Tracing knowledge and the law: The Missing Women Commission of Inquiry

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Abstract

In response to public concern over the prolonged serial killings of Vancouver’s Missing Women, in 2010 British Columbia’s provincial government called a public inquiry into the police investigation of Robert William Pickton, the convicted murderer of six women from Vancouver’s Downtown Eastside. Commissions of Inquiry advocates suggest that the quasi-legal framework makes it an ideal tool for exploring this case of juridico-political silence. As an inclusive and collaborative process, public inquiries create a space for hearing the voices that might be silenced in a formal trial. And yet, accounts of the Missing Women Commission of Inquiry (MWCI) suggest that it was a highly divisive and exclusionary process. This thesis explores the empirical details of the MWCI asking how modes of knowledge production are mobilized within the legal space it generates and with what effect. Drawing on inquiry transcripts, interviews with legal professionals and community organizers, and theoretical contributions from critical legal studies, performance studies, and archive theory, I query the epistemological and ontological exclusions that shaped the MWCI and their rootedness in naturalized legal codes and categories.
Preface

The research conducted in this thesis was approved by the University of British Columbia Behavioural Research Ethics Board, certificate number H12-01621.
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List of abbreviations

Downtown Eastside (DTES)

Missing Women Commission of Inquiry (MWCI)

Royal Canadian Mounted Police (RCMP)

Vancouver Police Department (VPD)
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Dedication

To my sister Rosemary, for the endless hours of absorbing conversation.
Chapter 1: Introduction

State commissions of inquiry are curious beasts. They are both of the state and authorized by notables outside their jurisdiction ... As morality tales, they powerfully sanction the limits of state responsibility as they reached into intimate and other social spaces that extend the state’s authority. As genres of documentation, they tended to employ certain writerly conventions, techniques of persuasion, and forms of evidence that combined a passion for numbers with the numbing bulk of repetition and the pathos of vignette.

- Ann Laura Stoler 2009, 141-142

1.1 Setting the scene

Around midnight on March 22, 1997, Robert William Pickton drove into Vancouver’s Downtown Eastside (DTES) from his Port Coquitlam home and picked up Ms. Anderson,¹ a survival sex worker, as she was hitchhiking her way to the neighbourhood’s Princeton Hotel.² Lured into his red pick-up truck with the promise of $100 dollars and a ride back to the DTES by 2am, Anderson eventually agreed to the 40-minute drive back to Pickton’s trailer. When they arrived, Pickton withheld payment until after she performed the promised sexual acts. Soon thereafter, having refused Anderson a phone call, Pickton grabbed her hand, and, stroking it, put a handcuff on her left wrist. Spotting a knife on the counter, Anderson slashed Pickton across his jugular; she later told investigators she knew she was fighting for her life. “[I thought], ‘that’s it, I’m history’. He’s got me now. ... And then I just, I went just like I seen red. I went ballistic” (Oppal 2012, 33). In the struggle that ensued, both Pickton and Anderson sustained multiple knife wounds. “He put the knife in me and then he lifted it up,” Anderson told her interviewers. “[I thought] I’m done. I’m stabbed, I’m gonna [sic] die” (Ibid). Weak from blood loss, Pickton

¹ Ms. Anderson is a pseudonym. Her real name is subject to a publication ban.
² Many of the details here come from a 1 hour, 12 minute interview of Ms. Anderson by two RCMP officers on the morning of March 27, 1997, four days after the incident, selectively recorded in the Missing Women Commission of Inquiry final report (Oppal 2012). Conducted in the hospital while she was still in significant pain, this was the only interview conducted of Ms. Anderson by police.
collapsed; seeing her chance, Anderson slid out from under his body and, bleeding, the handcuffs still dangling from her left wrist, fled to the road where she was picked up by a passing car and taken to a nearby hospital. Pickton arrived at the same hospital shortly after her; they were covered in each other’s blood, the key to Anderson’s handcuffs in Pickton’s pocket. Anderson was unconscious for four days in the hospital and effectively died multiple times on the operating table, having lost three litres of blood (Cameron 2010). Pickton was released from the hospital on March 28th and four days later, following an investigation by the Coquitlam police force, was arrested and charged with attempted murder, assault with a weapon, forcible confinement, and aggravated assault. Following his bail hearing, a trial was set for February 2, 1998.

According to Randi Connor, crown counsel assigned to the case, Anderson proved an unpredictable and unreliable witness in the months following the incident. “To the best of my recollection,” Connor said, “my impression was that [Ms. Anderson] was under the influence of drugs. I recall that she was nodding off and I recall that she was not able to articulate the evidence. She was in bad shape” (Missing Women Commission of Inquiry transcripts April 10 2012, 85). Despite the administrative crown’s conclusion that there was sufficient evidence to meet the requirements under the Charge Approval Policy and testimony by investigating officers that Anderson’s story was believable and that they had “no misgivings” (in Oppal 2012, 36) that she would attend court when the trial was scheduled, on January 26, 1998, after only one meeting with Anderson, Connor entered a stay of proceedings, dropping all charges against Pickton. Concluding that Anderson “could not articulate the evidence in a way … considered necessary for the trial” (Oppal 2012, 38) and that her history of petty criminal activity would delegitimize her as a witness (Jo 2012), Anderson’s story was denied telling under the law, the
weight of her illegibility overwhelming substantial material evidence. Deputy Constable Lori Shenher put it perhaps most succinctly: “as morbid a though as it is, had she died, you know, we probably would have had a slam dunk murder conviction without her testimony” (MWCI transcripts January 30 2012, 97).

Anderson is one among dozens of survival sex workers assaulted, disappeared, and murdered with apparent impunity in Vancouver’s DTES, cases dating back as far as the 1970s (Pratt 2005; Cameron 2010). Colloquially dubbed ‘Canada’s poorest postal code’, infamous for its high rates of drug use, prostitution, and homelessness, and well-known for the disproportionately large First Nations community that calls the neighbourhood home, media representations of the DTES “tend to be uniformly negative and sensational. Rather than presenting its complexities … media regularly present the Downtown Eastside as the epicenter of a national crisis” (Pratt 2005, 1062), “a gloomy ghetto of misery, destitution and squalor” (Vancouver Sun, quoted in Liu & Blomley 2013, 119). These discursive articulations have material consequences; “representations that circulate in the journalistic field contribute to fashioning reality to the extent – which is never negligible – that they influence the ways in which the latter is perceived, managed, and experienced, both by those in charge of the bureaucratic oversight of ‘social problems’ and by those who are the target of their interventions” (Wacquant 2007, 142). The enactment of territorial stigmatization, in other words, produces the appearance of that which it names: a dangerous, destitute underclass (Liu & Blomley 2013). In the DTES, these representations have worked to generate a criminalized

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3 Data from the 2006 Statistics Canada Census puts the number at 10% of total DTES residents (as compared to two percent in Vancouver) (City of Vancouver 2012). If we consider the Aboriginal street-involved population, however, the numbers shift significantly. In this category, Aboriginal women account for between 30% and 70% of the population, numbers differing based on research sample size and method (Lowman, Missing Women Commission of Inquiry transcripts October 13 2011, 122).
community, a legal and policing ‘problem’ rife with rampant criminal activity (Liu & Blomley 2013). For at least two decades the construction of such geographies was mobilized by the Vancouver Police Department (VPD) and the Royal Canadian Mounted Police (RCMP) to justify the government’s juridico-political silence in cases like Anderson’s, among untold others. The women reported missing and murdered by their friends and families were transient, addicted, and criminal, the police reasoned. They had left the area and they did not want to be found. As then-mayor Philip Owen put it: “We are not running a location service” (quoted in de Vries 2003, 217). By inhabiting spaces of violence these women were inviting violence into their own lives. Victims of their own creation, they appeared first as criminals, as individually to blame for their precarious existence (Razack 2000), and thus as impossible subjects of legal justice.

Finally, in 1998, amidst growing anger over police inaction and mounting evidence of a serial killer operating in the DTES, the VPD and RCMP initiated a joint investigation into the alarming rate of disappearances. In 2002, almost five years later, police arrested Anderson’s alleged aggressor, Robert William Pickton, when a search of his pig farm on an unrelated firearms warrant turned up evidence linking him to multiple women on the now extensive Missing Women’s List. Following his arrest, Pickton admitted to an undercover officer posing as his cellmate to torturing and killing 49 women, each of them sex workers and drug users, many of them Aboriginal (Cameron 2010). Following one of the most costly and large-scale investigations in Canadian history, in 2006 Pickton was charged with 26 counts of first-degree murder. During a lengthy pre-trial hearing, the judge ruled that proceeding on all counts would unduly burden the jury and the cases were split into two groups; the charges in Anderson’s case

4 Their appearance as subject to but never subjects of the law was expressed during the earliest moments of the investigation in the use of mug shots in the missing women’s posters, material representations of their perceived criminality.
having been dropped nearly a decade earlier, she would not be allowed to testify. In 2007, the
crown proceeded with six charges, all cases where the women’s remains had been found on the
farm. These women are Marnie Frey, Georgina Papin, Andrea Josebury, Brenda Wolf, Mona
Wilson, and Sereena Abotsway. Later the same year, Pickton was convicted of second-degree\textsuperscript{5} murder on all six counts and sentenced to life in prison. In 2010, he was denied his final appeal
by the Supreme Court of Canada.

On February 26th, 2008, then Attorney-General Wally Oppal announced that “[i]t would
not be in the public interest to proceed further against a person who is already serving six life
terms with no eligibility of parole for a minimum of 25 years” (Hunter 2010) and the remaining
20 charges against Pickton were dropped. Family members of these women were outraged. “We
want to know why the government feels that the murders and lives of these girls are not
important enough to proceed with a trial,” Lori-Ann Ellis\textsuperscript{6} told the Canadian Press. “Six of the 26
were given justice, they were given their day in court. That’s something this family will never
have” (Ibid). In response to growing public demand for answers to such lingering questions, on
September 9, 2010, the Lieutenant Governor in Council of B.C. announced a public inquiry into
the handling of the missing women case. The same Wally Oppal was named commissioner. Well
known as a former Liberal Party MLA,\textsuperscript{7} judge, recent Attorney-General, and commissioner for
the Oppal Inquiry into policing in B.C., Oppal was a highly controversial choice. In an August 6
interview with CBC’s Rick Cluff, less than two months ahead of his appointment as
commissioner, Oppal questioned the need for a public inquiry, saying that they are often

\textsuperscript{5} The downgrading of first- to second-degree murder is largely a result of the decision by the pre-trial judge not to
allow Anderson’s testimony, which could have shown that the murders were pre-meditated (Cameron 2010).
\textsuperscript{6} Lori-Ann Ellis is sister in law to Carrie Ellis, who was among the 20 outstanding cases.
\textsuperscript{7} During his tenure, Oppal worked with many of the people in power while the Pickton investigation unfolded.
expensive and that many of the concerns could be addressed by the police themselves. “[M]erely because things didn’t go the way they should have gone doesn’t necessarily mean we should embark on a lengthy inquiry,” he told Cluff (in Smith 2010). Together with his insider status, his seeming lack of dedication to the inquiry process generated much skepticism about his ‘independence’ and the government’s commitment to the MWCI (Walia 2011; Jo 2013; Francis 2012).

Officially convened September 27, 2010, the inquiry was tasked with five main objectives: to inquire into and make findings of fact respecting police investigations into women reported missing from the DTES between January 23, 1997 and February 5, 2002; to inquire into and make findings of fact respecting the decision to stay proceedings on charges of attempted murder against Pickton in 1998 (Ms. Anderson’s case); to recommend changes considered necessary respecting the initiation and conduct of investigations in B.C. of missing women and suspected multiple homicides; to recommend changes considered necessary respecting homicide investigations by more than one investigating organization in B.C.; and to submit a final report to the Attorney-General by November 30th 2012 (MWCI 2013). The dual mandates of ‘inquiring into and making findings of fact’ and ‘recommending changes’ were addressed through the establishment of both a hearing and a study/policy commission. Whereas the Public Inquiry Act sets out the study commission as a flexible research and community consultation process, the hearing commission allows the commissioner to receive and compel submissions and evidence under oath or affirmation and make findings of misconduct: in effect, a much more rigorous, legal fact-finding practice (Oppal, MWCI transcripts October 11 2011). It is on the hearing commission that the following chapters are focused, both as the public stage upon which justice
was seen to be done in the names of the missing and murdered women and as the principal evidentiary source.

As the “first inquiry of its kind that will seek answers to help the police address [the] ubiquitous tragedy of [missing and murdered women]” (Oppal, MWCI transcripts October 11 2011, 11-12), the relevance of the MWCI far exceeds is geographic and temporal boundaries. Forwarded by Oppal in his opening comments as a “tremendous opportunity … [to] show the rest of the country and the world that women’s safety and equal access to the protection of the police and the law is paramount to a just society (Ibid, 5), the MWCI has been earmarked as a model for future inquiries into systemic gender and race violence in Canada. This renders an analysis of the MWCI paramount. Determinations made by Oppal and his staff will reverberate not only in the collective social memory of this event, concretized in the archives, but also as a series of decisions that will inform public policy and the concrescence of future commissions with implications for both inquiry participants and for those whose lived experiences comprise the subject of its investigations.

Though the final report and the translation of its recommendations into public policy are undoubtedly important sites of study, in the following chapters I focus almost exclusively on the evidentiary hearings, allowing the distinction between these two sites, emphasized repeatedly by my interviewees, to stand. This is not to deny the centrality of the 1,448-page report to instances of justice and reconciliation or its potential effects for survival sex trade workers living or working in the DTES; I touch on these briefly in the conclusion. Rather, I have chosen to dwell in the intricacies of legal procedure so as to better understand how legal meaning is generated

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8 There was significant uncertainly among my interviewees about the political reception of Oppal’s report, and whether or not its suggestions would be translated into public policy. Recommendations made by Canadian Commissions of Inquiry are not binding, and often do not find purchase in practice.
and with what effect. Drawing on MWCI transcripts, interview material, my attendance at the inquiry sessions, and theoretical contributions from critical legal studies, performance studies, and archive theory in particular, this thesis queries the knowledge-based exclusions that shaped the MWCI, interrogating their rootedness in naturalized legal codes and categories; the material and discursive worlds they produce; and the bodies, expressions, and knowledge forms that inhabit these worlds. As one interviewee put it to me, I ask: “Who gets to play?” (Francis 2012). Throughout I take the empirical contributions of my research interlocutors as paramount, looking to them for what they reveal about the particular circulation of power and its detailed applications. Though I engage a sustained critique of the MWCI, this project does not seek to answer whether this commission – nor Canadian Commissions of Inquiry in general – is good or bad, an overall success or failure. Interviews suggest that it was many different things to different people at different scales of analysis. Instead, in the following pages I hope to move beyond utilitarian and operational questions about efficacy to look at the MWCI as a multifaceted exercise in inclusion, exclusion, resistance, performance, embodiment, preservation, knowledge-production, and memory-making.

1.2 Organization of the thesis

I proceed from here in three parts, each prompted by a story pinpointed by my interviewees as central to the progression of the MWCI. In chapter 1, this is the moment that Wally Oppal announced that service and advocacy groups granted participant status by the commission but denied funding for legal representation by Attorney-General Shirley Bond would be represented instead by two independent counsel: Robyn Gervais for ‘Aboriginal Interests’ and Jason Gratl for the ‘Downtown Eastside Community’. Appointed without consultation with affected groups, Oppal’s decision precipitated a deluge of bad press and,
significantly, the withdrawal of the Union of B.C. Indian Chiefs, the Native Women’s
Association of Canada, the B.C. Civil Liberties Association, and Amnesty International, among
other keystone organizations. Taking the exclusion of these groups as my entry point, in chapter
1 I explore how the law at work in the MWCI – at once product of longstanding legal norms and
of the specific decisions made by Oppal and his staff – codes and categorizes bodies and
knowledges in particular ways so as to render them intelligible to the commission. Specifically, I
explore the naturalization in legal spheres and articulation in the MWCI of a principal
dichotomous category: that of the ‘expert’ and the ‘non-expert’, asking how legal exclusion is
mobilized around a politics of knowledge production.

If chapter 1 involves an examination of the exclusionary power of the law at work in the
MWCI, chapter 2 seeks to re-locate agency, looking to two actors in particular who, by refusing
to conform to the ontological and epistemological expectations imposed by legal process,
illuminate juridical norms as always already unstable, unfixed, and ongoing. Here, I explore
illegibility and incoherence as embodied resistance, as an interruption of the iterative
reproduction of norms integral to the perpetuation of dominant hierarchies of power. In and
through their performative occupation of the law’s unintelligible ‘outside’, these bodies uncover
the precarity of law as a universal site of justice, elucidating the potential of such resistance to
alter the field of possible actions and engender alternative legal imaginaries. Insofar as the
inquiry shaped participation, then, as considered in chapter 1, this second chapter looks to
disruptive performances for how they, in turn, influence interactions with and experiences of
space and law.

A juridico-political exercise that by some estimates generated over two million pages of
materials (Tobias, MWCI transcripts February 6 2012, 8), the MWCI bears interrogation for its
practices and processes of documentation, preservation, and entextualization. In the third and final substantive chapter, I take the story of a report on institutional racism never entered into evidence as my ingress to the archive as a significant, but often overlooked, site of legal authority. Following Ann Laura Stoler among other archive theory scholars, I engage “archiving-as-process rather than archives-as-things” (Stoler 2009, 20), situating my analysis at the cloverleaf of power, documentation, knowledge, and memory. Troubling the traditional notion of The Archive as a site of objective truth depends upon a careful interrogation of the detailed applications of power at work in the archival process. As in the two previous chapters, I look to the empirical offerings of my interviewees, the MWCI transcripts, and news media as essential sources of knowledge and insight.

1.3 Law, geography, and the constitutive outside

Each of these chapters finds resonance within the broader field of legal geography. Though conventionally engaged as distinct intellectual territories (Delaney 2004), interest in the border zone between law and space has pushed critical legal geographers to think these epistemological sites together. Initially consisting, in large part, of bridge-building and translating “theoretical-cum-methodological conversations between two disciplines” (Ibid, 850), recent scholarship has started to develop a conceptual language that pushes beyond the law/space binary, impelling urgent questions about the co-constitution of these spheres. What difference does space make for the analysis and experience of law? What difference does law make for understandings and experiences of space and place? Together, what difference do space and law make? I treat space in the following pages both physically and metaphorically, looking to embodied experiences of exclusion and inclusion, to the infrastructures within which the law is housed and reproduced, to the boundaries and categories through which bodies acquire meaning,
and to more discursive understandings of the inquiry as a place of reconciliation, violence, justice, memory, or expertise. These interpretations, material and imagined, are never separable from one other; together, they inform our experiences of space, of the inquiry. Emergent from the co-mingling of critical legal and geographical studies, of the material and the discursive, two concepts thread their way through this thesis, bearing brief explanation here: Nicholas Blomley’s ‘splice’ and David Delaney’s ‘nomosphere’.

“The world,” Blomley (2003) writes, “is not given to us, but is actively made through orderings which offer powerful ‘maps’ of the social world, classifying, coding, and categorizing. In so doing, a particular reality is created” (29). Enactments of law and space are vital to this process of ordering and meaning making, boundaries delineating inside from outside and public from private, the law disciplining and encoding these spaces through the authorization of appropriate epistemological and ontological acts. Put otherwise, it is in place, ever-contextually, that space and law co-mingle, giving rise to particular social categories – mother, daughter, prostitute, drug user, lawyer, judge – with material implications for the lived experience of the subject. Blomley proposes thinking this inexorable entanglement of spatial and legal categories in terms of ‘splices’ or ‘splicings’. “As a noun,” he writes, “[the splice] alerts us to the particular and apparently stable arrangements produced through law and space. In part, perhaps, because of the apparent stability and objectivity of law and space, such arrangements acquire an air of fixity and naturalness” (2008, 162). The local origins of legal and geographical imaginaries are obfuscated in this noun, which comes to appear as “simply part of the order of things, and thus as non-negotiable” (Blomley 2003, 30). Thus, for example, do juridico-spatial terms such as ‘Downtown Eastside’ and ‘prostitute’ come to appear as abstract and pre-given, the abject, violent space of the DTES melting into the corporal space of the survival sex worker, who is
blamed for her own location (Sanchez 2001, 2004; Blomley 2003; Razack 2000). The intricate histories and ongoing making of these sites are lost in the naturalization of their meaning, in their reproduction as inevitably that which they are imagined to be (abject, violent, in crisis).

Calling attention to the infinite ways that space and law combine to interpellate one another, splice as noun thus sets us the important task of identifying dominant juridico-spatial arrangements, representations, and figures. As a verb, however, ‘splice’ pushes us one step further, pointing “to the necessary mobilizations, enrollments, and everyday ‘doings’ that such arrangements require” (Blomley 2008, 162). The noun, here, emerges as contingent upon the iterative reproduction of its verb form: upon the technologies, discourses, and practices of thinking and doing law and space. For categories of ‘expert’ and ‘non-expert’ to sustain legal meaning and disciplinary power, for example, requires repeated enactments in both everyday and specialized registers: in courtroom debates over the admittance and valuation of evidence; in the translation of victim narratives into academic reports and publications; in the coaching of clients by their legal representatives; or in Oppal’s appointment of independent counsel. Both space and law are enacted by these splicings, the courtroom and the corporeal space of the expert emerging as sites of the objective, factual, and rational truth seen to be engendered by law. Thought of in this way, “as achievements rather than facts” (Blomley 2003, 32), it becomes possible to think the resplicing or unsplicing of oppressive juridico-spatial arrangements. The ‘doings’ upon which splicing relies contain within themselves the possibility of interruption, expansion, subversion, transformation, intervention, and disruption. This recognition prompts a parallel reconceptualization of power, not as something stored or held in reserve, but as always “of the moment, something that has to be continuously reproduced over time” (Allen 2003, 111; Blomley 2008).
These splices are ubiquitous in our world. They inform our interactions with territory and public/private spaces, with infrastructure, technology, food, and markets, with others, human and non-human. Juridico-spatial meanings rub off on our bodies to code and categorize us: racially, in terms of gender and sexuality, as citizens, squatters, employees, tenants, students, welfare recipients, property owners, drug users, and so on; these categories inform our bodily comportment, our imaginaries and imaginations just as these comportments are fundamental components of juridico-spatial settings (Delaney 2010). It is these material and social spaces that we inhabit and constitute that Delaney calls ‘the nomosphere’, a complementary approach to Blomley’s challenge that looks to “the ways in which these (spatiolegal) representations are imbricated with elements of the (spatiolegal) material world” (2004, 851). From the root nomos, meaning law, the idea of the nomosphere provides a vocabulary for thinking about “the gossamer filaments that connect our embodied lives to specific fragments of the world” (Ibid), referring as much to our heterogeneous material lifeworlds as to the discursive and representational practices through which these worlds are imagined, constituted, and transformed. Conceived either as a singularity (the nomosphere) or in terms of its more specific or localized ‘nomic settings’ (the courtroom, the Missing Women Commission of Inquiry, the Downtown Eastside, the home), the nomosphere and its traces “are always shaping the horizons of our situations, always influencing the unfoldings of our situated experiences” (Delaney 2010, 41). While splice draws our attention to the irreducible intermingling of law and space, then, the nomosphere insists we remain at the same time attentive to the co-constitution of the discursive and the material. The law matters, as Judith Butler might say, in both senses of the word: it has significance and it materializes.

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9 Although in some cases the ‘nomopsheric’ (adjective form) and ‘the legal’ are almost interchangeable, they are not isomorphic, the former much being much broader in that its elements may be sub- or extra-legal, informal, or tacit (in addition to formal, explicit, and so on).
Just as the Missing Women Commission of Inquiry is simultaneously a legal and a spatial category, then, so too does it gain meaning through the giving, taking, and transcribing of evidence; through the infrastructure and the built environment of the inquiry building; through the embodied practices of lawyers and judges, and so on, all of which confer “a quantum of power that circulates within and beyond that space” (Delaney 2004, 855). On the eighth floor of the federal courthouse at 701 West Georgia Street, a long fifteen blocks from the heart of the DTES, the MWCI accumulated as a highly unwelcome space. Courtroom guards stood outside the doors to room 801, while on any given day attendees could “observe at least 11 uniformed members of the VPD downstairs at the entrance to this building … at least eight more than the number they assigned to the missing women cases in the first few phases of their investigation” (Ward, MWCI transcripts October 11 2011, 110). Inside the doors, Oppal, situated at the top of a raised platform, looked down at the ‘audience’ two levels below, seated behind a wooden spindle railing. Between them, facing Oppal, their backs to the crowd, legions of suited lawyers hovered over the shoulders of their clients, settled behind tables and desks. Walking into the room, the hierarchy inscribed in the organization and inhabitation of the space was palpable. Symbols of a long history of well-founded mistrust of policing bodies by DTES residents, the presence of law enforcement officials, lawyers, and Oppal’s judge-like figure in a room so representative of the judicial arm of the state all but ensured that community’s absence.

Under the rubric of legal geography, then, conceptions and enactments of space and law – both material (for example the physical space of the courtroom) and metaphorical (for example spaces of juridical ‘expertise’) – become key to the routinization of systematic exclusions. The spaces in which stories are told and performances performed matter to their expression, law splicing with space to facilitate the translation and circulation of particular modes of knowledge.
production and to silence others. Treated as abstract, inert, and prepolitical, splices appear to have their own rules, and not the rules constructed for them. The order of law depends on this abstraction, on the difference between order and violence, the ideal and the actual, the universal and the exceptional, the latter category in each binary necessarily denounced and excluded by a juridical logic that must be applicable everywhere and rooted nowhere (Mitchell 2002).

In reality, this logic is inextricably tied up in specific, too often forgotten histories of violence, dispossession, and erasure. During the early years of colonialism in the West, the construction of a European legal identity entailed the mapping of the colonial subject as a form from which the positivity of Western law and subjecthood could be derived. Laws enacted during this time actively reproduced and naturalized the assumed value of the Western norm, embodied in the white, civilized, rational, propertied male (Blomley 2003; Keyssar 2009; Goldberg 1993). Decisions to severely punish First Nations’ practices, including socio-legal practices, explicitly intended to diminish to the point of complete abolition alternative modes of thinking and being in the world. ‘White laws’ rendering criminal traditional sacred and ceremonial practices, such as the legal ban on the potlatch imposed in 1884 and not lifted until 1951, were repeatedly bolstered by changes in the Indian Act, which sought to eliminate “the Indian problem” plaguing the colonies (Fournier & Crey 1997, 54). Effectively rendering “all aboriginal people children before the law, legal wards of the Crown” (Ibid), the Indian Affairs Department enacted a violent juridical colonialism, one central to the articulation of a legal system within which our present legal regime finds its roots. Thus, in the West, did First Nations’ ontologies and epistemologies emerge as a foil for establishing and abstracting a Western legal code, which normalized and naturalized that which they were not. Assimilation became at once productive of the norm and the other, the former positioned within the law as the
rational, law-abiding citizen, the latter as the law’s outside. Difference, in other words, was positioned and produced relative to a singular conception of the law through law, particular circumstance abstracted to a general governing principle (Mitchell 2002).

And yet, though always conceived as absolutely different from it, that which stands outside the established norm is nevertheless internal and necessary to its constitution: what Judith Butler (1993), following Derrida, calls the constitutive outside. While disorder, on law’s part, cannot be located within the law itself, sources of disorder must exist against which an ordering law is intrinsically set (Fitzpatrick 1992; Mitchell 2002). Put another way, law requires the construction of a constitutive outside with reference to which it sets itself apart. The figure of the other was and continues to be deployed as a referent for recognizing the ordering power of the law, for order accrues in spaces, bodies, and knowledges that these others do not inhabit or possess. This process of othering is ineluctably reproduced, the naming of the other necessary for the repeated inculcation of the norm (Butler 1993; Wright 2006). Cloaking themselves in the name of the standard, the timeless, the a priori, splices imprint the exclusions they produce with their trademark signs of natural and intrinsic otherness.

Of interest to the questions I pose in the pages that follow, the emergence of law’s inside – ‘black letter law’ – has relied on the violent policing of, among other targets, alternative modes of knowledge production. Residential schools, symbols of settler colonialism in North America, enacted an epistemological imperialism that positioned settler knowledge systems as exclusively legitimate. Aboriginal children, removed from their communities, were forced to conform to the integrity and legitimacy of one language (English or French), one culture (European), one frame of reference (Christian, Western) (Battiste 2004; Fournier & Crey 1997). Severely punished for talking in their own language, taking part in traditional and ceremonial activities, and speaking
out about their ongoing abuse, Aboriginal children were indoctrinated through an ‘education’
regime that sought to “kill the Indian in the child” (Fournier & Crey 1997, 47). Thus did a
hierarchy of knowledge develop, one that defined itself in singular, positive, and univocal form
against the supposed ignorance and parochialism associated with the plural, contextually-rooted
knowledge systems of the other (Battiste 2004). It is a hierarchy that lingers and is reproduced
today in quotidian registers: in the ascendancy of science as a means of understanding,
interpreting, and interacting with the world; in school curricula; and, among other sites, in
normalized conceptions and practices of law, which hold objectivity, ‘fact’, and rationality as
requisite epistemological conditions.

