



Don Morrison, Affidavit #1
Sworn February 11, 2011 *en.*

NO. 08 0327
VICTORIA REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *PATIENTS PROPERTY ACT*
R.S.B.C. 1996, CHAPTER 349 AS AMENDED

-AND-

IN THE MATTER OF KATHLEEN PALAMAREK, PATIENT

AFFIDAVIT

I, Don Morrison, Lawyer, of 1109-207 West Hastings, Vancouver, British
Columbia, MAKE OATH AND SAY THAT:

1. Exhibit A and Exhibit B are opinions I authored, endorsed and delivered to Lois Sampson in April of 2010 on the subject matter as captioned upon each opinion.
2. Exhibit C is my curriculum vitae which I state is truthful in all regards.

SWORN BEFORE ME at Vancouver,)
British Columbia on this *11th* day)
of February , 2011 *en.*)

Don Morrison
_____)

Don Morrison
_____)
Don Morrison

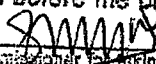
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DON MORRISON, B.A., M.S.W., M.L.S.C., L.L.B.
TRIAL LAWYER

1107-207 West Hastings St.
Vancouver, BC V6E 1H7
Tel: 604-685-7097
Fax: 604-662-7511
don.morrison@telus.net
www.donmorrisonlaw.com

April 26, 2010

Gil & Lois Sampson,
303- 1015 Pandora Avenue
Victoria, B.C. V8V 3P6

This is Exhibit A referred to in
the Affidavit of Don Morrison
made before me on Feb 11, 2011

A Commissioner for taking Affidavits within BC

Dear Mr. & Mrs. Sampson,

**Re: Review of the Saanich Police Department Investigation into the
alleged assault incident of January 15, 2009**

In your letter of March 28, 2010, you have requested an opinion with respect to
the Saanich Police Department and the alleged assault incident of January 15,
2009.

Documents:

- A. The following documents were provided to me on March 26, 2010 when
you attended my office:
1. A copy of your complaint to the Office of the Police Complaint
Commissioner, including appendices;
 2. A copy of surveillance camera video provided to you under court Order
by The Lodge at Broadmead regarding an alleged assault incident that
occurred on January 15, 2009;
 3. An account of the incident written by Lois Sampson and submitted to
the Saanich Police Department January 17, 2009, the day after she
reported to police that she had been assaulted by her brother, Ralph
Palamarek;
 4. An account of the incident submitted by Ralph Palamarek nine days
after the incident when he reported the incident of an alleged assault
by Lois on him;

5. Records obtained from the Saanich Police Department under various Freedom of Information (FOI) requests relating to the alleged assault incident and to various other allegations made to police about Lois Sampson by her brothers, Ralph, Robert and Ernest Palamarek;
 6. Various communications with the Office of the Police Complaint Commissioner, including their conclusions regarding your complaint and the final written response received from the Police Complaint Commissioner, Mr. Stan Lowe; and,
 7. Copies of other related correspondence and documents.
- B. The following documents were provided to me on March 28, 2010 by e-mail:
1. An email from your lawyer relaying from Constable Burdet the possibility of Lois's being charged with public mischief by the Saanich Police (re: case file 2009 - 1258).
 2. Your summary of a December 11, 2007 incident between another brother and yourself at Broadmead Lodge (re: case file 2007-32798).
- C. The following documents were provided to me on April 1, 2010 by e-mail:
1. Records of Victoria City Police Department on the involuntary apprehension of Kathleen Palamarek on October 31, 2008;
 2. Records of Elderly Outreach Services (EOS) on the involuntary apprehension of Kathleen Palamarek on October 31, 2008.

I have reviewed all materials and offer the following Comments and Opinion:

1. How police investigate, or the decision to terminate summarily a criminal investigation, is within police discretion barring incompetence or negligence.

