



COMMISSION OF INQUIRY INTO THE CIRCUMSTANCES
SURROUNDING THE DEATH OF PHOENIX SINCLAIR

The Honourable Edward (Ted) Hughes, Q.C.,
Commissioner

Transcript of Proceedings
Public Inquiry Hearing,
held at the Campaign Room, Lower Level, Delta Hotel,
350 St. Mary Avenue, Winnipeg, Manitoba

THURSDAY, APRIL 18, 2013

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MR. N. SAUNDERS, Assembly of Manitoba Chiefs and Southern Chiefs Organization Inc.

MS. B. BOWLEY, for witness, Ms. Diva Faria

MR. J. KATZ, for witness, Mr. Robert Baker

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1 APRIL 18, 2013

2 PROCEEDINGS CONTINUED FROM APRIL 17, 2013

3

4 THE COMMISSIONER: Good morning, Mr. Globerman.

5 MR. GLOBERMAN: Good morning, Mr. Commissioner.

6 I believe we have three witnesses scheduled to testify
7 today. The first witness is Mrs. Cecilia Stevenson.

8 THE COMMISSIONER: All right.

9 THE CLERK: If you could just stand for a moment.
10 Is it your choice to swear on the Bible or affirm without
11 the Bible?

12 THE WITNESS: I'll affirm.

13 THE CLERK: All right. State your full name to
14 the court then.

15 THE WITNESS: Cecilia Ann Stevenson.

16 THE CLERK: And can you spell me your first name?

17 THE WITNESS: C-E-C-I-L-I-A.

18 THE CLERK: And your middle name, please?

19 THE WITNESS: A-N-N-E.

20 THE CLERK: And your last name?

21 THE WITNESS: S-T-E-V-E-N-S-O-N.

22 THE CLERK: Thank you.

23

24 **CECILIA ANNE STEVENSON**, affirmed,

25 testified as follows:

1 THE CLERK: Thank you. You may be seated.

2

3 DIRECT EXAMINATION BY MR. GLOBERMAN:

4 Q Good morning, Ms. Stevenson.

5 A Good morning.

6 Q As you know, my name is Noah Globerman and I'm a
7 lawyer for the commission. I'll be asking a few questions
8 this morning. You are 64 years old?

9 A Yes.

10 Q And I understand that you are married to Lloyd
11 Stevenson, who is a legal advisor for the band in Peguis?

12 A Yes.

13 THE COMMISSIONER: Did you say legal advisor?

14 MR. GLOBERMAN: Yes, sir.

15 THE COMMISSIONER: Thank you.

16

17 BY MR. GLOBERMAN:

18 Q And I understand that you have two children and
19 they are 37 and 32 years old?

20 A Yes.

21 Q And you are currently retired?

22 A Yes.

23 Q And you have been for three years?

24 A Yes.

25 Q You live in Peguis First Nation reserve?

1 A Yes.

2 Q Have you lived there your entire life?

3 A No.

4 Q How long have you lived there for?

5 A Since about 1985.

6 Q And roughly how far away is Peguis First Nation
7 from Fisher River?

8 A From where we live it's, it's only about three
9 miles or so.

10 Q Okay. Have you ever lived in Fisher River?

11 A No.

12 Q We've heard evidence on Monday from Cindy Hart,
13 who is the director of the health centre in Fisher River
14 that you held that position in 2005; is that correct?

15 A I can't recall but I did hold that position but I
16 may have left a bit earlier than 2005.

17 Q Okay. Did you ever provide health services to
18 Karl Wesley McKay or Samantha Kematch or their child in
19 Fisher River in 2005?

20 A Not that I recall.

21 Q Were you aware that they were receiving health
22 services from the health centre in 2005?

23 A No.

24 Q Do you have any family in Fisher River?

25 A No.

1 Q Do you currently spend much time there?

2 A No.

3 THE COMMISSIONER: Was the health centre where
4 you were the director, is that located in Fisher River?

5 THE WITNESS: Yes.

6 THE COMMISSIONER: Yes, thank you.

7

8 BY MR. GLOBERMAN:

9 Q Did you spend much time in Fisher River in 2005?

10 A Not that I recall.

11 Q I understand that you are related to DOE number 3
12 and I should have said this at the outset, but you have a
13 key before you and several individuals that will be
14 testifying at the inquiry are the subject of a publication
15 ban and we're referring to them by their pseudonyms,
16 DOE number 1, DOE number 2, DOE number 3 and DOE number 4.
17 So please try your best to refer to them by those
18 pseudonyms. You are related to DOE number 3?

19 A Yes.

20 Q How are you related to her?

21 A Her mother and I were first cousins. I called
22 her my niece.

23 Q You called DOE number 3 your niece?

24 A Yes.

25 Q Are you and DOE number 3 close?

1 A Quite close, yes.

2 Q How often would you see her when she was growing
3 up and into adulthood?

4 A Almost every month, several days per month.

5 Q We know that DOE number 3 was once the partner of
6 Karl Wesley McKay. Did you know him at all?

7 A Yes.

8 Q When did you first meet him?

9 A Probably about 20 years ago or more.

10 Q What did you know about him at that time and as
11 the years progressed?

12 A I know that he was -- not much. I know that he
13 always very polite, very personable, talkative.

14 Q Did you ever see him act violently towards his
15 family or anyone else?

16 A No.

17 Q Did DOE number 3 ever tell you that Mr. McKay was
18 violent?

19 A Not until recently.

20 Q What do you mean by recently?

21 A About two years ago she told me that he had been
22 quite abusive to her during their relationship.

23 Q Now we know that DOE number 3 and Mr. McKay have
24 children and they will testify in the coming days of this
25 inquiry. Did you know DOE number 1 and DOE number 2?

1 A Yes.

2 Q Do you know them well?

3 A Yes.

4 Q How long have you known them?

5 A Since they were babies.

6 Q How often would you see them as they were growing
7 up?

8 A Probably every, every couple of months or so,
9 maybe every month on some occasions.

10 Q When DOEs number 1 and 2 were growing up, did you
11 ever see their father, Mr. McKay, interact with them?

12 A Not much, not that I can really recall actually.

13 Q Were you ever concerned by the way he interacted
14 with them?

15 A I can't really recall.

16 Q Do you recall if DOE number 1 and DOE number 2
17 ever mentioned anything to you about Mr. McKay being
18 violent towards them or their mother?

19 A No.

20 Q Now we have heard evidence that Mr. McKay was in
21 Fisher River sometime in the spring and summer of 2005.
22 Were you aware that he was in Fisher River at that time?

23 A Not initially, but it was brought to my attention
24 after, right about that time, yes.

25 Q When did you learn that he was in Fisher River?

1 A When I received a phone call from number 3.

2 Q Do you recall when DOE number 3 called you?

3 A Early spring, maybe late in May, around there.

4 Q Of 2005?

5 A I believe so, yes.

6 Q How did DOE number 3 know how to contact you?

7 A She phoned me.

8 Q She had your telephone number?

9 A Yes, she always had my telephone number.

10 Q What did you know about Mr. McKay's family at
11 that time?

12 A Nothing really.

13 THE COMMISSIONER: Maybe be a bit more specific
14 with the question.

15 MR. GLOBERMAN: All right.

16

17 BY MR. GLOBERMAN:

18 Q We know that he had DOE number 1 and DOE number 2
19 with DOE number 3. Did you know anything about any other
20 children he may have had?

21 A I don't recall.

22 Q Did you know if he had a new partner at that
23 time?

24 A I believe number 3 would have mentioned that to
25 me at the time that she called.

1 Q Did she mention the new partner's name?

2 A I don't recall.

3 Q Did you know where Mr. McKay was living in Fisher
4 River at that time?

5 A Yes.

6 Q Where was he living?

7 A I believe at the blue house in Fisher River,
8 that's, that's how I remember it. There's no numbers,
9 there's ...

10 Q Are you speaking about Angela Murdoch's house or
11 some other house?

12 A I, I don't know that it was Angela Murdoch's
13 house but they were living at that blue house. I'm not
14 familiar with the owner of the house.

15 Q At that time did you know Samantha Kematch at
16 all?

17 A No.

18 Q Have you ever met her?

19 A No.

20 Q Did you know anything about her children,
21 including Phoenix Sinclair?

22 A No.

23 Q And I take it at that time you didn't know that
24 Phoenix Sinclair was in Fisher River?

25 A I did not know, no.

1 Q Have you ever seen Phoenix Sinclair?

2 A No.

3 Q We heard evidence at this inquiry that
4 Ms. Kematch had a baby on November 30th, 2004. Did you
5 know if that child was in Fisher River?

6 A No.

7 Q Did you know anything about that child?

8 A I think it may have been mentioned to me at some
9 point, perhaps by number 3.

10 Q Now you mention that at some point in 2005
11 DOE number 3 called you and told you that Mr. McKay was
12 living in Fisher River. Did she contact you when you were
13 living in Peguis?

14 A Yes.

15 Q In that phone call, did DOE number 3 mention
16 DOE number 1 at all to you?

17 A Yes.

18 Q What did she mention about DOE number 1?

19 A She told me that he, or she was sending him out
20 to live with his father in Fisher River, I think for a
21 while, and that he was coming out to, to live out there
22 with his father.

23 Q Did she let you know why he was coming out to
24 live with his father?

25 A I don't recall exactly the reason why.

1 Q Do you recall what else DOE number 3 said to you
2 on the phone?

3 A With that -- at that particular phone call?

4 Q Yes.

5 A No, not that I remember.

6 Q Did she ever ask you to check up on the boys when
7 they were in Fisher River? And I'm referring to DOEs
8 number 1 and 2.

9 A I don't recall specifically ask, her asking that,
10 no.

11 Q Do you recall if she told you if she called Child
12 and Family Services?

13 A No.

14 Q Now when DOE number 3 contacted you to let you
15 know that Mr. McKay was living in Fisher River and that her
16 son, DOE number 1, was going to be staying with his father,
17 did she tell you who was living with Mr. McKay?

18 A I believe she said he was living with someone but
19 I don't recall her saying who that person was.

20 Q Did she tell you that Mr. McKay's new partner had
21 a child?

22 A I'm sorry, but I don't exactly recall. It may
23 have been mentioned at that time but I, I can't say that I
24 recall specifically.

25 Q Did DOE number 3 mention DOE number 2 at all to

1 you and if he was going to be coming to Fisher River?

2 A At some point she must have mentioned because I
3 knew he was there later on, a bit later on.

4 Q So just so I'm clear, he didn't come to Fisher
5 River at the same time as his brother, DOE number 1?

6 A That's my understanding.

7 Q Do you recall when he came to Fisher River?

8 A It might have been several weeks after, maybe two
9 weeks or so after [redacted] arrived there.

10 Q And just for the record, please try to refer
11 to -- it's okay, it's okay, but just try to refer to them
12 by their pseudonyms.

13 A Sorry.

14 THE COMMISSIONER: You're not the only one that's
15 made that mistake.

16 THE WITNESS: Okay.

17 THE COMMISSIONER: The people have been very
18 respectful of what we're trying to do here, so that's fair
19 enough.

20 THE WITNESS: Okay.

21 THE COMMISSIONER: Don't let that bother you.

22 MR. GLOBERMAN: And the media knows not to
23 publish that name.

24 THE WITNESS: Okay.

25

1 BY MR. GLOBERMAN:

2 Q Did you ever see DOE number 1 during the time
3 that he was in Fisher River in 2005?

4 A Yes.

5 Q Do you recall when you saw him there?

6 A Yes.

7 THE COMMISSIONER: That's DOE number 1 you asked
8 about?

9 MR. GLOBERMAN: Yes, sir.

10

11 BY MR. GLOBERMAN:

12 Q Do you recall what month it was?

13 A Around early June, I think.

14 Q What makes you say that?

15 A I go by the, the grass, it was still kind of
16 brown, it wasn't green yet, so that's, that's the only
17 thing I can go by. It wasn't, it wasn't summer yet, it was
18 still spring or late spring.

19 Q How did you come to see DOE number 1 in Fisher
20 River?

21 A He called. He wanted to come and visit.

22 Q And he had your telephone number?

23 A Yes, he probably got it from his mom.

24 Q And what did you and DOE number 1 talk about on
25 the phone?

1 A That he wanted to come and visit and basically
2 that was it on, on the phone, yeah.

3 Q And did he ask you to pick him up?

4 A Yes.

5 Q Do you recall where he was at the time?

6 A I went to pick him up at his grandfather's house.

7 Q What's his grandfather --

8 A In Fisher River.

9 Q All right. What's his grandfather's name?

10 A I think his name was John.

11 Q And you're referring to --

12 A Do you want his last name too or?

13 Q You're referring to Karl Wesley McKay's father?

14 A Wesley's father, yes.

15 Q His last name is McKay?

16 A I believe so, yes, yes.

17 Q Do you recall where Mr. McKay's father's house
18 was located, DOE number 1's grandfather's house?

19 A In Fisher River, in, not far from where Wesley
20 lived.

21 Q Do you know who was living in that house at the
22 time? I'm speaking about DOE number 1's grandfather's
23 house.

24 A I know his grandfather was living there.

25 Q Was DOE number 1 living there at the time?

1 A I don't -- no, I don't think so. I think he was
2 living at the blue house with his dad.

3 Q After you spoke with DOE number 1 on the phone,
4 did you go to his grandfather's house to pick him up?

5 A Yes.

6 Q Was anyone with you when you did so?

7 A My grandson may have been with me and we picked
8 him up at -- they were visiting, number 1 and his dad,
9 Wesley, were visiting at the grandfather's house.

10 Q And I understand that your grandson was about
11 five years old at the time?

12 A Yes.

13 Q When you went to pick DOE number 1 up from his
14 grandfather's house, did you see anyone there?

15 A Yes.

16 Q Who did you see?

17 A Wesley.

18 Q Did you talk to Mr. McKay at all?

19 A Yes.

20 Q What did you talk about?

21 A We just chatted, said hello and that sort of
22 thing and told him I came to pick up [redacted] to come and
23 visit. Sorry.

24 Q It's okay. What was your impression of Mr. McKay
25 at that time?

1 A He was his usual friendly self, civil and polite
2 and chatty.

3 Q Did you see Ms. Samantha Kematch at all that day?

4 A No.

5 Q Did you see any other children around that day?

6 A No.

7 Q Did you go inside Mr. McKay's father's house?

8 A No.

9 Q Did you ask to go inside the house?

10 A No.

11 Q Did you just go to the door when you arrived?

12 A No, I sat in the car and rolled the window down
13 and talked with, through the window to Wesley and
14 [redacted].

15 Q Was DOE number 2 there that day?

16 A I don't recall. No, I don't -- no, he wasn't
17 there.

18 Q What did you do after you picked DOE number 1 up?

19 A I only remember getting back to my house, our
20 house.

21 Q In Peguis?

22 A Yes.

23 Q And what did you do at your house in Peguis with
24 DOE number 1?

25 A He just played with my grandson. He and my

1 grandson played.

2 Q What was your impression of him at that time?

3 A Normal. He was always, and still is very quiet,
4 but I remember when they were playing they were -- it was
5 like he, he really -- they really had fun. The age
6 difference in both was maybe six years or so, double his
7 age, and they were playing together and just really having
8 fun together. And not boisterous fun but just you could
9 tell they were enjoying their time together.

10 Q Did DOE number 1 say anything to you about
11 Phoenix Sinclair or a little girl?

12 A No.

13 Q Did he mention anything about his father at all
14 or Samantha Kematch?

15 A No.

16 Q Now during your visit that day with DOE number 1
17 and your grandson, did Mr. McKay contact you at all that
18 day?