It is within this context that I work to understand the law circulating within the MWCI
space, an engagement with the politics of knowledge production that, as law’s tangled history
would suggest, finds echo within the more general project of postcolonial studies. The brand of
knowledge cultivated, reproduced, and valued by the MWCI is explicitly Western – objective,
expert, disciplinary – the inquiry engaging in its own process of epistemological assimilation.
Together, as analytic tools, the splice and the nomosphere are helpful for thinking through the
occlusions, inclusions, obfuscations, and exclusions enacted by such legal process. They provide
a way of engaging the legal, the spatial, and the experiential in conjunction with one another –
“in the register of discourse, in elements of the material world, and in the interrelation of the
discursive and material aspects of sociality as manifest in practice and experience” (Delaney
2004, 852). In the following chapters, I take up the challenge to think these terms empirically, to
examine the ‘maps of the social’ they produce: their authors; their particular histories; the
juridico-spatial understandings they naturalize and promote; and the bodies, infrastructures, and
physical spaces they represent. How do people encounter ‘the legal’ and ‘the geographical’,

never more separate than ‘the political’ and ‘the economic’ or ‘the social’ and ‘the sexual’? How do these encounters shape bodies, spaces, knowledges, and the law? By asking these questions, I hope to reassert some of the “messy realities of local particularities” (Blomley 2008, 161) silenced by normalized and abstracted legalities, the inevitable hiccups that reveal the limits of law’s univocal and unequivocal posturing.

1.4 Methodological notes

What and where we think from is an orientation device (Ahmed 2006), knowledge “not universal and fixed from on high, given by transcendental categories like rationality … [but] contingent upon the working of particular networks of alliances, and the hesitant complex dance of translation” (Barnes 2004, 573). One writes differently seated at a desk or on a couch, at a coffee shop or at home, with friends or alone, after a good work of fiction or theory or empirics. Entanglements with the material, social, and political world give us our bearings, with implications for our academic (and non-academic) performances and products. A master’s student in the geography department at the University of British Columbia, this project has incontrovertibly been shaped by the messy particularities of my own history, of my intellectual trajectory, and by the interlocutors – human and non-human – I have encountered along the way. These particularities and encounters materialize in sentence structure, word selection, reading list, and framing; in headings, titles, and interview materials; in the inclusion, deletion, and reinsertion of the phrases that reveal my uncertainties: the ‘I thinks’ and ‘I hopes’ and ‘could bes’. I have been at times terrified by and thoroughly excited about this project, felt like it was worthwhile and sometimes like I was totally missing the point, all the while trying to maintain a keen eye to my positionality in these pages and how best to convey this transparently and effectively to my audience, which is changing all the time.
Gerry Pratt (2004) writes that “reflexive accounts … are not ones in which the researcher is firmly located; they are accounts in which absences, fallibilities, and moments that require translation are brought into visibility” (179). Throughout this thesis, I have urged myself beyond the reflexive self-location that seeks to remove bias in order to uncover truth in a knowable space toward imperfect and incomplete translation (*Ibid*). Spatial metaphors of disembodiment, distance, and detachment are replaced with a vocabulary of gaps and fissures, unknowns and uncertainties (*Ibid*), with the “complex interests, materialities, and messiness of lives lived at particular times” (Barnes 2004, 568). To write reflexively in this way has not been an easy task. From grade school to post-secondary school, we are drilled to remove ourselves, to hide our presence, from both the process and product of writing: to use ‘facts’ and ‘objective’ language in place of opinions, emotions, and transparency. As I interrogate the politics of knowledge production in the content of this thesis, so too I have I tried in the process (of writing, thinking, producing) to unpack and undo this taught behaviour of absence and abstraction and to embody and entextualize resistance to normative modes of academic production.

Stemming from the inevitable process of selection involved in the writing of any piece of work, this thesis contains many gaps and silences. Coupled with my intellectual limitations and reservations, the spatial and temporal confines of a master’s thesis have generated a project that, while intended to be read in relation to a much broader literature on institutional power and the politics of knowledge production (including scholarship in feminist and post-coloniality studies, performance and archive theory, and critical legal geography), has necessarily enacted some significant exclusions. My orientation towards legal debates, spaces, and actors – specifically and explicitly those internal to the MWCI – is also an orientation away from other objects and subjects. The voices of lawyers and other legal ‘experts’ figure significantly in the following
pages as I work to gain entry into the MWCI’s juridico-epistemological territory, to look inside its boundaries and borders to understand how power is expressed, circulates, and with what effects. Who appears and what are the conditions of their appearance? How are bodies made subject to the inquiry? How are representability, legitimation, and valuation enacted and expressed? This engagement in discussion with legal professionals is crucial, both to the development of ideas that will effect changes in the domains of law, ethics, politics, and economics (Derrida 1990) and to our understandings of the intricate, quotidian, embodied workings of the legal sphere, knowledge I understand as central to critical interrogations of the law. But to focus on these questions I have had to let others fall away, perhaps most notably a detailed investigation into the MWCI’s complicity and rootedness in ongoing histories of colonial violence (on law and colonialism, see for example Suzack 2011; Miller 2011; Comaroff 2001; Law & Social Inquiry, vol. 26 iss. 2). This work is undeniably and utterly important, but not my project now.

There have been many barriers to assembling a ‘complete’ version of the story I offer here, insofar as ‘completeness’ is ever possible (or desirable). Perhaps most significant are the innumerable unreturned telephone and email requests for interviews, most notably with Wally Oppal and his inquiry staff. Given the influence of interview material on the trajectory of this project, the absence of these conversations is surely consequential. Wherever possible, I have compensated for this dearth by attending inquiry sessions and with careful, in-depth readings of the inquiry transcripts, press releases, and news stories. Though inevitably mediated by processes of transcription, translation, and interpretation, these documents have been critical; as Sara Ahmed (2012) writes, “texts can and do talk to us, but their voices are less audible” (9). The need to be able to guarantee anonymity, necessary to creating a certain freedom within my
interviews, has also limited what I can say and how. The highly publicized nature of the MWCI and the centrality of a few key events and actors make it relatively easy for readers to link interview statements back to their speakers. This was a greater challenge than I originally anticipated. Where knowledge comes from and who produces it – the particularities of their identity, their status within the inquiry, and their relation to other inquiry participants, among other considerations – is integral to the reception and interpretation of that knowledge. However, at the behest of my interviewees, I have tried to keep the identity of the speaker unknown, for example by way of gender-neutral pronouns or in some instances by changing small details of conversations and quotes.

Overall, I conducted five hour to hour-and-a-half long semi-structured interviews in and around Vancouver, meeting those willing to talk with me in coffee shops, at their offices, and over Skype. My focus on the inquiry proceedings and their juridical underpinnings prompted me to speak primarily with legal representatives and experts: Francis spoke with me as policy director for a legal advocacy group granted participant status that withdrew following Oppal’s decision to move to independent counsel; Jo, among the only legal representatives without formal training, talked about being a family member, about community involvement as a long-time DTES volunteer, organizer, and resident, and about the labour involved in showing up at the inquiry every day for months; Alex and Kerry, both part of the team of ‘independent counsel’ representing Aboriginal Interests and the Downtown Eastside Community, shared their experiences as institutional insiders, providing me with invaluable information about the detailed workings of the MWCI and its commission staff; and finally Pat, among the ‘expert’ witnesses called to testify at the inquiry, spoke with me about navigating the political, ethical, and moral dilemmas involved in participating in a controversial and conflict-ridden process like the MWCI.
Over the course of our conversations, each of these contributors suggested other possible interviewees, forwarding me the contact information that allowed me to gain entry into a legal sphere that proved oftentimes obscure and difficult to navigate. Insofar as possible, I followed up on these recommendations, proceeding with my fieldwork and developing my contact list in this way. As such, any predetermined notions about who I would interview and the questions I would ask was inevitably restructured by who granted me access, to what information, and through what avenues. I learned a great deal during each of these conversations, gleaning from them the best direction for further inquiry, the key debates and discussions happening around the MWCI, and perhaps most importantly, the emotional and affective labour involved in participation, withdrawal, and engagement. The candidness and honesty with which each interviewee offered her or his story has ‘thickened’ my understanding both of the nomic setting of the inquiry in particular and of what it means to be in and experience the nomosphere more generally, a quality that I have tried to translate in the following chapters.

I conclude my introduction by returning to this project’s arrival story, the one with which I opened this thesis. My focus on the Missing Women Commission of Inquiry at the interface of law and the politics of knowledge production was prompted in the very first instance by a newspaper story about Anderson’s experience, by the juridico-spatial conditions that rendered her subject to what Nelson Maldonado-Torres (2007) calls ‘misanthropic skepticism’, that is, doubt over the humanity of the subject. In the face of this doubt, statements like ‘you are human’, ‘you are a rational being’ or ‘you have rights’ take the form of cynical rhetorical questions: ‘Are you human?’ ‘Are you really rational?’ ‘Why do you think you have rights?’ Dismissed on the basis of her construction as an unreliable witness and by her inability to conform to the biopolitical and disciplinary logic of the legal norm, Anderson was rejected as a
legitimate producer of knowledge, as a rational, rights-bearing subject of the law. The implications of this rejection reverberate with explicit materiality. In the years following the dropped charges, an additional 19 women disappeared from the Downtown Eastside, among them each of the six women Pickton would eventually be convicted of murdering. Clothes gathered by police officers at the hospital that day in March but not tested for evidence until after Pickton’s arrest in 2002 held the DNA of three additional women from the missing women’s list. Stories like this one reveal the importance of ongoing, critical interrogations of the law. To account for them is to offer a different account of the nomosphere, a different way of understanding the relationship between the juridical and the geographical, the body and the law, the inside and the outside, the us and the them. A central aim in this thesis is to reveal what and who recedes from normative expressions of the law, to attend “to the restrictions in the apparently open spaces of a social world” (Ahmed 2012, 182). This process of revealing is necessary if we are to interrupt the reproduction of violent exclusion.
Chapter 2: The law, the expert, and the other

2.1 Introduction

April 10, 2012

Dear Mr. Oppal,

We write to advise the Commission that we, the undersigned groups, will not be participating in the Policy Forums or Study Commission aspects of the Missing Women Commission of Inquiry. We are not prepared to lend the credibility of our respective organizations’ names and expertise to this Inquiry, which can only be described as a deeply flawed and illegitimate process. The Commission has lost all credibility among Aboriginal, sex work, human rights, and women’s organizations that work with and are comprised of the very women most affected by the issues this inquiry is charged with investigating.¹⁰

So began an open letter addressed to Missing Women Commission of Inquiry (MWCI) commissioner Wally Oppal. Signed by an informal coalition of sixteen advocacy and service providing groups,¹¹ the letter outlines the multiple ways the MWCI has repeated the same discrimination and exclusion that these organizations hoped it was going to uncover. Frustration with the process began early during the inquiry when, on May 19th, 2011, five months before hearings were set to start in Vancouver, the Attorney-General’s office for the Government of British Columbia stated that it would only provide funding for representation for the victims’ families by counsel Cameron Ward; funding would not be provided to an additional twelve groups granted limited or full participant status.¹² According to counsel present at the pre-hearing conference on June 27, 2011, Attorney-General Shirley Bond’s refusal of funding despite a

¹⁰ This letter was written in response to Oppal’s request midway through the inquiry that these groups – who initially withdrew early in the process – re-join the commission.
¹¹ For a list of these groups and access to the full letter, see http://www.ubcic.bc.ca/News_Releases/UBCICNews04101201.html#axzz2ALAo7IPf
¹² Eighteen groups were granted full or limited participant standing at the inquiry. On May 2, 2011, Wally Oppal ruled that thirteen of these groups would not be able to participate without funding, including the families of the missing and murdered women.
request from the commissioner is unprecedented. Senior Commission Counsel Art Vertlieb quoted legal scholar Simon Ruel (2010, 63): “A funding recommendation made by a commissioner carries considerable weight and would be dismissed by the government at its peril as it could be accused of hampering the proceedings of the commission or tampering with its independence,” the latter a key governing principle in the establishment, conduct, and legitimacy of inquiries (Ashforth 1990).

At the pre-hearing conference, attended by counsel for all groups granted participant status including those denied funding, Shirley Bond’s legal representation justified their decision by emphasizing the difference between a trial and a commission.

Something that has been described as trial like and in [counsel for the Downtown Eastside Women’s Centre and the Committee of the February 14th Women’s Memorial March], Mr. Arvay’s words, extremely adversarial … and many people made references to two or more sides battling it out and the commission acting as referee and the final decision-maker. That describes a trial. It doesn’t, in my submission, describe a public inquiry. And the unique forum of a public inquiry …, at least inasmuch as it restrains, it also empowers. It provides a flexibility of process. That can go a long way to accommodate the hearing of voices that might not be present at all in a trial” (Craig Jones, MWCI transcripts June 27 2011, 152).

As understood by the office of the Attorney-General, then, the inquiry is an inclusive and participatory space, one welcoming of multiple voices and positions and fostering conversation and collaboration between potentially antagonistic groups. The flexible, independent, quasi-legal framework, in other words, makes the inquiry an ideal tool for exploring the case of Vancouver’s missing and murdered women.

Rather than challenging Bond’s decision in court as he was petitioned to do by the majority of those granted participant status (Francis 2012), in August 2011 Oppal appointed two independent counsel to appear before the commission: Jason Gratl to represent the Downtown
Eastside (DTES) Community and Robyn Gervais for Aboriginal Interests. Unlike counsel working on behalf of the federal and provincial Crown and police organizations, Gratl and Gervais were instructed to form their position and approach ‘independently’, without taking instruction from any client or group.\textsuperscript{13} For those assigned to these counsel, Oppal’s proposal “raise[d] a number of questions: Who is this individual accountable to? Who does this individual represent? How are instructions given and by whom?” (John 2011, 4). Unable to adequately respond to these concerns, Oppal’s decision sparked a flurry of media attention and criticism from participants, including the withdrawal of the Native Women’s Association of Canada, the B.C. Civil Liberties Association, and Amnesty International, among other groups. “The appointment of two ‘independent’ counsel by the Commission is a disingenuous attempt to remediate an unfair and discriminatory inquiry,” the Women’s Equality and Security Coalition\textsuperscript{14} wrote in a press release. “[W]e reject the implementation of these legal counsels over whom we have no control, cannot instruct, and yet have been granted authority to speak for us. We must speak for ourselves, choose our own counsel” (2011). In a statement to the commission, Chief Edward John of the Union of B.C. Indian Chiefs excoriated the inquiry for the appointment of counsel “without any discussions or concurrence with Aboriginal or First Nations peoples. … While we fully respect the appointed individuals,” he opined, “this is a highly unsatisfactory and difficult position” (2011, 4).

\textsuperscript{13} Though the position of ‘independent counsel’ is unique to commissions of inquiry, it is in many ways akin, and has been compared by those involved in the MWCI, to the formal legal position of \textit{amicus curiae} (Oppal 2012; Alex 2012): “a person or group that is not party to a lawsuit but that has strong interest in the case and wants to participate, usually by filing a brief in support of one party’s position” (Cornell University Law School Legal Information Institute nd, np). This person is not engaged in a client/counsel relationship with the group she or he supports.\textsuperscript{14} WESC is made up of Asian Women Coalition Ending Prostitution, Canadian Association of Sexual Assault Centers, Coalition of Child Care Advocates of BC, Provincial Council of Women of BC, EVE, Justice for Girls, National Congress of Black Women Foundation, Poverty & Human Rights Coalition, University Women’s Club of Vancouver, and Vancouver Rape Relief and Women’s Shelter.
Taken together, the justification for the denial of funding by Shirley Bond and her counsel and Wally Oppal’s decision to rectify funding insufficiencies by appointing independent representation to affected groups provides an interesting moment for querying the interface between the politics of knowledge production and the law operative in the MWCI space. Highlighting, on the one hand, the perceived flexibility, inclusivity, and participatory nature of Canadian Commissions of Inquiry and on the other affirming expert legal representation as a requirement for participation, their respective positions seemingly present a contradiction.\textsuperscript{15}

Dwelling within it, this chapter will focus on the knowledge-based exclusions that shaped, at least in part, the inquiry process. I will explore how the law at work in the inquiry space demands a paternalistic form of representation and translation – i.e. through expert legal counsel – that codes and values knowledges and categorizes people in particular ways to render them intelligible to the commission. The exclusions precipitated by these codings and categorizations are at odds with the MWCI’s ostensible interrogation of the exclusion of particular people and geographic areas from the state’s judicial responsibilities, and yet have proven internal to the workings of the inquiry.

The trajectory of this chapter is, at least in part, a response to the recent call in legal geography and critical legal studies to, through empirical research, “more carefully recognize the particularities of power,” power that is never “power in general, but always power of a particular kind, expressed as domination, authority, coercion, seduction, and so on” (Blomley 2008, 163). The interrelationships among legal discourses, various forms of knowledge, political economy, techniques of control, and institutions form a logic of power that is most fully grasped by

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\textsuperscript{15} Oppal all but expressly contradicted Craig Jones in his opening comments. “The purpose of the evidentiary hearings is to provide a higher level of procedural fairness to participants; therefore, while this is not a court of law, the process looks very much like a trial” (MWCI transcripts October 11 2011, 4) [italics added].
\end{flushright}
exploring its detailed applications (Turkel 1990). I return here to Blomley’s (2003, 2008) concept of the splice, to the apparently stable arrangements produced through law and space and the mobilizations, enrollments, and everyday doings that underlie them. Legal places are processes that materialize along with social meaning, identity, power, knowledge, and discipline. Recognized as such – as flows or circuits of relationships, hegemonic productions, and quotidian practices – it becomes possible to think of the way that legal institutions may be respliced, whether intentionally or accidentally (Blomley 2003, 2008), something I explore further in the second chapter. The idea of the splice thus returns us to a notion of matter “not as a site or surface, but as a process of materialization that stabilizes over time to produce the effect of boundary, fixity, and surface” (Butler 1993, 9).

Explorations of juridico-political worlds, David Delaney’s nomosphere, require a flexible and nuanced analysis of power. Here, I take up Foucault’s definition in *The subject and power* (1982) as a way that certain actions may structure the field of other possible actions. Power, for Foucault, is not a thing but a relation, not simply repressive but productive, exercised throughout the social body (1982; 1990; 1995). “Relations of power,” he writes, “are not in a position of exteriority to other types of relationships … but are immanent in the latter; they are immediate effects of the divisions, inequalities, and disequilibriums which occur and conversely they are internal conditions to these differentiations” (1990, 94). Power and knowledge in particular imply one another: there is “no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations” (Foucault 1995, 165). The subject who knows, the objects to be known, and modalities of knowledge are here regarded as dialectically related to the power-knowledge circuits under question (Foucault 1995). This understanding of power informs my methodological approach to
this case, foregrounding an analysis of law in terms of its internal relations of power and knowledge. Sticking with Foucault’s examination of power as operative at multiple scales, from below as well as from above, I write to elucidate the particular ways that power circulates in the inquiry’s nomosphere, to interrogate “the cultural-material environs that are constituted by the reciprocal materialization of the legal and the legal signification of the socio-legal” (Delaney 2004, 851). Insofar as possible I want to unravel some of the naturalized yet ever particular juridico-political splices produced by, and generative of, the MWCI’s form.

2.2 The quasi-legal commission

The narrative of the non-adversarial nature of inquiries deployed by Craig Jones in his defense of the Attorney-General’s decision to deny funding at the pre-hearing conference is common to understandings of Canadian Commissions of Inquiry. Framed as inquisitorial projects, inquiry counsel are, above all, expected to proceed in a neutral and dispassionate manner; the impartiality and objectivity of the commissioner, primary to inquiry proceedings, are adversely affected if commission counsel assumes an antagonistic role (Ratushny 2009). Because a public inquiry has no power to impose sanctions on individuals or corporations, that is to say, they “do not directly interfere with the liberty of the parties involved in them” (Mackay & McQueen 2006, 259), the adversarial relationships engendered by the judicial trial process as lawyers move to protect the rights of their clients are seen as unnecessary. Unencumbered by individual needs for legal protection, the inquiry is able to proceed as a relatively collaborative and inclusive process, better suited to dealing with instances of systemic injustice and non-enforcement. This narrative contributes to a more general description of inquiries as ‘quasi-legal’ procedures, as produced in and through the law and yet imbued with a much greater flexibility of process. Once appointed, the commissioner’s discretionary power allows her or him to conduct
the proceedings as she or he thinks is appropriate (Francis 2012). Ostensibly a means of facilitating the configuration of the inquiry to best meet the specificities of its subject matter, this flexibility renders salient the “underlying theory of the case, or, rephrased, a frame … [that] must emerge from [the lawmaker’s] own judicial consciousness” (Miller 2011, 43; Rigby & Sevareid 1992). Particular decisions made by the commissioner and her or his staff, informed by their frame, have crucial implications: for example, the setting of the terms of reference, the establishment and management of inquiry decorum, or the appointment of independent legal counsel. The hearings thus become contingent upon and susceptible to the interests, proclivities, and professional backgrounds of those in charge (Cole 2010).

Justification for the denial of funding through the deployment of the quasi-legal narrative has proven irresponsible to the particularities of the MWCI. Though convened with the intention of maintaining an inclusive, non-adversarial, and flexible process (Oppal, MWCI transcripts October 11 2011), in practice this inquiry has proven prohibitively legalistic and antagonistic. Publicly funded lawyers for the RCMP, VPD, and Department of Justice moved repeatedly to defend their clients, “hanging over their shoulders going ‘he doesn’t have to answer that question’” (Jo 2012). As in a courtroom, entire days were spent in legal proceedings and cross-examination, arguing the validity, accuracy, disclosure, and redacting of documents and testimony; the entry of materials into evidence; the process and procedure of testimony and cross-examination; legal challenges to publication and information bans and confidentiality issues; and the meaning of various legal concepts. Repeated reference to precedent-setting case law, past inquiry decisions, and a range of legal documents made it all but impossible to participate “unrepresented in a hearing that requires the review of hundreds of thousands of documents, technical cross-examination of professional witnesses, and an understanding of the
policies and procedures of the commission” (Vertlieb, MWCI transcripts June 27 2011, 12). In the following excerpt from the transcripts, Sheryl Tobias, counsel for the government of Canada, and Jason Gratl debate the merits and suitability of a publication ban on the names of all potential third party witnesses and suspects identified in police reports.

_Mr. Gratl:_ [I]n an application of this type, which would effectively be a complete gag order on the names of all third parties to this proceeding, certainly _Regina v Mentuck_ is authority for the proposition that the media ought to be given appropriate notice of an application at this time. …

_Ms. Tobias:_ I’m sure that you’re familiar with the -- with the jurisprudence on [publication bans in criminal cases], but I think it may be of assistance to recall that the supreme court of Canada in the _O’Connor_ case, for example, dealt with situations where third-party interests were necessary to be protected and where the Court very definitely set out the duty of the Courts and prosecutor to -- to preserve the dignity and privacy of third parties who were caught up in the criminal litigation process. And in the decision of the Supreme Court of Canada in _Mills_, the Court observed in particular that the details that -- that -- let me back up a little bit. The Court said that: ‘In fostering the underlying Charter values of dignity and autonomy, it is fitting that Section 8 of the Charter should seek to protect the biographical core of personal information. (MWCI transcripts October 20 2011, 124-127)

A 28-page exchange that also involves precedent-heavy objections and interjections from Wally Oppal, Sean Hern for the VPD and Vancouver Police Board, Cameron Ward, and Brian Baynham, assisting Robyn Gervais, the interaction between Gratl and Tobias evinces the difficulty of participating without sufficient training. Put simply, “If you didn’t have a lawyer on staff and had full participant status, there was no way you could exercise that status. […] I mean like, you can represent yourself in court, yes you can, but, especially if there’s a phalanx of lawyers on the other side, you know, ‘can’ is again a suspect term” (Francis 2012).

Access to information was likewise dictated by legal standards: participants, family members, and representatives without formal legal qualifications were prevented from accessing
many of the documents made available to legal counsel and inquiry staff. “[The commission was] clear with me that I wasn’t going to get anything,” Jo (2012) told me. “They have this certain classification of document and it means that if I touch those documents and read them I have to sign something and I have to give them back. I can’t leave with them. Where everyone else can take them home I guess, or have them at their office.” In this inquiry, then, structure was derived from rootedness in and knotting with legalistic practices and procedures. Adhering to the norms of decorum consonant with the majesty of the Crown, the rules of engagement derived directly and specifically from courtroom practice, particularly concerning the asking and answering of questions and the entry of materials into evidence.

Ann Livingston, family member of one of the missing women and a non-legal trained representative for the Vancouver Area Network of Drug Users made reference to her frustration and sense of disadvantage almost every time she spoke (which was not very often) at the inquiry. Unable to access documents made available to police lawyers months earlier and not versed in the courtroom cadence that so easily issues from the bodies of those well practiced in the law, Livingston was regularly forestalled in her attempts to bring the DTES into the courtroom “in a graphic way” (Livingston, MWCI transcripts December 1 2011, 168). She was offered assistance from the commission staff that most often amounted, in effect, to silencing her. “I think Miss Livingston has a lot of knowledge that would be very helpful,” senior commission counsel Art Vertlieb interrupted during an inquiry session. “It may be important for her to know that we are just now scheduling the commencement of our policy forum starting May 1, and that’s where she would be a very helpful participant” (MWCI transcripts December 1 2011,
Livingston’s struggle to participate meaningfully in the inquiry and her relegation to the community forum evince the establishment of exclusionary legal standards of coherence and performance. Normalizing discourses, grounded in dominant understandings of fact, truth, and reason, combine with juridical categories to form interlinking patterns of knowledge valuation (Turkel 1990; Foucault 1995) that render “some more than others at home in institutions that take certain bodies as their norm” (Ahmed 2012, 3). Jurisprudence, in this sense, establishes its own particular – though always generalized – rationality. Performance and participation are controlled by the specific decisions that restrict access to information and communication, “limiting discourse to speakers who are deemed ‘qualified’ in terms of formal education and professional certification, patterns of language and gestures that delimit discourse, [and] communications through specialized languages” (Turkel 1990, 177). Mr. Vertlieb’s suggestion that Ann’s contributions better fit the community forum essentially and explicitly drew a strict boundary between her body of knowledge and the bodies and knowledges of those trained in law.

In the following section, I explore the concrescence of the MWCI into its particular knowledge-power form. The decision to appoint independent counsel, highlighted by everyone I spoke with about the inquiry as a crucial decision that irreversibly changed its course, provides a splice through which enter this analysis. This decision, among others, irrevocably restructured the field of possible actions, influencing the circulation of power and allowing it to coalesce in particular bodies and spatial configurations.

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16 The policy or ‘study’ forum was mandated to “seek out additional community input and recommendations about these issues and to learn more about the current initiatives” (MWCI 2012a, 2). By suggesting she wait for the community forum, Mr. Vertlieb essentially and explicitly excluded Livingston from the legal sphere of the inquiry space and the fact-building that was happening there.
2.3 Narrative fields of power

Nicholas Blomley (2008) writes, “If we accept that the world is in part produced through various orderings and categorizations, it becomes clear that law offers one crucial vocabulary through which this order is produced” (162). The law both gives us a set of tools to distinguish between different categories of people – ‘husband’ from ‘wife’, ‘man’ from ‘woman’, ‘perpetrator’ from ‘victim’ – and gives authority to these categories by locating them within circuits of legally defined power (Blomley 2008). These categories emerge from a twofold spatialization: first through the iterative drawing of boundaries between different orders of people, and second through the ways that our lived-in landscapes – saturated with meaning – “can rub off on our bodies and render us legible as citizen, alien, tenant, trespasser, owner, refugee, guest, or bum” (Delaney 2004, 851). In this sense, “a person is neither a legal category nor a space, but both simultaneously” (Blomley 2008, 162). And these categories matter in the dual and inseparable discursive/material senses of the word: to have meaning and to materialize (Butler 1993). As both discourse and practice, they produce and signify difference and sameness in such a way that they come to appear as natural and pre-given: the missing women are prostitutes; the DTES is a high-crime area; the law is the site and source of justice (Blomley 2003).

Wally Oppal’s decision to appoint independent legal counsel to groups denied funding as a means of rectifying expressed concerns over concomitant power inequalities signals the historical naturalization in legal fields of another paired dichotomous category: that of the expert and the non-expert, the latter often inculcated as the victim. Assuming an un-problematic link between ‘having a voice’ and ‘being heard’ (Ross 2003), Oppal’s decision expressly reinforced the taken-for-granted power of the legal expert to bring to the fore the interests, lived
experiences, and perspectives of those she or he represents. As understood by the commission, it is not a matter of how one speaks or through whom, but of ‘standing’ – of being ‘given a voice’. For legal scholar Katherine O’Donovan (1993), the use of experts to explain the experiences of oppressed groups, specifically women experiencing domestic abuse, was a strategic move in Canadian law, a means of constructing the narrative of ‘the battered woman’ in a context admissible to judge and jury. The establishment of such legal narratives is based on the premise that the “choice of narrative form often determines control over legal outcome” (Weisberg 1998, 69). Women’s experiences, in other words, cannot be accommodated by the law without resort to legal experts, who, by speaking for battered women, allow their stories to be introduced. Inherent in this ‘speaking for’ is an assumption about the straightforward translation of ‘victim’ narratives into legal speech. To recount a battered woman’s story in the terms admissible in court – for example, by recourse to the discourse of medicalization and ‘battered woman syndrome’ – is, in effect, equivalent to this woman telling her story. In fact, the expert testimony has more value than the testimony of the victim, intelligible as it is to the judge and jury in whose hands her fate lies (O’Donovan 1993). From this perspective, the non-expert other, so rendered by the institutional idioms of juridical discourse, emerges as an unintelligible and unrecognizable nomospheric figure, her legal coherence predicated upon representation, interpretation, and translation.