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2. With respect to the prior allegations made against Lois Sampson, no further investigation was determined to be necessary and the files were closed.
3. The police are not required to inform alleged suspects in these cases.
4. This Police discretion does not apply to faulty findings of fact or misrepresentations which can form the basis for a 'public trust' complaint to the Office of the Police Complaint Commissioner.
5. With respect to the alleged assault incident of January 15, 2009,
 - i. Constable Burdet did a limited investigation.
 - ii. It is up to Crown Counsel, not Police, to determine if a criminal charge will be laid. The Police prepare a Report to Crown Counsel.
 - iii. Crown Counsel apply two criteria to each Report to Crown Counsel to determine whether charges should be laid:
 1. Substantial likelihood of conviction;
 2. The public interest.
6. It is within the discretion of the Police to determine whether there is sufficient cogent evidence to place before the Crown.
7. That discretion was exercised.
8. I reviewed the tape and in my view, the complaint made by Ralph Palamarek (January 24, 2009) is inconsistent with the video.
9. At its most serious interpretation, it would appear to be 'pushing and jockeying' between two estranged siblings. The missing frames, if in fact there are missing frames, would not alter the situation.
10. My opinion is that it was a proper exercise of discretion by the Constable Burdet.
11. To get information, there must be a formal FOI request. There are solid policy reasons for this.
12. It would appear that misinformation was provided by Mr. Bob Bigelow or by Constable Burdet or both. When was the video reviewed and by whom?

4.

13. The strong views of Constable Burdet that were expressed, including the possible charging of Lois Sampson, and the inaccurate interpretation of the video, were entirely inappropriate.
14. The Professional Standards officer is responsible for assessing a complaint, categorizing it and comparing the citizen's complaint to the Code of Professional conduct to determine if there have been possible breaches of the Code.
15. This comparison was not done. The complaint was not properly investigated by the Professional Standards officer.
16. In my view, a Professional Police Officer requires maturity and restraint and Constable Burdet did not display either attribute.
17. In my view, a Professional Standards officer requires analytic skills and a thorough understanding of the Act and Code.

The Request for an Extension

1. The extension of Investigations is governed by s. 56 which states the investigation must be completed within 6 months [s. 56(7)] unless the Police Complaint Commissioner grants an extension [s. 56(9)].
2. The complaint was filed August 16, 2009 and the 6 month deadline date was February 16, 2010.
3. Office of the Police Complaint Commissioner Investigative Analyst Woods took the word 'postponement', called it "suspension" thus removing it from s. 56 to a s. 65(4) request. I question why this was done. It would appear to be against the spirit of the Act and incorrect in law.

Summary Dismissal

1. The Summary Dismissal letter of the Saanich Police Department on November 17, 2009 findings are incorrect and inconsistent with the video.
2. It does not engage the Code of Professional Conduct in the analysis of the default.

5.

Summary

1. The Code of Professional Conduct Regulation has as one of its purposes:

s. 2(c) to assist municipal police departments in delivering fair, impartial, and effective police services to the community they serve.

2. Further, the Regulation sets out disciplinary defaults including (c) deceit and (f) abuse of authority.

3. Constable Burdet would appear to have breached these two disciplinary defaults as defined in ss. 5 and 7 and this should have been the focus of the Professional Standards Investigator, Sgt. S. Edwards. This would not have resulted in a Summary Dismissal.

Remedy

In my view, a proper reinvestigation should be ordered by the Police Complaint Commissioner pursuant to s. 54(6)(ii). This should be an external investigation pursuant to s. 55.1(1)(b).

A file review by an outside 'arm's length' police force is an alternative. Whether or not a Public Hearing should be ordered will depend on the outcome of this reinvestigation.

I hope this is of assistance to you.

Yours truly,



Don Morrison

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DON MORRISON, B.A., M.S.W., M.Sc., LL.B.
TRIAL LAWYER

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Vancouver, BC V6B 1H7
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This is Exhibit **B** referred to in
the Affidavit of Don Morrison
made before me on Feb 11 / 2011

[Signature]
A Commissioner for taking affidavits within BC

April 26, 2010

Gil & Lois Sampson,
303 - 1015 Pandora Avenue
Victoria, B.C. V8V 3P6

Dear Mr. & Mrs. Sampson,

**RE: An opinion with respect to the processing of the police complaint
filed August 14, 2009 with the Office of the Police Complaint
Commissioner**

In your letter of March 28, 2010, you have requested an opinion with respect to the processing of the police complaint filed August 14, 2009 including the conclusions reached by the Saanich Police Department and the Office of the Police Complaint Commissioner.

