmo’s statistical report. Rossmo (2009, 18) also relates that detectives “often fail to account for the absence of evidence.” This is relevant to our analysis of the failed investigative efforts in the Pickton case, since the issue of the lack of either sightings of the missing women, or an in-depth review of evidence that suggested they were dead (aside from Rossmo’s report) would naturally affect investigative approaches. One would have to ask what effort was expended in looking for a possible dump site for their bodies, since the missing women were not considered homicide victims by investigators.

Several other factors are illuminated by Rossmo’s excellent analysis of systemic issues that plague law enforcement institutions (2009, 23–30), including what he terms “inertia, momentum, and roller coasters” (Rossmo 2009, 23). Inertia stems from the inherent nature of police services as agencies that are highly bureaucratic and that demonstrate what he refers to as “an unwillingness to change, evolve, or act” (2009, 23). This is particularly relevant to our interest in how the missing women and their families were ignored, since in this model “marginalized victims” are not prioritized by police. In addition, as Rossmo (2009, 23) points out, “when a response finally does occur, it is often insufficient.” Contrast this with the treatment of a series of garage robberies that occurred in a well-to-do neighbourhood in Vancouver. The police board authorized a \$100,000 reward in this case, but refused to do so in the case of the missing women. Vancouver’s mayor at the time, Philip Owen did not accept a serial killer theory, as this statement illustrates:

“There’s no evidence that a serial killer is at work...No bodies have been found...I don’t think it is appropriate for a big award for a location service.” He (the mayor) scoffed at claims by relatives of the missing women that the prostitutes had close ties to their families and wouldn’t just vanish from the streets. “That’s what they say,” Owen said, “some of these girls have been missing for a year. All of a sudden...it becomes a major event.” (Phillips 1999, cited in Rossmo 2009, 31)

A month later, when the city finally agreed to put up the reward it did so reluctantly, and had the provincial government pledge 70 percent of the reward (Rossmo 2009, 32).

Another factor that can send an investigation in the wrong direction is organizational momentum that is highly resistant to change. To understand this concept, consider the difficulties that would confront a police agency announcing that it was incorrect in its assumptions about a case, and was redirecting its efforts in a completely different direction. This would certainly be the catalyst for the media,

politicians, and the public to question the expertise of the investigators and the competency of senior management. LePard (2010, 329) notes that managers did not want to make such an announcement to the media, since they did not trust it or view it as an investigative tool, a serious flaw that had a negative effect upon past cases, including the Bernardo investigation (Campbell 1996). As history has demonstrated, the media can cooperate with police and play an important role in assisting investigations, but can also wreak havoc with detectives' investigative efforts if there is no fair and consistent media policy (Campbell 1996). As Rossmo (2009, 24) and others (see S. Egger 1990, 2001; Hickey 2010; Keppel and Birnes 2009) have shown, it is a Herculean undertaking to change suspects or the predominant theory being used to explain a crime both internally, because of some investigators' resistance to considering other possibilities, and externally, because of concerns about possible negative public perceptions of the police service and its capabilities.

The reluctance of police investigators to consider other suspects once an investigative strategy has begun to focus on a particular individual (a prime suspect) has been a significant factor in wrongful conviction cases across North America. This is known as the roller-coaster effect. In Canada, the cases of Guy Paul Morin (Makin 1998) and Robert Baltovich (Finkle 2000) are two of the most well-recognized examples. Other secondary suspects are unlikely to re-emerge later in an investigation if they have been discarded early in the process, according to Rossmo (2009, 24). As he points out, cold-case detectives working a crime years later, with no attachment to the predominant (incorrect) theory or to suspects identified in an earlier investigation, are often able to identify the true perpetrator of the crime because they come to the file without bias or the sense that they must strictly adhere to the original investigation's overarching theory.

## **“In Harm’s Way”: Violence Against Aboriginal Women, Police Approaches, and the Families of Victims**

These acts of violence may be motivated by racism, or may be carried out in the expectation that societal indifference to the welfare and safety of Indigenous women will allow the perpetrators to escape justice. (Amnesty International 2004, 5)

In the previous sections of this paper, we have provided an analysis of systemic and other factors that can stall or misdirect a serial murder investigation. We have also tried to demonstrate the politics of neglect that guided both the police and decision-makers in failing to consider the possibility that the missing women were dead and to devote sufficient resources to the investigation. In this section of the paper, we will argue that consequentially, they treated the victims and their families as though they did not matter.