Writing about South Africa’s Truth and Reconciliation Commission (TRC), Catherine Cole (2010) describes this practice of interpretation as “a functional rendering of content created within the constraints of an improvised setting” (68). Though referring to interpretation from one language to another, a task that presents a unique set of stumbling blocks, important similarities emerge between this process and the translation of stories into legal language. A lawyer’s aim at
the MWCI is much like that of the South African interpreter: “to reproduce the speaker’s account as reliably as possible … not a word for word translation of the speaker’s words, but a transfer of the essential meaning … a reduced truth” (Wisani Sibuyi, quoted in Cole 2010, 68). In the words of one MWCI lawyer: “the process of adjudication is itself, especially adversarial adjudication, a transformative process, where narratives are interrupted by cross-examination, where the language deployed in court processes needs to be curtailed, has to be transformed into something that can be digested as legal fact” (Kerry 2012). In much the same way that “interpretation [between languages] collapses nuance and privileges so-called factual truth over narrative truth” (Cole 2010, 69), translation of stories into legal language – into language intelligible to the Commission, rooted as it is in strict legal procedure – effaces affective and embodied expressivity. For example, in moments where emotion overwhelms the speaking subject, a break in proceedings is offered with the assumption of acceptance, giving the speaker a chance to gather and compose her or himself. Thus is meaning both created and lost in a process that relies in part upon an attentiveness to the grid of intelligibility at work in the nomosphere, a grid informed and constructed through language – whether linguistic or knowledge-based – pace, tone, format, and so on.

Testimony provided by family members of the missing and murdered women offers a rich example in this regard. Prior to appearing before the commission, counsel spent hours with their witnesses: specifying dates, ordering chronology, back-checking evidence – in effect translating stories into the legally digestible facts (Kerry 2012; Alex 2012).

Mr. Chantler: You mentioned that Marnie eventually moved to Vancouver. Do you recall when that was?

Lynn Frey: I believe it was ’92.

17 Neil Chantler worked with Cameron Ward as counsel for the families.
Mr. Chantler: And how old was she then?
Lynn Frey: It was not ‘92.
Mr. Chantler: ‘95?
Lynn Frey: ‘95, sorry. She was 21, 22, just about 22.
(MWCI transcripts October 24 2011, 14)

This testimonial style – short, direct questions and answers peppered with chronologically ordered references to dates, times, locations and so on – typifies the on-the-record interaction between family members on the stand and their counsel, Cameron Ward; it was this style that granted them their legal audience and from which the value of their testimony was derived. “The family members … yes, a lot of their evidence was very emotional, some of it was contextual, but a lot of it was really good evidence, it was like you now, ‘I called the VPD five times’ or you know ‘I reported my daughter missing in whatever, 1997, and like the file didn’t get transferred to Vancouver until 1998’; they had some very good, what would be deemed as policing evidence” (Alex 2012). And it was on these same ‘facts’ that family members were cross-examined by counsel for the VPD and other interested parties.

Mr. Crossin: In fairness, I should tell you that Lori Shenher has absolutely no note of this conversation so I’m obliged to ask you, do you think you could have been mistaken about reporting it to her?
Lynn Frey: No, I don’t think I was mistaken at all. I know what I said. I know I called. …
Mr. Crossin: There’s no doubt you gave Lori Shenher a lot of information over the years, there’s no question about that.
Lynn Frey: Did you see anything in Lori Shenher’s reports about the tapes I gave her is that missing, too?
Mr. Crossin: I’m just trying to focus on this one event, if you might, and my question was fairly simple. Could you have been mistaken about relating that discussion to Lori Shenher? (MWCI transcripts October 24 2011, 122-123)

18 Lynn Frey is stepmother to Marnie Frey, one of Pickton’s victims. Mrs. Frey was the first family member to testify before the commission, and was an active member of the group petitioning the police in the mid- and late-1990s to investigate the cases of Vancouver’s missing women.
19 David Crossin is from the Vancouver Police Union, representing Detective Constable Lori Shenher.
Examples in the transcripts of testimonies being re-focused by counsel, whether in cross-
examination or in initial questioning, indicate the active circumscription and molding of the
narrative framework by counsel and commission staff. Family members were bound in their
telling by time allotted for the testimony, by the precedents, tone, and decorum of the hearing
format, and by the questions of legal representatives, themselves constrained by the terms of
reference as 1997-2002. Historical trajectories and experiences of neglect, oppression, and abuse
were most often expressed as contemporary and ‘factual’ instances of individual wrongdoing and
distress. Testimony was homogenized, rich performative content flattened as commission staff
and legal counsel sought to isolate a coherent relation between component parts. Rather than
giving space to emotional power of individual stories, the aggressive excavation of linear,
rational fact in the MWCI circumvented the experience of telling, and listening to, these stories.
The emotional voice of the feeling subject, in other words, was “overwhelmed by legal norms
that re-inscribed the objectivity of legal discourse at the cost of setting aside her story” (Suzack
2010, 128). Law’s power to name its own boundaries (O’Donovan 1993) in this case allowed
the inquiry to define particular questions and modes of telling as outside its scope and
responsibility.

This narrative framework contributes to the circulation of power within the inquiry space,
processes of translation and interpretation at work in the MWCI effecting a displacement,
transformation, and concealment of embodied and emotive experience. The testimonial form
required by the court becomes a mode through which people engage in reconsidering, reshaping,
and seeking acknowledgement of their experiences, a means in the ongoing work of fashioning
the self in relation to the onto-epistemological demands of law as a site of justice (Ross 2003).
Instances of oppression or exclusion and the person who experiences them are interpreted by the
inquiry, by law, as objects to be known (Conklin 1998; Delaney 2004) rather than subjects who know. Organized by counsel and presented as evidence to the commission staff, family members, community members, and expert witnesses alike are cast in a passive rather than an active role, restricted in the possibilities of their contributions by the terms of reference (which precluded, for example, sustained conversations about colonialism), by the question and answer model of legal inquiry, by the limits of their expertise as laid out by the commission, and by patterns of valuation and categorization that distinguish between fact and story. It is under these conditions of narrative formality, standardized in and through juridical practice, that stories become testimony, become ‘legally digestible’, witnesses granted the legitimacy of speech, but only within the patriarchal and colonial terms of the law (Suzack 2010).

And yet, as Cole (2010) reminds us, “the significance of acquiring speech for those who have long suffered violations of human rights in silence and isolation is more than gaining the opportunity to convey information” (78). The easy assumption of translation by the MWCI fails to ask questions about what is lost in the interpretation process, and what new fields emerge as a result of this action. When the narrative framework changes, how does the story change? What work does this new story do? How does it circulate within the space of the courtroom or inquiry, and how does this circulation pattern a parallel circulation of power? These questions have important material and discursive implications. The withdrawal of the sixteen service and advocacy providing groups whose letter introduced this paper and their replacement by independent legal counsel irreversibly shifted the circulation of power within the inquiry space, changing the narrative field by implicitly authorizing some stories and forms of story telling and prohibiting others. This process of authorization generated a field of knowledge, at once constitutive of and imbued with consequential power relations (Foucault 1995). Oppal’s decision
to appoint independent counsel presumed a transparency of communication and clarity in reception, the unevenness of social fields and their saturation with power effaced.

Inherent in legal representation, then, is a re-presentation of lived experiences, stories, and positionalities, mediated through the legal jargon of the expert and fitted into the narrative frame of inquiry. “All speaking, even seemingly the most immediate, entails a distanced decipherment by another, which is, at best, an interception” (Spivak 2010, 64). Interpretation and transcription, in other words, leave their marks. Proximity and orientation to the speaker are significant in these moments of translation. Shared histories, stories, and understandings of the world can ease the act of decipherment and facilitate the interception such that it becomes a more collaborative – rather than co-optive – process. Otherwise put, the particularities of voice, narration, and exchange are significant to experiences of justice and reconciliation. “Language changes reality; it constructs what counts as effective or failed communication, what is true, what we see and what we fail to see, our identities, the universe itself. Language shapes us and our world” (Krog, Mpolweni & Ratele 2009, 31). By appointing independent counsel without consultation with First Nations and DTES community groups, Wally Oppal ignored the complex politics of ‘speaking for’ and the power dynamics that inhere therein. Stacey Fox, representative for the First Nations Summit before funding was denied by the Attorney-General, put it this way: “This inquiry was supposed to be an opportunity for us to choose our own voices finally, and the suggestion that somebody else could do that for us, we take objection to. It’s not only a matter of commission counsel being aggressive in cross-examination on our behalf. … Fundamentally it’s about us telling our story with our voice” (MWCI transcripts June 27 2011, 206). Thus is the

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20 In a relevant play on words, Oppal repeatedly conjured the image of the ‘even playing field’ (see, for example, MWCI transcripts November 1 2011, 189) in his fairly explicit derision for Cameron Ward’s frustrations with the inadequate disclosure of relevant documents by counsel for the VPD and RCMP.
negotiation of speech, “to make sure that the voiceless are given a right to speak” (J. Butler 2009, x), inherently different from “supplying or imposing that voice” (*Ibid*). Tempered and mediated by the questioning and cross-examining of legal experts, the complexities of testimony, their messy histories, and their potentially rich performative contexts and content (Ross 2003) were largely lost, legalistic interventions resulting in “a strangulation of desired forms of voice” (*Ibid*, 332).

Interviews with independent legal counsel and their staff for the DTES Community and Aboriginal Interests uncovered a general frustration with the inability of the inquiry process, and of juridical process more generally, to make use of non-normative stories, those that do not or cannot comply with the legal grid of intelligibility.

You need a little fact. When did things happen? Who interacted with who? … Without meaningful detail from sex workers, it’s very difficult to incorporate their stories into the narrative. Extremely difficult. … Without that level of detail it’s just super hard to put somebody on the stand and say you know ‘now we’re going to hear from Lisa. Lisa’s going to tell us what her experience is like.’ Even though it’s perfectly true for her to say ‘with the cops it was always bullshit of one kind of another’ it just doesn’t assist or advance the inquiry. And so what are we left with? We’re left with studies. Like John Lowman’s level of analysis, which I think is superbly helpful, but it’s no substitute for the immediate stories of sex workers (Kerry 2012).

As a stand in for the narrative evidence of sex workers from the DTES, Lowman’s study provided a ‘factual’ and ‘true’ version of events. As Wally Oppal put it, “[Dr. Lowman] is an expert witness and may give opinion evidence based on the issues of prostitution” (*MWCI* transcripts October 13 2011, 7). Similar to the medicalization of battered women’s experiences with abuse mentioned above, the sexualized and racialized violence and oppression experienced

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21 John Lowman is a professor in the Simon Fraser University School of Criminology. He gave testimony at the *MWCI* as a Canadian expert on prostitution.
by sex workers in the DTES are reduced to a language intelligible to the law, spoken by experts who allow these stories to be introduced. These outside experts author and authorize the inquiry, verifying “both the state’s right to assess the public interest and its commitment to objectivity … in short [demonstrating] the state’s right to power through its will to the production of truth” (Stoler 2009, 31). “You know,” Pat (2013) told me “they ended up making a technical expert question and the thing about expert knowledge is, that expert knowledge typically tends to disqualify other sets of information or issues or questions.” Threatening the naturalized, normalized, and objective mode of knowledge production generated in and through the law, affective, emotional, or ‘non-factual’ narratives engender a double exclusion for those speaking them: initially by the police who would not take them seriously, and ultimately by the MWCI’s legal discourse that appropriated and reformulated them. The laws of evidence, developed in the courtroom and embraced by the MWCI, thus regulate whether and how stories may be told. Lisa’s story can be heard only once it is no longer her own; because she cannot tell it in a way that is compatible with the culturally available narrative imposed by the inquiry, her story becomes valuable at the MWCI only as material in someone else’s report.

As with trials, then, the MWCI depended on a familiar form of knowledge production in its quest for meaning: coherent accounts with a beginning, a middle, and an end, accounts that demand a transference from what Peter Rigby and Peter Sevareid call the “raw phenomena of experience to legal fact” (1992, 8). Legal scholar and sociologist Kim Scheppele has argued that a subtle premise of this process of transference is that truth is both singular and permanent (1989). Once uncovered – for it is always there, or even sometimes here, to be uncovered – and corroborated by a large number of tellers, among them experts, truth can be established and reproduced as fact (Weisberg 1998). This legal knowledge is imagined as disembodied, true to
an internal logic that speaks with a universal and unitary voice (Blomley 2003). The MWCI’s narrative framework, legislated to “make findings of fact respecting the conduct of [police] investigations” (MWCI 2013), was by its very mandate required to parse out the “incoherence of mere occurrence” and experience (Ferguson 1998, 85), to uncover and superimpose the ultimate facts which can be held up as true everywhere. Counsel in this process were tasked with looking “at the facts without preconceptions … [to] see ‘true’ facts among competing discourses” (Miller 2011, 43; see also Rigby & Sevareid 1992) and to present them to the inquiry as such.

The spatialization of fact and story as hierarchically organized modes of knowledge production re-entrenches and parallels a dichotomous opposition between objective and subjective, rational and irrational/emotional modes of knowledge production. “I know that sometimes in these difficult, highly charged circumstances,” Oppal said, “that feelings and emotions run high, but having said that we’re -- everybody here is legally trained, so part of the pre-requisites of someone being legally trained is that you set your emotions aside…” (MWCI transcripts November 3 2011, 39). The link between legal expertise and the ability to ‘set emotions aside’ has the effect, once again, of distinguishing between experts and non-experts, the latter resigned to the realm of uncontrolled emotion, the former to the realm of rational objectivity. Academic feminism and post-colonial studies have long highlighted the cultural and historical situatedness of knowledge production and valuation, and the relation between these processes and the gendering and racialization of particular ways of knowing (Wright 2013, see also Haraway 1988; Harding 1991). Established in opposition to the feminine, the racialized, and the subjective, the conceptual coupling of rationality and a white, masculine ability to see emerges as a hierarchy of deference of emotion to reason. Claims to neutrality and objectivity – essential sources of the law’s legitimacy in general (O’Donovan 1993) and the MWCI’s in
particular – cling to certain expressions of knowledge and ways of knowing, justifying the relegation of their emotive, irrational counterparts to a discarded sphere. The (white, masculinist) performance of expertise, then, has much to do with ‘who’ emerges as a recognizable subject within the inquiry framework. Those left unrepresented in dominant forms of knowledge or those who wish to speak of and for themselves in a mode other than that intelligible to the courts, fall away (Wright 2013). Their exclusion constitutes and legitimizes the field of power/knowledge from which the inquiry acquires its legal authority, the constitutive outside to a normative legal sphere, for it establishes itself as that which they are not: ordered, rational, objective. The subjective, affective, feeling self necessarily exists within the bodies of those at home in the MWCI space; it is their ability, in part, to “keep a lid on their emotions” (Oppal, quoted in CBC 2012) that separates them, as translators, from those who require translation.

The legal constraints on which stories could and could not be heard at the inquiry – and who could and could not speak them – are exacerbated by the limited means of representation at the disposal of the independent legal counsel. Jason Gratl, representative for the DTES Community, resolved to avoid, for example, “the thorny issue of the many options available for the decriminalization of sex work” (MWCI transcripts October 12 2011, 82). Other counsel echoed this position, citing the difficulty of representing anything other than the dominant position given the internal heterogeneity of their client group. “When all the [initial] twelve groups, or most of the groups pulled out,” Francis (2012) said, “the concern was, well, if we couldn’t reduce ourselves to one voice, or two voices, how do you expect these two independent counsel to represent our interests?” Marginal positions were thus obfuscated as counsel struggled to represent communities and groups that were internally divided on key issues. Cameron Ward, lawyer for the families, put it this way, “We can’t be expected to represent all those other interest
groups that you have heard from today more than, say, Mr. Doust could be expected to represent
the interests of the RCMP, the VPD, and the Vancouver Police Union, as well as his client, the
Criminal Justice Branch. It just doesn’t make sense when people have these different interests’
(MWCI transcripts June 27 2011, 147). Thus did the collapse of diverse interests under the
bifurcated categories of DTES Community and Aboriginal Interests leave positions other than
the dominant perspective unarticulated and off the public record.

Though appointing independent legal counsel to speak on behalf of Aboriginal Interests
and the DTES Community reproduced problematic re-presentations of alternative forms of
knowledge that hierarchized the narrative deployment of ‘the expert’, power did not accrue in the
bodies and positions of the independent counsel. Relationships of trust existing between
advocacy groups and their long-time clients – many of whom are sex workers, drug users, or
otherwise at odds with the legal system – are not easily reconstructed, especially in the context of
a trial-like process (Pacey, MWCI transcripts June 27 2011). “It is very difficult to get witnesses
to come forward from the community,” Katrina Pacey22 told commission counsel. “We know of
the structural and systemic barriers that women face to participating in this type of process. And
it is my submission that no amount of diligence on behalf of your counsel can replace the trust
that’s been established both between client groups that are represented here and counsel for those
clients” (Ibid, 203).23 Counsel for groups denied funding worried that bringing witnesses forward
under the care of independent counsel without legal capacity and client-lawyer representation
would leave these witnesses vulnerable. “[P]eople say this all the time, ‘we have a story to tell’,

22 Before withdrawing from the inquiry because of the decision to deny funding, Katrina Pacey was legal counsel for
a coalition of sex workers from the DTES.
23 During its first weeks of hearings, the inquiry heard expert evidence on the barriers to participation, including fear
of reprisal from drug dealers, pimps, and sex workers; fear of police retaliation, loss of social services, unwanted
identification to family members and friends as a ‘drug user’ or ‘sex worker’, and so on (see for example transcripts
from November 2, 2011 and June 27 2011).
right? And then the question becomes: What is the cost of that story to the people who might show up and be shredded in the process, shredded, and we will not have the capacity to meaningfully defend them, to protect them?” (Francis 2012).

Facing what Grand Chief Stewart Phillip, president of the Union of BC Indian Chiefs, called the VPD and RCMP’s twenty-four publicly-funded “legal hyenas” (Cole 2012, np), Robyn Gervais, Jason Gratl, and their associates operated at a profound disadvantage. Unable to gain access to the clients they were there to represent or to key legal documents, the independent counsel were themselves subject to an uneven inquiry structure. “In the beginning it was sort of a whirlwind,” Alex (2012) told me. “With such stark opposition … I had very little input from individuals so the best I could do was, you know, take from what people had said in the media about what they wanted to see out of this inquiry and go back and do some research.” Kerry put it this way:

Did everyone talk to me? No. The funding decision was not only a failure to provide funding support, but also a show of disrespect that is also a product of racism and discrimination. [Potential participants] broke faith with the inquiry at the point, thinking in part that if the Attorney-General wasn’t prepared to follow Wally Oppal’s recommendation for funding they wouldn’t be prepared to follow any of the recommendations, period. And they kind of figured that the fix was in, in terms of results at that point. Some of the groups considered that talking to me represented a form of capitulation to the sort of, status quo.

Kerry went on,

The decision to move to panels,24 the decisions with respect to which witnesses would be called in what order and how long they would testify … I wasn’t consulted. My requests to have sufficient

24 On February 21, 2012 the commission announced that it would shift from hearing individual testimony to testimony in panel form. While individuals would still be called and cross-examined “where certain issues of fact may be in question” (MWCI 2012b), witnesses representing interest groups, including the families, the DTES community, Aboriginal women, civic interests and police forces would be heard in panel sessions.
time to cross examine witnesses were routinely rejected, the amount of time asked for was abbreviated, witnesses I asked to be called weren’t, documents that I wanted to be edited and put into public record weren’t put into the public record. (2012)

When, on March 6th, 2012 Robyn Gervais resigned as independent counsel for Aboriginal Interests – citing insurmountable barriers to calling Aboriginal witnesses, her exhaustion at struggling against the VPD and RCMP’s 24 lawyers, and her unwillingness to continue lending legitimacy by her presence to an illegitimate process – she noted that in 53 days of testimony, 39 were spent with police evidence and witnesses.

I was encouraged by Dr. Lowman’s focus on Aboriginal women and my sense was that the commission was on the right track, but then Deputy Chief Constable LePard took the stand for 12 days, followed by RCMP inspector Williams for three days, and Deputy Chief Evans for five days, and I began to question how I could focus the evidence back on Aboriginal women. As we continue to hear from the Vancouver Police Department and RCMP witnesses, some of whom accepted no responsibility for the inadequate investigation of missing women, it became clear that you were hearing a one-sided story through a police filter. … Then suddenly it appeared that every senior criminal lawyer in B.C. was involved in the hearing and the focus became on which layer was representing which officer and how much the lawyer was being paid.” (MWCI transcripts March 6 2012, 3-10).

Given Gervais’s (and other’s) frequently cited time constraints on the inquiry, the time allocated for testimony expresses an implicit valuation strategy that has the potential to critically alter both Oppal’s final report and the archival process that will inevitably follow, an idea I explore more in chapter 3. Nearly all interview respondents raised this matter of time, expressing deep concern that the months spent on police testimony reduced the MWCI to yet another police inquiry, further undermining its value as a tool for interrogating systemic instances of racial and gender violence. For many participants, it was Oppal’s frame of reference that was at least in part to
blame: his extensive experience with policing inquiries informed and produced an inappropriate and disproportionate focus on policing testimony at the expense of the emotive and narrative detail offered by experiential accounts of events (Francis 2012).

2.4 Conclusion

Coupled with intense debates about what constitutes high and low quality evidence and expert witnesses, the failure to hear marginal and non-expert voices implies a devaluation of knowledge that resists appropriation into the inquiry’s narrative field. The requirement for generalizable, ‘objective’ stories that can be factually cross-referenced and corroborated signals the systemic exclusion of marginal or non-expert voices. “Law’s empire,” Catherine O’Donovan (1993) writes, “is founded partly on its status as oracle, as pronouncer of verity. Legal methods for determining the truth come from within its own system. The rules and procedures by which the content of law is determined are legal rules…. Where a contest over knowledge occurs judicial pronouncements as to truth have high status” (431). Though speaking the context of a courtroom, O’Donovan’s argument holds true for the MWCI. The flexibility of process provided by the Canadian Commission of Inquiry legal framework, purportedly a means of increasing reflexivity to the particularities of the subject matter, imbues the commissioner with increased discretionary power. Backed by the power of the law, Oppal is able to name his own boundaries, to define what counts and what does not count, what needs to be heard and what does not.

“We’ve called all the evidence that I feel in my mind is necessary to come to proper conclusions,” Oppal told reporters following the last day of hearings (Cole 2012), this despite bitter frustration on the part of the families of missing and murdered women who implored Oppal to hear more witnesses.

Oppal was commissioner in the 1994 provincial public inquiry into policing in British Columbia.
In the MWCI, then, law spliced with space and power in various locations to expand particular patterns of knowledge and documentation that exclude marginal positions while privileging those of experts and the police. Ultimately, the inquiry reinforced hierarchies of knowledge production and valuation, leaving largely unheard and untold first hand accounts of systemic violence. Oppal’s decision to appoint independent counsel in August 2011 set the stage for a particular circulation of power that patterned rather than interrupted existing relations. The inquiry became a space for powerful police interests first to assert their deep apology in a public forum to the families of the missing and murdered women, and second to justify the actions they took prior to and during the investigation. Those for whom the inquiry was convened, Vancouver’s missing and murdered women, were largely lost in the legalistic debates and defensive moves of lawyers, counsel, and commission staff.

If we consider the forms of communicative action authorized within the inquiry and examine how they produce distinctive forms of political discourse, the MWCI emerges as a highly exclusionary space, one in which belonging and participation are granted through a series of categorizations that code bodies and knowledge in specific ways. Foucault argues that truth is always articulated within the rules of a particular discourse (1990). It is law’s epistemology, then, that has been questioned here, an epistemology never inextricable from performances and modes of being in the inquiry. The general juridical form the MWCI is supported by the “tiny, everyday, physical mechanisms, by all these systems of micro-power that are essentially non-egalitarian and asymmetrical” (Foucault 1995, 222). The Attorney-General’s decision to deny funding requested by the commissioner, among other decisions and moves made during the inquiry, altered the possible fields of knowledge and action with disciplinary and material effects: the boycotting of the inquiry by the sixteen service and advocacy providing groups; the
predominance of police testimony and evidence; Robyn Gervais’s withdrawal midway through
the evidentiary hearings; family members’ dissatisfaction with the process and outcome of the
inquiry, and so on. The specific decisions and the legal apparatuses that support these decisions
matter both as precedents that will determine future ontologies and epistemologies of legal
inquiries and as effects of existing fields of power.26

In his History of sexuality, vol. 1, Foucault (1990) writes: “There is a plurality of
resistances, each of them a special case: resistances that are possible, necessary, improbable;
others that are spontaneous, savage, solitary, concerted, rampant, or violent; still others that are
quick to compromise, interested, or sacrificial; by definition, they can only exist in the strategic
field of power relations. … They too are distributed in irregular fashion: the points, knots, or
focuses of resistance are spread over time and space at varying densities, at times mobilizing
groups or individuals in a definitive way, inflaming certain points of the body, certain moments
in life, and certain types of behaviour” (96). In the following chapter, I engage Foucault’s
multiplicity of resistances as a challenge to understand the subversive performances of two
inquiry actors in particular. Though perhaps unintentional, their performances created disruptions
and disturbances in the smooth functioning of the MWCI. Acting as stumbling blocks, their
bodies and knowledges, by failing to conform to expected epistemological and ontological acts,
generated instances of resistance, uncovered the splices – the mobilizations, enrollments, and
everyday doings – that allow the inquiry, as a function of the law, to acquire its air of fixity and
authority. It is these bodies and their knowledges that make it possible to think the resplicing of
these institutions. The inquiry’s failure to hear these voices thus emerges as a foundation upon

26 As Francis (2012) said, “the conduct of this inquiry has tainted this organization’s perspective on the inquiry
process. We’ll think twice before lending our organization’s legitimacy to future inquiries.”
which to engage in a deep and sustained interrogation of law and its ability to address instances of systemic non-justice. How might this failure precondition the imagining of alternative legal ontologies and epistemologies? What might we make of these alternatives, and how might they address some of the concerns set out here? These questions deserve careful unpacking, a task I take up in the next chapter.
Chapter 3: Unruly bodies

3.1 Introduction

Across the discontinuities that separate discourses from one another, the regularities defining the rules of one may be disrupted by events formed elsewhere, giving rise to transformation.

David Webb 2012, 118

Much attention has been paid in critical legal studies in general and in interrogations of the Missing Women Commission of Inquiry (MWCI) in particular to law’s exclusionary expressions. In the preceding chapter, I took these exclusions as my object, exploring the intricate and ever particular arrangements of power produced by and generative of splices of law and space. This work on exclusion is important. It has succeeded in elucidating law’s constitutive outside – that is, the disordered and unruly referent against which positive conceptions of law are defined – and in populating this outside with the expected raced, colonized, sexualized, gendered, and disabled others. And yet, too often has this scholarship failed to take the next step, that is, it has failed to query the radical political potential of this outside, or far worse, taken as its objective the development of a new and better form of law that can speak for, that can bring in every marginal position. This work seems to make claims for a singular, univocal, and unequivocal discourse that meets its limits nowhere. Norms, always “in the process of being elaborated, adapted for new purposes,” their continuing life dependent on the “inventiveness by which they are reproduced time and again” (Butler 2010, 154) are readjusted to account for externalized others.27 Systemic inadequacies associated with normalizing discourses remain intact. Victims are reproduced in their passive role, their differences domesticated, the law

27 The admittance of oral histories as evidence in First Nations land claims cases provides one example. Though allowable in court under an exception to the hearsay rule first articulated in Delgamuukw v the Queen, strict evidentiary laws upheld by the Supreme Court of Canada ensure that the oral evidence is understood and interpreted within a common law framework, not within the context in which it evolved and is offered (Miller 2011).
exerting a debilitating effect over the possibility of radically and actually alternative actions and imaginaries. The remedy to exclusion is thus expressed as inclusion, as “an increasing proximity to those norms that historically have been exclusive: the extension of the norms … not only a fantasy but also a way of being made increasingly subject to their violence” (Ahmed 2012, 164). The persistence of abstracted, universalizing law persists in these violent inclusions, the very act of calling for justice and rights within dominant legal structures reconfirming the unequal power exercised in and through normative expressions of law (J. Butler 2009).28

Responding to what I see as some of the limits of my analysis presented in the first chapter, here I work to reallocate agency, uncovering specific expressions of Foucault’s (1990) plurality of possible, necessary, improbable, spontaneous, savage, solitary, concerted, rampant, and unintentional resistances. Whereas the previous chapter placed law at the centre, exploring how it codes and categorizes bodies and knowledges, this chapter centres these bodies and knowledges in an endeavour to render visible the contingent, performative, and always-particular applications and reverberations of the law. Here, then, I make the transition from splice as noun to splice as verb, from the work of unpacking law’s perceived fixity and naturalness to the work of exposing fractures in this façade and imagining how dominant splicings unravel. Specifically I ask: How did participants within the MWCI challenge or refuse law’s disciplinary attempts? How has this shaped the field of possible actions in the inquiry? What is the broader political potential of these resistances?