Documents:

- A. The following documents were provided to me on March 26, 2010 when you attended my office:
1. A copy of your complaint to the Office of the Police Complaint Commissioner, including appendices.
 2. A copy of surveillance camera video provided to you under court Order by The Lodge at Broadmead regarding an alleged assault incident that occurred on January 15, 2009;
 3. An account of the incident written by Lois Sampson and submitted to the Saanich Police Department January 17, 2009, the day after she

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reported to police that she had been assaulted by her brother, Ralph Palamarek

4. An account of the incident submitted by Ralph Palamarek nine days after the incident when he reported the incident of an alleged assault by Lois on him;
 5. Records obtained from the Saanich Police Department under various Freedom of Information (FOI) requests relating to the alleged assault incident and to various other allegations made to police about Lois Sampson by her brothers, Ralph, Robert and Ernest Palamarek;
 6. Various communications with the Office of the Police Complaint Commissioner, including their conclusions regarding your Complaint and the Final written response received from the Police Complaint Commissioner, Mr. Stan Lowe; and,
 7. Copies of other related correspondence and documents.
- B. The following documents were provided to me on March 28, 2010 by e-mail:
1. An email from your lawyer relaying from Constable Burdet the possibility of Lois's being charged with public mischief by the Saanich Police (re: case file 2009 - 1258).
 2. Your summary of a December 11, 2007 incident between another brother and yourself at Broadmead Lodge (re: case file 2007-32798).
- C. The following documents were provided to me on April 1, 2010 by e-mail:
1. Records of Victoria City Police Department (VPD) on involuntary apprehension of Kathleen Palamarek on October 31, 2008;
 2. Records of Elderly Outreach Services (EOS) on involuntary apprehension of Kathleen Palamarek on October 31, 2008.

8.

I have reviewed all materials and offer the following Comments and Opinion:

The Process:

1. Part 9 of the Police Act strictly controls the Police Complaint process.
2. Your complaint and ancillary requests must follow that procedure.
3. Many of your requests to the Office of the Police Complaint Commissioner (e.g. The request to reinvestigate the criminal sexual assault) must be redirected to the Chief of Saanich Police Department. These requests are beyond the authority of the Police Complaint Commissioner as set out in the Police Act.

The Request for an Extension:

1. The extension of Investigations is governed by s. 56 which states the investigation must be completed within 6 months [s. 56(7)] unless the Police Complaint Commissioner grants an extension [s. 56(9)].
2. The Complaint was filed August 16, 2009 and the 6 month deadline date was February 16, 2010.
3. Office of the Police Complaint Commissioner Investigative Analyst Woods took the word 'postponement', called it "suspension" thus removing it from s. 56 to a s. 65(4) request. I question why this was done. It would appear to be against the spirit of the Act and incorrect in law.

Summary Dismissal:

1. The Summary Dismissal findings in the letter of the Saanich Police Department on November 17, 2009 are incorrect and inconsistent with the video.
2. It does not engage the Code of Professional Conduct in the analysis of the default.
3. s. 54 requires a review by the Police Complaint Commissioner under s. 54(6) within 30 days.

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4. s. 54 does not prescribe 2 Confirmations of Dismissal and particularly flies in the face of s. 54(4).
5. The Confirmation of Dismissal dated November 18, 2009 does state the video was viewed.
6. The Confirmation of Dismissal dated November 18, 2009 did not allow 30 days for the Complainants to request a review pursuant to s. 54(5).
7. In my opinion, this fatally compromises the role of the Police Complaint Commissioner in this matter.
8. The Office of the Police Complaint Commissioner has prematurely committed itself to a position before the 30 day period.
9. Any later findings of fact by the Office of the Police Complaint Commissioner are contaminated. The principles of Natural Justice and the 'Duty to be Fair' must guide the Office of the Police Complaint Commissioner as it is an administrative tribunal with quasi – judicial authority. The Police Complaint Commissioner can lose jurisdiction through an abuse of authority.
10. The Confirmation of Dismissal by Police Complaint Commissioner December 17, 2009 is a second letter Confirmation of Dismissal, by the Office of the Police Complaint Commissioner.
11. The initial Confirmation of Dismissal occurred 1 day after the Summary Dismissal letter November 17, 2009 and the Office of the Police Complaint Commissioner appears to have improperly locked itself into a position without serious consideration of the evidence
12. This cannot be remedied by the second letter from the Police Complaint Commissioner

Disciplinary Defaults:

The Code of Professional Conduct Regulation has as one of its purposes,

s. 2(c) to assist municipal police departments in delivering fair, impartial, and effective police services to the community they serve

10.