19 A Yes.

20 Q Do you recall when he contacted you?

21 A Probably about an hour or so into the visit he
22 called.

23 Q What did he say on the phone?

24 A He asked how number 1 was doing and I said he was
25 doing fine and that was pretty well it.

1 Q Did DOE number 1 talk to his father, Mr. McKay,
2 on the phone though?

3 A Oh yes, he said he wanted to talk to his
4 son, number 1, and I gave the phone to him and they
5 talked.

6 Q Did it strike you as odd that Mr. McKay was
7 calling, asking about his son?

8 A I remember thinking oh he's a real caring father,
9 he's checking up on his son, but in the back of my mind I
10 wondered, it's only a little visit, why is he concerned.
11 So those are the thoughts that were quickly going through
12 my mind, but nothing alarming.

13 Q Did you talk to DOE number 1 at all about why his
14 father called or what he may have said?

15 A No.

16 Q What was your impression of DOE number 1 after he
17 spoke with his father?

18 A He turned somewhat quiet and he wanted to go
19 home, go back. He said he had to go back.

20 Q Did he say why he had to go back?

21 A No.

22 Q Did you ask him why he had to go back?

23 A I wondered why but, no, I didn't ask him.

24 Q And after you visited with DOE number 1 and your
25 grandson that day, did you drive him back to where his

1 father was living?

2 A Yes.

3 Q And that was at the blue house you spoke of
4 earlier?

5 A Yes.

6 Q Did you see DOE number 1 again in Fisher River
7 that summer?

8 A Yes, twice.

9 Q And do you recall when exactly that may have
10 been?

11 A Not exactly.

12 Q Roughly?

13 A I think it was about a week after that or so, or
14 a few days anyway after that first visit.

15 Q And you testified that you first visited with DOE
16 number 1 in June?

17 A Around about that time, yes.

18 Q How did DOE number 1 come for, come to visit with
19 you that day, the second visit?

20 THE COMMISSIONER: Which day?

21 MR. GLOBERMAN: The second visit.

22 THE WITNESS: I don't recall exactly but my
23 grandson may have asked me to call him or he may, or number
24 1 may have called, I'm not sure.

25

1 BY MR. GLOBERMAN:

2 Q And do you recall what you talked about on the
3 phone?

4 THE COMMISSIONER: Wait a minute. Was, was the
5 second visit at your home or over the phone?

6 THE WITNESS: At my home.

7

8 BY MR. GLOBERMAN:

9 Q Do you recall what you and DOE number 1 talked
10 about on the phone before you ended up visiting?

11 A No.

12 Q Did you pick DOE number 1 up?

13 A Yes.

14 Q From the blue house you referred to earlier?

15 A Yes.

16 Q At that time did you know who was living there?

17 A Yes.

18 Q Who was living there at that time?

19 A Wesley and his partner, from what I heard.

20 Q Do you know if any other children were living
21 there?

22 A I don't recall exactly.

23 Q Was anyone with you when you went to that house
24 that day to pick up DOE number 1?

25 A My grandson.

1 Q And this is the same grandson you referred to
2 earlier?

3 A Yes.

4 Q When you went to that house that day, did you go
5 inside the house?

6 A No.

7 Q Did you ask to go inside the house?

8 A No.

9 Q Did you just go to the door?

10 A No. I just sat in the car.

11 Q Who was there when you went to pick DOE number 1
12 up that day?

13 A I'm sorry, I just can't remember exactly which
14 visit.

15 Q Did you see DOE number 2 outside of the house
16 that day?

17 A Yes.

18 Q What did you see?

19 A He was standing outside at the back of the house,
20 the backyard, and he started to light some dry grass that
21 was about a foot high, almost a foot high, maybe a bit
22 more. He set fire to the grass there.

23 Q Did you talk to DOE number 2 about this at all?

24 A Yes, I, I jumped out of my car and I said,
25 number 2, what are, what are you doing?

1 Q And what did he say to you?

2 A He just -- as far as I recall he didn't respond
3 and I think I said put that out, why are you doing that, or
4 something like that.

5 Q Do you recall what he did after you told him
6 that?

7 A He stomped it out.

8 Q And then what did he do?

9 A All I recall is that his brother, number 1, was
10 already in the car and he was sitting in the back seat
11 because my grandson was sitting in the front and I asked
12 number 1 if he was coming and, if number 2 was coming, and
13 number 1 said no, and that's all I recall.

14 Q Did he say why DOE number 2 wasn't coming for a
15 visit?

16 A I don't remember anything about that.

17 Q What was your impression of DOE number 2 at the
18 time you saw him lighting the grass on fire?

19 A I wondered why he was doing that. At the time I,
20 I didn't really try to analyze why he was doing that but I
21 guess in retrospect I have some thoughts about that as to
22 why he would do that.

23 Q Were you concerned about what you saw at the
24 time?

25 A Yes.

1 Q Did you talk to anybody about the concerns?

2 A I may have mentioned it to their mother but I
3 don't recall specifically about the details.

4 Q Did you ask DOE number 1 about DOE number 2's
5 behaviour that day?

6 A Yes, I said why is he doing that and I guess -- I
7 also asked, after I yelled to number 2, why are you doing
8 that, and I said to number 1 why is he doing that.

9 Q Did he say anything to you?

10 A He said I don't know. Number 2 said I don't
11 know.

12 Q And after you picked DOE number 1 up in the car,
13 what did you do?

14 A I just remember driving back to our house and
15 that's, that's all I remember.

16 Q And do you recall what you did at the house,
17 DOE number 1 and your grandson?

18 A I think they just played again but specifically
19 I, I don't recall.

20 Q During that visit did DOE number 1 mention
21 Phoenix Sinclair or a little girl to you?

22 A No.

23 Q Did he talk about his father, Mr. McKay, or
24 Samantha Kematch at all?

25 A No.

1 Q Did he talk about anything that was ongoing on in
2 the house he was living at in Fisher River?

3 A No.

4 Q And what was your impression of DOE number 1
5 during that visit?

6 A Same as the first visit, normal.

7 Q And what did you do after your visit?

8 A I took him back to his dad's house.

9 Q Okay. The blue house you mentioned earlier?

10 A Yes.

11 Q Did you pick DOE number 1 up again from that
12 house that year?

13 A Yes, from what I recall.

14 Q Do you recall when that was?

15 A Probably a few days after or the following week.

16 Q Did DOE number 1 contact you to be picked up?

17 A I don't recall specifically.

18 Q Who was with you when you went to the house that
19 day?

20 A My grandson.

21 Q The same grandson you referred to earlier?

22 A Yes.

23 Q Did you go inside the house that day?

24 A No.

25 Q Did you ask to go inside the house?

1 A No.

2 Q Have you ever been inside that house?

3 A No.

4 Q Did you see anyone outside the house that day?

5 A Yes.

6 Q Who did you see?

7 A Wesley and [redacted].

8 Q DOE number 1?

9 A Oh, yes.

10 Q It's okay. Did you, did you speak with Mr. McKay
11 at all?

12 A Yes.

13 Q What did you talk about?

14 A I noticed there was a pile of garbage, he called
15 it garbage I guess later.

16 Q What did the garbage --

17 A A pile of rubble.

18 Q What did it look like?

19 A It was a heap of different items or pieces of
20 furniture. I remember seeing a cushion, like a sofa
21 cushion, boards, some boards, pallet, like pieces from
22 pallet, you know a pallet.

23 Q Wooden pallets?

24 A Boxes, maybe some clothing articles, I don't
25 know. But the pile was about, I remember five or six feet

1 wide and five or six feet deep and about 10 feet long. It
2 was quite a big pile.

3 Q Did you talk to Mr. McKay at all about the pile
4 of garbage?

5 A Yes.

6 Q What did he say?

7 A I asked him, you're throwing away all that good
8 stuff and, and he said that's, that's -- that it was
9 garbage.

10 Q Did you talk about anything else?

11 A No.

12 Q Did you find what Mr. McKay was doing with the
13 garbage odd at all or suspicious?

14 A No, but he said he was taking it to the dump.

15 Q What did you do after talking to Mr. McKay that
16 day?

17 A [Redacted] was standing to the side of the rubble
18 and he, he just got in the car, I guess you can -- then we,
19 we kind of, I guess, shuffled around a little bit and got
20 in the car.

21 Q Did you talk to him at all when you arrived at
22 the house, DOE number 1?

23 A Not that I recall, no.

24 Q Did you see anyone else outside or around the
25 home that day?

1 A No.

2 Q What did you do after you picked DOE number 1 up
3 that day?

4 A Went back to the house.

5 Q Your home in Peguis?

6 A Yes.

7 Q And who was there at the time?

8 A Just the three of us, my grandson, number 1 and
9 myself.

10 Q And what was your impression of DOE number 1 at
11 that time?

12 A I don't recall, but -- I don't recall anything
13 out of the ordinary.

14 Q Did DOE number 1 mention Phoenix Sinclair or a
15 little girl to you at all?

16 A No.

17 Q Did he mention anything about his father or
18 Ms. Kematch?

19 A No.

20 Q After your visit with DOE number 1, did you take
21 him back to the house at which you picked him up?

22 A I don't recall specifically but, yes.

23 Q Other than the three occasions we've reviewed,
24 were there any other times in 2005 that you saw Mr. McKay,
25 Ms. Kematch or his sons, DOEs number 1 and 2?

1 A No.

2 Q Did you speak with DOE number 1 or DOE number 2
3 at all again that summer by phone or by email?

4 A Number 1 or 2 did you ask?

5 Q Yes.

6 A Not that I remember.

7 Q Did DOE number 1 or DOE number 3 ever at any time
8 say anything to you about a little girl staying with the
9 family in Fisher River?

10 A I'm sorry, I don't recall.

11 Q Do you recall at any time DOE number 1 or DOE
12 number 3 mentioning anything to you about a second girl, a
13 bigger girl who was bad who was there?

14 A I'm sorry, I can't seem to recall, but ...

15 Q That's okay.

16 A Yeah.

17 Q During the time that DOEs number 1 and 2 were
18 staying with their father in Fisher River, were you ever
19 concerned that Mr. McKay may have been violent towards them
20 or acting inappropriately with them?

21 A No.

22 Q And you never called Child and Family Services?

23 A No.

24 Q Do you know when DOEs number 1 and 2 stopped
25 living at that house in Fisher River?

1 A Not specifically.

2 Q And we know that eventually they moved back to
3 Winnipeg.

4 A Yes.

5 Q Do you recall when you learned that they moved
6 back to Winnipeg?

7 A Again, not specifically but my, my best
8 recollection is maybe later on that summer.

9 Q Did you maintain contact with DOE number 1 or
10 DOE number 2 or their mother after that?

11 A Yes.

12 Q Did you ever talk to the boys or their mother
13 about their time in Fisher River?

14 A Not the boys but their mother mentioned on one of
15 our phone calls about video chatting. Did we talk about
16 that already?

17 Q No, we haven't.

18 A No, no.

19 Q Do you recall when this phone call was?

20 A It was early on, shortly after number 1 went to
21 live with his dad in Fisher River and his mother told me
22 that when they were video chatting, that number 1 kept
23 looking back.

24 Q Now just so I'm clear, you're talking about a
25 video chat between DOE number 3 and DOE number 1?

1 A Yes.

2 Q And what did she tell you about that chat?

3 A She just said that number 1 kept looking back,
4 just constantly, almost constantly while, while they were
5 talking, video chatting.

6 Q Did she tell you her thoughts on that at all?

7 A She said that he looked scared.

8 Q Do you know if she did anything or called anybody
9 with that information?

10 A No, I don't remember.

11 Q Did DOE number 3 ever tell you that she called
12 Child and Family Services about Phoenix Sinclair?

13 A Not that I recall.

14 Q Just have a few more questions for you this
15 morning. You mentioned that you never saw Phoenix Sinclair
16 in Fisher River. Did you ever know that she was there?

17 A Not until after.

18 Q When the story broke in the media?

19 A Yes.

20 Q When did you learn that Phoenix Sinclair had been
21 killed?

22 A I heard it on, on the media, not that long ago, a
23 few months ago, last winter, earlier this winter maybe or
24 last fall, whenever the last few, one of your last few
25 sessions here. I heard that she, she died July something,

1 July 9th or something like that and I'm not sure if I heard
2 correctly.

3 Q What did you do after learning that she had been
4 killed?

5 THE COMMISSIONER: You're talking about back now
6 in 2006, are you?

7 MR. GLOBERMAN: Yes, sir.

8 THE COMMISSIONER: He wants to know what you
9 heard or remember about the incident when, as someone said,
10 the story broke in 2006.

11 MR. GLOBERMAN: Mr. Commissioner, just so the
12 evidence is clear, the witness didn't testify that she
13 learned of the death in 2006.

14 THE COMMISSIONER: Oh, I thought she did.

15 MR. GLOBERMAN: No.

16 THE WITNESS: I only heard about it, about a,
17 less than a year ago actually, when the news broke in the
18 media that when she had been killed.

19 I felt -- well I was quite horrified actually, to
20 know that, that the time that she was -- of her demise was,
21 I was around, or the time just before I was around, close
22 to her or where she was being abused and I was around right
23 close to, close to where she was, where she was killed,
24 within weeks or just a few weeks before she was killed. I,
25 I felt really -- I guess the best way to describe it is

1 horrified and really -- I felt really, really -- I wondered
2 what she went through and I felt really terrible for what
3 she must have gone through.

4 MR. GLOBERMAN: I have no further questions for
5 you, Ms. Stevenson.

6 THE COMMISSIONER: Thank you, Mr. Globerman.

7 Witness, there will be some of the other lawyers
8 will want to ask you questions. We'll perhaps carry on for
9 half an hour and then have a break. You may be through by
10 then, we'll see, but are you okay to have more questions
11 for the next half hour?

12 THE WITNESS: Yes.

13 THE COMMISSIONER: Thank you.

14 Mr. Gindin?

15

16 CROSS-EXAMINATION BY MR. GINDIN:

17 Q Good morning.

18 A Good morning.

19 Q My name is Jeff Gindin. I represent Kim Edwards
20 and Steve Sinclair and I have some questions for you, all
21 right. You were telling us this morning about your
22 relationship with DOE number 3, the mother, right?

23 A Yes.

24 Q And that you were pretty close, saw her several
25 times a month, correct?

1 A Up to when she became a young adult, yes.

2 Q Okay. I'm going back to 2005, which is when
3 you've told us you saw certain things and spent some time
4 with DOE number 1, et cetera. Were you also seeing the
5 mother fairly regularly or speaking to her?

6 A Speaking with her several times.

7 Q Okay. Several times a month you mean or just
8 from time to time?

9 A Occasionally, time to time.

10 Q And did you discuss with her personal matters or
11 just kind of casual talk?

12 A Personal and some casual.

13 Q Okay. Now you said that she, at one point, told
14 you that Wes had been violent towards her, correct?

15 A Yes.

16 Q And when was that that she told you that? I
17 think you said a couple of years ago. Can you be more
18 specific?

19 A I would say it was around, or just before --
20 maybe around February 2012, that's as close as I can
21 recall.

22 Q That would be just over a year ago?

23 A That's -- yes.

24 Q And was that a phone call or a face --

25 A Yes.

1 Q Okay. And do you recall what she actually told
2 you about that?

3 A I recall that she said that he had been abusive
4 to her.

5 Q Did she say anything about anyone else in terms
6 of him being abusive to anyone else?

7 A No.

8 Q Was that a long conversation or just something
9 fairly brief?

10 A I don't recall but that's about all I recall is
11 when she told -- that she -- that he had been abusive to
12 her and she gave me some details as to the nature of that
13 abuse.

14 Q And do you recall that?

15 A Yes.

16 Q Can you tell us about what she said?

17 A That he physically beat her and that he, he
18 pushed her head in, he dunked her in the toilet at one
19 point, her head in the toilet.