To critically interrogate the law from within its own space is not to kowtow to predetermined delimitations on what is possible there. Rather, I want to refigure nomic site of the

28 Normative expressions of law in this chapter refer to Western statutory law, that is, the law employed by the state, in courts, in civil disputes, and so on.
inquiry as a place of contestation not by and through law as it is normatively understood, but by and through alternative and ‘other’ ways of performing within this sphere. It is important to note, before continuing in this work, that they are many reasons why some people cannot and will not take up the challenging task of resisting law from the inside out, for example, the women mentioned briefly in chapter 1, and in more depth in chapter 3, whose experiences of injustice and discrimination at the hand of the state’s judicial system materialized the inquiry as a hostile and unwelcoming space. For many of these actors, refusal (to appear, speak, tell, testify, engage) is a much more valuable and tenable position, their silences significant for the gaping holes left behind by withheld and withdrawn ‘evidence’. For others, protest is key, the vocal and embodied mobilization of occluded histories of colonial violence and racial neglect taking shape and tone in the daily demonstrations outside the inquiry courthouse. And for others still, it is public and publicized withdrawal: speaking out in newspapers, writing alternative inquiry reports, and disrupting MWCI press conferences. Though cognizant of these modes of resistance and a multiplicity of others brought into being by the inquiry and of their undeniable value to the constitution and experience of the nomosphere, this chapter highlights contestations from within the inquiry space as oppositional and productive struggles that have been too often overlooked.

As in the chapters that precede and follow this one, I focus on empirical accounts of MWCI participants, looking to two bodies in particular who resisted appropriation and domestication by legal norms at work in the inquiry. Both of these characters appeared in the first chapter, where they were predominantly introduced as subject to the exclusionary power of the law. This is not an oversight. I think it is possible to interpret the same performances from both positions: as subject of and resistance to exclusion. In effect, following Judith Butler, my task is explicitly to do so, to refigure the outside “as a future horizon, one in which the violence
of exclusion is perpetually in the process of being overcome” (1993, 53). The preservation of this space as a site where “the opacity of what is not included in a given regime of truth acts as a disruptive site of linguistic impropriety and unrepresentability” illuminates “the violent and contingent boundaries of that normative regime precisely through [its] inability… to represent that which might pose a fundamental threat to its continuity” (Ibid). Performances of resistance, as I will argue, are produced and compelled in relation to the disciplinary practices of these epistemological and ontological truth regimes, the same practices that render one ‘outside’ in the first instance. And yet though relational, these performances are not reactionary to existing configurations of power, space, and law but come into being through encounter: encounters among and between bodies, spaces, norms, and power. Acknowledging Mitch Rose’s (2002) caution against the reification of dominant systems through their conceptualization as pre-established entities in response to which resistance develops, I see normative and hegemonic spaces and the struggles against them as locked in a reciprocal process of becoming, each responding to and influencing the other. Again, drawing on Blomley, I hold on to a conceptualization of hegemonic practices and institutions as the appearance of fixity and naturalness, never as embodying these qualities in essence.

I write about resistive performances in this chapter as a way to extend, across time and space, their political potential and the political potential of and in alternative modes being in the nomosphere, of experiencing law and place. Following feminist political economists J.K. Gibson-Graham (1996, 2006), I see these subversive acts as performing the integral work of revealing their own possibility, of altering the field of possible actions such that acts of resistance become imaginable, tenable, probable. And so too do I want to chronicle these unruly bodies for how tirelessly they worked against the inquiry grain. As I explore in chapter 3, many of these
performances of resistance exceed the archive’s capacity to document them, their disruptive quality translating as unintelligibility: as stutters, broken speech, withdrawal, or silence. This matters, both for the lived experience of the subject and for future discursive interpellations of this event. The inquiry lingers as collective memory in the archives, as a ‘true’ version of proceedings ever open for interpretation to the future. This chapter is a chance to give these ‘unintelligible’ voices, knowledges, performances, and bodies their due, to write them down (as fraught a process as this is) and account for what so many interviewees described as among the most exhausting, horrible, demanding, exhilarating, and all-consuming experiences of their lives. I need to put these stories somewhere, even if I cannot put them in the archive.

This chapter (as the others, as the archive) has emerged from a constitutive selective process. The focus of this thesis on the internal workings of the MWCI has meant I have had to ignore many of the dynamics at play outside the inquiry, perhaps most notably the daily protests eight floors below the hearing sessions. Here, First Nations people and their supporters rallied against the inquiry’s narrow temporal focus, calling for a recognition of ongoing histories of colonial violence, dispossession, and racism. High numbers of Aboriginal children placed in foster homes (arguably an extension of the residential school system (see Fournier & Crey 1997)), disproportionate incarceration rates of First Nations people, the reservation system, and unresolved treaty disputes, among other ongoing colonialisms, they argued, are complicit in the disappearances of Aboriginal women from the Downtown Eastside (DTES). Media coverage, including the publication of numerous letters of withdrawal from First Nations organizations (see for example Phillip & Teegee 2011; Matas 2011; Hall 2012; John, Kwulasultun & Smith 2012) and an ongoing presence at the busy intersection at Granville and West Georgia streets secured the visibility of colonialism, past and present, at the interstices of the MWCI and resistance
against it. As such, these protests inevitably restructured the field of action within and outside the inquiry space, influencing public perception and processes of collective memory making in important and material ways.

And yet, its stories do not fit within the pages of this chapter. In part, as I mentioned in the introduction, this is a product of the time and space available in a master’s thesis, and of my particular position within the institution and in relation to the MWCI. Given these constraints, I do not think I can do justice to these important forms of resistance without myself delving into complex histories of colonialism and race violence. This is a necessary project; the literal and figurative ‘outside’ space of indigenous protests demands careful attention, unpacking, and preservation. However, it is not my project here, not least because to rush through these stories, to read their surfaces, is to enact the violent displacement concomitant with hasty translation and inadequate interpretation. And so, rather than addressing these accounts incompletely, I have oriented myself – transparently, I hope, and certainly with some hesitations – away from them and towards the resistances of those participating in the inquiry process.

### 3.2 Performing resistance

Following David Delaney (2004), I take three conditions as key to thinking about the circulation of meaning and resistance in the nomosphere. First, as explored in chapter 1, specialized institutions and practices exist which, through convention and coercion and with the weight of ‘The Law’ behind them, establish what counts as the authorized or normative interpretation of legal meaning. The narrative framework manifest in interactions between witnesses and lawyers, in the translation of experiences into expert reports, evinces this condition. How these testimonies generate meaning under the law is governed by an interpretive practice that iteratively reaffirms its own authority, affirms, for example, the value of rationality
over emotion, facts over stories, and other modes of knowledge production that uphold the law’s claims of universality and abstraction. Second, despite the existence of these authorized interpretations, legal meaning is open, and thus contestable, revisable, and capable of being incorporated into an array of meaningful connections. The persistence of legal norms – of norms in general – is dependent upon iterative performance, an inevitably that necessarily contains within itself the possibility of disruption (Butler 2010). How these disruptions are expressed and how we might understand their potential are central queries in this chapter. Finally, contingent upon and relational to the first two conditions, social agency is both highly constrained and open to novel transformations. Careful engagement with empirical work, always important, is especially significant within this third condition. Resistive performances warrant attention for how they interact with the particular circumstances within which they emerge and for the creative and multiple ways agency is expressed.

Judith Butler’s notion of performativity is helpful for thinking about resistance in the nomosphere, taking an interest, as it does, not only in how norms are established, but also in how performances and iterative processes are always “in relation to norms that precede and exceed us” (2009, ix). I will explore the relevance of this relationality more in a moment. First, the theory of performativity bears brief elucidation; inevitably, this is only a cursory glimpse into a theoretical contribution that spans decades and disciplines. Butler’s recent article on performative agency and the market (2010) is especially helpful. Though ‘the economy’ emerges as the specific and central site of inquiry, Butler’s analysis in this piece provides an interesting methodological approach for imagining and talking about a politics of resistance to legal norms, not least because the ways we know and consider ‘the economy’ and ‘the law’ seem to intersect in the naturalization and normalization of the social constructions upon which these categories
rely. The economy, Butler (2010) writes, “only becomes singular and monolithic by virtue of the convergence of certain kinds of processes and practices that produce the ‘effect’ of the knowable and unified economy” (147). Likewise, understandings of the law as fixed, abstract, and universal are the effect of iterative performances that reproduce these norms, for example, in the drawing of boundaries between the bodies and knowledges of experts and non-experts or in the enforcement of norms of decorum consonant with an always-generalized form of courtroom practice. Though we talk and think about them as such, “social categories are never stabilized, normalized, sedimented, or structured. Rather, they are always in a process of dynamic unfolding” (Rose 2002, 384). In other words, the effects of power and appearance of hegemonic systems are practiced phenomena, product of an ongoing spatio-temporal ‘doing’. Considering law’s performativity, then, establishes context as more than just the historical and empirical framework for law, contemplating it instead as the ever-shifting and always already situated historicity of law itself (Birla 2011). Law and power are continually coming into being – past, present, and future – contextually, every moment offering a multiplicity of possibilities in time and space (Rose 2002).

Drawing on J.L. Austin, Butler distinguishes between two forms of performative utterances: illocutionary and perlocutionary. If the former are acts that bring about definite realities, for example a judge passing down a decision in court, the latter, for Butler, are much more complicated: “those utterances from which effects only follow when certain other kinds of conditions are in place” (Butler 2010, 147). This utterance alone does not bring about a predictable effect, but can set into motion a series of actions that will alter the field of other possible actions. In this sense, “the illocution appears more clearly to rely on a certain sovereign power of speech to bring into being what it declares, but a perlocution depends on an external
reality and, hence, operates on the condition of non-sovereign power” (Ibid, 151). Both illocutionary and perlocutionary utterances operate in obvious and mundane registers, everyday actions and relations establishing time and again the existence and predominance of, for example, normative understandings of the law (or, as Butler is arguing, the economy). The effects of these utterances have theoretical and material consequences, influencing how we understand, operate within, and interact with the world.

And yet alone, the model of ‘the speaking subject’ does not fulfill a complete understanding of performativity. To inculcate the subject as the necessary ground of performative agency is to ignore the reproduction of social norms via a multiplicity of activities, nonhumans, and objects – for example, repeated acts of delimitation that seek to maintain a separation between legal and ‘everyday’ spheres; modes of education and specialization that constitute part of legal activity itself; and organizations of human and nonhuman networks, including technology, that enter into specific legal practice, such as transcription and recording. Thus is it through a series of discursive and non-discursive acts – generative of norms in their repeated and ongoing iteration – that something we name ‘the law’ is reconstituted and reproduced, and in relation to which the intelligibility of the body and its knowledge is governed. Illocutionary utterances in particular are complicated by this expanded understanding of performativity, the same passing down of a judgment onto a guilty party now relying on what a judge learns to say, how s/he learns to speak, and thus on the codification and ritualization of a discourse that precedes and makes possible the subject in the first place (Butler 2010). The causal and chronological relationship between illocutionary speech and its expected results is destabilized, relying as it does on the impossibility of a fixed, a priori context (Birla 2011). Perlocutionary performatives, already understood in relation to the gap between the originating
context or intention and the effects it produces, thus more closely reflect Butler’s notion of performativity and the transformative possibilities of performative iteration (Butler 1997). Within the notion of perlocutionary utterances, the subject’s agency is no longer reducible to intention, but is always already “folded into the social” (Birla 2011, 501; Butler 1997).

It is in these performatives that I am particularly interested, those that are constituted by a contextual reality and hence by the condition of a non-sovereign actor, but that, as I will argue, likewise constitute that reality and the subject, or its possibilities. Those subject to the disciplinary conventions performed by the MWCI did not generate that which they named, but in relation to the nomic settings enacted in and through the inquiry emerged as the potential brokers of failure. Perlocutionary performatives “are always brokering failure, whether or not they do actually fail” (J. Butler 2009, 152). It is in this very unpredictability and risk – in this potentiality of breakdown – that the possibility of resplicing emerges. Perlocutionary utterances draw our attention to the diverse and multiple mechanisms through which norms are reproduced and resisted, countering metaphysical assumptions inherent to culturally constructed categories (of, for example, law) and negating a form of positivism that delimits, in the first instance, a normative understanding of them (Ibid). Key here is that we cannot think resistance to norms without also thinking the quotidian and extraordinary ways that these norms are (re)produced in place, cannot think splice as verb without thinking it in relation to splice as noun. For it is in the very elucidation of this process of iteration that the possibility of alternatives emerges. Chapters 1 and 2, then, are contingent on one another, the first interrogating the concrescence of the MWCI around legal norms that dictate acceptable modes of thinking and doing, the second querying how an encounter with this nomic site establishes the best direction for subversive agency and the effects of these performative acts.
The picture that emerges from such an analysis is complex and contradictory, full of details that both confirm and resist the epistemological and ontological expectations established by the commission’s manipulation of the public space of the inquiry. Commission staff, including Wally Oppal, and individual participants endeavoured to perform the particular truths they were trying to achieve: the commission reproducing the “technical expert, you know, we’ll-tinker-with-the-policing-models” (Pat 2013) approach, families demanding police accountability and apology, community interests exposing decades of systemic neglect and abuse. The testimony provided by participants in this sense was not an unveiling of truth, but an active interpretation of what happened (Derrida 2002) within a particular frame of reference, an agential act that reveals the ongoing and conflict-ridden process of meaning-making. It is in the disjuncture between these multiple iterations of ‘truth’ that we come closest to perceiving the complexity of knowledge brought into being by legal process (Cole 2010, 2007) and can begin to think about relational performances of resistance. The multiple discourses generated during the MWCI cannot simply be divided between those that are accepted and those that are excluded (Foucault 1995), though exclusion was a common effect. The intelligibility of epistemological and ontological acts is contingent upon performances of space and the interpretive frame, and thus, explicitly, on context. “We must make allowance for the complex and unstable processes whereby discourse can be both an instrument and an effect of power, but also a hindrance, a stumbling block, a point of resistance, and a starting point for an opposing strategy” (Ibid, 100). Modes of participation that fall outside the norm, in other words, cannot be read not only for the conditions of their exclusion, but must simultaneously be considered for their capacity to thwart power and expose its fragility, to reappropriate space.
3.3 Occupying the nomosphere

If subversion and resistance become possible only in relation to particular conditions, because of “a certain historical convergence of norms at the site of my embodied personhood” (J. Butler 2009, xii),29 for some inquiry participants, the MWCI presented just that, an opportunity to perform resistance to the disciplinary and exclusionary power of abstracted legal norms. The specific concrescence of the MWCI’s nomic setting, explored in chapter 1, preconditioned to a consequential extent the possibilities of, or pathways for, subversion, which gain intelligibility and significance in relation to that which they seek to subvert (J. Butler 2009). Drawing on Foucault’s (1982; 1990; 1995) concept of power introduced in the last chapter, as a way of understanding that certain actions may restructure the field of other possible actions, two questions emerge: first, how do the spatio-legal conditions under which resistance takes place influence the materialization of that resistance? And second, and perhaps more importantly, how does resistance then loop back to restructure the possibilities of its expression?

The decision to participate in the inquiry by some groups and individuals deserves careful consideration here. Interpreted by many as a capitulation to the status quo of inequitable legal practice (Kerry 2012), the inquiry was highly divisive along these lines (Francis 2012), participation often framed in opposition to withdrawal. “[A]t least at the meetings I attended where we were lending whatever knowledge we have about [inquiries], people were, people were torn between the ‘principle and the strategy’ and the ‘something’s-better-than-nothing’,”

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29 Judith Butler is not denying the agency of the subject under the conditions of possibility established by norms. Rather, she’s arguing that resistance is contingent upon those norms, is always in relation to them. “And even though we sometimes plan actions,” she goes on, “deliberate on what course to take, and resolve upon intention, it is not finally possible to think of pursuing subversive strategies exclusively as a fully deliberate and intentional set of acts” (2010, xii). Butler uses the example of illegal migrants in Los Angeles who sang the American National Anthem in Spanish in protest of their ‘illegal’ status. To sing the anthem in Spanish, Butler argues, is both to call attention to the cultural presence of the Spanish language and is an act of resistance in relation to ‘English-only’ policies that claim English as the only language of the public sphere.
Francis told me. “I mean, all of the calculus that goes into trying to figure out how at the very, very end more good could be served…” (2012). For Francis, to participate was to make the best of a bad situation, whereas to withdraw was a strategic block against Oppal and his staff.

Headlines announcing the withdrawal of DTES, legal, and Aboriginal groups (see for example Sterritt 2011; Ha-Shilth-Sa 2011; Walia 2011) solidified these actors as the locus of resistance, their protests “against what they are calling a flawed, broken, and sham inquiry” (Ha-Shilth-Sa 2011) “placing the final nail in [the MWCI’s] coffin” (Walia 2011). Meanwhile, representatives for participating service and advocacy groups began to feel like “traders [sic] because we have not withdrawn from this inquiry, or we have not withdrawn so far” (Livingston, MWCI transcripts October 12 2011, 70). Opting in to participation was equated with opting out of the perceived solidarity engendered by withdrawal. “Josh Carter30 was trying to engage people in a discussion that I was leading them into a scab experience,” Jo told me, “that we were crossing the [picket] line!”

Withdrawal from the inquiry undoubtedly succeeded in elucidating a valuable form of intentional resistance in relation to the normalized enactments of power exerted by the MWCI. I do not want to diminish its significance. However, these events are not the focus of this section. In part, this is because much has already been written about the merit of withdrawal. Parallel reports by legal advocacy groups, newspaper and magazine articles, and blogs have documented its breadth, explored its intricacies, and established that, while product of the conditions instituted by the MWCI, so too was withdrawal generative of an oppositional perspective that shed light on the inquiry’s many failures (see for example Walia 2011; Union of BC Indian Chiefs 2012; Bennett et al. 2012). Rather than replicating this work, I want to focus on the

30 pseudonym
modes of resistance brought into being through particular forms of participation. To read these, as has been both implicitly and explicitly done, as the outcome of a ‘something’s-better-than-nothing’ perspective is to simplify and silence complex and purposefully subversive perlocutionary iterations in the nomosphere. To ignore them would be to obfuscate salient avenues for resistance and to deny agency to those actors who took them.

3.3.1 Jo

In a small office building in the heart of the DTES, Jo spoke to me animatedly about the potential of participation. Representative for one of the few groups who, granted standing at the inquiry, decided to stay with the process, Jo explicitly established the decision as dissidence and protest.

It was not clear to me why we were boycotting. And I thought it would have been much more effective to have all the community groups put a non-lawyer at the front and just JAM THE THING! Because it’s true. If somebody doesn’t give you a lawyer do you just walk away? I don’t think so! You know what I mean? And then we would have had the room full, which would have made the families feel better. … We could have just raised holy hell [by participating] … and then it would have really put into a crisis what was valid and what was invalid. Like what would [Oppal] have done? Thrown us all out? (2012)

For Jo, a non-lawyer, the standards of coherence and performance at work in the MWCI – grounded in a normalizing and self-referential rationality established by jurisprudence – generated not an impetus toward withdrawal or boycott, but an opportunity for disruptive engagement. ‘Jamming the thing’ was as a means by which to expose “the violent and contingent boundaries of the normative regime” (Butler 1993, 53) of law enacted by the inquiry. And though the envisioned crisis remained aspirational, “a lost fantasy” (Jo 2012), its imaginative potential, in not yet and unrealized form, establishes what Butler, drawing on Maruyama, calls “democracy as fictional in a specific sense” (2010, 155). Contained within this fiction is that
which overflows the framework for understanding what is possible in place; the fiction is an ideal that moves beyond a narrow conception of reality bound by normative modes of rule and precedent and social facts (*Ibid*). To imagine modes of opposition through alternative forms participation is to bring into being the possibility of law’s re-splicing via ontologically and epistemologically disruptive occupations of the nomosphere generally, and in the particular nomic space of the MWCI. It is through participation in the inquiry that the possibility of ‘jamming it up’ comes to exist, a possibility that disrupts a notion of the law as inevitably disciplinary and normalizing in its effects.

In the absence of a room full of people ready to ‘raise holy hell’, Jo exercised what s/he interpreted as the freedom of dwelling in fictional democracy. Preserving her/his status as outsider to the normative regime of legal practice – a status imposed by the MWCI – Jo responded to efforts at codification and exclusion on the basis of bodily comportment and modes of knowledge production by transgressing those same boundaries: not by attempting to embody the performances and inhabit the spaces of legal experts as a non-expert, but rather by taking advantage of an identity as unwelcome invader in the nomic site of the inquiry. During our interview, Jo told me of repeated attempts to take on such a role, to engage in disruptive collaboration with, for example, the independent counsel, who, as legal insiders, could advise potentially fruitful avenues for interference.

I’m trying to signal Gratl, and Gratl’s trying not to ruin his entire career for the rest of this life. I kept saying [to the independent counsel, ‘tell me what to do’], but there must be some code in lawyer land that they can’t go ‘do it Jo!’, in a completely sacred, I will never tell – they can pull off my fingernails and I will never tell! – way, tell me to go after someone and say something because

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31 Jason Gratl is the independent counsel appointed to represent the Downtown Eastside community.
I could get away with being inappropriate in the sense that I don’t know what the damn rules are anyways! (2012)

J. Butler argues that “the performativity of gender is … bound up with the differential ways in which subjects become eligible for recognition” (2009, iv). Both Jo’s supplication to the community lawyers to advise her/him on how best to disrupt inquiry proceedings by operating outside or against the comportment compelled by its nomic setting and their non-fulfillment of these requests reveal this boundedness: Jo’s feelings of exemption from the disciplinary norms at work in the inquiry stemming from a position as non-lawyer, lay-person, community volunteer, protestor, family member; the lawyer’s feelings of constraint a result of their training, their ‘expert’ status, their career goals and their standing in the legal community and before the Canadian Bar Association (Alex 2012). Equally bound up in the particular ways that the subject becomes intelligible – in this case, in and through legal norms that dictate appropriate acts in space – resistance and compliance both produce and are produced by this recognition. Jo’s appearance at the inquiry was always already constituted in relation to legal norms that, calling on chapter 1, draw strict boundaries between the expert and the non-expert. Said otherwise, Jo became eligible for recognition only as an outside (non-expert) other.

It is this very subject-position that contains within itself the possibility for resistance. If, as J. Butler (2009) writes, “[s]ometimes, it is not a question of first having power and then being able to act; sometimes it is a question of acting, and in the acting, laying claim to the power one requires” (x), then Jo’s appearance as an excluded subject within the nomosphere, in its very otherness, can be read as laying claim to the power of a preserved outside. Not knowing the rules generated a space for disrupting them, an impropriety that in its unintelligibility illuminated the contextual specificity of the law. Rather than fighting for inclusion, Jo – both intentionally and unintentionally – exercised the performative agency opened up by a cast-out positionality, for
example, by speaking to me ‘on the record’ about Oppal’s perceived complicity in state bureaucracy; \(^{32}\) by viewing, taking, and circulating documents only supposed to be available to trained legal staff; \(^{33}\) and by showing up at meetings, community forums, and inquiry sessions “for months and months … with no money and no childcare just to keep saying to Oppal” this one simple message: “criminalizing women who are addicted to drugs makes it so people can murder them and get away with it” (Jo 2012). Unencumbered in many ways by the coercive disciplinary powers of legal practice, Jo was present within the inquiry never as a lawyer and always as an advocate for DTES residents, a legal outsider mobilizing authority as an occupant of the nomosphere.

Jo was relatively ineffective in forcing the inquiry to attend to the ways that drug-addiction “affected inaction and lead to [the missing women’s] deaths” (Jo 2012). In-depth local knowledge of the DTES, a product of Jo’s presence there “since God” (Jo 2012), was, like the experiential knowledge of sex workers, lost in translation, “Oppal seem[ingly] immune to this information” (Jo 2012). The standards of legal coherence and the context of court-like process rendered Jo unintelligible: interrupted during cross-examination, unable to access documents, condescended to by Oppal and his staff. \(^{34}\) And yet the products of these mistranslations – the interruptions, anger, sadness, fidgeting, repeated and usually sarcastic apologies for not being a lawyer – somewhat incoherent in the transcripts, uncover the inability of the law’s regime of truth to represent and accommodate that which might pose a threat to its perceived universality.

\(^{32}\) “I don’t know whether to say this on the record,” Jo told me, “[but] I think that [Oppal] um, pushed to have this due to sort of personal reasons, and he made an agreement that if they gave it to him he wouldn’t allow anything to come out” (Jo 2012).

\(^{33}\) “You weren’t even allowed to just take [the documents]. And I’m thinking ‘Fuck you I’ll take this! Of course I’ll take this! This is the last record of my, you know, my nice’s mom. Why shouldn’t she have this!’” (Jo 2012)

\(^{34}\) “It was insulting. … I don’t know if Oppal would have dared speak [the way he did to me] to a lawyer” (Jo 2012).
Put simply, around Jo’s body and knowledge, the law reached its limits as an abstracted, univocal, and stable site of truth. Her/his counter-performance, emergent through encounter with the juridico-political splices that constituted the inquiry, implicated the particular nomic setting and the rules established therein, never separable from one another. The removal of documents mentioned above, for example, gains meaning as a resistive act only in the context of a juridical space that requires legal training as a precondition to access. Jo’s presence in the inquiry space thus made visible its status as metaphorically and materially unwelcoming to particular categories or orders of people. In a sense, her/his performance as outsider interrupted the inquiry’s iterative performances of inclusivity, equity, collaboration, and quasi-legality, illuminating a fracture in the perceived hegemony of the law as a universal site of justice.

3.3.2 Robyn Gervais

A second story warrants telling under the rubric of nomospheric occupation. Though this one fits more easily with dominant understandings of resistance, I recount it here in part for the moments of subversion that exceeded intentionality, again showing how contestation emerges in relation to the iterative elaboration of norms and interpellations of the subject. Because of the sensitive and potentially inflammatory nature of some of the interview materials included, I have dropped the use of pseudonyms to prevent it from being connected back to materials used in other chapters and previously here. I have also taken license to change some details so as to protect the anonymity of the speaker. None of these changes have altered in any significant way the meaning or context of affected statements. I reintroduce some details already described in chapter 1 to contextualize this account.

When Oppal made the decision to use independent counsel as a means of rectifying concerns that the groups denied funding by the Attorney-General would be thoroughly
disadvantaged during the MWCI, on August 10, 2011 he appointed Métis lawyer Robyn Gervais as representative for the almost incomprehensibly broad category of ‘Aboriginal Interests’. Alongside Jason Gratl, counsel for the Downtown Eastside Community, Gervais was responsible for bringing to the table the vastly disparate and diverse experiences and perspectives of affected groups. Her appointment was fraught from the beginning. Angry about a lack of consultation during the early stages of the inquiry process, many First Nations groups withdrew their support, leaving Gervais with few people to consult about how best to represent apposite issues. “It was definitely difficult,” she told me, “and it was only towards, I’d say probably like end of January into February that individual Aboriginal people involved in the missing women investigation started talking to me … and saying ‘you know, maybe we’d like to have some input in this after all’” (personal communication 2012).

Unable to make Aboriginal voices heard over the cacophony of police testimony, some of it accepting “no responsibility for the inadequate investigation of missing Aboriginal women” (Gervais, MWCI transcripts March 6 2012, 4) on March 6, 2012 Gervais resigned as independent counsel.

When I looked around the room and saw 24 publicly funded lawyers hired to protect individual police officers and the police generally I hope you can understand why I began to question … [whether] I could adequately represent Aboriginal women. … Regrettably, I find myself in a position where I feel compelled to withdraw… As I leave this inquiry, I regret that I cannot find a way to bring the voices of the missing and murdered Aboriginal women into the room. Thank you. (Gervais, MWCI transcripts March 6 2012, 4-10)

Obfuscating deep-seated power inequalities, systemic barriers to calling Aboriginal witnesses, and the inhospitable space into which Gervais was attempting to carry those voices, Oppal
effectively blamed Gervais’s withdrawal on her unwillingness to bring her demands to the open and public space of the inquiry.

[F]or you not to come here to address any of those concerns is a matter of -- and I say this with respect and I thank you for what you’ve done. I say this with respect. It’s been disappointing, to say the least. … [A]s an advocate, you are -- you have the liberty and the right to come into a courtroom, into the hearing room, and tell me who you wish to call and I would have listened to you. But, in any event, that’s water under the bridge now, isn’t it? So it’s unfortunate because you had an opportunity to really do something here. (Oppal, MWCI transcripts March 6 2012, 13-16)

For Oppal, then, it was Gervais’s failure to recognize and harness the rights and liberties associated with her privileged status as independent counsel for a key interest group – the right to call witnesses, to appear before the commission, to cross-examine, to request document disclosure, and so on – that undermined her ability to satisfy the responsibilities of her position.

[Y]ou’re free to call more witnesses. I’ve told you that. I mean call the witnesses … and I’ll hear them. … As an advocate for Aboriginal interests, if I might be so bold to suggest, that’s your duty as counsel, to call evidence, to call the evidence and to -- … That’s your job as a lawyer. (Oppal, MWCI transcripts March 6 2012, 26).

Put simply, she, like those who withdrew before her, was “silencing [her] own voice” (Oppal, MWCI transcripts April 2 2012, 6), a counterproductive act belying her appointment as advocate for marginalized Aboriginal women. “[I]t doesn’t do much good to walk out of an inquiry, to abdicate – and I say this with respect – abdicate a responsibility that is incumbent upon all of us to find a solution to these terrible crimes, horrible crimes that took place” (Oppal, MWCI transcripts March 6 2012, 25).