Further, the Regulation sets out disciplinary defaults including (c) deceit and (f) abuse of authority.

Constable Burdet would appear to have breached these 2 disciplinary defaults as defined in ss. 5 and 7, and this should have been the focus of the Professional Standards Investigator, Sgt. S. Edwards. This would not have resulted in a Summary Dismissal.

Remedy:

In my view, a proper reinvestigation should be ordered by the Police Complaint Commissioner pursuant to s. 54(6)(ii). This should be an external investigation pursuant to s. 55.1(1)(b).

A file review by an outside 'arm's length' police force is an alternative. Whether or not a Public Hearing should be ordered will depend on the outcome of this reinvestigation.

I hope this is of assistance to you.

Yours truly,

A handwritten signature in black ink, consisting of a large, stylized loop followed by a long horizontal stroke.

Don Morrison

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CURRICULUM VITAE: Don Morrison February, 2011

EDUCATION :

1982 UNIVERSITY OF BRITISH COLUMBIA

L.L.B.

1980 PEPPERDINE UNIVERSITY

M.Sc. - Organization Development

1971 UNIVERSITY OF BRITISH COLUMBIA

M.S.W. - Community Organization

CMHC Fellow (1970-1971)

1967 UNIVERSITY OF BRITISH COLUMBIA

B.A. - Asian Studies

This is Exhibit **C** referred to in
the Affidavit of Don Morrison
made before me on Feb 11/11
[Signature]
A Commissioner for taking affidavits within BC

EMPLOYMENT IN LEGAL FIELD:

BARRISTER AND SOLICITOR Present

Private Practice

POLICE COMPLAINT COMMISSIONER April 1998 - May 2002

Officer of the Legislature, British Columbia

Establish first Office of the Police Complaint Commissioner

Oversee complaints against 12 municipal police forces

MINISTRY OF ATTORNEY GENERAL Nov 1987 - April 1998

Criminal Justice Branch, Victoria, British Columbia

Crown Counsel Dec 1991 - April 1998

Major Crime Prosecutions Unit (MCPU) Region 1, Vancouver Island

Administrative Crown Counsel Nov 1989 - Nov 1991

Supreme Court, Victoria, British Columbia

Co-ordinate prosecution of Supreme Court trials and Summary Conviction appeals.

Trial Prosecutor Nov 1987 - Oct 1989

Jury trials

MINISTRY OF ATTORNEY GENERAL Oct 1986 - Oct 1987

Criminal Justice Branch, Vancouver, British Columbia

Trial Prosecutor

Provincial, County & Supreme Courts

MINISTRY OF ATTORNEY GENERAL June 1986 - Oct 1986

Vancouver

Barrister

Family Maintenance Project

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SWINTON & COMPANY May 1982 - May 1983

Barristers & Solicitors

Articled Law Student

EMPLOYMENT IN NON-LEGAL FIELD:

DEPARTMENT OF HEALTH AND WELFARE CANADA Sept 1983 - Oct 1984

Indian/Inuit Professional Health Career Program, Ottawa

Acting Director

Administered a new program assisting natives to enter the health field as professionals.

DEPARTMENT OF HEALTH AND WELFARE CANADA May 1984 - Aug 1984

Ottawa

Policy Advisor

Prepared policy papers on the residual role of Medical Services Branch on transfer of health services pursuant to Indian Act or Indian First Nations Government Act.

DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT CANADA

Ottawa Oct 1983 - April 1984

Policy Advisor

Developed response of government to the Special Parliamentary Report the "Penner Report" on Indian Self Government.