20 Q Prior to that conversation, you hadn't heard
21 anything from her about that?

22 A No.

23 Q And did you offer her some advice or?

24 A I told her I was shocked, that I didn't know
25 that's what happened, that I always thought Wes was, that

1 he was a nice guy and that I said something to effect,
2 [redacted], I -- excuse me -- number 3, I didn't know this
3 was happening --

4 Q No, it's okay.

5 A -- or this has happened all this time.

6 Q Did you ask why she hadn't told you earlier or
7 anything like that?

8 A Yes. In fact, I believe I said why didn't you
9 tell me or something like that.

10 Q And do you remember her response?

11 A Not specifically, no.

12 Q And you would understand that, yes, how difficult
13 that might be to tell someone?

14 A I'm sorry?

15 Q You would understand how difficult that might be
16 to tell someone about?

17 A Yes. It's very demeaning and very -- I think, I
18 may have thought or I may have said something to her about
19 when you're a victim sometimes you, you feel you're, have
20 no control.

21 Q Um-hum. Now if we go back to 2005, about eight
22 years ago, you would agree that you're having some
23 difficulty with respect to the exact conversations you may
24 have had with people?

25 A Yes.

1 Q And so there are a number of things that you
2 can't really recall in terms of what someone might have
3 said to you or not, right?

4 A Some things but there are -- I remember them --

5 Q Some things you --

6 A -- some things really well.

7 Q Yeah.

8 A There's no question.

9 Q But in terms of exact conversations, that's a
10 little harder to recall, would you agree?

11 A Yes, but I do remember certain exact words and
12 comments.

13 Q With respect to the incident with, I just want to
14 get the right name here, DOE number 2, burning the grass
15 that you saw in the backyard, what you said was that in
16 retrospect you have some thoughts about that incident. I
17 don't think you ever got to tell us what those thoughts
18 were. What, what do you think in that respect?

19 A When I say in retrospect, I guess when the news
20 broke about, about Phoenix, I started thinking, your mind
21 starts to remember certain things and I remembered that
22 occasion and I thought to myself what if number 2 was, if
23 that was his way for asking for help or calling for help.

24 Q I see.

25 A And that was a thing that really struck me is

1 that he -- it was the only way that he could, what a young
2 person might do when they feel out of control or ...

3 Q And he would have been, at that time, about 12,
4 is that ...

5 A I'm sorry?

6 Q He would have been about 12 years old, am I
7 correct, at that time?

8 A No.

9 Q Back in 2005?

10 A No, number 1 would be around 12.

11 Q Yes.

12 A And number 2 would be about 14 maybe. I think
13 they're one or two years apart.

14 Q Did you also wonder about whether it was unusual
15 that in a short period of time suddenly there were three
16 visits with you and they were calling you for visits one
17 after the other in a short period of time, did that strike
18 you as, did it make you wonder at that time or later?

19 A No, because they had both just arrived there
20 recently, so it would make, it would make --

21 Q Okay.

22 A It would be normal for them to call for a visit.

23 Q Now with respect to the second unusual incident
24 you saw with the big pile of stuff in the backyard, was
25 that in that same area where the grass burning took place?

1 A The pile was more towards the front where the
2 driveway goes into the yard, the front, about 25 -- well
3 maybe 40 feet from actually --

4 Q Okay.

5 A Yeah.

6 Q All right. Now --

7 A Forty feet from the house.

8 Q Okay. Now I notice that you said when you were
9 asking Wes about garbage and what he was doing, you said
10 what are you doing with all that good stuff. I take it you
11 thought that the stuff that was out there was usable and
12 not simply garbage?

13 A Well, I, I don't like throwing stuff away. I try
14 to be -- I thought maybe the boards might, might be used,
15 it would be used for something.

16 Q You also told us about a conversation with the
17 mother where she was telling you about a call or a webcam
18 call that she had with, you mentioned one of the boys and I
19 can't recall which one. Number 1?

20 A Yes.

21 Q So she had a call with number 1 which concerned
22 her because it appeared as though the child was looking
23 around perhaps to see if anybody was listening or something
24 like that, is that the impression you had?

25 A Yes.

1 Q And the child seemed scared?

2 A That's what his mother said, yes.

3 Q Now you were asked a few times if you recall
4 whether or not [redacted] -- pardon me, I'm sorry -- common
5 mistake as you can see.

6 A I'm glad I'm not the only one.

7 Q Yes. You were asked whether you recall the
8 mother had ever told you that she had called CFS about
9 various things or about anything. I think your answer was
10 you don't really recall. Are you saying you can't really
11 remember either way?

12 A I don't remember her telling me that she called.

13 Q So you're not saying she didn't tell you that,
14 you just can't recall. Is that fair to say that you're not
15 saying she definitely didn't tell me that, you're just
16 saying I don't remember her telling me that?

17 A I don't remember her telling me that.

18 Q All right.

19 MR. GINDIN: Those are my questions. Thank you.

20 THE COMMISSIONER: Thank you, Mr. Gindin.

21 Mr. Paul?

22 MR. PAUL: Thank you, Mr. Commissioner.

23

24 CROSS-EXAMINATION BY MR. PAUL:

25 Q Ms. Stevenson, my name is Sacha Paul. I'm one of

1 the lawyers for Winnipeg CFS and the Department and I just
2 have one what I'll call chronology question that may be of
3 some assistance to the commissioner. My understanding of
4 your evidence, and my friend, Mr. Gindin, was asking you
5 about DOE number 3 calling you about a webcam conversation
6 between DOE number 1 and DOE number 3, do you recall that?

7 A Yes.

8 Q Okay. I'll call that the webcam call.

9 A Okay.

10 Q Okay. My understanding of your evidence was that
11 the webcam call occurred shortly after DOE number 1 goes up
12 to Fisher River; is that right?

13 A Yes.

14 Q Okay. And so then again in sequence then the
15 webcam call happens, right, and then next would be your
16 three visits with the family that my friend, Mr. Globerman,
17 went over, right?

18 A Yes.

19 Q Okay. And then after that webcam call, the three
20 visits occur and then I think the information before this
21 commission is that DOE number 1 and 2 go back to Winnipeg
22 in July of 2005. Do you have any information as to when
23 they precisely went back to Winnipeg?

24 A No, I don't.

25 MR. PAUL: Mr. Commissioner, those are my

1 questions.

2 THE COMMISSIONER: Thank you, Mr. Paul.

3 Mr. Khan?

4

5 CROSS-EXAMINATION BY MR. KHAN:

6 Q Good morning, Ms. Stevenson, my name is Hafeez
7 Khan. I'm counsel for Intertribal Child and Family
8 Services. Just a few questions just to clarify. The blue
9 house that you were referring to, is that the house on the
10 highway near the gas station?

11 A Yes, it's across from the gas station.

12 Q Okay. Now you and DOE number 3 were close or are
13 close?

14 A Yes.

15 Q And --

16 A Quite close.

17 Q Quite close. And you had mentioned that you
18 spoke with her regularly before the boys moved to Fisher
19 River?

20 THE COMMISSIONER: Just what was that question?

21

22 BY MR. KHAN:

23 Q That you spoke to DOE number 3 regularly during
24 the period before DOEs number 1 and 2 went to Fisher River
25 in 2005.

1 A Regularly for us would be like once a month kind
2 of.

3 Q Right.

4 A Yes.

5 Q And so once a month, every month or every --

6 A Yeah.

7 Q -- two months maybe but not months at a time when
8 you didn't speak to each other?

9 A There may have been periods when there were two
10 or three months that passed before we would speak.

11 Q And that didn't change after December of 2005,
12 did it?

13 A Not -- I don't think it changed that much. There
14 may have been times when, one or two occasions where we
15 didn't talk for five, four months, kind of thing.

16 Q But you were still just as close?

17 A Well we're family.

18 Q And you had mentioned that DOE number 3 had never
19 told you about her own experiences with Wes McKay until
20 just recently?

21 A Yes.

22 Q Two years ago that is.

23 A Yes.

24 Q And certainly would have remembered if she had
25 told you that before?

1 A Yes.

2 Q And Mr. Gindin had asked you if you recall
3 whether DOE number 3 had ever told you that a little girl
4 that was being abused at Wes McKay's home --

5 MR. GINDIN: I never asked her that.

6 MR. KHAN: No?

7 MR. GINDIN: No, that wasn't the question.

8 MR. KHAN: If you can correct me, Mr. Gindin.

9 MR. GINDIN: I don't think that was the question.
10 I think I asked whether she could recall --

11 THE COMMISSIONER: Just speak into the mic.

12 MR. GINDIN: Yes. I believe my question was
13 whether she could recall DOE number 3 ever telling her that
14 she made a call to CFS. I think she indicated that she
15 simply can't recall. That's the only thing that --

16 MR. KHAN: Okay, thank you, thank you.

17

18 BY MR. KHAN:

19 Q And you said you didn't recall?

20 A Yes.

21 Q But you would agree with me, with me that if DOE
22 number 3 told you that a child was being abused in a home,
23 isn't that something you would remember?

24 A Definitely.

25 MR. KHAN: Thank you.

1 THE COMMISSIONER: That's everybody?

2 Mr. Globerman, re-examination?

3 MR. GLOBERMAN: Yes, just a couple of questions.

4

5 RE-EXAMINATION BY MR. GLOBERMAN:

6 Q I just want to ask you a little bit --

7 THE COMMISSIONER: I -- we're sure, we're there's
8 no other counsel, are we?

9 Yes, all right.

10

11 BY MR. GLOBERMAN:

12 Q I just want to ask you a little bit about the
13 communication you had with DOE number 3 in 2005. You
14 mentioned that you had some contact roughly about every
15 month that year?

16 A I cannot say if it was every month. But in 2005,
17 I don't recall exactly if it was every month.

18 Q And just to be clear, you were living in Peguis
19 at that time, correct?

20 A Yes.

21 Q And DOE number 3 would have been living in
22 Winnipeg?

23 A Yes.

24 Q So how exactly did DOE number 3 contact you?

25 A By phone.

1 Q Did she require a 1-800 number or a special
2 number to do so?

3 A I may have given her my -- I have a 1-800 number,
4 I may have given her that or she may have had her own. I
5 think maybe her phone was restricted and she, she might
6 have had an access number that she could use for -- you
7 know how MTS has that special service where you can use an
8 access number or punch in a number so that you can call out
9 from a, long distance from a restricted phone. I do seem
10 to recall something like that. Or she might have called me
11 collect, either of those three or any of those three.

12 Q You don't remember exactly?

13 A No.

14 Q Okay.

15 MR. GLOBERMAN: I have no further questions,
16 Ms. Stevenson. Thank you.

17 THE COMMISSIONER: All right, witness. We'll
18 just wait and see if there's anything here. I think you're
19 finished but we'll just wait a minute.

20 MR. KHAN: Sorry, Mr. Commissioner, I just have
21 one more question just from the re-direct.

22

23 CROSS-EXAMINATION BY MR. KHAN:

24 Q Again, it's Khan for the monitor. Ms. Stevenson,
25 were you aware that DOE number 3's phone was restricted in

1 terms of her ability to call long distance?

2 I thought in your answers to Mr. Globerman's
3 question that you had made reference to a restricted, a
4 restricted phone.

5 THE COMMISSIONER: Yeah, she did.

6 THE WITNESS: Yes.

7

8 BY MR. KHAN:

9 Q So were you aware that DOE number 3 was unable to
10 make long distance calls from her phone?

11 A I, I remember something about that, yes.

12 Q Okay, thank you.

13 MR. GLOBERMAN: Thank you, Ms. Stevenson.

14 THE COMMISSIONER: All right, witness, you're
15 finished. Thank you very much for being here today.

16 THE WITNESS: Thank you.

17 THE COMMISSIONER: Appreciate your assistance.

18

19 (WITNESS EXCUSED)

20

21 THE COMMISSIONER: Yes, Mr. Globerman?

22 MR. GLOBERMAN: I would suggest that now would be
23 a good time to take our mid-morning break before the next
24 witness.

25 THE COMMISSIONER: Yes, we'll take a 15 minute

1 mid-morning break now. Thank you.

2

3 (BRIEF RECESS)

4

5 THE COMMISSIONER: Ms. McCandless.

6 MS. MCCANDLESS: Good morning, Mr. Commissioner.

7 Our next witness is Alison Kakewash.

8 THE CLERK: If you could just stand for a moment.

9 Is it your choice to swear on the Bible or affirm without
10 the Bible?

11 THE WITNESS: Without the Bible.

12 THE CLERK: Okay, just state your full name to
13 the court then.

14 THE WITNESS: Alison Charity Kakewash.

15 THE CLERK: And spell your first name.

16 THE WITNESS: A-L-I-S-O-N.

17 THE CLERK: And your middle name?

18 THE WITNESS: C-H-A-R-I-T-Y.

19 THE CLERK: And your last name, please?

20 THE WITNESS: K-A-K-E-W-A-S-H.

21 THE CLERK: Thank you.

22

23 **ALISON CHARITY KAKEWASH**, affirmed,

24 testified as follows:

25

1 THE CLERK: Thank you. You may be seated. Just
2 try to speak up for us.

3

4 DIRECT EXAMINATION BY MS. MCCANDLESS:

5 Q Good morning, Ms. Kakewash.

6 A Good morning.

7 Q Before we begin, I just wanted to point out for
8 you that there is a document in front of you entitled
9 witness key. There is an order granted by the commissioner
10 for a publication ban on the names of certain witnesses.
11 So if I ask you about someone today on that list or if you
12 need to refer to name, please use the pseudonyms on the
13 document in front of you. Okay?

14 A Yes.

15 Q How old are you?

16 A Twenty-seven.

17 Q Okay.

18 THE COMMISSIONER: Pardon?

19 MS. MCCANDLESS: And we'll just ask you to speak
20 up a little bit, please.

21 THE COMMISSIONER: Yeah, just ...

22 THE WITNESS: Twenty-seven.

23

24 BY MS. MCCANDLESS:

25 Q Thank you. I understand you have a bit of an

1 unusual nickname.

2 A Yes.

3 Q And what nickname is that?

4 A Gizzy (phonetic).

5 Q Gizzy? How did you get that nickname?

6 A Through my Uncle Wes or my Uncle Ivan.

7 THE COMMISSIONER: Gizzy?

8 THE WITNESS: Gizzy. Gizzy, Gizmo.

9 THE COMMISSIONER: Yeah, okay, I've got you.

10

11 BY MS. MCCANDLESS:

12 Q And you live in Fisher River First Nation,
13 Manitoba?

14 A Yes.

15 Q Have you lived there all your life?

16 A Yes.

17 Q You just mentioned your Uncle Wes. Karl Wesley
18 McKay is your uncle?

19 A Yes.

20 Q And I understand your father is Mr. McKay's
21 brother?

22 A Yes.

23 Q What's your father's name?

24 A Billy Kakewash.

25 Q Kakewash. How many siblings do you have?

1 A Four.

2 Q I imagine you have a number of cousins?

3 A Yeah.

4 Q Is Lisa Bruce one of your cousins?

5 A Yes.

6 Q Ashley Roulette, is she a cousin of yours?

7 A Yes.

8 Q Amanda McKay?

9 A Yes.

10 Q Another cousin. And the witness we've identified
11 as DOE number 4, is that another cousin of yours?

12 A Yes.

13 THE COMMISSIONER: Now just who has she
14 identified?

15 MS. MCCANDLESS: We have Lisa Bruce --

16 THE COMMISSIONER: Yes.

17 MS. MCCANDLESS: -- Ashley Roulette, Amanda
18 McKay.

19 THE COMMISSIONER: Ashley Roulette, yes. And
20 then who?

21 MS. MCCANDLESS: And DOE number 4.

22 THE COMMISSIONER: They're all cousins --

23 THE WITNESS: Yes.

24 THE COMMISSIONER: -- or siblings?

25 THE WITNESS: Cousins.

1 THE COMMISSIONER: Cousins.

2

3 BY MS. MCCANDLESS:

4 Q And you have a number of other cousins, I
5 imagine.

6 A Yeah, yes.

7 THE COMMISSIONER: But you said you had four
8 siblings?

9 THE WITNESS: Yes.

10

11 BY MS. MCCANDLESS:

12 Q And are you related to Madeline Bird?

13 A Yes.

14 Q How are you related to her?

15 A My cousin.

16 Q And how long have you known Karl Wesley McKay?

17 A Pretty much all my life.

18 Q Since your childhood?

19 A Yes.

20 Q How often would you see Mr. McKay during your
21 childhood?

22 A Not very often.

23 Q Why was that?

24 A 'Cause he lived in Winnipeg, I lived in Fisher
25 River.

1 Q Was Mr. McKay close with your family?

2 A Yes.

3 Q Was he close with your father in particular?

4 A Yes.

5 Q And do you have any recollection of what
6 Mr. McKay was like when you were a child?

7 A He was mean.

8 THE COMMISSIONER: He was what?

9 THE WITNESS: Mean.

10

11 BY MS. MCCANDLESS:

12 Q Could you describe for the commission of what
13 you, what types of things he did?

14 A Like to people or?

15 Q Yeah, you described him as mean, so can you just
16 explain a little bit what you meant by that?

17 A Like wicked.

18 Q The commission has heard evidence that Mr. McKay
19 was violent with women and children.

20 A Yes.

21 Q Did you see any of that yourself?

22 A With one of my cousins.

23 Q What did you see?

24 A I can't remember but I think he was pulling her
25 hair.

1 Q Was this when you were younger?

2 A Yeah, yes.

3 Q Now I'm going to jump ahead into 2005. I
4 understand you did spend some time with Mr. McKay in Fisher
5 River in 2005?