It is no coincidence that the families of Robert Pickton's victims, both Aboriginal and non-Aboriginal, began to question the commitment of both the Vancouver Police Department and the RCMP to solving the cases of their missing loved ones or considering the possibility of a serial killer operating on the Lower Eastside, given the issues we have raised thus far in our paper. In 2002, Karin Joesbury brought a civil suit against the RCMP in relation to the death of her daughter, Andrea Joesbury (Williams and Simmill 2006, 25). In response, the RCMP commissioned two officers, Inspector R. J. Williams and Staff Sergeant K. W. Simmill, to undertake a review of the case, and produce a document "for the purpose of current and anticipated civil litigation" (Williams and Simmill 2006; this line was printed on each page of the document). The RCMP mandate also took into account the possibility that other victims' families may come forward with civil claims.

The Joesbury family contended that the RCMP had failed in its duty to investigate information regarding Pickton's farm in Port Coquitlam over the period 1983 to 2002 that was forthcoming from a variety of sources; that the RCMP had identified the possibility that a serial killer was responsible and had not engaged in a proper investigation; and, finally, that the RCMP did not communicate with other police forces that would have "assisted in detecting Robert Pickton's activities" (Williams and Simmill 2006, 2). The RCMP's response indicated that it perceived no difficulties in communicating and working with the Vancouver Police. The authors of the report argued that this was a project of great "magnitude" and attached "the daily log" to the report to bolster this claim. Williams and Simmill (2006, 23) indicated that new policies on missing persons were being developed as the report was being prepared. In the end, they concluded:

From a global perspective covering the elements outlined at the beginning of this report, we are of the opinion the RCMP acted appropriately and followed up investigative leads, with respect to Robert Pickton.

The reviewers admitted that there was "delay in action" regarding the Pickton case, claiming that this was "caused by many other high profile investigations." They viewed it as "unfortunate that the Coquitlam Detachment's priority pressures precluded this file from receiving *continuous unlimited resources and commitment*" (Williams and Simmill 2006, 26; emphasis added). This raises the question: What case could be of higher priority than one in which dozens of women had disappeared from the streets of Vancouver, in one small area? It also reveals senior management's concern about the costs involved in launching an effective investigation. Given that the document was prepared by the police to defend against possible civil suits, it buttresses a positive view of their own conduct, and cites resource issues and other priorities to explain shortcomings in the investigations. However, as we will note in a later section of the paper, in reviewing the police investigations covering the 1999 to 2002 period, the Oppal Inquiry will

have access to an enormous budget. Given the existence of the Campbell Inquiry (1996), extensive research by academics cited throughout this paper, and the experience of the Olson case, we question whether inquiries have a significant effect on future serial murder investigations given the usual time lag between cases. We contend that police investigators could benefit from consulting with recognized academic experts in the field of serial murder inquiry to avoid some of the pitfalls encountered in the Pickton case. We will return to this topic in our conclusions.

What is most puzzling is the concluding statement of the RCMP review document:

Although this was a complex review, with very unique circumstances, based on our experience and from the interviews conducted, it is suffice to say nothing would have changed dramatically if those involved had to do it over again. (Williams and Simmill 2006, 27)

Where does this conclusion leave us? Certainly one might expect that those involved could reflect on the issues that prevented an earlier identification and arrest of Pickton, rather than bolstering their view that nothing would change if it had to be done again. Others have also questioned the “thoroughness” of a review that runs 27 pages in length, in comparison to the LeParo report (2010) that was prepared for the Vancouver Police Department, which fills 405 pages. Perhaps we can view the report merely as a document meant to defend a position in a civil case, and for which, like the Pickton investigation itself, the resources could not be found to produce a more useful and instructive document.

In 2004, Amnesty International released *Stolen Sisters: A Human Rights Response to Discrimination and Violence Against Indigenous Women in Canada*, a report on violence against Aboriginal women in Canada. This was a response to the concerns of Aboriginal families over the violent victimization of Aboriginal women across Canada. This violence can take any one of a number of forms (see generally, Amnesty International 2004). In our introduction, we alluded to the very difficult plight that faces Aboriginal women entering an urban environment from a reserve setting, and the racism, discrimination, and violence that play a part in the everyday lives of far too many. In its discussion of the Pickton case, the Amnesty International report suggests that the delay in identifying a single serial killer was involved in the disappearance of so many women. It also states, “police and city officials had long denied that there was any pattern to the disappearances or that women were in any particular danger” (Amnesty International 2004, 23).