Participated in the development of drafting instructions for an Indian First Nations Government Act.

MINISTRY OF SOLICITOR GENERAL CANADA Dec 1978 - April 1979

Acting Director

Planning & Inter-Governmental Affairs

Development of strategic plan for consultation centre.

Supervised national consultants in the policy areas of youth, preventive policing, natives and diversion.

Regional Consultant (Pacific Region) July 1974 - Sept 1979

Managed regional office of 4 with budget responsibilities for program development and evaluation in British Columbia and the Yukon in areas of Diversion, Victims, Native Police.

NATIONAL PAROLE SERVICE May 1972 - July 1974

Vancouver, British Columbia

Parole Officer

Supervised parolees in the Vancouver area.

Prepared parole applications for the Parole Board

TEACHING AND COUNSELLING :

VANCOUVER COMMUNITY COLLEGE April 1981 - July 1981

Contract Counsellor between 2nd and 3rd year law school.

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DOUGLAS COLLEGE Sept 1977 - 1975

Supervisor

Criminology, Field Placement Program.

SIMON FRASER UNIVERSITY 1975 - 1976

Sessional Lecturer, 3 semesters

Crim. 469 - Professional Ethics in Criminal Justice.

VANCOUVER COMMUNITY COLLEGE May 1971 - May 1972

Counsellor

Counsellor to native students attending U.B.C., S.F.U., V.C.C., Capilano College, Douglas College

Case load reached 60+ and involved recruitment and maintaining aboriginal students attending post secondary institutions

VANCOUVER SCHOOL BOARD Sept 1969 - June 1970

Teacher (Fall, Spring sessions)

English as a second language

KANSENJI SECONDARY SCHOOL Sept 1967 - May 1969

Ndola, Zambia

Teacher

Multi-racial Secondary School

CONSULTING :

PADAEIC SOCIETY - 1990

Team building, strategic planning.

Inter agency group focusing on services to I.V. AIDS victims not presently being serviced by agencies

VANCOUVER INDIAN HEALTH CARE SOCIETY - 1990

Strategic planning for service delivery to natives in urban setting, (sponsored by the B.C. Ministry of Health)

ALBERTA INDIAN ASSOCIATION - 1986

Goal setting, team building workshop with new board of directors

CUSO - 1984

National board/staff, team building workshop in Ottawa, Ontario

DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT - 1983

Review of aboriginal government proposals and federal government options for aboriginal self-government models

LAW REFORM COMMISSION OF CANADA - 1983

Prepared a discussion Paper of "Public participation and the role of the Commission."

VANCOUVER CRISIS CENTRE - 1980 - 1981

Workshop Facilitator

Board/staff workshops: problem solving with volunteer trainers

MINISTRY OF SOLICITOR GENERAL - July 1980

Review of Preventive Policing Program

CORRECTIONAL SERVICE OF CANADA - May 1980 - June 1980

(PACIFIC REGION)

Workshop Facilitator

Regional management team workshop.

Orientation to new case management system. Follow-up evaluation workshop for Deputy Wardens Pacific Region

B.C. POLICE COMMISSION - 1979

Goal setting with crime prevention committee

NATIONAL PAROLE SERVICE - 1988

Team building workshops with management and staff

B.C. CORRECTIONS SERVICE - 1976

Strategic planning, team building with Vancouver Island Regional and Fraser Valley

Community/corrections workshop, Northern Region

VANCOUVER CITY POLICE - 1976

Strategic planning/team building (District III)

VANCOUVER INDIAN CENTRE - 1975 - 1976 & 1985

Board/staff workshops

B.C. NATIVE COUNSELLING AND COURT WORKERS ASSOCIATION - 1974

Co-training of 1st province wide court workers

WORKSHOPS & PRESENTATIONS:

2001 Presentation, " Policing the Police: Is it Working?" , Criminal Justice Congress, Halifax

Presentation, " Models of Civilian Oversight of Police in Canada " , International Law Enforcement Academy , Bangkok

2000 Presentation " The Challenges of Disclosure of Police Boards after Scaduto " , Canadian Association of Police Boards Annual Conference, Saint John