6 A Yes.

7 Q And what time of year in 2005 was that?

8 A Spring.

9 Q Was that into the summer as well or just the
10 spring?

11 A Yes, into the summer too.

12 Q Where did you live in 2005?

13 A At first I was living at my father-in-law's and
14 then shortly after I moved to my mom's.

15 Q And where was your father-in-law's located?

16 A Across the river from my mom's.

17 Q So in Fisher River?

18 A Yes.

19 Q And then you moved to your mom's?

20 A Yes.

21 Q And what was your mother's name?

22 A Linda Kakewash.

23 Q And I understand that your mother is deceased?

24 A Yes.

25 Q And she passed away in 2006?

1 A Yes.

2 Q So you had mentioned that you first lived at one
3 house and then you moved in with your mother?

4 A Yes.

5 Q And did your mother live in a house?

6 A Yes.

7 Q Did you see Mr. McKay or Ms. Kematch at your
8 mother's house --

9 A Yes.

10 Q -- in 2005?

11 A Yes.

12 Q Were they visiting or did they stay there?

13 A They lived there.

14 Q When did they begin to live there?

15 A Spring.

16 Q Okay.

17 A March, April.

18 Q And for how long did they stay there?

19 A A couple of weeks maybe, a month.

20 Q Okay. And I'll just ask you to speak up a little
21 bit. Thank you. Were you living in your mother's house at
22 that time?

23 A No.

24 Q And at some point Mr. McKay and Ms. Kematch left
25 your mother's house?

1 A Yes.

2 Q Do you know why they left?

3 A My mom told them to leave.

4 Q Why did she tell them to leave?

5 A Why did she tell them to leave?

6 Q Yes.

7 A Because that wasn't their house, it was my mom's.

8 Q Had your mother invited them to stay?

9 A No, my father did.

10 Q Okay. And were your parents living together --

11 A No.

12 Q -- at that time?

13 A No.

14 Q Do you know where Mr. McKay and Ms. Kematch went
15 after they left your mother's house?

16 A They moved to Angie Murdoch's.

17 Q To Angela Murdoch's house?

18 A Yeah.

19 Q And that's in Fisher River?

20 A Yes.

21 Q Did you visit your mother's house when Mr. McKay
22 and Ms. Kematch were living there?

23 A Yes.

24 Q Do you recall seeing anyone else with them at
25 that house?

1 A Just them two and their baby, the baby girl.

2 Q Okay. And roughly how old was the baby girl?

3 A Four months, five months.

4 Q Do you recall if you ever saw Phoenix Sinclair at
5 your mother's house?

6 A No, I haven't.

7 Q You didn't see her there?

8 A No.

9 Q Now had you met Ms. Kematch prior to when she
10 moved into your mother's house?

11 A Yes.

12 Q When had you met her?

13 A Like a year before that, maybe less.

14 Q So sometime in early 2004?

15 A Yes.

16 Q Where did you meet her?

17 A At my dad's place in Ashern.

18 Q In Ashern, Manitoba. And who was with
19 Ms. Kematch that day?

20 A Just her and my uncle.

21 Q Mr. McKay?

22 A Wesley.

23 Q How long did you spend with them that day?

24 A A few hours.

25 Q What type of a visit was it?

1 A They drove me to Winnipeg for my auntie's
2 funeral, wake service and funeral.

3 Q Okay. So roughly how long of a drive was that?

4 A Three hours.

5 Q And what was Ms. Kematch like that day?

6 A Quiet.

7 Q Was there any mention of her having any children?

8 A No.

9 THE COMMISSIONER: Who all was in the car?

10 THE WITNESS: Wesley, Samantha and myself.

11 THE COMMISSIONER: Just the three of you?

12 THE WITNESS: Yes.

13

14 BY MS. MCCANDLESS:

15 Q Did you hear any mention of the name Phoenix that
16 day?

17 A No.

18 Q Now we had discussed earlier about the fact that
19 you were at your mother's house on occasion when Mr. McKay
20 and Ms. Kematch were staying there and there was a baby
21 girl there. Did you have an opportunity to see how they
22 interacted with that baby girl?

23 A They were nice.

24 Q Both of them were nice to her?

25 A Yes.

1 Q And do you know how many times you had visits
2 with them at your mother's house?

3 A Two to four times.

4 Q Two to four times?

5 A Two to four times.

6 Q Did you ever go to Angela Murdoch's house in the
7 spring and summer of 2005?

8 A Yes.

9 Q And approximately how many times did you visit
10 that house?

11 A Six to ten times or more.

12 THE COMMISSIONER: How many?

13 THE WITNESS: Six to ten times or more.

14

15 BY MS. MCCANDLESS:

16 Q And do you know roughly what months you were in
17 that house?

18 A I can't recall, April, May.

19 Q Were you in the house in June or July?

20 A Yes.

21 Q Do you recall when it was the last time you were
22 in that house, the date?

23 A July.

24 Q Of 2005?

25 A Yes.

1 Q Did you see any children in Angela Murdoch's
2 house?

3 A I seen the baby girl, Wesley, Samantha and
4 Phoenix and my, and DOE 1, I believe it was DOE 1.

5 Q So you came to meet Phoenix Sinclair at some
6 point?

7 A Yes.

8 Q Where did you see Phoenix Sinclair?

9 A In the room.

10 Q In Angela Murdoch's house?

11 A Yes.

12 Q Okay. And we'll get more into the details of
13 those visits in a moment. Did you ever see Phoenix
14 Sinclair outside of Angela Murdoch's house?

15 A Like outside, like in the reserve?

16 Q Anywhere out other than inside Angela Murdoch's
17 house.

18 A No.

19 Q How many times did you see Phoenix Sinclair?

20 A Two times.

21 Q Was Mr. McKay in the house every time you went to
22 visit and Phoenix was there?

23 A Yes.

24 Q Was that also the case with Ms. Kematch?

25 A Like was she there?

1 Q Yes.

2 A Yes.

3 Q How did Mr. McKay treat Ms. Kematch?

4 A All right.

5 Q Was he nice to her? Was he mean to her?

6 A He was nice to her, sometimes mean.

7 Q Did you ever see him act in a violent way towards
8 Ms. Kematch?

9 A No.

10 Q Were you ever afraid of Mr. McKay?

11 A Yes.

12 Q Why was that?

13 A 'Cause he's wicked.

14 Q When you say wicked, what do you mean?

15 A Mean.

16 Q You had mentioned earlier some examples. Do you
17 have any examples of things that he did to you that made
18 you afraid of him?

19 A He hasn't done anything to me.

20 Q The times that you saw Phoenix Sinclair at
21 Angela Murdoch's house in 2005, how old were you?

22 A Nineteen.

23 Q And now I'm going to ask you about what you saw
24 in the house as it related to Phoenix Sinclair. Can you
25 tell me about the first time you saw Phoenix Sinclair at

1 Angela Murdoch's house?

2 A She was in the room.

3 Q Okay. When you say the room, what room do you
4 mean? You can take your time if you need a moment.

5 A The first room on the left.

6 Q Okay. I just want to take you back. Was there a
7 time that you saw Phoenix playing inside the house?

8 A Yes.

9 Q Okay. Was that the first time you saw Phoenix?

10 A Yes.

11 Q Okay. Are you ready to proceed?

12 Okay. Can you tell the commission what you saw
13 that day when Phoenix was playing?

14 A She was just playing with my son and baby girl
15 and she knocked over one of the babies and she got sent to
16 the room.

17 Q Okay. Where was she in the house at that time?

18 A The living room.

19 Q Where was Mr. McKay?

20 A The kitchen.

21 Q And where was Ms. Kematch?

22 A On the computer, I do believe.

23 Q Was that in the living room or the --

24 A Yes.

25 Q So Phoenix was playing in the living room with

1 your son. How old was your son at the time?

2 A Four months.

3 Q And the baby girl?

4 A Yes.

5 Q And she knocked one of the babies over?

6 A Yes.

7 Q What happened next?

8 A My uncle grabbed her and told her to go to the
9 room.

10 Q How --

11 THE COMMISSIONER: Grabbed her and what?

12 THE WITNESS: Shoved her into the room.

13

14 BY MS. MCCANDLESS:

15 Q How did he grab her?

16 A Grabbed her by the arm.

17 Q What kind of a grab was it?

18 A Just kind of rough.

19 Q Was it rough? gentle?

20 A Kind of rough.

21 Q Do you recall if DOE number 1 was in the house
22 that day?

23 A I believe he was.

24 Q When you saw your uncle grab her, you said he
25 shoved her into the room. Can you tell the commission what

1 that room was?

2 A The first room on the left.

3 Q Was that on the main floor of the house?

4 A The main floor.

5 Q Could you see what was inside that room?

6 A I think it was just a fridge. Can't remember if
7 there was a bed in there or not. It was a dark room.

8 Q Did you hear Mr. McKay say anything to Phoenix as
9 he shoved her in the room?

10 A Get in the room.

11 Q Did you hear him call -- hear him refer to her?

12 A You fucking bitch.

13 Q Did you hear Phoenix say anything at that time?

14 A No.

15 Q Did Ms. Kematch do anything when this happened?

16 A No, no.

17 Q And before this incident, how did Phoenix seem
18 that day?

19 A Like out in the room? Like out in the living
20 room?

21 Q Yes.

22 A Happy.

23 Q Did you hear her speak very much?

24 A No.

25 Q Did she seem afraid at all?

1 A Yeah, yes.

2 Q What did she look like that day?

3 A She looked okay.

4 Q What was her weight like?

5 A She looked very small, skinny.

6 Q Did she look healthy?

7 A No.

8 Q Is there anything else about her appearance that
9 you remember that day?

10 A She had short hair.

11 Q Could you see her head? Was she wearing a hat or
12 no hat that day?

13 A No hat.

14 Q How much longer did you stay in the house that
15 day?

16 A A couple of hours.

17 Q A couple of hours? You have to say yes or no.

18 A Yes.

19 Q Did you see Phoenix come out of the room after
20 your uncle shoved her in?

21 A No.

22 Q Did you ask Mr. McKay if he was going to let
23 Phoenix out of the room?

24 A Yes, me and Samantha.

25 Q You both asked him that? What did he reply?

1 A No.

2 Q Did he explain why?

3 A No.

4 Q I'd now like to ask you about the next time you
5 saw Phoenix and you mentioned earlier that you had seen her
6 two times, so this was the last time you saw Phoenix?

7 A Yes.

8 Q Please tell the commission what you remember
9 about that day.

10 A The last time I seen her?

11 Q Yes.

12 THE COMMISSIONER: Was that at the house also?

13 THE WITNESS: Yes. She was in the room, first
14 room on the left. I went to the door, opened it, and she
15 was standing there with a blanket over her head. She was
16 in a panty and she was just standing there looking at me.
17 And I asked her what her name was 'cause I didn't know if
18 that was Phoenix or not but she just stood there and my
19 uncle told me to get out of that room, shut the door and
20 get out, so I did.

21

22 BY MS. MCCANDLESS:

23 Q Why was it that you weren't sure that if that was
24 Phoenix?

25 A I don't know.

1 Q Was the room, was there a light on in the room?

2 A The room was dark.

3 THE COMMISSIONER: Pardon?

4 THE WITNESS: The room was dark.

5

6 BY MS. MCCANDLESS:

7 Q Was this the same room you had seen Mr. McKay put
8 Phoenix in at the previous visit?

9 A Yes.

10 Q Was there anything else about her appearance that
11 day that you remember?

12 A She looked -- I don't know if it was bruises or
13 scrapes or dirt.

14 Q How long did you see her for?

15 A Twenty seconds. Fifteen, twenty seconds.

16 Q Did she speak to you?

17 A No.

18 Q Who else was in the house that day?

19 A Wesley, Samantha, baby girl, my son and I can't
20 remember if DOE 1 was there.

21 Q He may have been but you don't have a specific
22 recollection?

23 A Yes.

24 Q When you opened the door to the room and saw
25 Phoenix, what was her expression?

1 A She looked sad.

2 Q Did you know why she was in that room?

3 A Because she was a bad little girl, from what my
4 uncle told me.

5 Q Did you ask your uncle why she was in the room?

6 A Because she was bad, little girl.

7 Q That's what he said to you?

8 A Yes.

9 Q Had you ever seen Phoenix misbehave?

10 A No.

11 Q How long were you in the house that visit?

12 A A couple of hours.

13 Q Did Phoenix come out of the room during that
14 visit?

15 A No.

16 Q Did you ask Mr. McKay or Ms. Kematch if they were
17 going to let Phoenix out of the room?

18 THE COMMISSIONER: Witness, would you like a
19 little break? Can we just adjourn for five minutes? I
20 think that would be a good idea. All right, we're going to
21 adjourn for five minutes.

22

23 (BRIEF RECESS)

24

25 MS. MCCANDLESS: Thank you, Mr. Commissioner.

1 BY MS. MCCANDLESS:

2 Q Before we adjourned, you were speaking about the
3 last time you saw Phoenix Sinclair and that she was in the
4 room on the main floor of Angela Murdoch's house.

5 A Yes.

6 Q Did you ask Mr. McKay or Ms. Kematch if they were
7 going to let Phoenix out of the room?

8 A Yes.

9 Q And what did they say?

10 A My Uncle Wesley said no.

11 Q Did he explain why?

12 A She's too bad.

13 Q During the time that you saw Phoenix Sinclair in
14 Angela Murdoch's house, did you ever see Mr. McKay hit
15 Phoenix?