The case of serial murderer John Martin Crawford, who was convicted of killing three Aboriginal women, is instructive in terms of how these women, and Indigenous women victims of homicide in general, are reduced into the previously discussed category of the “less dead.” As he received an award from the Institute for the Advancement of Aboriginal Women, Warren Goulding (2001),

who wrote a book on the Crawford case, commented, “I don’t get the sense the general public cares much about missing or murdered Aboriginal women. It’s all part of this indifference to the lives of Aboriginal people. They don’t seem to matter as much as white people” (Purdy 2003).

The Aboriginal Justice Inquiry and Implementation Commission also expressed this sentiment, arguing that Indigenous people are “over-policed” but “under-protected” (Chartrand et al. 1999). More disturbing perhaps is their view that “many police have come to view Indigenous people not as a community deserving protection, but a community from which the rest of society must be protected” (Chartrand et al. 1999, quoted in Amnesty International 2004). As Travis (2006) noted, the media has done little to raise public concern about missing or murdered Aboriginal women, since it “either just ‘didn’t care’ or reduced victims to implicitly guilty, drug-addicted prostitutes.” According to Travis (2006), the delays in the police investigation into the missing women’s cases reflected the view that they were “social outcasts... The prevalence of drug addicts and prostitutes among the missing—not to mention Native—rendered them inconsequential.”

This raises another issue—the reluctance of Aboriginal peoples to engage with the police. As the Amnesty International (2004, 80) report argues “many Indigenous people feel they have little reason to trust police and as a consequence are reluctant to turn to police for protection.” Moreover, street prostitutes have the added burden of engaging in a profession in which some of their activities (solicitation and communication) are subject to charge and arrest. CBC associate producer Audrey Huntley, who has documented cases of missing Aboriginal women, found that Aboriginal families of victims “most of the time felt that they hadn’t got the attention (of officials). They were met with a lot of indifference on the part of the police” (Travis 2006). The Supreme Court recently agreed to hear an appeal of a case launched by Lower Eastside sex-trade workers in 2007. The case challenges current laws, which they claim subject prostitutes to an increased risk of violence, since they are reluctant to call police when they encounter violence because it will result in their arrest (Wyld 2011). They are arguing that sex workers are denied the fundamental right to security of the person guaranteed under Canada’s *Charter of Rights and Freedoms*.

The Aboriginal Justice Inquiry of Manitoba, which convened in the 1990s, found that underlying sexist and racist stereotypes about Aboriginal women were pervasive in society. Moreover, the inquiry commented that “sexism and racism contributes (sic) to the assumption in the part of perpetrators of violence against Indigenous women that their actions are justifiable or condoned by society” (cited in Amnesty International 2004). The researchers who completed the Amnesty International report (2004) found that numerous studies that explored Canada’s approach to policing “concluded that Indigenous people as a whole are not getting the protection they deserve.” Of particular significance to this argument are the reports by Aboriginal families that “police failed to act promptly when their sisters or daughters went missing, treated the family disrespectfully, or kept the family in

the dark about how the investigation—*if any*—was proceeding” (Amnesty International 2004, 12; emphasis added). Moreover, incidents were reported to the researchers that were disturbing in light of the inertia of the investigation into the missing women in the Pickton case:

Despite the concern of family members that a missing sister or daughter was in serious danger, police failed to take basic steps such as promptly interviewing family and friends or appealing to the public for information. (Amnesty International 2004, 12)

Overall, police have responded to criticism of the Missing Women Investigation in two ways. First, they have suggested that they acted appropriately, but were constrained by lack of resources and conflicting priorities, and have placed blame on individual police officers. Second, they have suggested that responsibility for the investigation lay with others. The LePard report (2010) argues that the Vancouver Police had a responsibility to apply pressure at a managerial level to the Coquitlam RCMP, with whom, in his opinion, “the legal responsibility for the investigation clearly lay.” However, Vancouver Police did not accept that murders had been committed, claiming that if there were “compelling” evidence of murder it would have applied more resources to the investigation. LePard’s report suggests that “the investigation was plagued by a failure at the VPD’s management level to recognize what it was faced with” (LePard 2010, 4 of “Summary”). LePard (2010) also suggests that responsibility for the failed management of investigation lay with “those in positions of authority in the Coquitlam RCMP and the Provincial Unsolved Homicide Unit.”