Presentation "*The Impact of Torts and Human Rights Litigation on Police*", CACOLE Annual Conference, Winnipeg

Presentation "*The Transition of Police to the Professional Model and the Role of Civilian Oversight*", Keynote Address, 9 th Annual Conference on Law Enforcement & Ethics, Dallas

Presentation " The Legal Status of Police and Private Security " to Conference on "Police and Private Security: What the Future Holds." Toronto , Nov. 1999

Presentation to Arson Investigators Level III

Presentation to Canadian Police Association Western Wage Conference

1999 Presentation to World Police Medical Officers Association

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- 1999 Presentation to American Society of Forensic Odontologists
- 1998 Presentation to Canadian Association of Police Boards
- 1998 Presentation to Canadian Association of Civilian Oversight of Law Enforcement
- 1998 Presentation to Futures Group of Canadian Association of Chiefs of Police
- 1998 Opening Remarks to first training course for Municipal Police Undercover Training
- 1996/8 Presentation to Fire Commissioners' Advanced Arson Seminar
- 1995 Mock Trial with Forensic Odontologists
- 1995 Presentation to Crown Counsel Training Workshop on Adverse Witnesses
- 1994 Presentation at International Association of Identification conference
- 1994 Presentation to Fire Commissioners on Advanced Arson Seminar
- 1993/4 One day presentations (12) to RCMP on Advanced Forensic Training across Canada
- 1993 Presentation to Crown Counsel conference on juries
- 1993 Presentation to RCMP Blood Stain Examiners
- 1992 Presentation on Character Evidence at Crown Counsel conference
- 1992 Workshop presentations (two) for Fire Commissioner's Office, on legal issues for fire inspectors
- 1992 Structured Experience on Examination-in-Chief and Cross-Examination for articulated students
- 1992 Presentation to B.C. Criminal Justice Branch, for new crown counsel
- 1992 Workshop for Forensic Odontologists
- 1991 Presentation to B.C. Fire Investigation Education Seminar

REPORTS AND PUBLICATIONS :

- 1992 Author, *Windjammer Syndrome: Witness Recollection of Events that did not Happen*.
- 1990 Co-Author, *Young Offenders - Continuing Legal Education*
- 1992 Co-Author, *Crime Activities of the Dai Huen Jai (Big Circle Boys) draft paper*
- 1983 Author, *The Public Participation Function of the Law Reform Commission of Canada*.
- 1982 Co-Author, *Evaluation of the Cedar Cottage-Kensington Community Accountability Panel (2 volumes)*.
- 1981 Editor, *Crime Prevention and the Police in Quebec : Source Materials in Translation (2 volumes)*.
- 1980 Author, *The Preventive Policing Programme in the Ministry of Solicitor General*.
- 1980 Author, *Overview of Preventive Policing in Canada*.
- 1980 Author, *Planned Change in the Vancouver Police Department*.
- 1974 Author, *The Vancouver Handbook on Parole*.
- 1973 Editor, *New Directions in the Criminal Justice System. (UBC Continuing Legal Education Symposium)*.
- 1972 Editor, *B.C. Corrections Courier (journal)*.

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COMMUNITY ACTIVITIES -- BOARD MEMBERSHIPS :

- 2001 - 2002 • Member, Advisory Board, Canadian Police College
- 1999 - 2002 • President, Canadian Association of Civilian Oversight of Law Enforcement
- 2001 - 2002 • Board Member, International Association of Civilian Oversight of Law Enforcement
- 1993 - 1996 • Victoria School Board (Trustee)
- 1985 - 1987 • Nishga Children's Society (Board) Burnaby, British Columbia
- 1983 - 1984 • Mayor's Committee on Crime Prevention, Ottawa, Ontario
- 1982 - 1983 • Britannia Community Centre (Board), Vancouver, British Columbia
- 1978 - 1980 • Vancouver Indian Centre (Board), Vancouver, British Columbia
- 1978 - 1980 • Vancouver Crisis Centre, Vancouver, British Columbia
- 1975 - 1976 • Canadian Association for the Prevention of Crime (Board), Ottawa, Ontario
- 1970 - 1971 • CUSO (Board), Ottawa, Ontario

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