16 A No.

17 Q Did you see Ms. Kematch hit Phoenix?

18 A No.

19 Q Did you tell anyone about Phoenix being kept in
20 that room?

21 A No.

22 Q Did you ever talk to your mother about what you
23 saw in the house?

24 A Yes.

25 Q What did you tell your mother?

1 A Just told her that my uncle was mean to her.

2 Q Were you concerned with the way you saw Phoenix
3 being treated?

4 A Yes.

5 Q Did you consider calling CFS about what you saw?

6 A Yes.

7 Q Can you tell the commission, did you call CFS?

8 A No.

9 Q Why didn't you call CFS?

10 A I was scared of my uncle.

11 Q Did you discuss with your mother at all the
12 possibility of calling CFS?

13 A Yes.

14 Q And what do you recall about those discussions?

15 A Just said that maybe we shouldn't.

16 Q What was your concern about Mr. McKay?

17 A Like what he would do, hurt me.

18 Q I take that to mean you were concerned he might
19 retaliate against you?

20 A Pardon?

21 Q Were you concerned he was going to retaliate
22 against you --

23 A Yes.

24 Q -- if you reported something?

25 A Yes.

1 Q Did you go back to Angela Murdoch's house after
2 the last time you saw Phoenix?

3 A Yes.

4 Q Can you please tell the commission about the next
5 time you went to Angela Murdoch's house?

6 A Went there and it's like I felt this bad feeling,
7 like as if my, as if Wesley killed somebody, killed
8 Samantha.

9 Q How many days after you had seen Phoenix did you
10 go back to that house?

11 A A week maybe.

12 Q Can you just tell the commission about, you went
13 to that house, what door did you enter?

14 A The back door.

15 Q Did you knock at the door?

16 A Yes.

17 Q And you said you had a bad feeling. When did you
18 have that bad feeling?

19 A When I was walking to the house and when I
20 reached the door, that's when it really hit me.

21 Q After you knocked on the door, what happened?

22 A I went in.

23 Q Did someone come and open the door for you?

24 A No.

25 Q And when you came in where did you walk to?

1 A The back door.

2 Q Were you on the landing --

3 A Yes.

4 Q -- of the house? And what did you see when you
5 walked in?

6 A Drips of blood.

7 Q Where did you see the drips of blood?

8 A Right on the landing.

9 Q How much blood did you see?

10 A Two or three drips.

11 Q Who was in the house when you walked in?

12 A Samantha, Wesley, baby girl.

13 Q Were either DOE number 1 or DOE number 2 there?

14 A No.

15 Q What was Ms. Kematch doing when you walked in the
16 house?

17 A She was on the computer, weeping.

18 Q And what was Mr. McKay doing?

19 A I don't know if he was cleaning or what but he
20 was up and down the stairs, like busy.

21 Q So he was inside the house going up and down
22 which stairs?

23 A The basement stairs.

24 Q Did you ask him what he was doing?

25 A No. I just said, wow, you're up around moving

1 lots, when usually you're sitting down or laying in bed.

2 Q So typically when you saw him he was lying
3 around?

4 A Yeah, yes.

5 Q Did you ask about Phoenix that day?

6 A Yes.

7 Q Who did you ask?

8 A Samantha.

9 Q What did she say to you?

10 A She didn't answer me. My -- Wesley answered me.

11 Q What did he say?

12 A We sent her back.

13 Q Did he say where he sent her back to?

14 A Her dad's.

15 Q Did Mr. McKay say why he had sent Phoenix back?

16 A Too bad.

17 Q She was too bad?

18 A Yes.

19 Q Did you ask Mr. McKay or Ms. Kematch about why
20 Ms. Kematch seemed, you said she was weeping?

21 A I asked her about my uncle cut her off and he
22 just said she's having a bad day.

23 Q Did you ask anyone about the blood you saw?

24 A No.

25 Q Was the blood dried?

1 A Dry, yes.

2 Q What was your impression of what Mr. McKay said
3 to you when you asked about Phoenix?

4 A I was shocked.

5 Q That they had sent her away?

6 A Yeah.

7 Q What shocked you about that?

8 A 'Cause she wasn't bad when I seen her, those two
9 times I seen her, she did not look bad at all. She looked
10 sweet, innocent girl.

11 Q You can take your time if you need some. Are you
12 okay to proceed?

13 You had mentioned having a conversation with your
14 mother about the possibility of phoning CFS. Was that
15 before or after you went to the house and saw the blood?

16 A Before.

17 Q Did you give any more thought to phoning CFS
18 after that day?

19 A When she wasn't there?

20 Q Yes.

21 A No, 'cause I figured she went back to her dad's.

22 Q How long did you stay in the house that day?

23 A Twenty minutes, half hour.

24 Q Was that short or longer than your typical visit
25 at the house?

1 A Short.

2 Q Was there any reason why you had a shorter visit
3 that day?

4 A Because I felt scared.

5 Q You said you felt scared. Did you give any
6 thought to phoning the police?

7 A No.

8 Q And why was that?

9 A Because I didn't know anything at the time.

10 Q You had mentioned earlier that Madeline Bird is a
11 cousin of yours; is that right?

12 A Yes.

13 Q Did you ever see her out and about in Fisher
14 River in the summer of 2005?

15 A Yes.

16 Q And did you know --

17 THE COMMISSIONER: Who, who was that you asked --

18 MS. MCCANDLESS: Madeline Bird.

19

20 BY MS. MCCANDLESS:

21 Q At the time did you know that Madeline Bird was a
22 worker with Intertribal Child and Family Services?

23 A Yes.

24 Q Had you given any thought to mentioning to her
25 what you had seen?

1 A No.

2 Q And why was that?

3 A Because I was scared.

4 Q Did you ever go back to Angela Murdoch's house
5 after the time you had seen the blood?

6 A Yes.

7 Q Do you know roughly how many times you went back?

8 A No.

9 Q And did you speak with your uncle, Mr. McKay,
10 when you went back?

11 A Yes.

12 Q Was there anyone else staying in the house at
13 that point?

14 A My sister, Miranda.

15 Q Is there anything you recall -- did you visit the
16 house when your sister Miranda was staying there?

17 A Yes.

18 Q Is there anything you recall about a visit with
19 your uncle and your sister?

20 A When we were watching the show on TV about a
21 little boy and his stepfather and that little boy went
22 missing, my Uncle Wesley said to bury, to cover the grave
23 with pepper because it kills the smell.

24 Q So Mr. McKay had given his own thoughts on how --

25 A Yes.

1 Q -- to cover the smell of a body?

2 A Yes.

3 Q Did you think anything of that at that time?

4 A No.

5 Q And the commission has heard evidence that at
6 some point Mr. McKay and Ms. Kematch moved back to
7 Winnipeg. Did you have any contact with them after they
8 moved back to Winnipeg?

9 A No.

10 Q Do you recall how it was you found out about
11 Phoenix Sinclair's death?

12 A My mother.

13 Q And was this after the story had come out in the
14 media?

15 A Yes.

16 Q What did you think after you found out what
17 happened to Phoenix?

18 A I cried. I was shocked. She was only five years
19 old, a little innocent girl.

20 Q Why were you shocked?

21 A I never thought go do something like that.

22 Q You never --

23 A Wesley.

24 Q You never thought that Mr. McKay would do
25 something like that?

1 A Yes.

2 Q And after Phoenix's death came to light, you did
3 speak with the RCMP; is that right?

4 A Yes.

5 Q And you provided them information about what you
6 saw that summer?

7 A Yes.

8 MS. MCCANDLESS: Mr. Commissioner, those are my
9 questions for this witness.

10 THE COMMISSIONER: Thank you, Ms. McCandless.

11 Mr. Gindin, please.

12

13 CROSS-EXAMINATION BY MR. GINDIN:

14 Q My name is Jeff Gindin. I appear for Kim Edwards
15 and Steve Sinclair. I have a few questions for you.

16 You told us that your impression of Wes McKay was
17 that he was mean and that he was wicked, to use your
18 phrase, and that's something that you were aware of growing
19 up?

20 A Yes.

21 Q And your mother, in fact, warned you about him --

22 A Yes.

23 Q -- correct? And when she did that she used the
24 term pervert?

25 A Yes.

1 Q And she actually warned you not to go there very
2 much?

3 A Yes.

4 Q And she warned you about that early on?

5 A Yes.

6 Q Prior to you --

7 A Yes.

8 Q -- going there several times?

9 A Yes.

10 Q And I guess you didn't pay attention to that or
11 you just thought you would go anyway or?

12 A I never did think that he would do that me or my
13 child.

14 Q Did you discuss with your mother what she meant
15 by calling him a perve or what that referred to?

16 A Like --

17 Q Did she explain why she felt that way?

18 A Well she told me that he raped somebody before.

19 Q Um-hum. Now the first time that you saw Phoenix,
20 you said that that was the time where she accidentally
21 knocked over one of the children?

22 A Yes.

23 Q And then Wes responded to that by grabbing her
24 roughly and shoving her into the room, right?

25 A Yes.

1 Q You would consider that physically abusive,
2 wouldn't you?

3 A Yeah.

4 Q And there was also verbal abuse that you
5 witnessed?

6 A Yes.

7 Q By what he called her?

8 A Yes.

9 Q He swore at her?

10 A Yes.

11 Q In a very degrading way, correct?

12 A Yes.

13 Q Did you tell anybody about that after, about what
14 you witnessed that first visit, afterwards?

15 A My mom.

16 Q Your mother. Was that by telephone or did you go
17 see her?

18 A Seen her.

19 Q And what did you tell her? Did you tell her
20 basically what you've told us?

21 A Yes.

22 Q Okay. And was there any discussion at that time
23 as to whether this should be reported to CFS?

24 A Yeah, we talked about it, but ...

25 Q Now how old were you then?

1 A Nineteen.

2 Q Nineteen. And we know that, I believe that you
3 didn't call, correct?

4 A Pardon?

5 Q You didn't call CFS yourself?

6 A No.

7 Q And as far as you know your mother didn't either?

8 A No.

9 Q And her response to you telling her the
10 information, was it -- what was it exactly? How did she
11 respond to that?

12 A How did my mother respond to that?

13 Q Yeah.

14 A She was shocked. She called him an asshole.

15 Q Did she explain why she didn't think CFS should
16 be called?

17 A She was scared for me.

18 Q She was scared for you. Were you aware then or
19 that there is a way of calling CFS and having --

20 A Was I aware, like ...

21 Q That you could call CFS and have your call be
22 confidential?

23 A No, I wasn't.

24 Q Did that come up at all in your discussion with
25 your mother?

1 A No.

2 Q But your mother was concerned --

3 A Yes.

4 Q -- for your safety you say.

5 A Yes.

6 Q And that's why she didn't call as far as you can
7 tell?

8 A Yes.

9 Q Was there any discussion about calling the police
10 at that time?

11 A No.

12 Q No. And that was when you noticed that Phoenix
13 didn't look healthy, was quite skinny?

14 A Yes.

15 Q And the room that she was put in, I think you saw
16 that room, was it that first visit you saw the room or was
17 it another time?

18 A The second visit.

19 Q It was a dark room with just a fridge in it?

20 A Yes.

21 Q Now the second time that you were there, you also
22 saw some things that weren't very pleasant, right? I think
23 you said you saw some bruises or scrapes on her.

24 A I wasn't too sure if it was bruises or scrapes
25 or --

1 Q But it was something?

2 A Yes.

3 Q Some kind of injury?

4 A Yes.

5 Q Okay. And did you tell anybody about that second
6 visit?

7 A No.

8 Q Do you recall talking to your mother --

9 A No.

10 Q -- about that? No? Did you think about telling
11 someone?

12 A Well, I wasn't sure if they were scrapes or
13 bruises or dirt or what.

14 Q You went there a third time, correct?

15 A Yes.

16 Q In all these visits of you going there, were all
17 after your mother warned you that maybe you shouldn't go
18 there?

19 A Yes.

20 Q And of course you already had the impression and
21 the knowledge that he was a mean and wicked person?

22 A Yes.

23 Q And I think you said that you thought about maybe
24 calling but you were afraid of Wes, right?

25 A Yes.

1 Q And you were asked just a minute ago about your
2 knowledge of Madeline Bird --

3 A Yes.

4 Q -- who you knew was a social worker --

5 A Yes.

6 Q -- with ICFS. How is she related to you?

7 A My cousin.

8 Q Is that your first cousin or?

9 A Second or third cousin.

10 Q Okay. And did you see her from time to time?

11 A So and so.

12 Q Okay. Did you ever think about talking to her
13 sort of in confidence to see what she thought?

14 A No.

15 Q And when you spoke to your mother was it just
16 that first time that you spoke to her about this?

17 A Yes.

18 Q Okay. Then you talked about the third time you
19 went to the house and this time you were coming back to the
20 house, of course. You may have been afraid of Wes but you
21 still returned there, right?

22 A Yes.

23 Q Is that when you were telling us that you had
24 this bad feeling as you came in?

25 A Yes.

1 Q And the bad feeling was that, I think you said
2 maybe someone got killed there?

3 A Yes.

4 Q And this is a feeling you had before you even
5 went in?

6 A Yes.

7 Q And before you, before you even saw the blood,
8 right?

9 A Yes.

10 Q And what do you think that feeling was based on?
11 Was it based on these earlier visits that you had there
12 or --

13 A No.

14 Q -- just something that came?

15 A Just something that came to me.

16 Q And so you had that feeling as you were coming
17 in. Of course you still went in, right?

18 A Yes.

19 Q And then you see blood?

20 A Yes.

21 Q And that didn't -- that obviously concerned you
22 even more?

23 A No.

24 Q Didn't concern you, the blood?

25 A No.

1 Q What did you think when you saw the blood?

2 A I just figured oh, one of them must have had a
3 bleeding nose or something.

4 Q So you enter there with this feeling that
5 somebody might have been killed there, then you saw the
6 blood and the blood didn't concern you particularly?

7 A No.

8 Q No. But then you come into the house and you see
9 Samantha weeping?

10 A Yes.

11 Q Did that concern you a little bit?

12 A No.

13 Q No? Have you seen her weeping before?

14 A No.

15 Q No. So you have this bad feeling, you see the
16 blood, you see her weeping and the weeping doesn't cause
17 you any concern particularly?

18 A No.

19 Q But you did ask about why she was --

20 A Yes.

21 Q -- weeping. And she didn't answer, Wes answered
22 for her?

23 A Yes.

24 Q Did you find that a little strange as well?

25 A About him answering? Well he usually always

1 answered for her.

2 Q Yeah, exactly. He often answered for her, right?

3 A Yes.

4 Q And he was also acting unusual in the sense that
5 he was running around, being busy up and down the stairs?

6 A Yes.

7 Q Did that cause you a little more suspicion?

8 A No.

9 Q Even though that's not what he usually does?

10 A Yeah.

11 Q Did you ask him about what he was up to and what
12 he was doing running up and down the stairs?

13 A No.

14 Q These stairs you're talking about, are they near
15 the landing where the blood was?

16 A Yes.

17 Q And he tells you that he sent her back to her
18 dad?

19 A Yes.

20 Q Which caused you to question that because you
21 never saw her misbehave, right?

22 A Yes.

23 Q In fact, I think you left earlier than you might
24 have otherwise because of all of this.

25 A Pardon?

1 Q That you left earlier than usual --

2 A Yes.

3 Q -- and that's because of the bad feeling you had,
4 the things you observed?

5 A Yes.

6 Q Everything you were told, right?

7 A Yes.

8 Q Did you consider calling anyone?

9 A No.

10 Q Even your mother?

11 A Well when my mother-in-law picked me up there she
12 kind of felt the same feeling.

13 Q Um-hum.

14 A And she didn't want me there.

15 Q And did you talk to her about what --

16 A No.

17 Q -- went on what you saw? No?

18 A No.

19 Q Or your mother afterwards?

20 A No.

21 Q So your mother-in-law shared that feeling, that
22 bad feeling that you shared?

23 A Yes.

24 Q Did you tell her about your bad feeling?

25 A Yes.

1 Q And she said she --

2 A Like -- yes, yes.

3 Q And she said that she felt the same way?

4 A Yes.

5 Q As far as you know, neither of you called anyone?

6 A No.

7 Q And then you're there another time when you're
8 watching the movie, correct?

9 A Yes.

10 Q And how much later was that compared to the last
11 visit when you saw the blood?

12 A A month.

13 Q About a month later?

14 A Two months.

15 Q And was that in the summer?

16 A Yes.

17 Q Of 2005, right?

18 A Yes.

19 Q So now you're over there again, right, and
20 obviously was that your decision to just drop in, or?

21 A Yes, because my sister was there.

22 Q I see. And you recall now pretty clearly that
23 Wes made a remark about the movie and about how you could
24 use pepper to disguise the smell of a corpse?