References to Gervais’s inexperience in the courtroom worked to justify Oppal’s position, some counsel and inquiry participants citing her junior lawyer status as the reason for her withdrawal.
Her role, like the role of any counsel, is to be there to pry into and inquire into all issues. Robyn has appeared to want to focus entirely on issues that might relate to systemic violence against First Nations people … What I’m really highlighting is the difference of point of view of what the role of counsel is. Now I’ve been before the Bar since 1964, Robyn’s a very junior lawyer, but she’s good by the way, she’s doing a good job, but it would be good if she could broaden her perspective, that’s all. (Roberts, quoted in Cluff 2012a)

Gervais’s short time before the Bar Association, mobilized to explain her resignation, draws attention away from the inquiry’s inability and unwillingness to hear from Aboriginal witnesses, placing blame for their silence in the MWCI on the unpracticed shoulders of the woman appointed to represent them; her junior status, all of a sudden the focus of conversations about her participation (see for example Cluff 2012a, 2012b) was qualified as an unfortunate oversight by the commission that appointed her.

And yet, for at least two interviewees, it was this very status that might have gotten her the job, her lack of courtroom practice hindering her ability to be ‘independent’ by forcing her to “get into bed with some institutional insiders”35 (personal communication 2012).

They wanted her to apply for this position because she was a junior lawyer. … They thought she wouldn’t get in the way, and they could sort of guide her along whatever path they wanted her to go on. (personal communication 2012)

The paternalistic power dynamic described by these interviewees seemed to govern the working relationship between Gervais and the commission counsel. “When Robyn tried to get her voice heard, she was just sort of patted on the shoulder like, ‘oh, ok Robyn, ok Robyn’ and just not really taken seriously” (personal communication 2012). Following a directive to move from

35 Initially, Gervais was supervised by two experienced lawyers: Bryan Baynham and Darrell Roberts. Midway through the inquiry, Darrell Roberts left his supervisory post to act as counsel for Marion Bryce, whose daughter, Patricia Johnson, was last seen in the DTES in 2001. Johnson was among the 20 remaining cases against Pickton stayed by the court in favour of conducting the Missing Women Commission of Inquiry.
individual testimony to panel format on February 21, 2012, Gervais was denied her request for two Aboriginal Interest panels over four days. Instead, she was allotted one day for the first group, an expert panel dealing with relationships between the Aboriginal community and Vancouver police forces, what commission counsel referred to as the “factual panel” (Brooks, MWCI transcripts March 6 2012, 18); the second panel, three community witnesses living and working in the DTES, would not be heard by the commission at all. Despite open lines of communication between herself and the Aboriginal community, at the time of her resignation Gervais had not succeeded in calling a single witness.\(^\text{36}\) “[W]ithout outside support from the Aboriginal community, without inside support from the commission, there was no way I felt I could [proceed] adequately,” Gervais told the commission (Gervais, MWCI transcripts March 6 2012, 27). Coupled with insufficient time to “go to the hearings everyday, and interview [panel] witnesses, and put together good evidence” it soon “just became incredibly obvious that her position was nothing but a token position,” said one interviewee, “and they just wanted her to sit there and you know, be Aboriginal, and be a woman, and not really say anything (personal communication 2012).

This perspective raises important questions about performances of legitimacy by the MWCI, and how these are wrapped up in the iteration of legal norms that must be adapted to meet the social and political demands of the context in which they are being deployed. In and through Gervais’s female, Aboriginal body, the inquiry could perform the inclusivity and collaboration necessary to its socio-political reproduction as a legitimate nomic site of truth-

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\(^{36}\) Some Aboriginal people had testified, but were called to the stand as family members or by commission counsel. This means that the initial line of questioning, which sets the stage for cross-examination, is developed by Cameron Ward, Art Vertlieb, or another commission lawyer. Gervais never had the opportunity to prepare a witness with a line of questions developed to expose particular evidence she considered integral (personal communication 2012).
making. “I think the thinking was that when she took the appointment she gave it the sort of Aboriginal legitimacy that was enough that it wouldn’t crumble,” an interviewee told me. “With no Aboriginal people in it at all, maybe it would have [folded]” (personal communication 2012). The surface of Gervais’s body, emblematic of the colonized other, was inculcated to do the diversity work of the MWCI, a form of labour necessary because diversity and equality were not already given (Ahmed 2012); she was there to stand in and speak for the other, always in a way concomitant with the law (and only, it would seem, when convenient for the commission). Thus was her position within the inquiry performed in two important ways: first as a female body of colour providing the MWCI with a tool for displaying its commitment to post-colonial inclusivity (Ahmed 2012) and second as a junior lawyer bound by the rules and standards of the legal discipline. (Unlike Jo, for example, Gervais is held accountable for her position by the Bar Association, which regulates and monitors legal performance.) The commission wrapped Gervais’s body in these two subject-identities, asking that on the one hand she silently signify and symbolize the commission’s dedication to an inclusive process while on the other she reproduce, epistemologically and ontologically – through her comportment, posture, gestures, and speech acts – the legal norms of knowledge production at work in the MWCI.

Gervais’s withdrawal rippled through the inquiry with intentional effects. Her departure and the subsequent interviews and media reports shed light on the MWCI’s failure to canvass the issues of colonialism and systemic racism, re-opening debates emergent during the pre-conference hearings almost a year previous and causing “great concern” for Oppal and his staff (Oppal, MWCI transcripts March 12 2012, 1). Lingering disquietudes about the narrow terms of reference, a funding ceiling that at once allowed for the hiring of 24 legal counsel to represent policing institutions and forced the appointment of independent counsel to represent Aboriginal
Interests and the DTES community, strict time limits on proceedings, and the absence of sex workers and Aboriginal people from the inquiry process once again appeared in the pages of popular news-media publications (see for example CBC 2012a; Hyslop 2012) and as the subject of radio and television interviews (see for example Cluff 2012a, 2012b). So too did Gervais’s resignation force a three week delay for an inquiry already plagued by setbacks, and, as I explore in chapter 3, operating within strict (and controversial) temporal constraints.

With the events of last week weighing [sic] heavily on my mind, I have directed commission to immediately undertake the important and urgent task of identifying an experienced and respected legal professional for the role of independent counsel representing the issues related to Aboriginal interests. … To facilitate this appointment, I feel it is necessary for me to direct the commission to stand down. … I do not want to proceed without new counsel being familiar with our mandate and with the evidence thus far called. (Oppal, MWCI transcripts March 12 2012, 2-3)

Thus with an anticipated 15\(^{37}\) days of inquiry hearings remaining were two additional counsel appointed, neither of whom was involved with the MWCI before Gervais’s withdrawal. “We will put our best feet forward and do the best we can to put the recommendations forward that make women and children safer,” Elizabeth Hunt told CBC. “We will take the time that we can to put the information before the commissioner … and leave those other things to the powers that be” (quoted in Cluff 2012b). When asked about Gervais’s concerns and their ability to overcome the obstacles she faced, Suzette Narbonne answered: “I don’t share her concerns. I think the inquiry necessarily has to hear from the police officers. … There’s [sic] two of us; we have strong, strong skills that we bring to the table. I know Ms. Gervais has strong skills but we’re just ready and able to do this” (Ibid). Reaffirming the absence of Aboriginal voices as, at least in part, a

\(^{37}\) An extension lengthened this to 26 days of hearings.
consequence of Gervais’s failure to fight to have them heard, Narbonne and Hunt’s appointment – “an absolute act of desperation” (Phillip, quoted in Lewis 2012) – was proffered by the commission to appease a re-invigorated and critical public.

Thus did Gervais’s withdrawal interrupt the process and expose failure, delaying proceedings and “shed[ding] light on the fact that it was like the inquiry didn’t really look at Aboriginal issues … [or] systemic racism” (personal communication 2012). But it was the performance of her female, Aboriginal body – one that in my experience attending the inquiry sessions was significant for its otherness – as an embodiment of collaboration and credibility by the MWCI that pushed the effects of Gervais’s resignation beyond the intentional register.

Legible as a sign of diversity, Gervais’s presence was required by the MWCI to symbolize its (perceived) refusal of the systemic racism it had been convened, in part, to interrogate. Having written its (appearance of) dedication to Aboriginal representability on the surface of her body, her resignation disintegrated any remaining modicum of legitimacy, even as it was substituted with the Aboriginal bodies of her replacements. “The Union of B.C. Indian Chiefs stands in solidarity with Robyn Gervais for taking the principled stand in relation to pulling out of the Missing Women Commission of Inquiry,” Grand Chief Stewart Phillip told media following Gervais’s withdrawal. “Robyn Gervais struggled and made a real effort to work through the shortcomings in the inquiry. The Aboriginal voice was completely marginalized and relegated to the sidelines. … The commission has absolutely no credibility and it’s been a complete waste of time” (quoted in Lewis 2012).38 Tensions between Gervais and the Aboriginal community –

38 The Union of BC Indian Chiefs (UBCIC) formally withdrew from the MWCI on July 27, 2011. In an open letter to Wally Oppal, the UBCIC stated their concern for the “extremely narrow and restrictive terms of reference, the tight timelines” and “the unilateral appointment of BC’s former Attorney-General as Commissioner.” “This was an opportunity for the Christy Clark government to demonstrate that the safety of First Nation women, and their
initially materializing during her appointment to represent them without consultation by the commission – dissolved, First Nations leaders going on the record to voice their support for her decision (Lewis 2012). In an open letter to the commission dated March 6, 2012 (the day of Gervais’s resignation), the First Nations Summit withdrew their support, the last Aboriginal organization to do so. “Given the withdrawal of, and the reasons provided by, the independent legal counsel, Robyn Gervais, today, and the withdrawal of all First Nations/Aboriginal organizations earlier in the process, we feel we cannot continue to participate. Effective today, we withdraw from participation in this inquiry” (John, Kwulasultun & Smith 2012). A symbol of indigeneity and credibility within the MWCI, product of the commission’s performances of her body as such, Gervais’s departure was in effect the departure of these conditions, her resignation an emblematic act that served to justify greater resistance by angry and excluded communities.

Gervais’s resignation is not equivalent to the withdrawal early on of boycotting groups. As Philip (quoted in Lewis 2012) put it, “she struggled and made a real effort.” This work deserves recognition. The effects of her departure are explicitly contingent upon her arrival in the first instance, upon the perlocutionary performance of her body as diversity by the MWCI, on her repeated silencing by Oppal and his staff, and on the commission’s refusal to hear her witnesses. The categorization of her participant body and subsequent disciplining of her performance, product of normative enactments and understandings of the law in general, of specific decision made during the MWCI, and of the particular context in which the inquiry came into being, established the conditions that made possible the intentional and unintentional effects of her resignation. Thus was Gervais’s a different kind of jamming activity: because her presence

families, matter to this government. With the full involvement of all participants, this inquiry, and the full and meaningful implementation of its recommendations, could have been a small but significant measure of justice” (Phillip & Teegee 2011).
was deployed to change perceptions of whiteness, her departure unveiled the whiteness of the
toxic setting, of the legal institution. Like Jo, Gervais’s performance established the precarity of
the legal system – especially its displays of inclusivity and diversity – and thus the possibility
and necessity of its resplicing.

3.3.3 Counter-readings

Sara Ahmed (2010) writes that “bodies are shaped by histories, which they perform in
their comportment, their posture, and their gestures” (246). This chapter has been an attempt to
look to these comportments, postures, and gestures for how they disrupt dominant spatializations
enacted by the law, in particular those that work to reinforce distinctions between what are
perceived as different categories of participants (e.g. expert, non-expert). Both Jo and Gervais
drew on experiences that at once escaped and were born of the inquiry’s disciplinary attempts; to
borrow Nirmal Puwar’s (2004) term, they shared the experience of being treated as ‘space
invaders’, as entering the space reserved for others: for Jo, the space of the legal expert, for
Gervais, a space of institutional whiteness. Thus do the conceptual or metaphorical spaces of ‘the
expert’ and ‘the non-expert’ collapse into specific nomic settings with material implications,
expressed in the affective feeling of being unwelcome in the courthouse. Operating within the
nomosphere, these actors made use of an epistemological and ontological agency that derived not
from their rights as legal subjects under the law, but from a subject-position located outside of
and in relation to the norms that constitute the MWCI space.

I selected these two stories in part because to do so required a re-reading of the normative
discourses used to interpret them; Jo is not incoherent but disruptive, Gervais not incapable but
engaging in an active refusal of the use of her body. The legal categories imposed on Jo and
Gervais, while at times “appearing to close down political possibilities also contain within them
an expansionary or transformative potential, albeit one often repressed” (Blomley 2003, 32). Not only expelled to the constitutive outside by a powerful and exclusionary system of law, Jo and Gervais mobilized their status as outside others. And while their performances do not necessarily have obvious or even efficacious performative outcomes, these acts accomplish other things, for example, modeling what a subject might look like, might sound like, who situates him or herself against the normalizing disciplinary power of the law (Butler 2010). The nomosphere, constituted in large part by practices and processes of law, cannot be underestimated as a key site of these accomplishments. Like legal categories, “the spaces within which law is put to work, while disciplinary, are also potentially transgressive” (Blomley 2003, 32); they are rife with moments for interjection, insertion, disruption, mutation, transfiguration, and renewal. The MWCI provided a series of such moments. Breaking with rule and precedent, with perceived social facts, resistances to the inquiry remade that space as one constituted, at least in part, by subversive and unexpected agential acts. Confronting existing forms of legal organization, discipline, and control, Jo and Gervais intervened in the very production of place, (re)politicizing, (re)appropriating, and (re)signifying space as a means of transforming the power relations that underlie its production.

It is in this process of re-signification, in the possibility of transgression, that there lies significant political potential. To uncover the subversive acts of participants is to show that subversion is possible, that the power of the law is neither hegemonic nor stable but only appears as such, thus exploding the myth of a universal, objective, and univocal system of law. ‘This law does not speak for me, does not stand for me,’ they declared. In response to various acts of resistance brought into being by the MWCI, people began to ask questions about the law’s capacity to represent Aboriginal issues, its ability to hear marginalized voices, and its potential to
address a form of violence underwritten by law’s own violent historicity. In the spaces opened up by these questions, already-existing and as-yet-unexpressed legal regimes emerge. Resistance, in other words, illuminates the limits of the universalizing and normalizing juridical system established in the West during colonialism and reproduced daily in courtrooms, inquiries, households, neighbourhoods, shopping malls, bawdy-houses, and jails (among innumerable other nomic spaces); at these limits a multiplicity of other legalities exist, revealing a plural and heterogeneous legal landscape. Local, Indigenous, and religious juridical codes entangle with a multiplicity of others, demanding that we attend to law in its multi-vocal expressions, that we account for a knowledge of the law that comes not just from written documents, but from law as “lived, sung, danced, painted, eaten, walked upon, and loved” (Watson 2002, 255). These alternative legal regimes demand our attention, though they are beyond the scope of this chapter.

3.4 Conclusion

Emphasizing performativity as an approach to law and expressions of resistance addresses the embeddedness of subjects within the iterative production of norms and insists on the opening up a multiplicity of spaces of contestation, a diversity of spatial uses obscured by the abstract categories imposed by law (C. Butler 2009). Jo and Gervais’s (and others’) different interpretations, mobilizations, and experiences of the nomosphere cannot be reduced to perspective. Rather, they represent highly contested sites of meaning, multiple processes of sedimentation and materialization that occur simultaneously in space and time. The nomosphere does not appear differently in these two cases, but is different, accumulating different meanings for the subject.

The performances described above, then, cannot be understood as counter to the efforts of those who withdrew, as a capitulation to the status quo, but must rather be acknowledged as
complex interventions into the iterative reproduction of legal norms and spaces. It is when we think these modes of political engagement together that a more complex picture of what it means to ‘resist’ these norms takes shape as a multiplicity of acts that together have the potential to give rise to transformation. It is, for example, together that they revealed the systemic failures of the inquiry, that they continue to push for Canada and the world to pay attention to the past, present, and future disappearances of marginalized and racialized women around the globe, and that they call for a national inquiry into the missing women investigation. Though each claims residency in a shared constitutive outside, this space is far from fixed in space and time. Jo, Gervais, those who boycotted the inquiry, and others who opposed it each evince the contingent and malleable quality of this space, which accumulates around and in relation to both ‘the inside’ and to the performances, bodies, and knowledges that conditionally inhabit it. The outside is not once and for all subservient or impermeable to the inside, even as these spaces are constituted in relation to one another. Going back to Foucault (1995), we must attend to the unstable processes whereby epistemological and ontological performances can be both an effect of and a hindrance to power. As sexed, gendered, racialized, (dis)abled, classed, trained, specialized, biological, social, political bodies, we enter into and depart inside and outside spaces frequently, contingent as they are on context. Rather than thinking resistance as separate entities coexisting in the same political sphere, then, we can think them as porous, as superimposed, co-mingling, and intimately wrapped up both in each other and in the norms they are disrupting. These resistances operate simultaneously on different scales, formal and (un)intentional performances at once connected to a range of subversive acts small and large that require one another.

The accounts of resistance included in this chapter contribute to a shift in how we think about and operate within the nomosphere. But so too have they, in the relationality of their
performances, identified particular and systemic mechanisms of exclusion that will continue to
impede the pursuance of alternative legal ontologies and epistemologies, for example, the
entextualized transcriptions that rendered Jo unintelligible in the first instance, or the institutional
whiteness that required Gervais’s uncomfortable presence. These mechanisms demand our
attention in a way that takes us beyond the empirical accounts of resistance related here. This
chapter, then, closes with many lingering, unanswered questions: What might a new legal
landscape, one constituted by multiple understandings and performances of ‘law’ that exceed our
current, narrow conception, look like? Where do we seek out these alternative and multiple legal
iterations, and how do we foster them? I have tried, here, to identify a tentative first step: that
is, the empirical undoing of law as universal and hegemonic. The performances of the
individuals discussed above succeeded in this, highlighting the precarity of law’s normative
regime of truth, which is unraveled by acts that assert the radical political potential of a
constitutive outside. In this sense, just as we have re-read the acts of two inquiry participants for
their perlocutionary performative potential, so too might we re-read this failed inquiry as having
succeeded on at least one front: that is, in prompting a re-calibration of “all the people at the
bottom … without any power to do the right thing” (Alex 2012) as agentive actors in a legal
sphere constituted at least in part by necessary resistances. Though rooted in its particularities,
the implications of this success far exceed the spatial and temporal boundaries of the MWCI, the
existence of resistive performances constituting their very possibility.

39 We might look to literature on Indigenous law (see for example Suzack 2010; Luther 2010; Sieder 2011; Razack
2002; McIver 1999; Richardson, Imai & McNeil 2009; Watson 2002, 2007), feminism and the law (see for example
Comack 2006; Deckha 2006; Davies 2008) or to work on legal pluralisms (see for example de Sousa Santos &
Chapter 4: Archival impressions

4.1 Introduction

RACISM EXPERT WITHDREW REPORT BECAUSE MISSING WOMEN INQUIRY ‘WOULD NOT FULFILL ITS MANDATE’

Brian Hutchinson, National Post, April 10, 2012

An expert in systemic racism and Aboriginal stereotypes withdrew from the troubled Missing Women Commission of Inquiry after deciding the commission “would not fulfill its mandate,” the National Post has learned.

UBC anthropology professor Bruce Miller was contracted by the commission as an expert witness and was expected to testify at public hearings that began last fall. He says he submitted a report in advance of his testimony, but by September had informed the commission that he no longer wished to participate in the process.

Growing numbers of individuals and groups have criticized the inquiry for paying little attention to the roles that negative stereotyping and racism played in police failures to investigate Vancouver’s missing and murdered women, many of whom were Aboriginal.

So opened page A.6 of Wednesday April 11, 2012’s National Post. In the days to come, Dr. Bruce Miller and his withdrawn report would populate the pages of local, provincial, and national publications, each account as ambiguous and inconsistent as the last. As far as I understand it, the story goes like this. On a day early in April, public media learned that Dr. Miller’s report on systemic racism, understood by some as “the conduit for the basic message in this whole god damn thing […], key to the whole enterprise” (Pat 2013), would not be entered into evidence at the Missing Women Commission of Inquiry (MWCI); the contents of the report would remain off the record and no report on systemic racism would replace it. The specific circumstances of this determination have been hotly debated in the press. Why did Miller retract his report? Did he submit it, or was it retracted before the commission was able to see it? Did the
commission hesitate, prompting Miller’s withdrawal? Though Miller insists he submitted a completed report to the MWCI, the conditions of a privacy agreement signed during the initial stages of his participation in the inquiry prevent him from clarifying further. Senior Commission Counsel Art Vertlieb took a similarly vague position: “I’m not going to discuss Dr. Miller,” he told the reporters. “We weren’t able to get him to complete his assignment, and I’m just going to leave it at that” (Hutchinson 2012).

Disputes over the unstable meaning associated with this document and the unclear conditions of its retraction/rejection testify to the significance of what it means to be on or off the record, to be evidence. This chapter uses this story as an entry into consequential conversations about the accumulation, circulation, and preservation of documents, files, papers, photos, scripts, videos, text messages, emails, newspaper stories and other items that comprise one of the most material legacies of the inquiry: the archive.40 Beginning with a brief exploration of the emergence of archive studies in social sciences and an overview of contributions from key archive theorists, I ask: How do technologies of accumulation and recording treat and translate diverse modes of knowledge production? What past does the MWCI require and what past does it produce? Whose voices translate? Most broadly: What is at stake in the archive? As in the previous chapters, I query my subject here by exploring the intricate and immediate relations that compose the Missing Women Commission of Inquiry.

Archive studies and the archival discourse can illuminate how we are all implicated in transformations of scholarship, publication, and the careful but ever-selective chronicling of histories, memories, and lingering impressions. As Renisa Mawani (2012) writes, “we are never

40 By the archive, I am referring to both the ‘official’ archive accumulated by the inquiry and to the more general collection of materials resulting from the MWCI process. See section 4.2, Reading the archive, for a more extensive discussion on defining the archive.
really beyond the questions we ask, the truths we seek, or the geopolitical conditions in which we aspire to address and make sense of them” (361). In addition to the questions posed above, then, in this chapter I reflect critically on the work I have done in this thesis, and on what work it does as an archive in its own right. Throughout research and writing, I have been caught up in an inevitable process of selection and interpretation: foregrounding some perspectives and burying others, posing certain questions and leaving others unasked, drawing on one body of theory and closing the book (literally!) on another. Just as the researcher in the archive is “actively creating meaning, rather than simply finding it” (Reason 2003, 85), so too am I generating a particular account of the inquiry. Sifting through transcripts, materials entered into evidence, interview ‘data’, news stories, personal stories, and so on, I am necessarily modifying, excluding, including, shaping, altering, and adjusting. Like the inquiry itself, like archives themselves, this thesis is a force field that “pulls on some ‘social facts’ and converts them into qualified knowledge, that attends to some ways of knowing while repelling and refusing others” (Stoler 2009, 22). I have tried throughout to maintain a transparency in the decisions I have made as regards this process of conversion, inclusion, and refusal. In this third and final chapter, however – and especially in its closing section on the alternative archive – I write in part to more expressly limn the meaning and materiality associated with such processes.

4.2 Reading the archive

A continuum of publications and documents makes up an inquiry: materials entered into evidence, live streaming and entextualization of testimony, photographs, the final report, and a surfeit of newspaper and magazine articles. These materials – their production, process of accumulation, preservation, use, and circulation – constitute one of the many worlds produced by the MWCI: that is, the world of the archive. The archive is not just a source of the past. It is a
site of contested knowledge for the future. It can shape the direction of historical scholarship, collective memory, and national identity; influence how we know ourselves as groups, individuals, societies; signpost changes in public policy and state authority; and reflect the cultural-intellectual and legal contexts in which it comes into being (Schwartz & Cook 2002; Stoler 2009; Mawani 2012). Achille Mbembe (2002) writes that “[e]xamining the archive is to be interested in that which life has left behind, to be interested in debt” (25). This is undoubtedly so. And yet the appeal of the archive is not exhausted by what has already been left, and as Ann Laura Stoler (2009) reminds us, what is left is not always left behind or obsolete (see also Derrida 1995). Throughout the MWCI, for example, lawyers, commission staff, and Oppal himself drew continuously on law’s archive – on statutes, cases, precedents, publications – which served to justify and legitimize controversial decisions by recourse to naturalized legal codes. Though the archiving of the MWCI is yet in its nascent stages, it is possible to look at the commission process, outlined in the two previous chapters, and start to think about how the method of accumulation and what is accumulated are important both to present and future understandings of this event and law more generally and to the possibility of reconciliation between police agencies and the populations they are intended to serve. In the absence of a known or established archive, we can still think about entanglements of people, documents, power, law, and knowledge, about some of the material and imaginative implications of the archival process. If, as Derrida (2002) writes, “the archive doesn’t simply record the past, [but also], of course, constitutes the past, and in view of a future which retrospectively, or retroactively, gives it its so called truth” (40), then it seems pertinent to ask, even ahead of the archivization itself: What past does the future of this archive create? This chapter is thus not an evaluation of what has (not) been archived, but rather an open interrogation of this important but
too often ignored site of legal authority and resistance. Following Stoler among other archive
theory scholars, this chapter focuses on “archiving-as-process rather than archives-as-things”
(Stoler 2009, 20), on archivization-as-subject rather than archive-as-source.

If the concept of the archive was ever a comfortable one, it is certainly no longer so. A
postmodern suspicion of truth claims made by the historical record has prompted scholars in a
wide range of fields to interpret the archive as always and already a reconstruction (Manoff
2004). No longer approached as “a mass of facts, of true facts, to be gathered and delivered and
made available” (Derrida 2002, 50), the archive has emerged as an important site of critical
inquiry. In the past decade, geographers, historians, literary critics, philosophers, sociologists,
anthropologists, political scientists and others have grappled with the meaning of the concept
(Manoff 2004). “What the archive is, how it works, and in which ways it may be reconfigured
are all questions that the elaborate, intertextual thought of our times tackles with characteristic
self-consciousness and often unashamed opacity” (van Zyl 2002, 39). Suspicion of the archives
has been especially strong in some disciplines and epistemological approaches. Feminist and
postcolonial writers, for example, have attempted to locate the voices of the silenced other within
the literature produced by colonial powers, elucidating existing gaps and distortions and
highlighting radical or alternative contributions by women, people of colour, and other others
(see for example Stoler 2009; Hamilton et al. 2002; Birrell 2010). Oftentimes, these subaltern
and marginal voices prove impossible objects of retrieval, their absences revealing the archive
not at a site of recovery but as an unequal moment of encounter (Povinelli 2002). Other scholars
have sought to re-read archives differently, not for evidence of the preeminence of a particular
epistemological rationality and authority (which admittedly exists), but for the uncertainty,
disquiet, and anxieties that, as Stoler (2009) argues, though evident in the archive, have been too easily sidestepped by students of colonial history.

Though sometimes taking different methodological approaches, many of these writers share a notion of the archive as a repository and collection of artifacts referring to the entire extant history record (Manoff 2004). In recent decades, the metaphoric invocation of the cultural theorist’s ‘archive’ has bled into the body of documents and the buildings that house them, the historian’s ‘Archive’, obscuring sharp differentiations (Stoler 2009). And the line between libraries, archives, and museums is only getting blurrier (Robert Martin, cited in Manoff 2004). Archival materials are available online with increasing immediacy in formats that include sound, images, and multimedia, as well as text, all but completely eroding the distinction between these sites (Ibid.).

Jacques Derrida and Michel Foucault have contributed greatly to this reconceptualization of the archive beyond the archive proper. For both, the archive functions primarily as a figure of thought (Arvatu 2011). Foucault (2010) writes that the archive is not “the sum of all the texts that a culture has kept upon its person as documents attesting to its own past, or as evidence of a continuing identity; nor do I mean the institutions, which, in a given society, make it possible to record and preserve those discourses that one wishes to remember and keep in circulation” (129). Rather, the archive for Foucault is a ‘system of discursivity’ that establishes the possibility of what can be said. It is thus situated between language – the system for constructing possible sentences – and the corpus – the collection of all words spoken – acting as the “general system of the formation and transformation of statements” (Ibid, 146). Recalling Foucault’s contribution to chapter 1, this concept of the archive resembles – or is at the very least informed by – his definition of power as a force (of action) that re-structures the field of possible actions (1982).
Thus there inheres in the archive an interpretive potential that shapes, constructs, and delimits knowledge and power.

For both Foucault and Derrida, this notion of the archive is in essence open, saturated with unfastened epistemic meaning and material consequence. Derrida (1995):

We have no concept, only an impression, a series of impressions associated with a word. To the rigor the concept, I am opposing here the vagueness of the open imprecision, the relative indetermination of such a notion. “Archive” is only a notion … We have only an impression, an insistent impression through the unstable feeling of a shifting figure, of a schema, or an in-finite or indefinite process. … I do not consider this impression, or the notion of this impression, to be a subconcept, the feebleness of a blurred and subjective pre-knowledge. … This is one of the theses: there are essential reasons for which a concept in the process of being formed always remains inadequate relative to what it ought to be, divided, disjointed between two forces. And this disjointedness has a necessary relationship with the structure of archivization. (29) [original italics]

I take this openness to heart in what follows, posing questions that I do not answer, that maybe cannot be answered, not least because in this openness inheres a multiplicity of social and political possibilities to which we must remain ever attentive. As with the law, it is not my intention to define in any way what the archive is or how it functions in the nomosphere. Rather, I engage the notion of the archive in conversation as a curious and uncertain inquisitor.