LePard’s (2010, 323) report puts forth the “bad apple” theory, suggesting that just a few officers were responsible for the poor overall performance of the department. At the same time, it attempts to lessen criticism of the investigators and management by refocusing the blame on Pickton: “While there were individual police officers whose performance was lacking, the true villain in this tragedy is the suspect” (LePard 2010, 323). This is curious, given the Campbell Inquiry’s (1996) finding that failed serial murder investigations reveal systemic errors. Richard Ericson’s (1993) classic study of detective work, *Making Crime: A Study of Detective Work*, also supports the notion that it is the bad barrel, rather than the bad apple, that must be examined. While it is easy to place blame upon individual police personnel—who are nameless, retired, or deceased—to find a long-term solution, it is more crucial to look at the system that created an environment in which such mistakes could be made. It is suggested that the failures in this case were partially the result of inadequate resources, including a lack of sworn officers and civilian support staff (LePard 2010, 325); this argument resounds in the Williams and Simmill report (2006). We raise the issue of whether the problem is lack of resources, or the failure to use existing resources to their best advantage, which appears to be reflected in Rossmo’s (2010) insider account of the investigation. There is a candid admission that “VPD management failed

to exploit Detective Inspector Kim Rossmo's talents when needed most but this scarcely excuses the refusal of upper-level officers to consider the ramifications of his 1999 report" (LePard 2010, 328).

In the end, the LePard report (2010, 316) concludes that "the investigation of Pickton prior to February 2002 was inadequate and a failure of major case management." However, one must remember that Pickton was *arrested* in that month; therefore, the investigation, despite its cost and thoroughness, was to *recover* evidence from his farm and other sources sufficient to identify his victims and convict him of murder. It appears that enormous resources suddenly became available for forensic evidence gathering only when the enormity of Pickton's crimes was realized, and public and political interest became focused upon the case. In contrast, when women were disappearing from the Lower Eastside, neither the Vancouver Police Department nor the RCMP raised an alarm to find the resources to *prevent* more women from disappearing. Given their experience with the Olson serial murder investigation in the late 1970s and early 1980s, the results of the Campbell Inquiry (1996), and Rossmo's (1999) statistical analysis of the disappearances, both police agencies should have considered making a request for the resources needed to meet the investigative challenges. However, as LePard (2010, 329) notes, the media strategy on the disappearances "was being driven—or at least influenced—by managers who either didn't believe in the serial killer theory, or felt that publicly acknowledging *a serial killer would only create more problems, or both*" (emphasis added).

## Limiting Voices and Limiting Scope: The Oppal Inquiry and Aboriginal People

The critical difference is racism. We are born to it and spend our lives facing it. Racism lies at the root of our life experiences. The effect is violence, violence against us, and in turn our own violence. (Chartrand et al. 1999)

As previously discussed, as early as 2002, Kim Rossmo and Doug McKay-Dunn, a retired inspector, called for an inquiry into the problems with the Missing Women Investigation. In fact, Rossmo is cited as saying that "any effort to delay an inquiry until after the current criminal investigation is 'clearly a stalling tactic'" (Kines and Bolan 2002). Nine years passed before an inquiry was launched in January 2011. Several critical problems with this inquiry have been raised by Aboriginal chiefs, elders, and Aboriginal peoples.

First, the scope of the inquiry is limited to police actions over a defined historical period, 1999 to 2002. This limitation has been the subject of considerable criticism from Aboriginal leaders and others (Keller 2011). While Commissioner Oppal later recommended a wider scope for the inquiry, broadening it

into a “study and hearing commission,” as we shall learn, access to resources will prevent Aboriginal groups from being heard in an effective way.

Chiefs have also questioned the appointment of Mr. Oppal, who has “many ties to the Liberals,” and formerly served as attorney general of British Columbia (Mulgrew 2010). Stewart Phillip, president of the Union of British Columbia Indian Chiefs questioned why the Government of British Columbia did not consult with “Aboriginal and women’s organizations about the terms of reference” (Mulgrew 2010). Given that Mr. Oppal was part of the government, some have questioned the appearance of his appointment: “There is a perception there may not be independence there...Perceptions, whether reality or not, cause concern” (James, cited in Mulgrew 2010). Given the Aboriginal status of many of the victims, and the importance of the issues surrounding violence against Aboriginal women in British Columbia, we question why co-commissioners were not appointed from the ranks of Aboriginal chiefs and elders. This would have gone a long way to ensuring that Aboriginal voices were acknowledged. From an Aboriginal justice perspective, consultation with Aboriginal chiefs, elders, and victims’ families should have been undertaken by the Government of British Columbia before it appointed a commissioner, regardless of his excellent credentials. Excluding Aboriginal chiefs and elders as decision-makers sends the inappropriate message that those from the dominant culture can evaluate the facts surrounding the issues, make decisions, and render judgments without the participation of Aboriginal persons as equal judges or commissioners.