25 A Yes.

1 Q Right. And did you relate that back in your mind
2 to having seen the blood on the --

3 A No.

4 Q -- landing or anything like that?

5 A No.

6 Q Or the bad feeling you had the last time you were
7 there?

8 A No.

9 Q You didn't? Did that cause you to maybe tell
10 your mother or discuss with your mother these comments of
11 Wes?

12 A No.

13 Q You just kept that yourself at that time?

14 A Yes.

15 Q And would that be the last time you were at his
16 place?

17 A Yes.

18 Q And what you saw of Phoenix was just that she was
19 a sweet, innocent child?

20 A Yes.

21 MR. GINDIN: Thank you.

22 THE COMMISSIONER: Thank you, Mr. Gindin.
23 Anybody else before Mr. Cochrane? It would appear not.
24 So, Mr. Cochrane?

25 MR. COCHRANE: Thank you, Mr. Commissioner.

1 CROSS-EXAMINATION BY MR. COCHRANE:

2 Q I just have a few things I want to clarify,
3 Alison. You had testified that you visited Angela
4 Murdoch's home where your uncle lived about six times or
5 so?

6 A Yes.

7 Q Yes. And it wasn't clear to me in your testimony
8 when you visited those times were you by yourself or did
9 you take your baby with you?

10 A I had my baby with me.

11 Q And were you going there to visit your Uncle Wes
12 or what other purpose were you going there for?

13 A For the baby, for their baby, like a play date.

14 Q Like a play date, okay. And my friend there,
15 Mr. Gindin, asked, just asked you a moment ago about the
16 last time that you were at the, at that house and you were
17 told that Phoenix -- sorry, they had sent Phoenix back to
18 her dad. Do you recall that?

19 A Yes.

20 Q And was there anything suspicious about that
21 comment or did you believe, believe what they were telling
22 you?

23 A I believed that they sent her back.

24 Q Yeah?

25 A Yeah, I believed that they sent her back.

1 Q Now if you, if you suspected that that answer was
2 not true or if you believed that answer was not true, what
3 would you have done?

4 A Like if they didn't send her back?

5 Q Yeah, if, if you felt that they were lying to
6 you, if that reason they gave you wasn't, wasn't true or
7 you had reason to believe it wasn't true.

8 A I would have called the police or ICFS.

9 Q Would have called the police or ICFS. And of
10 course you didn't do that because you believed that --

11 A She did go to her dad's.

12 Q Thank you.

13 MR. COCHRANE: I have no further questions.

14 THE COMMISSIONER: Thank you, Mr. Cochrane.

15 Ms. McCandless?

16 MS. MCCANDLESS: No re-examination, Mr.
17 Commissioner. This is our last witness before 2:00 p.m.
18 today, so ...

19 THE COMMISSIONER: Yes. All right, witness,
20 you're completed and I thank you very much for your being
21 here. I know it wasn't an easy assignment for you but
22 we're appreciative of you responding and giving us the
23 evidence you have.

24 THE WITNESS: You're welcome.

25 THE COMMISSIONER: You can now leave.

1 THE WITNESS: Okay.

2

3 (WITNESS EXCUSED)

4

5 THE COMMISSIONER: And we'll adjourn until two
6 o'clock this afternoon.

7

8 (LUNCHEON RECESS)

9

10 THE COMMISSIONER: All right. Mr. Mascarenhas,
11 you're next.

12 MR. MASCARENHAS: I am. Good afternoon,
13 Mr. Commissioner. Before we begin I'd just like to
14 introduce at counsel table, Joel Katz is counsel for the
15 witness on the stand today. He hasn't been here up until
16 today, so I just wanted to make an introduction.

17 THE COMMISSIONER: Mr. Katz?

18 MR. KATZ: Yes. Good afternoon, Mr. Commissioner,
19 and I hope that's the last thing I say today.

20 THE COMMISSIONER: Yes. And your first name is?

21 MR. KATZ: Joel, J-O-E-L.

22 THE COMMISSIONER: Right. Thank you very much.

23 MR. KATZ: Thank you.

24 MR. MASCARENHAS: We only have the one witness
25 this afternoon, Mr. Commissioner. I'm ready to proceed

1 when you are.

2 THE COMMISSIONER: Right. The witness can be
3 prepared for examination.

4 THE CLERK: If you could stand for a moment. Is
5 it your choice to swear on the Bible or affirm without the
6 Bible?

7 THE WITNESS: Affirm.

8 THE CLERK: State your full name to the court,
9 please?

10 THE WITNESS: Robert William Baker.

11 THE CLERK: And spell me your first name.

12 THE WITNESS: R-O-B-E-R-T.

13 THE CLERK: And your middle name, please?

14 THE WITNESS: W-I-L-L-I-A-M.

15 THE CLERK: And your last name, please?

16 THE WITNESS: B-A-K-E-R.

17 THE CLERK: Thank you.

18

19 **ROBERT WILLIAM BAKER,** affirmed,
20 testified as follows:

21

22 THE CLERK: Thank you. You may be seated.

23

24 DIRECT EXAMINATION BY MR. MASCARENHAS:

25 Q Good afternoon, Corporal Baker.

1 A Good afternoon.

2 Q I understand that you were the lead investigator
3 into the missing person/homicide investigation with Phoenix
4 Sinclair?

5 A Yes, that's correct.

6 Q And your evidence today will be to provide us
7 your, your observations and the actions you took in regards
8 to the investigation.

9 A Yes.

10 Q What is your educational background?

11 A I graduated high school in Dauphin, Manitoba.
12 From there I attended the University of Winnipeg. My focus
13 was in justice and law enforcement as well as history. And
14 the RCMP called for me to attend our depot training academy
15 in 1996. I was credit shy of graduating but I left my
16 studies and joined the RCMP in 1996 and I've been with the
17 Royal Canadian Mounted Police for 16 and a half years.

18 THE COMMISSIONER: And still there?

19 THE WITNESS: Still there.

20 THE COMMISSIONER: Good.

21

22 BY MR. MASCARENHAS:

23 Q Can you please give us a brief employment
24 history, your brief employment history with the RCMP
25 starting from when you began in 1996?

1 A Yes. In 1996 I was posted to Selkirk, Manitoba,
2 just north of Winnipeg here, and I was there for close to
3 four years. And after that I took a transfer to Little
4 Grand Rapids. Little Grand Rapids is a northern fly-in
5 community, First Nations fly-in community. I was there for
6 two years at which time I had transferred back down south
7 to Stonewall. I was there for another two years. And in
8 2004 I was transferred into the RCMP serious crimes unit in
9 Winnipeg. I was there for three years. And in 2007 -- I
10 was in the serious crimes unit for the time of this
11 investigation and in 2007 I left the serious crimes unit. I
12 took a transfer to Oxford House, back to northern Manitoba.
13 I was promoted to the rank of corporal and in 2009 I
14 transferred back down south, back to Winnipeg, and I'm
15 currently in historical case, our cold case unit, and
16 that's where I'm presently posted today.

17 Q You just stated that in 2005, at the time of your
18 investigation to Phoenix Sinclair's death, you were a
19 member of the major serious crimes unit?

20 A That's correct.

21 Q What are the functions and responsibilities of
22 the major crimes unit?

23 A When I was posted there and today the primary
24 responsibility is homicide investigations and that can
25 include missing persons where foul play is suspected and

1 the mandate does also include high profile serious
2 investigations such as a police officer involved shooting
3 or a death of a prisoner in custody and those sorts of
4 major investigations. Primarily it's homicide
5 investigations.

6 Q And is that unit based out of Winnipeg?

7 A Yes, it is.

8 Q How is it that you became involved with the
9 investigation of Phoenix's death?

10 A From, from the, from the day that I received the
11 direction to become involved?

12 Q Yes.

13 THE WITNESS: Okay, Your Honour, Mr. Commissioner,
14 I'm going to refer to my notes, if that's okay to you, for
15 the duration of this afternoon?

16 THE COMMISSIONER: They were made at the time,
17 were they?

18 THE WITNESS: Yes, they were.

19 THE COMMISSIONER: All right.

20 THE WITNESS: Thank you.

21 My, sorry, my sergeant at the time was Sergeant
22 Bert Clark (phonetic). Bert Clark was -- he's now retired,
23 he was in charge of the RCMP serious crimes unit and
24 Bert Clark had, had been advised that DOE number 3 had
25 contacted Child and Family Services to report that her sons

1 had been a witness to a homicide. That was, in turn,
2 reported to the Winnipeg Police Service who determined that
3 this occurred in RCMP jurisdiction in the community of
4 Fisher River. My sergeant, Bert Clark, was contacted as it
5 was his responsibility and jurisdiction. And when this
6 happened it was March the 6th, 2006, and I used to car pool
7 back to Stonewall where I lived with, with the sergeant,
8 Bert Clark, and he either told me that afternoon on the way
9 home or that morning of the 7th, the following day, on the
10 way into work. So it was either on the way home on the 6th
11 or the way back to work on the 7th. He asked me to head up
12 that investigation at that time. And the investigation at
13 that time was, it was to determine the whereabouts of
14 Phoenix Sinclair and if indeed there was a homicide
15 involved.

16 I, that morning I made a call at 8:15 in the
17 morning to Corporal Ken Genaille. Ken Genaille was, was an
18 officer with the RCMP in Fisher Branch detachment who looks
19 after Fisher River and my question to him was that the
20 report that we had received of Phoenix Sinclair, if there
21 was anybody missing in the community that he was aware of
22 and he, he hadn't heard of any, anything like this. He
23 hasn't heard of any missing persons and he couldn't
24 corroborate that for me. He said at the time --

25

1 BY MR. MASCARENHAS:

2 Q I'm sorry. Just if I could slide back a little
3 bit with you, Corporal Baker. You said that you received
4 the report from Sergeant Clark that DOE number 3 had
5 advised Sergeant Clark -- had advised the Winnipeg Police
6 that her sons had disclosed information to her in regards
7 to a possible death?

8 A Sorry, if I, if I -- that's not correct. DOE
9 number 3 had contacted Child and Family Services --

10 Q Child and Family Services.

11 A -- who contacted Winnipeg Police Service, who
12 contacted Sergeant Clark.

13 Q Thanks. And just to clarify, did you, were you
14 aware, are you aware now that DOE number 3's sons are who
15 we refer to as DOEs number 1 and 2 in this inquiry?

16 A Yes.

17 Q Thank you. Now did the investigation start as a
18 homicide investigation when you first received the file
19 from Sergeant Clark?

20 A We, we call it a missing person where foul play
21 is suspected. It incorporates the components of a missing
22 person investigation and the possibility that it may be a
23 homicide. At this time we could have determined from the
24 information that we had that it was a homicide
25 investigation and the primary focus at that time is to find

1 the missing person.

2 Q So because of the seriousness of the allegation,
3 you were asked to look into it, but you didn't know if the
4 allegation was true or not at that time?

5 A That's correct.

6 Q Was there any difference in the process that you
7 followed in the early stages of your investigation based on
8 the fact that you didn't know if the allegation was true or
9 not?

10 A Just in terms of the amount of the resources.
11 Let's just say the homicide investigation will often
12 incorporate a full complement of resources in a major case
13 management model of investigation where people are playing,
14 or people are assuming a multitude of roles. The
15 investigation itself would be the same and the
16 investigation that I started that day would be the same as
17 a homicide investigation.

18 Q And did you treat the allegation any less
19 seriously even though you had no evidence with which to
20 verify at that time?

21 A No, no, Your Honour, no.

22 Q Now I'd just like to, I'd just to refer you to
23 CD0065.

24 MR. MASCARENHAS: Madam Clerk, if you could put
25 up page 4074.

1 BY MR. MASCARENHAS:

2 Q I understand that this document is the executive
3 summary of the investigation into Phoenix's death?

4 A Yes.

5 Q And what was the purpose of the executive
6 summary?

7 A The executive summary is to provide an outline of
8 the investigation, Your Honour.

9 Q And did you author this document?

10 A I did not.

11 Q As lead investigator did you have a chance to
12 review it?

13 A I did, yes.

14 Q And in your opinion does it accurately outline
15 the investigation that you and the RCMP conducted into
16 Phoenix's death?

17 A Yes, it does.

18 Q Now I'd like to go through some portions of the
19 initial stages of your investigation after you first
20 received the file from Sergeant Clark. You were telling us
21 about your interaction with Sergeant, or I believe it was
22 Sergeant Genaille?

23 A Corporal Genaille, yes.

24 Q Corporal Genaille in the Fisher River RCMP
25 branch?

1 A Yes.

2 Q Can you please tell us more about that portion of
3 your investigation?

4 A March 7th, 2006, at 8:15 a.m.?

5 Q Yes, please.

6 A Yes. I spoke with Corporal Ken Genaille on the
7 phone and I advised him of the complaint that we had
8 received through Child and Family Services and through
9 Winnipeg Police Service and discussed with Corporal
10 Genaille about the possibility that there might be somebody
11 missing, there might be a child that was missing in the
12 community and the nature of the complaint that this, this
13 may be a homicide investigation. Corporal Genaille wasn't
14 aware of any, anybody missing in the community, no children
15 missing in the community, sorry, nor any incident like
16 that.

17 Q And just a general, just a general, in regards to
18 your notes, I understand that they're very detailed
19 notes.

20 MR. MASCARENHAS: And, Madam Clerk, just if we
21 could pull up on the screen, it would be page 5799. It
22 would be page 5799 and that's commission disclosure 155.

23

24 BY MR. MASCARENHAS:

25 Q Are these your notes, Sergeant -- or sorry, are

1 these your notes, Corporal Baker?

2 A Yes, they are.

3 Q And before we get any further, what was your
4 general process when it came to note taking?

5 A General process to taking notes was any, any
6 conversation, any information that I would have received,
7 anything that I determined would be important to the
8 investigation to keep record of, I would write that in my
9 notebook at the time that I received it or at the most
10 practical time thereafter.

11 Q And along with your notes, do you have any
12 independent recollection of your investigation into
13 Phoenix's death?

14 A Yes, I do.

15 Q So after you spoke to Corporal Genaille, your
16 notes indicate that you ...

17 MR. MASCARENHAS: If we can, if we could actually
18 scroll the page down to page 5800, Madam Clerk. Sorry, if
19 you could scroll it down one more page, Madam Clerk.

20 If I could just have one moment,
21 Mr. Commissioner.

22 Sorry, Madam Clerk, if we could go to 5804.

23 My apologies, Mr. Commissioner.

24 THE COMMISSIONER: No problem.

25

1 BY MR. MASCARENHAS:

2 Q So after you spoke to Corporal Genaille, it
3 appears that you made phone calls to a variety of
4 collaterals.

5 A That's correct, yes.

6 Q The first collateral that's indicated at the top
7 of the page is a call, is a call from Lorraine at Winnipeg
8 School Division. Why did you contact the Winnipeg School
9 Division?

10 A That would be one of the checks that we would
11 make for a missing child to determine if a child was
12 enrolled in school and to try to account for that child.

13 Q And did she tell you anything that was useful in
14 informing your investigation?

15 A Yes, she did. She had mentioned, she had told me
16 that, and I noted here, that Phoenix was last in their
17 system in September 2004 and only for that month and not
18 since. That was -- not that Phoenix was in their school
19 but Phoenix was last in their system.

20 Q You also requested a CPIC check, I believe.

21 A Yes.

22 Q And what does a CPIC check stand for?

23 A CPIC is a Canadian Police Information Centre.
24 That is a database that the Royal Canadian Mounted Police
25 manage for all partner police agencies in Canada.