Though facing criticism from some for their dilution of the term – for generating “a metaphor capacious enough to encompass the whole of modern information technology” (Steedman 2002, 4) – Foucault and Derrida’s writings have had a tremendous impact on the field. Under their influence, the politics of representation, exclusion, and fluidity of the archive have gained particular traction, scholars reconsidering the relationship between archives and the societies that generate and use them (see for example Hamilton et al. 2002; Derrida 1995, 2002; Stoler 2009; Reason 2003; Schwartz & Cook 2002). Power lies at the heart of this relationship:
power over what and how to record; power to preserve and mediate the record; power to name, label, configure, and order; power over access, memory, and understanding. Thus have new (largely post-structural) analyses thoroughly and productively troubled the traditional archival perspective, in which interrogations of power have been largely absent (Schwartz & Cook 2002). As with studies of law and space, this process of troubling and complication encourages and relies upon a detailed interrogation of the specific applications and expressions of power within the archival process, a task I undertake in the following pages.

Drawing on Derrida and Foucault but always cognizant of their critics, this chapter employs a concept of the archive that sits somewhere between the “two extremes of literalism and abstraction” (Osborne 1999, 53). While the particularities of this research project and the materials I have gathered demand the commodious conceptualization denounced by some commentators, an active engagement with the temporal dimension implied by a slightly more narrow understanding – that is, archives as “loci of power of the present to control what the future will know about the past” (Schwartz & Cook 2002, 13) – is also key. Really, then, this chapter is interested in what (stories, bodies, voices) lingers and how. I dwell in the very elasticity of ‘the archive’, my work here enriched by the plurality of uses, meanings, and complications offered by a multiplicity of perspectives.

4.3 Archival splices

Archives and the law necessarily run across one another. Derrida tells us that the word archive, or the archive of this word, “coordinates two principles in one: the principle according to nature or history, there where things commence – physical, historical, or ontological principle – but also the principle according to the law, there where men and gods command, there where authority, social order are exercised, in this place from which order is given – nomological
principle” (Derrida 2002, 1). Though familiar use of the word emphasizes its temporal and sequential dimensions, its Greek and Latin origins in the word *archon*, or magistrate, signal the archive’s status as a place of authority, a place where legal documents were stored and preserved (Derrida 1995; van Zyl 2002; B. Harris 2002). Historically entrusted to *archons* in ancient Greece, “[official] documents in effect speak the law: they recall the law and call on or impose the law” (Derrida 1995, 2); the judiciary, in other words, derives legitimacy from the documents that ground it (Mawani 2012). The concept of the archive is thus spatial, temporal, material, and juridical, the law inscribing itself within and authorizing the archive (*Ibid*). This process of archivization is inextricably linked with “the function of unification, of identification, of classification” (*Ibid*, 3), a process, Derrida adds, that must be paired with “the act of consigning” through the *gathering together of signs* into “a single corpus, in a system or a synchrony in which all elements articulate the unity of the ideal configuration” (*Ibid*). As with the naturalized codification of people, bodies, and knowledges under the law explored in chapter 1, archivization-as-process relies on hierarchical practices of naming, ordering, meaning-making, and categorization, reproducing and concretizing them in the public record. In effect, as Mawani (2012) argues, “law is the archive: generating, compiling, referencing, absorbing, and disregarding statues, precedents, and other forms of knowledge” (351). The archive and the law thus gain legitimacy and meaning (as a site of truth, history, knowledge) together, from the same classificatory and “putting into order” (Derrida 1995, 4) discourse that appropriates and

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41 For Derrida, consignation refers to the dual processes of gathering together meaning (“signs”) into a single, unified corpus and classifying, or putting into order these meanings. The archive is thus an illusion of unity, unable to house the complete past but emerging as a coordinated and ordered collection (Derrida 1995, 3-4; see also V. Harris 2002).
assimilates some knowledges as pertinent while dismissing others as extraneous or non-existent (*Ibid*).

Mbembe (2002) argues that this power of the archive is a product of the material entanglement of buildings and documents, of “an architectural dimension, which encompasses the physical space of the site of the building, its motifs and columns, the arrangement of the rooms, the organization of the ‘files’, the labyrinth of corridors, and that degree of discipline, half-light and austerity that gives the place something of the nature of a temple and a cemetery” (19). In part, this is certainly so. The material condition of the archive imbues it with a tangibility from which it derives a certain authority in ‘realness’: the archives embody a universe that can be touched, seen, handled, read, and decoded. This tactile status exerts a debilitating power over doubt, the archive appearing as a material relic of an actually-occurring past contained within a fixed location. Thus does the archive hold “the promise (or illusion?) that all time lost can become time regained. In the archive, there lingers an assurance of concreteness, objectivity, recovery and wholeness” (Bradley 1999, 19).

And yet, despite the perception of stability prompted by such architectural entanglements, the archive-as-subject is not static but is “always and already being refigured, … is porous to societal processes and discourses” (Hamilton, Verne & Reid 2002, 7) much like the nomospheric splices that underlie it.42 An “itinerant site of encounter, exchange, and circulation” (Mawani 2012, 348), the choice over what to record and preserve occurs within socially constructed, but now naturalized, frameworks that determine the significance of what becomes archive (Schwartz

42 In effect, the archive is a splice. Following Mbembe (2002) and Blomley (2008), the archive derives power and authority from the apparently stable arrangements produced through law (the law that legitimates the archive, which in turn legitimates and naturalizes the law) and space (the buildings that house the archive) and by other juridico-spatial entanglements: colonial encounters, Commissions of Inquiry, and so on. The archive is juridico-spatial, a material and discursive site of law.
& Cook 2002). The perception of these malleable, plastic frameworks as a priori is important: just as the law generates normalized, legally digestible discourse in the service of juridical consistency and universality – recall the use of expert reports to relay sex workers experiences of abuse at the hands of the police mentioned in chapter 1 – the archive, riddled with ever particular articulations of power, comes to stand in for a past time, to represent that time as finite and static even as it re-presents it. Though contingent, uncertain, and open to interpretation (Stoler 2009), the order of things established by the archive is abstracted and deployed as closed, inevitable, and universally true. The law itself is abstracted in this place, its particular (violent) histories deeply buried beneath the documents from which it derives authority (Mawani 2012). Lingering with Foucault and his conception of power, the archive emerges not just as an institution, but rather as a system of law, discourse, and practices that gives shape to what can and cannot be (said, done, written, preserved, collected, remembered, recalled). Thus are archives both documents of inclusion/exclusion and monuments to particular configurations of power (Foucault 2010), hinging on social, political, and technological forces (Derrida 1995; Manoff 2004). The cognitive universe of the archive exerts its power as the appearance of inalienable and truthful proof (Mbembe 2002): proof that a life existed (or did not exist), that a decision was made (or was not made), that a report on systemic racism was written (or not written).

This co-mingling of power, the law, and archives underpins a complex relationship between the archive and the state, one that begs brief elucidation here, central as it is to the function and process of information gathering engaged in by the state in general and commissions of inquiry in particular.

Recording and documenting have been means of securing colonial state power for centuries (Stoler 2009; Mbembe 2002; Richards 1993; Mitchell 2002; Mawani 2012). Research
in and on the archive reveals “the bureau, the locus of writing” as “the real seat of power” (Ashforth 1990, 5) in modern states: the accumulation of (particular) documents, disciplined writing, and intricate filing systems in the pursuit of official knowledge producing assemblages of control and specific methods of domination (Stoler 2009). Carefully built around data-intensive, knowledge producing institutions like museums, universities, and geographic surveys (Richards 1993), the establishment and concrescence of empire is inseparable from the careful gathering of information about the people and places under colonial rule (Manoff 2004). This is what Thomas Richards (1993) calls “the fantasy of the imperial archive” (6), in which recording and documentation become tools for boosting feelings of colonial power, even – or especially – in the presence of uncertainty and debate over how best to administer vast geographic territories. In a very real sense, then, the ordering power of the state derives from its ability to control the production of knowledge, to compel a proliferation of documents that “inaugurated, authorized, and legitimated an imposing force of law, even if that authority was continuously questioned and challenged” (Mawani 2012, 349). Laws, social categories, economic systems, and so on, developed in always particular places and contexts, are abstracted and naturalized in the archives, their significance concretized in the records, reports, letters, transactions, legal papers, maps, and deeds – among other systems of written accountability – and the elaborate bureaucracies and infrastructures dedicated to house them. Thus are colonial archives not only generated by the state, but in their own right technologies that reproduce the state (Stoler 2009). Social realities promoted in the archive (or by public commissions of inquiry) are integrally connected to formations of state power and law (Ashforth 1990). Put simply: “there is no state without the archive – without its archive” (Mbembe 2002, 23).
And yet, if we are cognizant of the insecurities, anxieties, and hesitations in the colonial record as Stoler prompts us to be, the archive also materializes as a constant potential threat to the perceived hegemony and authority of the state (Stoler 2009; Mbembe 2002; Mawani 2012). “[A]rchives are not simply accounts of actions or records of what people thought happened. They are records of uncertainty and doubt in how people imagined they could and might make the rubrics of rule correspond to a changing imperial world” (Stoler 2009, 4). The power of the state thus rests not only on its ability to generate the record, but also to abolish and anaesthetize it (Mbembe 2002), to accumulate or expunge particular versions of history. As much as the archive is a site of authority, then, it is also a significant locus of dissension and discord (Mawani 2012). Political and social friction over the MWCI can be understood as such a struggle: one for the democratization of the record, which “can always be measured by this essential criterion: participation in and access to the archive, its constitution, and its interpretation” (Derrida 1995, 4 note 1). Following Chapter 2, and again with a keen eye to the variable forms of resistance and struggle, this chapter emerges in part from a desire to archive – in the broadest sense – dissent, to document that which might not (or cannot) enter the ‘official’ record. In part, then, I hope this work can contribute to what some theorists call ‘the alternative archive’, a concept I unpack later in this chapter.

4.4 The MWCI and its archive

Perhaps nowhere is the process of information accumulation, evaluation, circulation, and consignation by the state more evident than in public commissions of inquiry. Set with the task of reconstructing narratives – of redressing errors made in the record – commissions reorganize knowledge, actively “devising new ways of knowing while setting others aside” (Stoler 2009, 29). Dedicated to determining the pertinence of past events to current understandings and future
policy directions, the Missing Women Commission of Inquiry claims the authority of the archon, delving into, calling upon, and compelling to speak particular and selected pasts. In so doing, it assembles a self-referential and self-serving history\textsuperscript{43} on the basis of which it can “promote closure and healing, so that all citizens of British Columbia can move forward toward a safer future, together” (Oppal, MWCI transcripts October 11 2011, 13) [italics added]. Thus has the success of the inquiry been predicated upon the dual processes of first delving into and opening up particular histories and then breaking\textsuperscript{44} from them, moving beyond them to a safer future.

In service of these goals, the MWCI spent innumerable hours establishing what should be gathered as evidence, how, and what value it should be assigned. Its fact-finding mandate demanded these efforts: demanded a ‘fixing’\textsuperscript{45} of knowledge, a correction of misunderstandings, an end to the instability of meanings attached to the past. In effect, the MWCI was an inquiry into a selective record, into documents lost or found, destroyed or preserved, submitted or unsubmitted. These documents were then gathered for evaluation and extraction by Oppal and his staff, acts themselves informed by the archival legacy of past legal processes (statues, precedents, and so on). The productive capacity of such political inquiry is astonishing: the hearing portion of the commission produced over 17,000 pages of transcripts, 231 evidentiary exhibits, and 23 reports and media publications, culminating in a 1,448-page report and totaling by some estimates over two million pages of materials (Tobias, MWCI transcripts February 6 2012, 8).

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\textsuperscript{43} Roland Barthe’s (1986) ‘referential illusion’ might be more accurate, a term referring to the tension between a positivist relationship between a real, objective past and a historian’s reality of discursive reconstruction. Working to uncover the real and objective past, the MWCI could inevitably only re-construct a past, not a mirror but a signification.

\textsuperscript{44} This break both implies a forgetting and a remembering: a forgetting of past violences done by police agencies to marginalized communities in the DTES as a predicate to the establishment of future good relations; and a recognition and memorialization of past oppressions such that they are not (inadvertently) repeated.

\textsuperscript{45} Fixing in both senses of the word: to correct and to stabilize.
The generation of this inquiry record is an important site of contestation and seat of authority. The ability to withhold, disclose, or edit and redact documents emerges as a productive and material source of power, the inability to access them a significant exclusion. Though under the Canadian Commissions of Inquiry Act Oppal has the authority to compel relevant documents from those granted standing, he rarely exercised this power, “commission counsel being like, you know, either ‘they’re not relevant’ or ‘no they’re not missing’ or ‘we’ll talk to the RCMP’ or ‘we’ll talk to the VPD and get them’ and then it would be just put off for a certain amount of time” (Alex 2012). In terms of the Royal Canadian Mounted Police (RCMP) and the Department of Justice – both federal bodies – this power was circumscribed by the MWCI’s provincial jurisdiction. “The Department of Justice never, they didn’t really rub it in our faces that they were there voluntarily,” Alex said, “but from time to time it would come up. ‘We are here, we are here voluntarily’ … and they would consistently say like, ‘we are making our best effort despite that’” (2012).

Testimony and legal submissions by counsel drew sometimes tentative, sometimes persistent and resolute links between the accuracy, availability, and treatment of these documents and the legitimacy or fairness of the missing women investigation and the subsequent inquiry. Independent counsel, counsel for the families, and the relatives of the missing and murdered women petitioned relentlessly (and often unsuccessfully) for the full disclosure of un-redacted versions of documents in a timely fashion, often locating ‘truth’ and ‘answers’ within the pages

46 Vancouver Police Department procedure and practice around the taking and filing of missing people’s reports in the cases of sex workers and drug users, for example, were repeatedly targeted by expert witnesses and the friends and family members of missing women as a key site of discrimination that facilitated Pickton’s actions. “We recently had someone reported missing [in the DTES],” Jo (2012) told me. “And they called 911 and 911 told them to call missing persons, and the missing persons said when they called them that they were to call 911. It’s exactly what happened to me 20 years ago! … It took a long time for my family member to get on the list as missing – they simply won’t take a missing person’s report.”
of missing or misplaced files. Cameron Ward, counsel for the families, was particularly committed to uncovering suppressed information and establishing more equitable frameworks for the sharing and circulation of knowledge.

Mr. Vertlieb and you, Mr. Commissioner, are quite right, I have complained continuously about the document disclosure and what I perceive to be the grave inadequacies with respect to it. … [And] I now have the additional concern … of why in the world couldn’t the families have had access to the files at the same time or around the same time that Deputy Chief Evans did…. Despite [my] direct interest in the proceedings, I as [counsel for the families] wasn’t entitled, wasn’t granted any access until the summer, May, June of 2011, some five, six months apparently after Deputy Chief Evans from Peel, Ontario was given access. If that’s a level playing field, if that’s fair then I – you know, I just – I’m speechless. I’m still gravely, gravely concerned about document disclosure” (Ward, MWCI transcripts November 3 2011, 28-36) [italics added].

“If we don’t get documents that were created back then,” he argued during a later and equally lengthy submission to the commission, “we have no chance of getting to the truth, which is the object of this exercise, insofar as your fact-finding mandate is concerned. And I am sure this commission doesn’t want to be party to an effort to cover up or, or whitewash the events of 10 years ago. But we haven’t got the documents” (MWCI transcripts January 31 2012, 237) [italics added]. Power and knowledge are imbricated in these struggles, truth and legitimacy embodied and circulated in their textual expressions.

Repeated references to a cover up during the inquiry proceedings, in interviews I conducted, and mentioned briefly by Ward above, betray the deep mistrust of policing agencies’

47 Jennifer Evans is deputy chief of the Peel Regional Police force in Ontario in charge of Field Operations Command. In 2002 she wrote a report presenting her assessment and opinions on the investigations into the case of Vancouver’s Missing Women by the Vancouver Police Department and the Royal Canadian Mounted Police.
and their participation in the MWCI, a mistrust exacerbated by these constant fracases over documentation. Jason Gratl, independent counsel for the Downtown Eastside Community:

... I’ll echo Mr. Ward here, about his concern with the completeness of document disclosure. What I’m thinking of in particular is ... what appears to be the wholesale destruction of all the documents from the entire duration of the operation of the Vancouver Police Native Liaison Society. Those documents appear to have been boxed up, the VPLNS office closed, and the entirety of the documents have disappeared. ... Vancouver Police Department says that they can’t find them, but we haven’t had a complete explanation (MWCI transcripts February 6 2012, 7).

Jo put it this way:

So then when you’re sitting there realizing ... that they had thrown away everything! And it wasn’t a cover up! I was like, wow. Everything? Did the Coquitlam RCMP happen to do this by any chance? ‘Oh, well, it was a mistake. It got put in the wrong file. And all the other files are white and it’s red and no red files are to be demolished.’ I see, really. It’s so obvious that they took it out and fucking destroyed the whole thing! And that’s another thing that makes it really clear that the Coquitlam RCMP are completely involved with the Picktons. Who else could, I mean do you know someone who could do you a favour and get your entire record shredded, gone, I mean really, that’s a pretty powerful favour. And the idea that it happened by accident ... (Jo 2012).

This circumscribed circulation of documents compromised the inquiry’s professed reconciliatory potential, something I explore more later in this chapter. For the moment, suffice it to say that for many participants, the incomplete disclosure of documents, some of them containing personal

48 The Vancouver Police & Native Liaison Society (VPLNS) opened its doors in 1991 with the objective of improving relationships between the Aboriginal community and the Vancouver Police Department, a relationship fractured, in particular, over the VPD’s readiness in calling Social Services to remove children from homes where domestic abuse had been reported (Ens, MWCI transcripts April 2 2012). Morris Bates, former victim service support worker with the VPNLS, put it this way: “Take the beating and don’t report it or else report it and lose your kids. That’s how the system was set up to do” (MWCI transcripts April 2 2012, 65). The VPNLS was closed in 2003.

49 These documents were eventually tracked down by Robyn Gervais. Though Oppal and the VPD had repeatedly been asked to produce these documents, no one asked Freda Ens, who knew exactly where they were.

50 The files Jo is talking about are the ones detailing why the 1997 charges of forced confinement and attempted murder against Pickton were dropped.
information about the last moments in the lives of missing and murdered women, rather than lessened tensions between policing agencies and marginalized communities in the DTES, fueling anger over the (potentially intentional) mismanagement of the investigation. This fundamentally undermined the inquiry’s ability to excavate, re-write, and especially break from troubled histories of neglect and abuse.

The process and procedure of redacting documents was an especial source of tension. Amounting to “a form of limiting public access to information” (Gratl, MWCI transcripts November 3 2011, 65), edits by the VPD and RCMP were made before documents were submitted to the commission, raising questions about the legitimacy of the redaction process and in whose interests redactions were being made. “It’s not even possible at this point for the non-institutional participants to second-guess or to double-check or verify whether it is in the public interests or whether information is relevant,” Gratl told the commission. “[I]nstitutional participants may at their sole discretion select what -- what information may or may not be put into the public realm” (MWCI transcripts October 20 2011, 117). In an interesting twist on the highly publicized nature of the investigation and the inquiry, the missing women themselves – whose life details have been splashed across newspapers, bandied around courtrooms, articulated and communicated in expert reports – were removed from the pages of police files, replaced by the acronym STW (Sex Trade Worker) and an ID number.

*Jason Gratl:* This is a package of documents that has been retrieved and assembled by my staff … and you can see the names of missing women have been redacted from these lists. So in page 1 you see

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51 In our interview, Jo talked about police files that documented the last moments of contact between her sister in law – a missing woman – and social services. “[The commission] had these huge numbers of documents right, and Gratl would have them and he’d give them to me to look at but also Cameron Ward had them and he’d show them to the families but you weren’t even allowed to just take them. You’re just thinking ‘Fuck you I’ll take this! This is the last record pf my, you know, my nieces mom. Why shouldn’t she have this?’ … You think, we waiting 12 years to read this [document] and for 12 years all we asked was could someone go see what happened to her?!” (2012)
that there’s what’s described here by the Vancouver Police Investigation Division in a 1986 missing persons year-end report … as ‘native hooker STW1182’.

*The Commissioner:* Yeah

*Mr. Gratl:* This is the type of information that my friends propose to redact.

*The Commissioner:* Yeah. So are you opposed to that?

*Mr. Gratl:* Yes. I mean, these are the missing women! It would be hard, in my submission, to come to a thorough understanding of the investigation of missing women while their names are concealed by these redactions. (MWCI transcripts November 3 2011, 61)

The use of this particular redaction code symbolizes the anonymity, generalizability, and branding of (Aboriginal) sex trade workers as such, as women who over the course of the inquiry are blurred into a collective identity useful either as racialized bodies bearing the material signs of Pickton’s violence (in the case of his murder victims) or as witnesses testifying at the inquiry as illegal prostitutes working in the Downtown Eastside. In both cases, it is in their specification as ‘native’ and ‘sex trade worker’ that these women materialize as valuable contributors to the inquiry. Though Oppal addresses the problematic use of STW# in his final report, this code carries on throughout the inquiry hearings, despite counsel highlighting it as a “demonizing, stigmatizing” practice (Roberts, MWCI transcripts November 24 2011, 10). Claiming only to mirror prevailing idioms of familiar use – “the designations … are intended to use the term that has commonly been used” (Tobias, MWCI transcripts November 24, 2011, 11) – these codification strategies effectively reproduce a discourse that reduces the missing women to a limited set of discriminatory characteristics – specifically, their identity as illegal and often Aboriginal prostitutes operating in the DTES – subjecting them to the simultaneous processes of bureaucratic abstraction and colloquial stigmatization. And while their status as such was and is materially important to their treatment by the VPD and RCMP, the lack of a critical unpacking of
this redaction code coupled with its repeated use in the transcripts and evidentiary materials ensures that it will be normalized\textsuperscript{52} and memorialized in the archive.

The process of redaction is an important one. In the case of the missing women – some of whom have since been found alive – the STW\# code keeps private a moment in their lives that they might not wish to make public, a privacy the commission was less keen to uphold in a decision on affidavit testimony I discuss in the next section. What deserves critical interrogation here is not the practice of redaction generally, but the specific conditions under which edits were made, who made them, and how they constitute the public record. The use of the particular code STW\# performs and materializes these women in the archive first and foremost as illegal prostitutes, obfuscating the intricate details and complexities of their lived experiences. Who appears and how they appear is integral to the archive: as STW\#, the knowledge these women offer loses its legitimacy as ‘fact’ within a system that, as chapter 1 argued, profoundly privileges the trained expert.

That the RCMP and VPD were responsible for the redacting of internal police documents under the guise of a public inquiry further signals the amended and circumscribed condition of the archive, which develops in response to and around these redactions. What is archivable – that is, the content of what becomes archive – is, through and through, a political and politicized determination. Redaction highlights the archive not as a recording, a reflection, an image of the event, but as a structured and structuring force (Derrida 2002), processes of documentation and circulation of information subject to the objectives, will and legalities of, in this case, state

\textsuperscript{52} Generally, names are redacted and replaced VIC\#, for victim. This code comes with its own set of meanings that I cannot unpack here. By using STW\# in the place of VIC\#, the RCMP and VPD reaffirm that these women appear in the first instances as sex workers – that this characteristic is integral to their treatment by policing agencies in Vancouver.
institutions. This control matters to the constitution of social and collective memory concretized in the archive and thus to the event itself.

Whether or not these missing and redacted documents contain within their pages a ‘truth’ that would shed light on police abuses and misconduct is an important query, but one not within reach of this chapter. Crucial to the question of the archive, however, is how the ability to dictate access to documents prescribes the suffusion of power within the nomosphere and thus the circulation of knowledge and the constitution of memory in their archival form, or maybe more accurately, their archival absence. If, as Mbembe (2002) writes, “the archive is, therefore, not a piece of data but a status” (20), control over the MWCI’s archive in the very first instance – at the moment that documents are proffered for perusal and review – establishes a hierarchy that initially opens or closes the potential for participatory practice and ultimately informs the concrescence of the archive into its final form. In a striking parallel with the power dynamics explored in the first chapter, control over documents and documentation advantaged the same groups privileged by the inquiry’s embeddedness in legal practice and its emphasis on expert knowledge at the expense of marginalized groups: namely, police organizations.

4.5 The record

An inquiry into archivization demands an attempt to understand the conditions and circumstances of materials as, and the exclusion of materials from, the record. These inclusions, exclusions, and obfuscations are underpinned by relations of power that matter to the constitution and experience of the archive and complicate investigations into the availability of and access to documents (Hamilton, Harris & Reid 2002). The public nature of Commissions of Inquiry – designed as they are for public consumption (Stoler 2009) – renders crucial a disinterment of what it means to be on or off the record. Public commissions of inquiry lay claim to an extended
audience: to the audience present at the hearings and to a wider media audience across the nation. Here, public is conceived not simply as the aggregate of citizens of a nation state, but in Jürgen Habermas’s sense, as a composite of all those who might join in a discussion of the issues raised. The public sphere generated by the inquiry thus emerges a space of potential interactive discourse where a number of people can participate in a discussion that takes as its condition knowledge of, and exposure to, the subject matter at hand (Habermas, cited in Calhoun 1992; see also B. Harris 2002). Gathering in (hi)stories, consigning them to the archive, and publicly displaying elements of the archival body under construction, the MWCI generates such a discursive space, one in which it carries out, in full public view, its particular form of juridical justice.

Beyond the differential access to and control over documents described in the previous section, struggles over the constitution of this public display – held in constant tension with concerns over confidentiality, themselves justified by recourse to law’s archive – are conspicuous in the transcripts and in interviews I conducted. Independent counsel and counsel for the families “consistently [tried] to put things on the record” (Alex 2012), where they would be available to inquiry participants and the broader public audience: because, as Alex put it, “everything happens behind closed doors” (2012).

In terms of the procedural stuff that went on in the commission, a lot, a lot of that was done, you know, with Art Vertlieb pulling us into a room being like, ‘Ok, you know, we just want to try and work this out … we don’t want to have to bring this to the commissioner, let’s try to work this our amongst us.’ Very much done in a conciliatory tone, but it was very much a ‘this is what’s going to happen’ … It was just, like, across the whole so loose, so without checks and balances, and it’s so in the hands of commission and commission counsel that like really … everything happened behind the scenes.” (Ibid)
If access to documents in the first instance is an early expression of an ordered and ordering power structure in which policing agencies and their lawyers controlled the circulation of knowledge and availability of information, negotiating the public and private spaces of the record and the ‘back room’ respectively expanded quickly as an important form contestation over this hierarchy, the former materializing as a key site of dissent.

From my point of view, our strongest position was not in the backrooms at all, our strongest position was on the record in front of cameras in front of the media. That’s where I made my arguments. I didn’t care to strike compromises because those compromises, … they wouldn’t be in our favour … and so I just learned from the process that our advantage would be … in public. (Kerry 2012)

To put things on the record is thus a political act, the record itself a potential site of disobedience and resistance against the commission’s attempts to maintain a division between public space and the space of the inquiry. In the following excerpt, Cameron Ward is responding to a procedural directive that imposes strict time limits on cross-examination, discussed further in the next section.

Mr. Ward: Mr. Commissioner, before we hear from the next witness I wish to respond on behalf of my clients. It’s Cameron Ward.

The Commissioner: No response is necessary. Why do you need to respond? It’s a directive I issued.

Mr. Ward: I want to put one thing on the record then, please, and that is simply this. … The directive was made without receiving input from counsel, and I just want –

The Commissioner: Without what?

Mr. Ward: Receiving input from counsel for the participants … We made no submission prior to the directive.

The Commissioner: I might add you’re not entitled to make them, and so thank you. (MWCI transcripts January 11 2012, 2)

By registering his dissent against the top-down issuance of a legal prescription that has the potential to circumscribe the evidentiary process, one made without consultation with counsel, Ward is enrolling the nomic record as a check against the private authority of individual actors in
a fundamentally public process. It is both the audience present, and perhaps more importantly, to
the disembodied national and international audience that Ward (and Oppal, his staff, and other
lawyers) is addressing and to which he refers. “The public needs to be satisfied that this inquiry
is thorough, fair, and independent, and unless its powers are not – [are] exercised appropriately,
I’m really worried about the outcome. … This is a public inquiry being conducted in the public
interest’ (Ward, MWCI transcripts February 6 2012, 4).