While the Oppal Inquiry will listen to various groups and individuals through the medium of community forums, it does not have a specific mandate to address wider issues of violence against Aboriginal women in the province, including the thirty-two unsolved murders on the Highway of Tears. Stewart Phillip criticized the community forums, since “there is no obligation to document the information and comments brought forward at public sessions.” In his opinion, they will “have no impact” (Matas 2011).

A major—but perhaps not unexpected—blow to the Aboriginal community occurred when the Government of British Columbia denied funding to Aboriginal groups and sex-trade workers to cover their legal costs in relation the inquiry. The solution offered by Mr. Oppal appears to be “finding lawyers willing to work for free” (Keller 2011). While the inquiry argues that people will be heard despite not having funding, we question how these groups can make effective presentations on substantive issues when they either have no access to legal representation or are dependent upon the pro bono generosity of lawyers. This creates a classic David versus Goliath scenario. Given the complexity of the issues and the resources necessary to draw up submissions and factums, what lawyer or firm could responsibly take on representation and hope to do an adequate job against the massive legal representation and financial resources of the government-funded agencies at the centre of the inquiry? While we acknowledge the significant amount of quality work done pro bono by lawyers in Canada, we are also

aware of the enormous financial costs and the personal commitment of time and resources required to do a satisfactory job representing groups who want to make submissions. We contend that it is unrealistic to assume that pro bono representation will adequately ensure that all voices are heard and that truth is forthcoming. David Eby, executive director of the B.C. Civil Liberties Association, reflected on the fundamental inequity between government agencies and the affected: “There are lawyers on the government’s side representing everyone from the RCMP to the VPD to the criminal justice branch, who are basically saying that there were no problems or if there were problems, they’ve been fixed—and *they’ve all got full government funding*” (Keller 2011; Sahajpal 2011; emphasis added).

The decision not to provide funding appears even more ominous given the RCMP’s own suggestion that there is little doubt it “attempted to exhaust all investigative avenues relative to the suspect” (Williams and Simmill 2006; Matas 2011), and that the Vancouver Police directed responsibility to the RCMP Coquitlam detachment and the Provincial Homicide Unit. It also supports Rossmo’s 2002 comment regarding delaying tactics being used in bringing forward the inquiry. It can be suggested that refusing to provide funding to Aboriginal groups hardly provides an even playing field and will, in fact, severely limit their ability to bring forward issues for consideration, thus ensuring that silence envelopes their concerns. As Sahajpal (2011) notes, “By not allowing these advocacy groups to have their voice heard, the tragedy continues,” and for us, only the silence remains.

## **Recommendations**

The objectives of this paper were to provide an analysis of flaws in the police investigation into the Lower Eastside Missing Women Case, and to further our understanding of police attitudes towards Aboriginal victims and their families. We hope it is evident that there must be a serious evaluation of police action, and lack of action, in this investigation. This evaluation should be conducted by independent researchers recruited from outside of the policing agencies responsible for this investigation. In our opinion, the direct involvement of Aboriginal leaders and elders as both equal adjudicators and investigators is absolutely critical to the success and acceptability of its results and recommendations for Aboriginal peoples. We also argue that there is a need for changes to police investigative protocol in possible serial murder cases to avoid the major pitfalls and traps that thwarted this investigation. Specifically, given the analysis in this paper, we recommend:

1. Police officers and civilian staff receive training that will permit them to deal with the families of Aboriginal victims of crime in a respectful manner, taking their concerns seriously and reporting back to them in a timely manner.

2. Police make use of academic researchers and resources to further their knowledge of bodies of existing research on investigative issues and specific offender patterns to avoid the investigative traps that plagued this investigation (Rossmo 2009; Fleming and O'Reilly 2011).
3. In light of Amnesty International's report (2004), issues of racism in police dealings with Aboriginal victims and families of victims should be further investigated by researchers. The results of this research should be conveyed to the Canadian Association of Chiefs of Police nationally for immediate ameliorative action.
4. Nationally, homicide detectives should have regular opportunities for networking and education on serial crimes, which could be accomplished through conferences. This would allow them to be informed about research, and investigative experience and techniques, as well as potential pitfalls in investigations. In this way, direct investigative experience could be handed down through generations of investigators.

Our genuine belief is that these recommendations, if acted upon, would have a positive impact on future investigations of serial crimes and lift the veil of silence.

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