1 Q And what information would that include?

2 A It includes many things. It includes criminal
3 records. It includes firearms records, missing persons.
4 It can include many things, wandering persons registry. It
5 is, it is our one database that holds all of, all of these
6 records, including driver's licence, driving information.

7 Q And what was your purpose for conducting CPIC
8 checks?

9 A To determine the whereabouts of Karl Wesley
10 McKay, to determine the whereabouts of Phoenix Sinclair and
11 Samantha Kematch. Perhaps Phoenix Sinclair was listed as a
12 missing person, perhaps there would be information there to
13 determine the whereabouts of these people and also to
14 determine if Karl Wesley McKay or Samantha Kematch had any
15 particular warrants or violent convictions that I should be
16 aware of or conditions, court conditions.

17 Q Did you find any results when you did your CPIC
18 search?

19 A There were no results for Phoenix Sinclair.
20 There was nothing on the system that, or the CPIC system
21 that she was reported missing and recorded there as such.
22 There was nothing there for Samantha Kematch, but there was
23 for Karl Wesley McKay and what I noted were there were
24 three violent convictions for, for assault and there were
25 other convictions for failing to comply with court orders,

1 breaches, that sort of thing.

2 Q When you saw these convictions, what exact
3 information would you have been able to access from
4 Mr. McKay's criminal record?

5 A To get further details on those convictions?

6 Q Yes.

7 A The convictions that he had were with -- for
8 assault, were with Winnipeg Police Service. So I would
9 have to access Winnipeg Police Service records. The RCMP
10 generally don't have access to Winnipeg Police Service
11 records for occurrence details.

12 Q So after you did your CPIC check, I see a third
13 collateral that you checked, or I believe a third
14 collateral that you checked was to call child protection.

15 A Yes. I called child protection to determine if
16 they had any involvement with Phoenix Sinclair and they
17 last saw her in February 2003.

18 Q And just to clarify, what are you referring to
19 when, what are you referring to when you say child
20 protection?

21 A The Child Protection Branch.

22 Q Thank you. Did you receive any information that
23 informed your investigation from child protection?

24 A They, they advised me that they were going to
25 request her chart and I noted in my notebook that I just

1 wanted to know at that time when the patient was last seen.
2 I was trying, I was trying to at that time account for her
3 whereabouts. There's -- this was a missing person with
4 foul play suspected. Perhaps she was, she was still alive
5 and that was something I wanted to, I still wanted to find
6 her.

7 Q And I believe you called all three of these
8 collaterals on March 8th, 2006?

9 A Yes, I did, that morning.

10 Q And are these the normal resources you would use
11 to find a missing child?

12 A Missing, to find missing children is much more
13 difficult than finding missing adults. It depends on the
14 circumstances. To find a missing child in this case, there
15 was an allegation of foul play, of homicide. There was
16 involvement with Child and Family Services. And so these
17 were likely avenues of investigation I determined at that
18 time would assist in locating her or finding out what
19 happened. For other children it might be different to --
20 in a child's life, around the child the central figures are
21 the child's parents, the child's family, the child's
22 siblings and extended family and it moves out to friends
23 and the community, the community leaders, schools, to Child
24 and Family Services and then finally out to the police and
25 in a missing child investigation you would follow that, you

1 would follow those aspects of involvement in a child's life
2 and make inquiries with family and friends and school and
3 that sort of thing. But in this, in this instance it was a
4 little bit different because Child and Family Services at
5 the outer area was already involved. So I started the
6 investigation from those, from those areas.

7 Q We've heard evidence throughout the inquiry that
8 privacy laws have impacted CFS and other agencies'
9 abilities to access information with collaterals at times.
10 It appears that you contacted a variety of collaterals
11 during the early stages of your investigation. Have you
12 had any problems with accessing information due to privacy
13 concerns?

14 A I have and I'm sure that's to be expected, that
15 that answer be expected. Oftentimes privacy rules are,
16 people will use that as a reason why they can't give
17 information, yet there are clauses, and just to use the
18 Personal Health Information Act as an example, I believe
19 it's Section 22 that allows access to a police officer to
20 the information of a patient for the safety of that patient
21 or the safety of the community. In my experience it can be
22 difficult to gather that information. People will be more
23 inclined to say no, I don't want to give you that
24 information, rather than to make that personal decision and
25 where that decision about them giving the information, it

1 might not, and they believe it might not be appropriate.
2 So I do have, I do, I have encountered many times where
3 I've had difficulty obtaining information due to privacy
4 regulations. And there are many different types of privacy
5 regulations from the federal government to provincial, for
6 private businesses, and it's difficult.

7 Q In your experience are there exceptions to the
8 privacy act, the various privacy acts in place that are
9 available for various circumstances?

10 A Most, most always there are, there are exceptions
11 and there are stipulations, as I mentioned, in the Personal
12 Health Information Act or in a federal Privacy Act where
13 like-minded investigative agencies can share information.
14 For the RCMP and Child and Family Services, we can share
15 information if they're conducting a like-minded
16 investigation or if we are and we will share information
17 with each other. There are avenues to share investigation
18 and it is stipulated, it is already stipulated in these, in
19 these acts. That's been my experience.

20 Q Are the workers you deal with at various
21 collateral agencies generally aware of their obligations in
22 regards to these exceptions?

23 A In my experience, no.

24 Q Have you had requests under these exceptions for
25 information denied?

1 A On my occasions and not just, not picking on one
2 specific agency or anything like that but from many
3 agencies, from many agencies.

4 Q What is your experience in receiving information
5 from various CFS agencies when requested?

6 A Sometimes Child and Family Services will, will --
7 if it's a like-minded investigation and we're working
8 together on the case it's a lot easier, but if I'm, if I'm
9 trying to gather information on a case that they might not
10 be involved in and they don't know all the particulars,
11 they might be more inclined to say no. And in this case I
12 can give an example that I had requested information and
13 was told no for three sealed files. And when a file is
14 sealed, often people will say you can't have it, that's
15 sealed, and I can't give you that. But I don't, I wouldn't
16 give up. I would explain -- I find I have to take it upon
17 myself to explain that while it says in this act that you
18 will provide this information and here's a written request,
19 that a written request often carries more weight.
20 Conversely if somebody wants information from the RCMP, we
21 will share information to like-minded investigators for
22 similar investigations, but we would need a written request
23 as well. With Child and Family Services, I've had, I've
24 had a number of times where I've been told that I can't
25 obtain that information and it takes a little bit more work

1 to have it understood that it's in the best interests of a
2 person's safety that that information should be released.

3 Q And you referred to three sealed files. Do you
4 happen to know if those were child-in-care files or people
5 involved in Phoenix's file?

6 A I can't recall. I believe they were but I can't
7 recall at this time. I'll just maybe refer to my notes.

8 On March 7th at 1425, I called Cree Nation Child
9 and Family Services and I was told that I cannot have
10 access to the three sealed files they have regarding
11 Phoenix Sinclair. The last file was closed on March 9th of
12 2005 and I was provided with the Child and Family Services
13 worker's name. On my notes that would be page 17.

14 MR. MASCARENHAS: Sorry, Mr. Commissioner, just
15 one moment.

16 THE WITNESS: I think it's up, I think it's up a
17 little higher there. It's on March 7th.

18 THE COMMISSIONER: Where on the page are your
19 notes numbered with your numbering?

20 MR. MASCARENHAS: Yes, that's what I'm looking
21 for.

22 THE WITNESS: I have this one here, I'll just
23 refer to that.

24 THE COMMISSIONER: Oh. Oh no, it's not on these
25 copies, I guess. That's fine, we'll get there.

1 THE WITNESS: Is page 17 missing from the
2 electronic?

3 MR. MASCARENHAS: That's what I'm wondering right
4 now. I don't see it.

5

6 BY MR. MASCARENHAS:

7 Q Do you by chance have, in your binder of notes
8 that I know your counsel prepared for you, you happen to
9 have the electronic disclosure copy that we have on the
10 screen and which we've been working with? I'm wondering if
11 the notes you have, your personal notes are different.

12 A I have three copies of page 14, so I would assume
13 that that's, that's missing. I've been working off my
14 notebook.

15 Q I agree, it seems that I have the same.

16 MS. MCCANDLESS: So that might be the cause of
17 confusion in regards to why some of the notes that Corporal
18 Baker's referring to don't appear to be in our disclosure.

19 THE COMMISSIONER: Well, are the correct notes on
20 the screen?

21 MR. MASCARENHAS: No. It appears -- if you look
22 at pages 5800, 5801 and 5802, they are all triplicate of
23 the same note when they were scanned in apparently.

24 THE COMMISSIONER: All right. So the notes you
25 wanted to refer to are not presently on the screen?

1 MR. MASCARENHAS: No, it appears that there was
2 an error when it came to creating the commission
3 disclosure.

4 THE COMMISSIONER: All right.

5 MS. MCCANDLESS: Corporal Baker's notes appear to
6 be --

7 THE COMMISSIONER: Will, will it be satisfactory
8 for him to speak from his notebook?

9 MR. MASCARENHAS: As long as -- that is fine with
10 me as long as it's all right with --

11 THE COMMISSIONER: Well, we'll do that and if
12 anyone wants to see his notes before they cross-examine,
13 we'll allow that.

14 MR. MASCARENHAS: Thank you, Mr. Commissioner.

15

16 BY MR. MASCARENHAS:

17 Q Now, Corporal Baker, I understand that you also
18 had an opportunity to take statements from DOEs number 1, 2
19 and 3?

20 A Yes, I, yes, I did.

21 THE COMMISSIONER: Well just before we leave
22 that, it was, it was the Cree Nation Family Services that
23 you called --

24 THE WITNESS: That's correct.

25 THE COMMISSIONER: -- and where, where are they

1 located?

2 THE WITNESS: I'm not too sure, Your Honour.

3 THE COMMISSIONER: All right.

4 THE WITNESS: I'm not too sure. Would you like
5 me to read the portion of my notes that's absent?

6 THE COMMISSIONER: Just say -- no, I'm just
7 trying to -- that's all right. But it was they who told
8 you there were three files that were sealed and closed and
9 unavailable to you?

10 THE WITNESS: Yes.

11 THE COMMISSIONER: All right.

12

13 BY MR. MASCARENHAS:

14 Q Did you also call Winnipeg CFS at that time or
15 did you only call Cree Nation CFS?

16 A I called Intertribal CFS. Just before I made the
17 call -- actually, sorry, here -- I called Intertribal CFS
18 on March 7th.

19 THE COMMISSIONER: Before you called Cree
20 Nations?

21 THE WITNESS: Yes, I did. I called Intertribal
22 Child and Family Services. I called Fisher River Child and
23 Family Services and then I called Cree Nation Child and
24 Family Services.

25

1 BY MR. MASCARENHAS:

2 Q Do you know if you were referred to the following
3 agencies by the initial agency you spoke to?

4 A Yes.

5 Q Now as I was, sorry, as I was saying before, I
6 understand that you took statements from DOEs number 1, 2
7 and 3?

8 A Yes, yes, I did.

9 Q Now what did you learn from taking statements
10 from DOE number 1 -- or DOE number 3? DOE number 3 would
11 have probably been the initial, the initial witness that
12 you spoke to.

13 A The initial witness that I spoke to was DOE 2 and
14 when I spoke to DOE 2, I had learned that his brother had
15 witnessed the homicide.

16 Q And that would be DOE 1?

17 A That his brother, DOE 1, had, sorry, that had
18 witnessed the homicide, yes.

19 Q And --

20 A And after interviewing DOE 1 and DOE 2, I
21 interviewed DOE 3.

22 Q Can you tell us what you learned from the
23 statements you took from these witnesses?

24 A Yes. I don't know how much detail that you want
25 me to speak to in regards to those interviews, but I had

1 learned that DOE 1 and DOE 2 were with their father at
2 Fisher River First Nation. They were under his care for
3 the summer, for the spring and early summer, and while they
4 were there at his, at his home, they witnessed the, I guess
5 what amounted to the torture and then homicide of Phoenix
6 Sinclair and following that, disposing of her, of her
7 remains of her body in the woods. And that then, then the
8 boys were brought back to, brought back to Winnipeg by
9 Child and Family Services.

10 Q After interviewing DOEs 1, 2 and 3, did you
11 believe that the allegations they presented were
12 legitimate?

13 A Yes, I did. There was -- if I can say, the story
14 was almost a little bit incredulous, that it was, that it
15 was unfathomable that that kind of abuse could have
16 happened, that nobody would know about this, that, that
17 this could have just happened over that length of time
18 that, that period of time. It was almost, it was
19 unimaginable and that part of me led me to hope that maybe
20 it wasn't true, that perhaps we could, we could still find
21 her. But the boys -- we're trained to interview people and
22 we're trained to determine as best we can when somebody's
23 not telling the truth and it was my opinion that the boys
24 were telling the truth. The one boy, for example, he, when
25 he was explaining, DOE 1 was explaining what happened,

1 usually when somebody's not telling the truth they'll
2 describe leading up to the incident and then they will
3 describe the incident very briefly and then they will go on
4 after that. They'll talk about everything but. But he
5 couldn't stop talking about it and, and he was visibly
6 shaken and, and this was something that he couldn't bear to
7 live with any more, that was my impression, and they
8 appeared very truthful.

9 Q And just to clear up a little bit of confusion,
10 Mr. Commissioner, the calls that the witness made to the
11 collaterals, I believe you did those on March 8th and you
12 spoke to the DOEs on March 7th. So you made those
13 collaterals following your interview of the DOEs; is that
14 correct?

15 A I, I -- the Child and Family Services calls I
16 made on the 7th. I made those in the afternoon of the 7th.
17 And actually between -- I do recall that while I was
18 interviewing DOE 1 and DOE 2, in between that time my
19 sergeant, Bert Clark, who was in charge of the unit was on
20 the phone with Randy Murdock from Intertribal Child and
21 Family Services and I was, I was busy interviewing the boys
22 and if I can recall correctly, I told him on the phone that
23 I was busy.

24 Q And I believe we saw a contact note from Randy
25 Murdock in his evidence yesterday that indicated that he

1 did so.

2 A And then I had the opportunity to call
3 Mr. Murdock that afternoon.

4 Q Thank you. And did you gain any information from
5 speaking to Mr. Murdock?

6 A Well, I did. The information that I gained from
7 him was that, that, and I noted in my notes, at 2:00 p.m.
8 that as per our phone conversation that there was a child
9 with Winnipeg -- there was a file with Winnipeg Child and
10 Family Services and it was closed March 9th, 2005 and that
11 was, according to Randy Murdock, that was from the CFSIS
12 system and from there I contacted Madeline Bird of Fisher
13 River Child and Family Services.

14 Q And did you get any information from speaking to
15 Ms. Bird?

16 A The information that I, that I received from her
17 was in regards to DOE 1 and DOE 2 having spent the spring
18 and summer with their father in Fisher River and how that
19 came to an end with, with the arrest of the babysitter who
20 was hiding in a house at the time, that she spoke about.
21 But importantly, I learned from Madeline Bird that she was
22 related to Karl Wesley McKay, so I became very guarded in
23 what I shared with her.

24 Q Thank you. And that was on March the 7th. On
25 March the 8th is the day you made the call to those three

1 collaterals that we discussed earlier, that being the
2 Winnipeg School Division, you did the CPIC check and you
3 also called the Child Protection Centre.

4 A Yes. Sorry, March 7th was also when I called
5 Cree Nation Child and Family Services though --

6 Q Yes.

7 A -- as well about the three sealed records.

8 Q You, you called the -- we understand that you
9 called ICFS and you called Cree Nation that day.

10 A Yes.

11 Q And March 8th is when you made the calls to the
12 three other collaterals that we're previously discussed?

13 A Yes.

14 Q All right.

15 MR. MASCARENHAS: I apologize for that confusion
16 in regards to the chronology, Mr. Commissioner. I hope
17 that you understand the chronology of events that's
18 happened.