As a critical locus of public access to details of the MWCI, the media emerged as a
central field of debate, detractors lambasting the inquiry for failing the very women whose lives
comprise the object of the commission, commission staff rebutting with claims of legitimacy and
self-importance, lamenting the withdrawal of women’s and Aboriginal organizations and, in
some cases, blaming them for their own exclusion. Reports released amongst much public
fanfare and protest ahead of Oppal’s final report – most notably Wouldn’t piss on them if they
were on fire, a scathing review written by independent counsel Jason Gratl and Blueprint for an
inquiry, produced by the B.C. Civil Liberties Association in collaboration with Pivot Legal
Society and West Coast Leaf – evince the dissatisfaction of organizations within and outside of
the sphere of the inquiry. Feeling that Oppal’s report would not satisfactorily communicate to the
public the egregious failures on the part of policing agencies in Greater Vancouver or be

53 “Everyday I come into this courtroom with the hope that the groups that have withdrawn their participation will
reconsider,” Oppal told a large inquiry audience shortly after Gervais’s withdrawal. “I have heard the concerns of
the people and the groups that have withdrawn, and I respect their position. However, I want to take a moment here
to say that I strongly believe that this actions of withdrawing from this inquiry is [sic], with respect,
counterproductive. Each group that has withdrawn has an important role here, and by choosing not to participate you
are, in fact, silencing your own voice in the process” (MWCI transcripts April 2 2012, 6). Oppal’s lengthy statement,
reproduced in degrees by the media, prompted the highly publicized letter in which withdrawn groups re-stated their
collective commitment to the boycott that opened chapter 1. These back and forth exchanges were common fodder
for news outlets, especially during the initial stages of the inquiry.

54 The B.C. Civil Liberties Association, Pivot Legal, and West Coast Leaf are legal advocacy groups working in the
DTES.
transparent about the mistakes made by the B.C. government and the commission in structuring the inquiry, these parallel publications took as their mandate a reappropriation of the public record, of the discursive space generated by the MWCI.

The record, then, was mobilized by disaffected inquiry participants as a site of contestation, emerging as a field within which they struggled against the power hierarchies generated by control over and access to information. But so too did the Oppal make use of the MWCI’s public character, “the commissioner and commission counsel all over the media saying how important it was for Aboriginal participation, how they were begging groups to come back in” (Alex 2012) and repeatedly declaring his commission’s commitment to the missing women, to investigating and uncovering systemic instances of neglect, oppression, and marginalization.

The missing and murdered women were marginalized. They were women. Many of them were Aboriginal. Many were involved in the survival sex trade, drug addicted, and impoverished. … We must ask ourselves, is this acceptable? Is it acceptable that we allowed our most vulnerable to disappear, to be murdered? … We say that each one of us is equal; each one of us is worthy of the same protection from violence. But is it true? We must examine whether this is really the case. (Oppal, MWCI transcripts October 11 2011, 5)

That Oppal then went on to conduct an inquiry that, in its detailed internal functionings and in the perspective of many participants, all but eliminated the potential for addressing systemic issues of gender violence, histories of colonial violence, and the racism at the heart of policing institutions shows a dedication not to justice being done, but to justice being seen to be done.55 “Wally wouldn’t let any witnesses ever be called that would reveal anything of meaning,” Jo

55 Oppal quotes the following passage of Lord Hewart C.J.’s judgement in R. v. Sussex Justices: “[it] is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done” (Oppal 2011). In this case, it would seem that justice being seen to be done came at the expense of actual justice, at least insofar as this chapter is concerned.
said. “[T]hey had absolutely no interest – in fact, it would appear that the whole inquiry was set up to ensure that [the details] didn’t come out” (2012). Given the strength of feeling against the VPD and RCMP and against the Liberal government of the late 1990s for its abandonment of Vancouver’s missing women, Oppal’s rationale for public declarations of support serves an important political purpose: people needed assurance that these issues were not being overlooked. In service of this conciliatory goal – of reassuring an engaged public about the sanctity of human rights for all56 in the evident and material absence of such a reality, or even its potential – the commission mobilized the record as a platform for demonstrating the state’s commitment to ‘moving forward’, to progress, to legal order. Within this public and publicized space, the MWCI communicated that which it wanted to appear to be doing: generating ‘solutions’ to a set of intelligible and coherent injustices, all in the labour of a more equitable and just society.

Meanwhile, with the record attentively focused on the inquiry carryings-on, missing women posters continue to go up in Vancouver’s DTES. Their membership in the now mournable category of Vancouver’s Missing Women denied by the temporal bracketing of cases engendered through the commission’s self-imposed terms of reference, these women stand only to threaten the justice being seen to be done by the MWCI. Though selectively called upon alongside those disappearances that precede the 1997 cutoff point to stress the severity of the commission’s subject matter, and thus its urgency and consequence, the appearance of these cases in the public record of the inquiry is notably suppressed, overwhelmed by the MWCI’s proclamations of action and efficacy. ‘We have certified causalities!’ the commission announces.

56 “This commission,” Oppal said in his opening comments, “can further demonstrate our commitment to protect all vulnerable and marginalized women, and our belief that we are all equal, all valued, and all deserving of protection” (MWCI transcripts October 11 2011, 13)
‘We have directed vectors of blame! Set precedents! Political signposts are in place!’ (Stoler 2009). The redirection of financial resources towards the MWCI, the time and energy dispersed over its duration, the lengthy final report: each justify the state’s claim that they are taking action. “Here’s what’s happening,” Pat told me. “Oppal has made nice, he’s a clever politician, and he’s been willing to talk about stereotypes and prejudice in the general public, and unwilling to apply this to the police force … I think they have no interest in rattling the cage of any major institution. … *The whole thing to me was an exercise in making sure nothing happened.*” (2013). The public inquiry production puts on the record the state’s commitment to justice, a commitment that will linger as ‘actions taken’ in the archive even as women continue to disappear. The legitimacy of the inquiry’s performance of justice as seen to be done thus relies on a series of oppressive exclusions: on the translation of stories into testimony, on the mobilization of legal standards of coherence and intelligibly, on the selective interpellation and interpretation of the historical record, and on the implicit silencing of ongoing violence and abuse on the public record in favour of a focus on ‘moving on’. This determined forward motion is simultaneously a technology of obfuscation and delay (Stoler 2009) with material implications for the lives and families of those who continue to experience violence and neglect at the hands of the state.

4.6 *Sight unseen, voice unheard*

Though the details are unclear, the vignette that opens this chapter highlights the autonomy in being able to select the conditions of one’s appearance in the record. Whether Bruce Miller submitted his completed report before retracting it (as he maintains), or whether he refused to submit it to the commission (as Vertlieb claims), he was able to dictate how he would
participate in the accumulation of the MWCI’s archival legacy: as contributor, detractor, stumbling block, whistleblower, and so on. For many of those called upon (both implicitly and explicitly) by the commission to testify, this potential to determine the circumstances of involvement were all but eroded by the particular form of the MWCI. The decision explored in chapter 1 to appoint independent counsel to represent marginalized groups lingers in this way, perpetually (re)figuring the concrescence of the commission’s archive. As explored briefly in chapter 1, in this decision inhered a neglect for the importance of existing relationships of trust between legal counsel for advocacy and service providing groups in the DTES and their marginalized clients. In her statement to Oppal during the pre-hearing conference, Kate Gibson, executive director for the WISH drop-in centre in the DTES told the commission:

> There is significant trauma, fear, and distrust of government and the courts among many women who are or have been involved in the sex trade in the Downtown Eastside. They are reluctant to participate in a public inquiry. … [M]any women will want to meet with counsel they trust so they can gain a full understanding of the possible implications of coming forward to give evidence. … To be clear, we will not be able to participate without funding for counsel and support services for the women, the result being that you will not hear from the women who have the most to say about police, how the police handle violence in this community. (June 27, 2011, 66) [italics added]

As feminist scholars have shown, the experience of fear and violence is extremely gendered; these experiences materialize through the production of places, subjectivities, and

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57 This is not to underestimate the emotional stress of the decision Miller made to withdraw his report. Rather, I would highlight that access to legal counsel of his own mediated, to a certain extent, the tremendous capacity for the commission to intimidate targeted participants into (in)action.

58 WISH is a not-profit organization that provides a variety of services to female sex workers. It was among the groups that would, shortly after the pre-hearing conference, withdraw from the MWCI.
structures of governance (Wright 2013). For so-called ‘vulnerable’ women called upon to testify at the MWCI – many of whom have experienced decades of abuse at the hands of the VPD, RCMP, and the Department of Justice, all protected at the inquiry by legions of legal counsel jumping to their defence – speaking ‘on the public record’ was intricately tied up with traumatic experiences of marginalization, discrimination, and delegitimization. These women “were laughed at and scorned by police and told that she had it coming, that she was the author of her own misfortune, that she did not deserve extra police protection because she had assumed the risk associated with street-level sex work” (Gratl, MWCI transcripts October 12 2011, 90).

Inhabited by the actors responsible for this discrimination, the nomic setting of the inquiry materialized as a hostile space, inculcating former and current sex workers and drug users as legal outcasts and asking them to testify to the violence done to them in the presence of those who committed that violence and under conditions that fundamentally privilege those doers. Following Melissa Wright, a crucial question emerges: “how does one generate knowledge of such experiences if everyone is too afraid to engage in acts of knowledge production?” (2013, 49). For Wright, this question underscores Hannah Arendt’s observation that “fear of the public is an epistemological crisis that is, at the same time, the killing of politics” (Ibid). Fear of the public space of the inquiry can likewise be framed as a crisis in ways of thinking these experiences; “the form of expert knowledge, [marginalized women’s] local knowledge if you want to call it that, was given really no place,” Pat (2013) told me. Unable or unwilling to accommodate the participation of marginalized women, the commission effectively ensured the

59 Vulnerable witness was the term used during the inquiry to describe “current or former sex trade workers, victims of sexual assault, and Aboriginal women.
erasure of their voices and their knowledge from the archive, and this is an inherently political act.

On November 2, 2011, in an attempt to disassemble some of these structural barriers to participation, Jason Gratl put forward a motion to allow testimony via anonymous affidavit. Drawing on expert evidence from Dr. Kate Shannon⁶⁰ and Dr. John Lowman,⁶¹ Gratl made a request for procedural protections for vulnerable witnesses to ensure that the commission’s “recommendations and findings of fact are appropriately informed by the most direct evidence possible, namely, the evidence of sex trade workers in the Downtown Eastside” (Gratl, November 2 2011, 15). In the face of multiple failed attempts by the commission to attract current or former sex workers to testify, Gratl asked that a blanket order be given to allow vulnerable witnesses to give evidence with the guarantee of anonymity and confidentiality and without fear of adversarial cross-examination, including by affidavit. Breaking with what over the previous six months had emerged as an established pattern of privileging police perspectives on such issues, Oppal granted Gratl’s motion, but with one very important caveat: evidence that has not been subject to cross-examination, for example, anonymous affidavit evidence, cannot be used to substantiate findings of misconduct or uncorroborated findings of fact (Oppal 2011). As I mentioned in the previous section, in public commissions of inquiry ‘the record’ is held in perpetual tension with concerns over confidentiality, legal representatives struggling to dictate under what conditions various information central to the missing women investigation – names,

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⁶⁰ Dr. Kate Shannon was retained by the commission to write a report on “several issues that relate to the health and safety of women involved in street-based sex work in the Downtown Eastside” (Brooks, MWCI transcripts October 17 2011, 97).

⁶¹ Dr. John Lowman is a professor in the School of Criminology at Simon Fraser University. He was asked by the commission to give expert testimony on prostitution in Vancouver’s DTES (see MWCI transcripts from October 13 2011).
dates, locations, conversations – will be made available to the public. These decisions have implications for the experiences of those whose life details comprise inquiry materials: histories of drug use, sexual abuse, arrests, prostitution, domestic violence, children removed by social serviced, even HIV-status (Jo 2012) stand to be divulged or concealed. Whereas police agencies’ document redactions mobilized a dedication to the confidentiality of sex trade workers to justify their relegation to the coded space of STW#, here these same policing bodies successfully demanded that current and former sex workers’ meaningful contribution to the public record rest fully on their identifiability and categorizability, on their willingness to appear bodily before the commission to be cross-examined by police lawyers as indigenous women, as prostitutes, as drug users. By recourse to various historical cases and precedents, to the Public Inquiry Act and the Canadian Charter of Rights and Freedoms, to the entextualized ruminations of judges and lawyers, to established legal statutes (Oppal 2011), Oppal effectively reproduced a violent epistemic exclusion systematized, naturalized, and justified over time in law’s archive. Testimony given anonymously or via affidavit, though now permitted by the commission, is – both on the record and in the archive – tainted by Oppal’s qualifications as to its validity and strength. These women, then, whose lives risk being undone by their testimony, again face doubt and uncertainty at the hands of the law, this time in a process ostensibly established in their name.

A second point of interest emerges from the decision to conditionally allow anonymous or affidavit testimony: the protections available to other vulnerable witnesses would not be granted to Ms. Anderson, “the only one who got away from serial killer Robert Pickton” (CBC 2011) and, as mentioned in the introduction, the woman whose story lies at the heart of this thesis. Though her anonymity – subject to a decade long publication ban – would be protected,
Anderson would be compelled to give her testimony in person and undergo cross-examination. The weight of her testimony, Oppal ruled in a written statement released in mid-November, and its potential centrality to the commission’s mandate necessarily exclude her from these protections. Four months later and only hours before she was slated to testify, Anderson told the commission she would not be appearing, citing concerns about her privacy and the privacy of her family. Once again, the inquiry space – materializing around the particular legal decisions of Oppal and his staff – proved inhospitable to those long excluded from spaces of juridico-political justice. In the wake of this decision, the commission would be forced to conduct its work without her evidence.  

Given that the terms of reference specifically highlight the commission’s mandate to “inquire into and make findings of fact respecting the decision of the Criminal Justice Branch on January 27, 1998, to enter a stay of proceedings on charges against Robert William Pickton of attempted murder, assault with a weapon, forcible confinement, and aggravated assault” (MWCI 2013), the absence of Ms. Anderson’s testimony is notable. Instead, commission staff interviewed the prosecutors who handled the case: Richard Romano, now a judge, and Randi Connor, who made the decision to drop the charges. Both had publicly funded lawyers throughout the inquiry, there to protect their privileged status as public servants and shield them from the hostility of an aggrieved commission audience. Prevented from testifying at Pickton’s trial by the pre-trial judge who ruled her evidence inadmissible and again here by rules of the court that demand cross-examination, Anderson – central to both the investigation and the inquiry – remains a peripheral figure all but vacated from the pages of the archive.

62 Friends and family of the missing women were disappointed by Ms. Anderson’s decision, some blaming the commission for her withdrawal and many feeling that this was yet another failure by the commission to understand what was really going on between marginalized women and policing bodies in Vancouver (Jo 2012).
4.7 Spending time

Exclusion from the record and in the archive, then, can be explored as a spatial process that undermines access and precludes appearance. But so too does time emerge as a key expression of value and contribution. In effect, time and space co-mingle in the archive: it matters to its constitution that certain epistemologies, stories, versions of events are given more time, more space, in the archive proper. In addition to thinking about testimony and the archive only in terms of access, it is paramount to consider how and why certain voices linger or dissipate across time, and what implications this has for collective memory and future social and political engagement.

The commission’s self-assigned role as archon reveals an absorption in the temporal. As mentioned briefly in the introduction, the MWCI spent innumerable hours determining who should speak about what past and for how long, then set itself the task of interpreting this self-referential and self-selected history, “to search for the truth in an efficient, effective, and timely manner” (Oppal, MWCI transcripts January 11 2012, 4). The terms of reference (1997-2002) were actively policed, questions beyond the confines of its six-year span persistently disallowed. “[P]overty and colonization, those are all very valid concerns,” Oppal told the commission following Gervais’s withdrawal.

[U]nfortunately, it’s not -- you know, the focus of our commission of inquiry, contrary to the wishes of many people in the province, are not to get into those issues. … We all have to in our collective conscience deal with those issues and they have to be dealt with. However, I’m constrained by the terms of reference. (MWCI transcripts March 6 2012, 24)
Coupled with an apparently strict – though three times extended – deadline for the submission of the final report, temporal anxieties produced a repeatedly truncated witness list, the controversial shift to panel testimony that prompted, at least in part, Gervais’s withdrawal, and a general preoccupation with ‘time spent’. On January 11, 2012, after weeks of testimony from police witnesses and experts, Oppal made the following directive: a) After the witness is led in the direct evidence [by commission counsel], reasonable time limits will be imposed on cross-examination, which will only be extended with leave; b) counsel will not duplicate ground covered in prior cross examination” (MWCI transcripts, 2).

Independent counsel, already struggling to generate a list of willing witnesses to testify before the commission from their respective communities of interest, took particular umbrage with the effects of such temporal limits. During her final submission to the MWCI on the day of her withdrawal, Robyn Gervais told the commission: “The delay in calling Aboriginal witnesses, the failure to provide adequate hearing time, the ongoing lack of support from the Aboriginal community and the disproportionate focus on police evidence have led me to conclude that Aboriginal interests have not and will not be adequately represented” (MWCI transcripts March 6 2012, 10). A month earlier, Jason Gratl cited a similar concern for

the enthusiasm this commission may or may not have about a thorough investigation. [Interested parties] in the Downtown Eastside are very concerned in particular about the truncation of the witness list to eliminate witnesses from the Downtown Eastside … who are well aware of many of the systemic issues of which you’ve -- in which you’ve expressed an interest but in relation to which we haven’t seen a lot of direct evidence” (MWCI transcripts February 6 2012, 6)

63 The first deadline was June 30th, 2012; the second October 31, 2012; and the third November 30, 2012. The report was released to the public on December 17, 2012.
The decision to switch from individual testimony to panel format – “and they very much couched [this decision] in the, again … we’re not going to look at past failures but we have to look to the future and so on and so forth” (Alex 2012) – further incited independent counsel.

Ms. Gervais: Considering that there now there have been 53 days of hearings, 39 days of police testimony, and with minimal evidence from the Aboriginal community, I trust you can understand my reaction when I was told without any explanation that I would be allotted one day for the Native Liaison Society Panel, four witnesses. And the second panel was dismissed entirely.

The Commissioner: Do you want a few minutes to compose yourself?
Ms. Gervais: No. Given that these hearings are largely about missing and murdered Aboriginal women, I didn’t think that I should have to fight to have their voices heard. I think I should have been provided those four days without questions. … According to the schedule you provided me, you would not have heard from the first Aboriginal Native Liaison Society worker who was involved directly in the missing women investigation until April 2, which is three weeks before the close of these hearings, and only one day was allocated for their testimony. (MWCI transcripts March 6 2012, 8-9)

These lengthy transcript excerpts – and there are many more like them – can be read as resistance to a valuation strategy that equates ‘time spent’ with a particular witness with the significance of her or his testimony to the inquiry. If, as Mbembe (2002) writes, “[a]rchives are the product of a process which converts a certain number of documents into items judged to be worthy of preserving and keeping in a public space, where they can be consulted according to well-established procedures and regulations” (20), then the finite time/space offered up in the archive necessarily “results in the granting of a privileged status to certain written documents, and the refusal of that status to others” (Ibid). This refusal, in the case of the MWCI, emerged in part from a temporal privileging of some voices over others. The two weeks spent with VPD Deputy chief Doug LePard and his 400-page report, in the breadth of their offering, almost necessarily overwhelm the relatively scant hours spent, as Gervais and Gratl repeatedly pointed
out, with Aboriginal witnesses and witnesses from the Downtown Eastside. “You know, the police account of the investigation and the community account of the investigation may have been two very different things,” Gervais said in an interview with the CBC. “But the reality is, we won’t know that” (Cluff 2012a). Oppal’s final report reflected this imbalance, the hundreds of pages on policing techniques and strategies mirroring the hundreds of hours spent with police witnesses. Time, then, in the MWCI emerged as its own finite form of currency, to be ‘spent’ with, or on, some witnesses at the expense of others.

4.8 Entextualization

Marlene Manoff (2004), drawing on Derrida, writes that “[i]f the archive cannot or does not accommodate a particular kind of information … then it is effectively excluded from the historical record” (12). If some modes of exclusion prevent people from appearing through the materialization of spaces, subjectivities, and temporalities, or command an impossible appearance as a condition of their inclusion, others work epistemologically, some ways of thinking slipping more easily into archival form. Knowledge shapes the archive, but the archive also shapes knowledge (Schwartz & Cook 2002); “[a]rchivable meaning is … in advance codetermined by the structure of the archive,” the archiving technique leaving an impression on material, and thus on proof of the past (Derrida 1995, 18). What happens to knowledge, to stories, when they are archived? How are they molded, sculpted, cast and defined? Finally, how do they appear?

“Today,” Bruce Miller (2011) writes, “law is found in documents that can exist independent of the sanctioning of second parties or the knowing associated with touch. Well-established, firmly entrenched law is commonly referred to as black letter law. We have developed the means to interpret the world as text, and we diligently translate action into writing.
What we take to be the permanence of writing is associated with serious intellectual activity. The common-law legal world now generally associates the oral and the sensory with fraud" (1).

Within the policy mandate of the MWCI inheres a process of validating a truth already known by DTES residents, service and advocacy organizations, and the friends and family of missing women – namely, that police organizations materialize systemic discrimination and racism against racialized, illegal prostitutes and drug-addicted women in the DTES – through the movement of sources from the oral to the written (see V. Harris 2002 for a discussion of this process of entextualization in the South African Truth and Reconciliation Commission).

Commissions must assemble these stories not only to reach an authorized truth, but also to make them legitimate through the process of collection and transcription (B. Harris 2002) and to render them communicable to other legal archives. The gathering in and institutionalization of this movement is concretized in the consignation of the archive: in the taking down of witness statements, the transcription of testimony, the hundreds of pages of written expert and police reports. Written documents still figure as the basis of verification here, as the hallmark for and of history and law, even when “revealed to be an incomplete and unreliable window into the past” (Mawani 2012, 348). Privileged over oral sources, “and thus over the subaltern and the indigenous” (Ibid, 350), textuality generates a ‘reality effect’ in the production of history and the archive (B. Harris 2002), spaces from which nomospheric sites like the MWCI garner authority and power.

64 It is interesting that it was a dis-privileging of the written word that lay at the heart of Oppal’s rejection of affidavit testimony as a legitimate source of ‘facts’. Tim Dickson, representative for the Vancouver Police Department and the Vancouver Police Board, citing legal scholar Edward Ratushny, told the inquiry: “There are a number of factors to consider when replacing oral testimony with written documentation. If the credibility or reliability of the witness is at issue, oral testimony and the opportunity for cross-examination may be required” (MWCI transcripts November 2 2011, 72). It is thus in the first instance that oral testimony is required. To stand as valid in future investigations, oral testimony must be corroborated and transcribed, must be ‘fixed’ in legal process.
As mentioned in the introduction to this chapter, the MWCI’s dedication to entextualization (in part in service of its archive) generated an incredible material legacy, by some accounts over two million pages of documents and files: expert reports were submitted to the inquiry in written form, organized into tabbed and labeled folders to be consulted, checked, and called upon during oral testimony and cross-examination; lost documents touched on earlier in this chapter presented monumental stumbling blocks, which, as a result of their absence, could not – at least to the mind of legal counsel and commission staff – corroborate testimony from the families, police organizations, street-level sex workers, or community workers; “every throat clearing and burp” (Jo 2012) was transcribed, filed, and closed with a certification of the “foregoing to be a true and accurate transcript of the proceedings transcribed to the best of my skill and ability” (see any transcript from the MWCI). The MWCI, it would seem, in its copulation with Miller’s black letter law, was dedicated to the serious intellectual activity inculcated through textual engagement.

Though the MWCI hearings were live streamed on the internet – an attempt to democratize access and generate a broader viewing public – the ultimate effect and status of the video footage is uncertain. Before her resignation, Robyn Gervais petitioned regularly for the maintenance of the live video feed.

I think it’s really important that the live streaming continue. I know that the Aboriginal community across B.C. is watching the live stream, and as I indicated yesterday I’m starting to get some communication from the Aboriginal community and that has come in various forms. For example, when I was cross-examining a witness, I had someone from the Aboriginal community sending me text messages saying ‘could you please ask this question?’” (MWCI transcripts November 3 2011, 69)

Unfortunately, the set up the hearings at the MWCI did not allow for questions to be asked instantaneously; counsel are required to speak in a pre-determined order and are actively
dissuaded from speaking out of turn. (As Oppal put it, “We have ways of doing things here. This is not a town hall meeting when people can jump up whenever they want [MWCI transcripts March 8 2012, 3]). Consequently, “in terms of the practicality … [communication] was a little bit difficult, but in terms of access, like, of people being able to access the room and being able to, yeah, text me questions … I thought it was fantastic” (Gervais, personal communication 2012). However, with constant changes to the testimony schedule and impromptu days of legal proceedings, it became very difficult for people to tune into the hearings for specific evidence and testimony.65 “They were very cheap with their money,” Jo told me. “Not anywhere in [the DTES], this is notable, did someone have a TV screen with the live stuff coming through, and nobody taped it, so you can’t play it!” (2012). Access was further limited by the timing of the hearings, which generally ran Monday to Friday, 10am to 3pm.

Jo’s concern for taping of the live stream is interesting. “Someone elbow their way into this thing and keep it for posterity so people can look at these clips,” Jo told me, “because … it wasn’t saved! Just live streamed and just pissed into the wind as far as I could tell!” In an email communication between myself and the firm that organized the live streaming, it eventually came out that the video feed was in fact recorded, but was being kept for the archive, which must remain closed for a certain amount of time before it is made accessible to the public.66 That so few people knew about this recording (Jo was not the only one to question the decision not to record the stream) and that it was made expressly for inclusion in the archive can be read as a

65 “Honestly like I never knew what was going to happen day to day. I would just show up there and I would just be like, ok, what’s it going to be today. You know, sometimes we’d just be rounded up, all of us, and brought to you know the boardroom and there’d be a meeting and it’d be like, you know ok, this is what’s going to happen now” (Alex 2012).
66 After exchanging multiple emails, the woman from the film company agreed to send me a hard copy for the recording. Two months later, at the time of writing this chapter, the copy had not yet arrived; further email inquiries were not answered.
testament to the MWCI’s self-referentiality. The audio-visual recordings are a measure of the accuracy and authenticity of its transcriptions, housed in the archive to constitute and reaffirm the reality and truth of the MWCI’s public hearings and report (see B. Harris 2002 for his discussion of audio-visual recording and the South African TRC).

Following Derrida (1995), these technologies of archivization influence the process of archiving itself, which in turn shapes the process of knowledge production. Recording technologies change concepts of time and space, our ways of knowing, thinking about, and articulating our relationship to the world around us (Schwartz & Cook 2002, 6). As Derrida (1995) imagines it, if Freud and his contemporaries had had access to tape recorders, telephones, computers, the internet, printers, and so on, it would have completely transformed the history and development of psychoanalysis. In other words, “the methods for transmitting information shape the nature of the knowledge that can be produced” (Manoff 2004, 12). The entextualized transcripts signal the material significance of written over oral histories and testimony, even as they are validated by those somewhat mysterious and hidden live recordings. The uncertain existence in the imaginaries of those involved in the inquiry of this video maintains transmission of and engagement with the record as a textual transmission; that only the transcripts and written versions of evidence are available online ensures that extensive analysis (scholarly and otherwise) of MWCI materials remains primarily with these entextualizations. And so if, as Verne Harris (2002) argues and I maintain in this chapter, the process of reproducing the record is fundamentally shaped by recording – if transcription leaves its mark – following from the previous chapter the question then becomes, what does this process of entextualization mean for acts of resistance and their translation into the archivable record? In particular, what does it do to affective, emotive, and embodied stories when we render them as text?
Perhaps the most obvious expression of the inquiry’s limitations appears on the first page of transcripts from the first day of the first inquiry session. In bold black capital letters, following the registrar’s call to “[o]rder: Missing Women Commission is now open. Commissioner Oppal presiding” (MWCI transcripts October 11 2011, 1) are these words:

**(TRADITIONAL OPENING CEREMONY)**

followed immediately by Oppal’s response: “On behalf of the commission of inquiry and our staff I want to thank Elder Harry for coming forward and giving us the blessing and the prayers” *(Ibid)*. The activity, emotion, energy, pain, and joy contained in the performance represented in those three words, “traditional opening ceremony,” completely exceeded the capacity of the MWCI to accommodate and effectively deal with Aboriginal cultural imagination, an inability that pre-figured the inquiry’s broader failure to attend to alternative epistemologies and ontologies. To reduce to three bracketed words an embodied expression of welcome and prayer is to vacate from the record the critical emotive and affective sentiment that saturates such performance, to vacate from the expression itself a politics of resistance to the quasi-legalistic rigidity of the MWCI. Derrida (2002) writes, “some archive has been, forever, destroyed. Not simply as documents, but simply people have disappeared. *And the pain, or the violence, on many sides cannot be recorded in the archive*” (50) [italics added]. Such was the pain and violence of the opening ceremony lost.

Like attempts to entextualize “traditional opening ceremony,” efforts to transcribe the emotive testimony of witnesses and counsel, or the words of those not comfortable with the cadence of (quasi)legal procedure, generated a significant loss of meaning.

Nobody would read those transcripts!” Jo said during our interview. “Because even when I went to read mine I could see how awkward they were, every throat clearing, every burp or whatever it drives you mental when you read it! … You know
what I do is I take the whole thing, I copy it, and I just start editing. Edit, edit, edit. And then I put it somewhere. ... Sometimes I actually have notes and I went back and looked at them and I said 'oh my God did I really screw up that badly? I said the opposite of what I meant to ... So if you ever need anything from mine corrected... (2012)

Jo’s unique position as participant, family member, community advocate, and uncertain contributor to the MWCI emerged in the transcripts as unclear stumblings and stutterings. Within this entextualized space, Jo appears as incoherent in part because of the explicit rules of decorum and rationality established in the courtroom, but also because of her suffering and oppression. The fiery, political, emotive, vibrant, engaging, willful person I interviewed completely dissipated under the conditions of entextualization, which unfastened her speech acts from their particular context and flung them into the nomosphere; Jo was only incoherent, in other words, within the interpretive narrative framework of the MWCI.

This loss of meaning was coupled, in many instances, by a process of rendering completely invisible expressions of contestation and resistance. “Some of the families definitely told [the police] off,” Jo told me. “You know what [the police] would always do is ‘cough, cough, on behalf of the Vancouver Police Department I’d like to apologize’. ‘I DON’T ACCEPT YOUR APOLOGY!’ We got a couple of those. Like, people were cheering almost. ... ‘YOU’RE HERE TO SILENCE US!’” That these outbursts do not exist in the transcripts means, in effect, that they do not exist in the MWCI’s archive, and thus have been removed from the institutional memory of this event. In each of these cases, the system of discursivity established in the MWCI’s entextualized archive placed strict limits on the appearance of particular epistemological and ontological acts, establishing not only the possibilities of what can be said, but how. The commission’s need to gather cold hard facts, data, and quantifiable, corroborate-able information that could be efficiently coded and entered into a massive database in service of
its archive, it would seem, cut short the value of what Lars Burr (2002), in the context of the South African Truth and Reconciliation Commission (TRC), has called memory environments: the sounds, scars, enacted sayings, gestures, performances, and ritualized behaviours of witnesses.

Some of these textual failures could certainly be rectified by the prompt public distribution of the live-streamed video footage. Reflecting on their engagement with transcribed testimony from the TRC, Antjie Krog and Noisis Mpolweni write that “it is only by watching the video of the testimonies that one fully grasps how the traumatic content and emotional delivery has put everybody under unbearable strain” (2009, 368). The video, it is true, has the potential to capture some of the emotional and affective content lost in entextualized versions of events. And yet theory on the archive of performance might caution us against an uncritical embrace of film. “While promising the authoritative archival ideal,” Matthew Reason (2003) writes, “such documentations [film] must fail to deliver, as archive theory makes clear, on any account of completeness, neutrality, and accuracy” (87). The inevitable transformative effect of documentation (Reason 2003) inevitably generates loss. So, while film may deliver a more embodied trace of what happened and who participated, to take it as a real or true image of the event ignores the bodies and knowledges at work in its production (as in the production of the archive). To frame any interpretation, filmic or textual, as a unified whole represses what is left outside, what is beyond the interpretive grasp, denying its existence and consigning it not to the archive, but to oblivion. It is, at least initially, in a recognition of this inevitable repression that there lies a politics of dissent, one that challenges, indefinitely, deployments of archival representations as containing within themselves even the possibility of being whole or univocally true.
4.9 Reconciliation

The MWCI was, at least in part, established to facilitate community-building through reconciliation. “A commission of inquiry,” Oppal told audience members and participants during the opening hearing session, “can serve an important reconciliation function. … Many [people] are resentful and angry: they believe the police and larger community did not care for these women and their tragic deaths. I hope that the commission’s work promotes closure and healing…” (MWCI transcripts October 11 2011, 13). Its ability to control the past – by calling upon and ‘correcting’ the entire extant record related to this event (or at least what it constituted for itself as the entirety of the relevant extant record) and managing how this record is perceived by the future – is integral to its fulfillment of its reconciliatory objectives. “Ultimately,” Kerry told me, “a part of the purpose of the public inquiry is to distance the past from the present” (2012). The place of the truth and its relation to the past are perceived as crucial: “unless a society exposes itself to the truth, it can harbour no real possibility of reconciliation, re-unification, and trust” (B. Harris 2002, 171). And yet it was these very practices of truth-building, of past- and future-making, that emerged as significant sources of objection and delegitimization in the eyes of those to whom reconciliation was being offered, those who “suffered untold grief” (Oppal, MWCI transcripts October 11 2011, 13) at the hands of the VPD the RCMP, and the Department of Justice.

Among Derrida’s most significant contributions to archive theory is the idea of forgetting as central to the accumulation of the archive. He writes: “[I]n order to oppose the destruction [of memories of horrible events], you want to keep safe, to accumulate, the archive, as such, not simply living memory – because we don’t trust the living memory, you trust the archive. … [T]here is a perverse, a perverse desire for forgetting in the archive itself” (2002, 66-68) [italics
added]. “When you put something in a safe, it’s just in order to be able to forget it” (Ibid, 54). For friends, family, and victims who testified at the inquiry – in particular those whose missing and murdered relatives were not among the six charges brought against Pickton in 2002 – the inquiry had the potential to create a break from a past of neglect and abuse (Jo 2012; Francis 2012), in part by generating Derrida’s ‘safe’ for their stories of marginalization. “Like, I don’t know if you’ve heard this from people,” Francis told me. “They say, ‘I want to tell my story. I want to hear ‘we screwed up.’ I want to hear ‘we’re sorry.’” And on some level … this is pretty basic” (2012) [italics added]. The telling and depositing of stories in the archive is its third implication: the archive is not only the place where things commence and the place from which order is given, but finally the place where memory accumulates, existing across space and time as stored information (Derrida 1995). The reconciliatory possibility of the archive rests on its ability to produce an institutional memory, yes, but always in tandem with its ability to produce a forgetting at the same time: a work of memory, but also a work of mourning.

For the inquiry, then, to focus so relentlessly on police evidence, to so aggressively make space and time for police testimony through the various means described in this chapter, unequivocally undermined its reconciliatory potential. “Some of the most basic [things people wanted, to tell their stories], were some of the things that were shattered earliest on. And it was going to be very, very difficult to build on that foundation” (Francis 2012). “We cannot have an inquiry and shut the police out” Oppal said, amidst critique of his focus on policing (MWCI transcripts March 6 2012, 11). “It’s important to remember,” he went on a few weeks later, “that at its core this inquiry is about policing” (MWCI transcripts April 2 2012, 3). Centering policing agencies and their testimonies and stories, Oppal put DTES, Aboriginal, and family witnesses’ desire to forget in anamnesis (in Derrida’s ‘living memory’) in unresolved tension with the
impossibility of forgetting under the particular circumstances of the MWCI. The narrative truth presented by many who gave testimony could not, for its affective and emotional qualities, be consigned in the external space of the archive (Derrida 2002). The inquiry’s selective and strategic absorption of particular histories, integral to its authority and to the veracity of its own legality, all but arrested its reconciliatory function. If I could speak with Oppal (he did not respond to my multiple calls and emails for an interview), I might ask: What happened to the missing and murdered women who, “from the very outset”, you stressed, “are at the heart of this inquiry” (Oppal, MWCI transcripts October 11 2011, 13)? Rather than providing the friends and family of these women and victims of sexualized and racialized violence in the DTES with a vault within which to place their memories, their anger, their stories and accounts, Oppal, in and through particular decisions made throughout the inquiry, built a platform from which the police, apparently now at its core, could extend their scripted, ill-received, and unaccepted apology.

4.10 Conclusion: The alternative archive

When we write, when we trace, we leave a trace behind us; each time we speak, each conversation, each chapter, each sentence leaves its mark (Derrida 2002). This trace is at the same time memory, archive, erasure, repression, orientation, mourning, commemoration, and collaboration. The ideas, theories, people, and voices with which we spend our time and how we organize, translate, transcribe, and (re)present these cohabitations matter to the emergence and reception of our work. In academic writing in particular – with its emphasis on certainty, conclusion, productivity – the traces of our decisions, our recordings “become independent of [their] origin, of the movement of [their] utterance” (Derrida 2002, 54). I have tried throughout this project to reflect openly and transparently on the methodological decisions I made,

67 “Archive is not a living memory,” Derrida writes, “it’s a location” (2002, 42).
sometimes out of necessity and sometimes out of inclination, and how they reverberate in the pages of each chapter. Nowhere have these decisions seemed as consequential than when writing about the archive. The traces of this project will linger in the cyber spaces of the UBC Library and the Library and Archives Canada websites, maybe in journal articles, in future concatenations of my work, and in the minds and memories of those who read it. Decisions to include, exclude, obfuscate, celebrate, denounce will be explained only in terms of the explanations I give them.

Though itself an exercise in entextualization, in writing this thesis I hope to contribute to the concrescence of an alternative archive of the MWCI process, an alternative archive of law. “Activation of the archive and an expansion of its breadth,” Stoler writes, “occurred both within the official domain [of the commission] and in the accumulations that gathered on its contested edges.” Marginal archives – the materials, dissidences, and living memories on these edges – can preserve materials excluded from the mainstream caches. These collections (my work included) are no less curated than the institutional archive generated, in this case, by the Missing Women Commission of Inquiry; “they are equally shaped by the kind of material collected, and the way it is arranged and described, as well as by what is excluded from an alternative reading of history” (Hamilton et al. 2002, 11). Like the normative counterpart against which it sets itself, the alternative archive relies upon and operates within the public record, friction there generating the desire for a site in which a radical interpretation of collective memory can be (re)figured. Unlike the fantasy of the singular, all-encompassing corpus promulgated by the archive proper (and by law), however, these alternative readings and repositories reveal an inevitable failure: the impossibility of completeness inherent to archivization. This process of compilation in opposition to a particular hegemonic discourse matters to social and political dissent, collective
memory, and lived experiences; the law inscribes itself as an authorizing force through its archive (Mawani 2012), which remains a crucial point of reference and return in the reproduction of violent and exclusionary norms (Povinelli 2002). And so if, as this chapter has maintained, archives are not sources but sites of contested knowledge, the alternative archive contains within itself the potential to challenge dominant epistemological perspectives performed by and in the institutional (legal) archive, which is undermined by that which it seeks to obscure and repress (Mawani 2012); at stake are other ways of thinking, doing, remembering, forgetting, and narrating law, justice, and reconciliation.

Dwelling in the nomosphere – interviewing lawyers and organization representatives rather than family members, Aboriginal leaders and community members, and residents of the DTES, though perhaps reproducing some of the silences generated in the first instance by policing institutions again by the MWCI, has allowed me to uncover the mechanisms by which marginalized voices and alternative forms of knowledge production are excluded from legal practice, process, documents, and archives. To record nomospheric resistance to the imposition of legal norms and standards, for example as explored in chapter 2, contributes in part to their persistence and power, even as they are excluded from the archive. By reframing the material and discursive offerings of the MWCI – its transcripts, stories, bodies, and so on – I write to show that alternative readings are possible and that they have counter-hegemonic potential. It is not, however, up to me to dictate the boundaries or limitations of these alternatives, nor to categorize other offerings as such (or not). Rather, to elucidate law and the archive not as natural, abstract, a priori institutions but as dynamic processes of sedimentation, fissure, and recalibration – product of particular (and precarious) concatenations of power – is to leave open possibilities for resistance and refiguration.
The role of technology in the accumulation of the alternative archive – as in the concrescence of its institutional equivalent – cannot be underestimated. This chapter and those that precede and follow it have taken shape around laptops, desk tops, coffee shops, tape recorders, office chairs, pens, pencils, notebooks, and couches. My use of these technologies has informed the textual and relational accumulation of this project in (un)known and (un)fixed ways. The off switch on my tape recorder, it would seem, inevitably prompted dramatic off the record divulgences, hastily jotted down in my black Moleskine after goodbyes and thank-yous, memorialized but always lacking their initial punch. The various tools and technologies at my disposal helped me to navigate the porous border between the public and private status of various pieces of information, a crossing always fraught with ethical and epistemological considerations. What can I say about whom and in what context? The answers to these questions, undergirded by recording and transcription technologies, have had significant consequences for the process and product of writing.

Both within and outside the inquiry space, the mechanisms of accumulation contributed to, even embodied, the ‘fringe’ or alternative status of gathered materials. It is significant to the transference of their message that Aboriginal groups and their supporters outside the inquiry danced and drummed their protest against the narrow terms of reference and Oppal’s refusal to address long histories of colonialism and their imbrication with gendered and racialized sexual violence in the Downtown Eastside. These technologies of communication and expression stand in stark opposition to the textual and black-letter-legal emphasis of the inquiry, the demonstrations opposing the MWCI’s nomic setting both in medium and message. To stand inside the inquiry, on the top floor of a glass building at the corner of Granville and West Georgia in downtown Vancouver and listen to Wally Oppal, atop his platform, address a
battalion of lawyers in suits and ties on processual matters in dry legalese while protesters drummed, sang, and danced outside created, at least for me, a tension that I found hard to overcome. The tonal traces of these protests lingered in and circulated around the courtroom, a constant reminder of the spatio-temporal and legal exclusions reproduced daily by the commission.

Within the inquiry, technological slippages between what the commission staff made available on their website and what counsel offered to their communities of interest generated complex relationships and entry points that exceeded the MWCI’s grasp. Robyn Gervais is worth quoting at length:

I started to gain [people’s] trust a little by doing things like tweeting evidence, so I would tweet live all the time, and then at the end of everyday I would tweet who the witness would be for the next day because you know, the commission would put up a schedule on the website but it changed day to day because you just don’t know how long people are going to be on the stand and so forth so at the end of the day I would say, you know, ‘constable so and so takes the stand tomorrow morning, being cross-examined by so and so. … I thought the very least I can do is keep people informed. So I did that, and I did weekly summaries of evidence, which I tweeted out, and I emailed to all of the organizations … that had applied for standing, I emailed them whether they wanted them or not. (personal communication 2012)

Groups who withdrew, who by way of ‘backroom’ and ‘closed-door’ conversations should not have been privy to the internal and immediate reorganizations and reconfigurations of the inquiry, were looped back into the archive, into the record, via the technologically-driven disclosures of MWCI participants. “Devries: the police kept using the word transient. I think that that word killed people #MWCI”; “Former RCMP Inspector Don Adam, lead investigator on evenhanded, resumes testimony today under cross examination #MWCI”; “Hern for the VPD suggests a STW liaison team with a VPD member, a civilian member, and a health care member
#MWCI”; “Here’s a link to my weekly summary #MWCI.” In hundreds of 140-charaters-or-fewer tweets, and in response to an inquiry that mobilized exclusions and obfuscations via manipulations over the valve between the public and the private, Gervais succeeded in generating alternative pathways for participation and inclusion.

In his chapter on archives and the political imaginary, Bhekizizwe Peterson, while espousing the potential of the alternative archive and its possibilities, cautions against its wholesale embrace.

I am sure [material lost from the archives] has survived, and is stored in the stubborn memories of people, in suitcases and plastic bags under beds, in wardrobes and ceilings. We must desist, however, from consoling ourselves by imbuing such material with a subversive, underground anonymity … The challenge is to find, assemble, catalogue, and elucidate as much as possible of this material and to bring it into the public or institutional orbit. Although we may concede the presence and significance of an ‘experiential archive’, simply to proclaim that it is everywhere is perilous. (31)

Fair warning. That alternative archival materials, “out there beyond the soiled fingers of officialdom” (Ibid), are not be found in our schools’ curricula, in museums, or in historical and cultural inheritances is significant to their political and social potential. But to assemble, catalogue, and elucidate them in ways intelligible to dominant archival and legal institutions seems the wrong goal. As I have tried to show here and in more depth in the second chapter, these alternative performances, memories, and archives are valuable in part for how they escape the institutional orbit. It is in the disjuncture between multiple public performances of truth and the archive that we come close to perceiving the complexity of the knowledge the MWCI brought into being (Cole 2007). And so we need to account for what is different about the work done by those like Robyn Gervais in their efforts to recalibrate access. A better (though far more challenging) question might thus be: How do we treat and engage these materials without
compromising their epistemological and ontological alterity? As highly contested sites of meaning, processes of sedimentation and materialization, they are simultaneously spatial, temporal, and juridical, and always irreducible to text and recordings. They exist as potential sources of contestation in which experiences of events and the law can be challenged and deconstructed. The task, then, is not to include these alternatives in the mainstream archive; no singular archive can contain all interpretations. Rather, following Judith Butler’s (1993) methodological challenge, the task is to illuminate the multiple forms that already exist, to disrupt the formulation and interpellation of narrow interpretations of history and events. Following Mawani (2012) we must question the “enduring effects and embrace of the archive” as a privileged site of research (360) and our desire to ‘complete’ it with post-colonial, feminist or other ‘other’ perspectives. In so doing, we may productively acknowledge that other ways of being, knowing, and relating have legitimacy, and that they matter to the lived experience of the subject. To keep the archive, in its broadest configuration, open, to keep these questions open, is surely, in itself, a significant political act.
Chapter 5: Closing thoughts

Left Coast Post: *How do you feel now – the inquiry’s obviously not over, there remains the final report in four months, but hearings have formally ended now.*

Michele Pineault: It’s the closing chapter in the Stephen King novel that I’m in. It’s the closing of a chapter and the beginning of a new one. Hopefully it’s a better one. Do Stephen King novels ever have happy endings?

- Ball 2012

On Wednesday June 6, 2012, after 93 days of testimony from 83 witnesses over eight months, the Missing Women Commission of Inquiry (MWCI) wrapped up its evidentiary hearings at 701 West Georgia Street. Rick Harry of the Squamish Nation, hereditary chief of Xwalacktun, closed the final session. From the transcripts:

*Mr. Harry:* [T]here’s a lot of emotions here. I felt them. I couldn’t imagine having someone go missing in my family. So I would like to just share this spirit song, Commissioner, to uplift and hopefully help you out in this closure, and I’m here just to do my best also. So my hands up for all the people who are here. I know you all care, that’s why you’re here. So I’ll share the song, it’s a prayer song, and you can pray in your own way.

(CLOSING PRAYER)

*Unidentified speaker:* Remember our sisters. (109)

Outside the courthouse doors where these final words were being spoken, a circle of drummers, prayers, dancers, and singers blocked the busy intersection at Granville and West Georgia to protest the inquiry’s abandonment of these same sisters, the missing and murdered women in whose name the MWCI was convened. For these protesters, the end to the inquiry was a desperately unsatisfactory one. The withdrawal of service and advocacy groups, key material witnesses not heard by the commission, limited time for cross-examination by legal counsel, and the Attorney-General’s recent rejection of a request by the families of 25 missing and murdered

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68 Michele Pineault is the mother of Stephanie Marie Lane who disappeared in 1997 when she was 20 years old. In 2003, Pineault learned that police had found her daughters’ DNA on the Pickton farm.
women for a deadline extension on inquiry proceedings left far too many questions. “I don’t know what’s going to come of this inquiry,” Michele Pineault told Left Coast Post after the final day of testimony. “I think we need more answers. As difficult as it may be, it’s difficult to live life daily anyway – we need to find the answers. I want to know what really happened. We did not find out what really happened” (in Ball 2012).

And so these questions and frustrations lingered when, six months later on December 17th, Oppal released Forsaken, his four-volume final report, to yet another drumming, singing, dancing, protesting public. In its 1,448 pages, Oppal lambastes police for their prejudice against Aboriginal women, sex trade workers, and drug users and for the territorial skirmishes between the Vancouver Police Department (VPD) and the Royal Canadian Mounted Police (RCMP) that prevented adequate investigation of their disappearances. “[Vancouver’s missing and murdered women] were forsaken twice,” Oppal wrote in the opening pages of his report. “Once by society at large, and then again by police. … To paraphrase Maggie de Vries, sister of Sarah de Vries, one of the victims: there should have been mayhem, searches, media interest, and rewards; but these responses only trickled in over the course of many years” (2012, 4).

Oppal was barely through his opening comments when heckling from the public gallery began. Though heartened by his pronouncement that ‘systemic bias’ contributed to ‘colossal’ policing failures, the audience’s enthusiasm was quickly tempered by Oppal’s qualification of this finding. “Sir Robert Peel coined the phrase: ‘the police are the public and the public is the police.’ I keep this phrase at the forefront of my analysis. The police failures in this case mirror the general public and political indifference to the missing women. … At some level, we all share the responsibility for the unchecked tragedy of the failed missing women investigations. … There is no evidence of widespread institutional bias in the VPD or RCMP” (2012, 94-95). For
Oppal, the police were capitulating to a social status quo that denied addicted sex trade workers from the DTES their status as juridico-political citizens: the failure was systemic, yes, but not institutional or individual (Oppal 2012). Many participants, among them those who had been calling for an investigation into the disappearances for decades, found this allocation of blame difficult to digest. “Surely [the families’] desperate pleas to police for help finding their missing daughters, sisters, and mothers were not indifferent?” counsel Cameron Ward (2012) opined on his website. “Surely the women and men marching in the streets demanding action were not indifferent?” And what of the varied attitudes towards these women within the police force? How do we account for the differences between the officers who came up in marginalized women’s accounts as being “somebody who cared and somebody who helped … and those who they perceived as not really caring about them, police officers [who] take condoms from their purses; [take them on] starlight tours, being picked up in one place, dropped off in another” (Lowman, MWCI transcripts October 13 2011, 42)? Simultaneously hesitant to attribute fault to individual police actions, decisions, officials, and departments and focused in the majority of his 63 recommendations on organizational policing ‘solutions’, many of which parallel recommendations made nearly two decades ago in his 1994 final report on policing in BC, Oppal’s Forsaken left un-targeted many of the “primary questions to which the families and friends of the missing women have long sought answers” (Ward 2012). “[T]he commission actively chose to interpret the terms of reference so as to exclude from its lens institutional prejudices respecting women, Aboriginals, drug users, and sex trade workers that may have contributed to failed investigations” (Ibid).

Not all responses to the final report have been negative. Rick Frey, victim Marnie Frey’s father, told CBC’s Anna Maria Tremonte that he was caught off guard by the value of the report.
“Wally surprised me. It’s a good report in that it lays blame on the feet of the Vancouver city police and the RCMP and I, you know, I’m grateful to see that in there” (quoted in Tremonte 2012). A recommendation to compensate the children and families of Pickton’s victims resonated with Marnie’s daughter Brittney. “[The compensation] makes a lot of difference because then it gives me time to move on, and not forget about my mom but to remember the person she was not the situation she was in, and then it can help me move on as a person” (in Tremonte 2012). And yet still the questions persist: “Ya, we know we have to change. How do we change it? Are we going to change it? Those are the big questions … We know what we have to do, we just have to do it” (R. Frey, quoted in Tremonte 2012).

As I write this conclusion, it would seem that Rick Frey has an answer to at least one of those questions. On July 11, 2013 a coalition of 20 First Nations and women’s organizations published a letter addressed to BC’s new Attorney-General Suzanne Anton criticizing the government for failing to implement Oppal’s recommendations. “We’re sick and tired of going to funeral after funeral after funeral. Enough is enough,” said Grand Chief Stewart Philip of the Union of BC Indian Chiefs, one of the groups party to the letter. “We are completely frustrated and disgusted with the unwillingness and inaction on the part of the provincial government. … We know that the status quo will perpetuate the issue of missing and murdered women” (CBC 2012b). This letter was in part motivated by former Lieutenant-Governor Steven Point’s decision to step down from his post as ‘champion’ for the final report just five months after his appointment.70 Point’s resignation was prompted by a lawsuit against Pickton, five RCMP

69 The day the report was released to the public, the Attorney-General announced that point would be responsible for seeing the 63 recommendations through to implementation.
70 Point’s resignation was prompted by a lawsuit against Pickton by the children of his victims. “As a consequence of this development I have concluded that it is impossible to continue in my role as special adviser to the
officers, the provincial government, and the city of Vancouver by the children of Pickton’s victims. “As a consequence of this development I have concluded that it is impossible to continue in my role as special adviser to government in relation to the recommendations by Commissioner Oppal in his report on Murdered and Missing Women,” Point said in a letter to the Attorney-General (cited in Mulgrew 2013). Jason Gratl, among the legal counsel representing the victims’ children, suggested to media that the litigation had nothing to do with the resignation. “There was a big load on that camel before we added a straw” (quoted in Mulgrew 2013). At the writing of this conclusion, no one has been assigned to replace Point.

Thus has the MWCI endured as it began: amongst criticism, controversy, and ongoing disappearances. Ann Laura Stoler (2009) writes that commissions of inquiry can “reactivate knowledge but also stop it in its tracks. As technologies of delay, they [can] effectively mobilize interest and satisfy it, as well as arrest decisions” (30). In process and product, it would seem, the MWCI has promulgated a singular version of truth and knowledge, systemic and institutional juridico-political failures reduced to a series of 63 expert-oriented solutions targeting policing techniques and technologies (Pat 2013). A form of action, these movements “forward toward a safer future, together” (Oppal, MWCI transcripts October 11 2011, 13) are simultaneously inaction of a particular kind. Some of this stasis was written in to the specific conditions of the inquiry: terms of reference that precluded important conversations about ongoing histories of colonial violence and dispossession; modes of transcription and entextualization that privileged the circulation and preservation of particular voices in the archive; police witnesses who spoke in place of those victimized by institutional failures, providing a one-sided account of the missing government in relation. Jason Gratl, lawyer in the case, insisted that they did not serve Point with legal papers putting him on notice of legal action, but rather sent him a “courtesy email” informing him of pending litigation. D
women investigation; and confrontational cross-examination that demanded legal representation even as participating groups were denied funding for counsel. And some of it was the product of more systemic nomospheric configurations: legal demands for corroborated, ‘factual’ testimony that silenced experiential accounts of abuse and oppression; rules of giving and taking evidence that created a hierarchy of access to documents and information and prevented some speakers from coming forward; and reductive categories of ‘expert’ and ‘non-expert’ that coded bodies and knowledges with significant implications for their perceived value to the commission. By naming justice for Vancouver’s missing and murdered women, it would seem, the inquiry effectively allowed this justice to be denied once again, “the failure of the speech act to do what it says not [necessarily] a failure of intent or even circumstance, but actually what the speech act is doing” (Ahmed 2012, 117). ‘How can we be doing nothing if we are seen to be doing something?’ The MWCI made its point strongly, like other commissions, by “enumerating ‘findings’ in a unified picture of sustained inequities” (Stoler 2009, 148). And yet these inequities are not only product of state inattention or oversight. They are enduring zones of state abandonment (Ibid), structured in part by juridical practice.

To ask what the doing of the inquiry allowed not to be done is to attend to the divisions and spatializations generated by normalized legal practice and to track what does and does not come along with the worlds it produces. The interviewees who contributed to this project materialized the borders and boundaries constructed by the MWCI by coming up against them. Their “failure to inhabit the categories that give order to an existence or bring an existence into order can be understood as beneficial, not in the sense that this failure might propel us forward but that it might give us insight into the very system of propulsion, into what does and does not move forward” (Ahmed 2012, 178). This thesis has been my attempt to critically interrogate the
categories and barriers that preconditioned the MWCI’s legal legitimacy, to inquire into and expose the material and discursive (juridical) mechanisms through which inclusions and exclusions are engendered.

Over the course of this work, I have been asked a number of times whether I am arguing for a recalibration of law or its wholesale rejection. Though, staying with Judith Butler, I have deep reservations about law as a site of justice, I cannot answer this question as it is framed. To draw a line between recalibration and rejection is first to define law in a positive sense, to fix its meaning in a way that denies the radical heterogeneity of the nomosphere. This has the effect of accomplishing that which I have been writing against: that is, the effect of abstraction and universalization. To sit as a white, female graduate student at the University of British Columbia in orientation toward a particular definition of law and its expressions would necessarily be to orient myself away from a multiplicity of others. As David Delaney (2004) writes, “how [the nomosphere] is manifest, say, in rural Sumatra is vastly different than how it is manifest in midtown Manhattan” (or downtown Vancouver) (852). To tell someone or some group that the justice they achieved through law was not justice, or not law, is to close down rather than open up how we think about, interact with, operate within, interpret, and engage the nomosphere, activities antithetical to my political project. What I am working towards here is not a general delegitimizmization of all particular expressions and enactments of law, but rather an examination of the effects of these particular expressions and enactments, and what it means to see, deploy, and experience them as abstract and general.

71 Nor, do I think, would Butler argue for a complete opposition to ‘the law’, but rather a careful critical interrogation of the discourses and materialities it generates, theoretically and empirically.
That said, to resist a wholesale opposition to ‘law’, even when it is clear there is no one law, is not to abandon any effort to evaluate and oppose its multivalent expressions that augment or (re)produce inequality and injustice. By examining the particularities of juridical systems and the often violent histories and doings that give them authority, following Derrida (1989) I have tried to discursively decouple the too-often collapsed categories of ‘law’ and ‘justice’ and to generate a foundation from which to begin thinking new fictional democracies, or what Derrida (1989) calls an ‘impossible justice’, which seek to redesign the “apparatus of boundaries within which a history and a culture have been able to confine their [legal] criteriology” (953). This impossible justice goes beyond the calculating logic of an abstracted and universalizing law, demanding a notion that is no longer based on violence and the force of law. Like the constitutive outside, it is the very quality of impossibility that contains within itself political potential: potential to recast the calculable sphere of the law without compromising or domesticating the inevitability of otherness and difference.

In the end, I suppose I pose more questions than I answer. In part what I hope to accomplish by doing so is to bring about an understanding of the inquiry as far from closed, of regimes of law and conceptualizations of justice as ever open for interrogation and interpretation to the future. While the institutional work of the commission is complete, the vast body of knowledge – in all its diverse, provocative, and controversial forms – has yet to be digested, to be synthesized, remembered, forgotten, deployed, and circulated. This thesis, then, ends with a call to be remain attentive to the ongoing processes of judgment, valuation, inclusion, exclusion, and categorization of bodies and knowledges at work in the nomosphere. It is an invitation to recall the past, query the present, and imagine the future in different ways and to see the potential in these engagements.
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* Missing Women Commission of Inquiry transcripts are available online at http://www.missingwomeninquiry.ca/transcripts/


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