19 THE COMMISSIONER: I think I do.

20 THE WITNESS: Sorry, that's due to my, my notes
21 and what's missing here.

22 MR. MASCARENHAS: It's not your -- you don't have
23 to apologize --

24 THE COMMISSIONER: I think we understand.

25

1 BY MR. MASCARENHAS:

2 Q In regards to what happened next on the
3 investigation, I understand that on March 9th, 2006, you
4 were contacted by workers from EIA.

5 A At 9:10 a.m. that day, yes.

6 Q And what did the workers from EIA have to speak
7 to you about?

8 A We, we discussed the couple moving to, to
9 Winnipeg, applying -- the couple being Karl Wesley McKay
10 and Samantha Kematch moving to Winnipeg, applying for, for
11 welfare and the children that they had and the children
12 that they were, that they were claiming welfare benefits
13 for and at that time I moved to a different notebook,
14 Your Honour. I'll just refer to that one.

15 Q And how is that EIA became involved in this
16 investigation, why did they contact you?

17 A I contacted them actually before this. I made
18 contact with them to, to get their involvement and to get
19 information from them. Oftentimes provincial welfare
20 agencies are, are -- they're a great partner for us to work
21 with. They have a lot of information. Because they're,
22 they're based on benefits people will, people aren't trying
23 to avoid them for the most part if they're obtaining
24 benefits. So it's, it's a good partner for us, it's a good
25 source of information.

1 Q So they were returning your call?

2 A Yes.

3 Q Was EIA already investigating the case or did
4 they begin to investigate the case because of your call?

5 A They were not investigating the case prior to
6 this, no.

7 Q I believe that you -- or sorry, in regards to
8 your contact with EIA, what did you guys -- what was the
9 plan of action that you came up with?

10 A The plan of action that eventually unfolded was
11 to have --

12 Q What was your next step in the plan of action in
13 regards to your contact with EIA?

14 A It was to determine who, to determine if they did
15 indeed have the child that they were claim -- they were
16 claiming welfare for Phoenix Sinclair and it was --

17 THE COMMISSIONER: As of what date?

18 THE WITNESS: As of, I believe it was January --
19 my memory serves me to say it was January 6th, 2006. I'll
20 say January 2006, Your Honour.

21 THE COMMISSIONER: Thank you.

22

23 BY MR. MASCARENHAS:

24 Q Did anyone attend to the house to attempt to see
25 Phoenix as a result of your plan of action?

1 A Lyle Moffat (phonetic) and Ed Mann (phonetic),
2 two provincial investigators with welfare, attended to the
3 residence with the intentions of having them produce
4 Phoenix Sinclair.

5 Q Were they able to speak with Ms. Kematch or
6 Mr. McKay?

7 A Yes. They --

8 THE COMMISSIONER: Who, who attended?

9 THE WITNESS: The provincial welfare
10 investigators.

11 THE COMMISSIONER: From your department, from
12 your force?

13 THE WITNESS: No, sorry, for the Province of
14 Manitoba.

15 THE COMMISSIONER: Okay, all right. They
16 preceded you there, did they?

17 THE WITNESS: They did, yes.

18

19 BY MR. MASCARENHAS:

20 Q And just to clarify, when you say provincial
21 welfare, is that also known as EIA, employment income
22 assistance?

23 A To the best of my understanding it is, yes.

24 Q So you said they were able to speak to
25 Ms. Kematch and Mr. McKay?

1 A On the 9th of March at 10:40 a.m., Ed Mann,
2 provincial welfare investigator, advised me that he and his
3 partner, Lyle Moffat, attended the suite on McGee and
4 advised they spoke to the couple who had their two children
5 but that their daughter Phoenix had went to stay with aunt,
6 Norma Sinclair, and had left on Monday.

7 Q Did you direct the two EIA investigators to
8 attend to the residence?

9 A We, we had a, we had asked for their cooperation.
10 I didn't, I don't want to say, Your Honour, that I directed
11 them that you will do this and you will do that, they are a
12 different agency than we were, but they were definitely on
13 board with what we wanted to do.

14 THE COMMISSIONER: They were, they were the
15 advance guard, I take it.

16 THE WITNESS: That's right.

17

18 BY MR. MASCARENHAS:

19 Q After you received this information about them
20 attending to the house, what was your next step?

21 A The next step in the investigation was, was to
22 have them, have them produce Phoenix Sinclair, to make, to
23 make that happen and that would be through provincial
24 welfare. The other avenues that we had checked, the other,
25 the other agencies that we had checked with, that wasn't

1 working out. So this was our, this was the best lead that
2 we had at that time and, and we had -- myself and Sergeant
3 Bert Clark met with provincial welfare to essentially set
4 up a sting, I guess you could say, to have them, Kematch
5 and McKay either produce Phoenix Sinclair, that she would
6 still be alive, or not be able to produce her or perhaps
7 even try to bring in a ringer, so to speak, somebody else
8 that wasn't Phoenix Sinclair, which if that was the case,
9 that would provide evidence for our investigation.

10 Q Were you told by Mr., by Mr. McKay or Ms. Kematch
11 that they would produce Phoenix or that Phoenix was
12 available?

13 A Myself, no.

14 Q Were investigators Mann or Moffat from the EIA
15 office told that Phoenix would be available?

16 A Yes.

17 Q And when did they tell you, or when did they tell
18 the investigators from EIA that they would be able to
19 produce Phoenix?

20 A On the 9th of March, 2006 at 11:30 in the
21 morning, Ed Mann, provincial welfare investigator, advised
22 that Samantha Kematch said that, that Phoenix would be
23 brought home that afternoon and she was attempting to evade
24 welfare and saying that it would be later in the afternoon.
25 The welfare investigator said that's fine, we're working

1 through till midnight, that's okay, so we'll be here, we're
2 not letting, we're not letting this go.

3 Q So was a time eventually agreed on that Phoenix,
4 that they would meet and produce Phoenix?

5 A A time was and that was later in the day at
6 3:50 p.m.

7 Q And was there a location set for where they would
8 meet?

9 A Yes, Ed Mann, the provincial welfare investigator
10 said that we would meet at, that they would produce Phoenix
11 Sinclair at Portage Place.

12 THE COMMISSIONER: Whose place?

13 THE WITNESS: At Portage Place mall.

14 THE COMMISSIONER: Oh Portage Place mall.

15 THE WITNESS: Yes.

16

17 BY MR. MASCARENHAS:

18 Q Did you have any further contact with Ed Mann
19 before the meeting at Portage Place?

20 A Just when I was just, just being advised that
21 they were on, they were on the way to Portage Place and
22 that we would meet them there.

23 Q Were you, were you ever provided any pictures of
24 Phoenix Sinclair or Ms. Kematch or Mr. McKay to --

25 A Not for --

1 Q -- inform your investigation?

2 A Sorry. Not for Phoenix Sinclair but we were
3 provided pictures from provincial welfare of McKay and
4 Kematch, but not for Phoenix Sinclair, no.

5 Q So in regards to the meeting at Portage Place,
6 when were you informed that Ms. Kematch and the child that
7 was to be Phoenix, were at Portage Place?

8 A At 3:50 that afternoon on March the 9th, that
9 provincial welfare was on their way to meet with Kematch
10 and McKay at Portage Place and I, I attended with Bill
11 Robinson, he was another officer in the serious crimes
12 unit, and I had asked one of our other officers,
13 Janna Code (phonetic), I asked if Janna could contact Child
14 and Family Services and to involve them at this point,
15 because obviously a child was going to be produced and is
16 it Phoenix Sinclair? Is it somebody else? This was, this
17 was the appropriate time to involve Child and Family
18 Services. And we arrived at Portage Place at 4:20 that
19 afternoon, in front of the HMV music store.

20 Q And do you have an independent recollection of
21 attending to Portage Place mall?

22 A I do, yes.

23 Q Can you tell us what happened when you arrived at
24 Portage Place mall, please?

25 A Yes. There were -- myself and Bill Robinson, the

1 other investigator, we arrived there and we noted Ed Mann,
2 Lyle Moffat, the two provincial welfare investigators,
3 were, were meeting with Samantha Kematch and another lady
4 that we determined afterwards to be Stephanie Roulette and
5 how that unfolded was Samantha Kematch had asked Stephanie
6 Roulette to bring Stephanie's daughter to pretend that to
7 be Phoenix and if memory serves me correct, Stephanie
8 Roulette was to be the aunt, Norma Sinclair. And the
9 welfare investigators, I was watching from, from a short
10 distance away with Bill Robinson and the welfare
11 investigators asked them to produce Phoenix and Samantha
12 Kematch said well this is Phoenix but she answers to the
13 name Princess. And she didn't even match the description
14 of, of a child that age and the little girl turned to her
15 mother, Stephanie Roulette, and said, mommy, she went to
16 her and said mommy, away from Kematch, and the welfare
17 investigators, we watched, as they were learning that this
18 was not Phoenix Sinclair and Bill Robinson and I stepped in
19 and at that time we arrested Samantha Kematch for the
20 murder of Phoenix Sinclair.

21 Q So this was a planned operation, a sting
22 operation to attempt to find out if Phoenix Sinclair could
23 be produced by Ms. Kematch, if she was in Ms. Kematch's
24 care?

25 A Yes.

1 Q How did, how did Ms. Kematch react to being told
2 that she was under arrest for Phoenix's murder?

3 A Her reply that I noted was that she said, "What?"
4 And I explained to her do you understand and then she said,
5 yes, she understood. Ms. Kematch, Samantha Kematch is --
6 her reaction, in my experience her reaction to this, her
7 reaction to most anything was, was -- she was very, she
8 comes across very non-emotional and I interviewed her later
9 on for two hours and the only -- she had no emotion about
10 Phoenix Sinclair that I observed. Her only emotion that
11 she had was about her own predicament.

12 Q So you said that interviewed Samantha Kematch
13 later on?

14 A I did, in the early hours of that morning, I
15 believe it was just after midnight, if I'm not mistaken,
16 that I interviewed her.

17 Q Did you attempt to take a statement from Samantha
18 Kematch?

19 A I did, I did. I attempted to obtain a warned, a
20 cautioned statement, a video statement from her.

21 Q Were you successful?

22 A No, no, I was not. I wasn't even successful in
23 getting her -- still surprised by this, I wasn't even
24 successful in getting emotional responses from her about,
25 about Phoenix Sinclair. I remember asking her and I don't

1 know how this wouldn't evoke an emotional response, but
2 when I asked her when she, when buried Phoenix Sinclair,
3 did you, did you have a chance to give her a kiss goodbye
4 and she was just, there was no, no response, no emotional
5 response.

6 Q Now I understand at the same time that Kematch
7 was under arrest, an attempt was being made to arrest
8 Wesley McKay.

9 A Yes, that's correct, and I wasn't involved in
10 Karl Wesley McKay's arrest. I was aware of it but I wasn't
11 involved.

12 MR. MASCARENHAS: Madam Clerk, if I could just
13 pull up page 4077 of CD 65.

14

15 BY MR. MASCARENHAS:

16 Q If we look at the second paragraph from the top
17 of the page, the executive summary states that:

18

19 "On March 9th, 2006 at 11:42 p.m.
20 investigators of the Winnipeg RCMP
21 Serious Crimes and Major Crime
22 Units arrested Karl Wesley McKay
23 at his residence located at
24 747 McGee St., Winnipeg, for the
25 murder of Phoenix Sinclair."

1 We heard yesterday morning from a niece of Karl Wesley
2 McKay, Amanda McKay, that Karl McKay was actually arrested
3 at her apartment. Do you have any knowledge of that?

4 A No, I don't have any knowledge of that,
5 Your Honour.

6 Q Were you involved at all in taking Karl McKay's
7 statement?

8 A Not, not his initial statement, Your Honour, no.
9 Days later, but not, not his initial statement to, to
10 police, no.

11 Q I'm going to refer you a little lower down on the
12 page there after the paragraph that we just looked at. It
13 says:

14

15 "On March 10, 2006, Karl --"

16

17 Oh sorry, if we could just scroll up slightly, Madam Clerk.

18 It says:

19

20 "On March 10, 2006, Karl McKay
21 provided a warned video taped
22 statement to police with respect
23 to what happened to Phoenix
24 Sinclair. During the
25 statement:

1 - McKay confessed that he murdered
2 Phoenix Sinclair on June 11, 2005
3 in the basement of his house in
4 Fisher River, Manitoba.

5 - He stated that Phoenix was
6 making noise in the basement, so
7 he tossed her into a pile of
8 clothing and added that Samantha
9 Kematch was present when this
10 occurred. He stated that Phoenix
11 was still breathing when he and
12 Samantha left to go to his
13 father's place and that soon after
14 his son DOE number 1 called him
15 and told him that Phoenix was not
16 breathing.

17 - McKay stated that he and
18 Samantha went home and attempted
19 to revive Phoenix by performing
20 CPR on her. When this was not
21 successful, he put her into the
22 bathtub with warm water. McKay
23 stated when he realized Phoenix
24 was dead, he took her to the
25 basement where he and Samantha

1 wrapped her in clear plastic and
2 bound her with packing tape.
3 McKay stated that they also
4 wrapped a raincoat around the
5 outside of the plastic.

6 - McKay stated that they waited
7 until it was dark and then he and
8 Samantha put Phoenix's body into
9 the trunk of his Tempo. They
10 drove out to the dump where they
11 buried her a foot deep into the
12 ground.

13 - McKay also drew a map to
14 indicate where the body could be
15 found."
16

17 Now this is just a summary of Mr. McKay's statement but as
18 lead investigator on the case, I assume that you had an
19 opportunity to review Mr. McKay's statement at some point.

20 A Yes.

21 Q Is this an accurate reflection of what it
22 contained?

23 A Yes, it is.

24 Q Now it also appears, I also believe that on
25 March 10th Ms. Kematch gave an actual statement. Do you

1 have knowledge of this statement?

2 A Yes, I do.

3 Q Were you present when Ms. Kematch gave her actual
4 statement?

5 A I was not the investigator or the interviewer. I
6 did not monitor that statement. I caught a few bits and
7 pieces. I was working on other parts of the investigation
8 at the time.

9 MR. MASCARENHAS: Madam Clerk, if we could scroll
10 down just to where it says on March 10th at the bottom of
11 the page there.

12

13 BY MR. MASCARENHAS:

14 Q This is in regards to, from the executive
15 summary, this is in regards to the statement given by
16 Samantha Kematch on March 10, 2006. It states:

17

18 "... Samantha Kematch was
19 interviewed by investigators and a
20 cautioned statement was obtained:
21 - She stated she was present when
22 Phoenix was found, but emphasized
23 that she ..."

24

25 And if we could scroll the page down to 4078, Madam Clerk.

1 "... was not responsible for
2 Phoenix's death. Samantha stated
3 she and Karl wrapped Phoenix in
4 black plastic garbage bags and a
5 rain coat, and that Karl carried
6 her upstairs once it was dark
7 outside and put her in the trunk
8 of the car.

9 - She advised she and Karl drove
10 to a heavily treed area past the
11 garbage dump. A shallow grave was
12 dug by both Samantha and Karl and
13 Phoenix was buried there.

14 - She stated she believed Phoenix
15 died as a result of being pushed
16 by Karl.

17 - She observed a gash on Phoenix's
18 back from a nail on the wall and
19 also saw blood on the floor,
20 possibly from Phoenix's head.

21 - She admitted to beating Phoenix
22 with a bar the night before she
23 died, because Phoenix had been
24 crying. She described choking
25 Phoenix, and keeping her in a pen

1 in the basement because she would
2 'piss and shit herself'.

3 - She stated that they rarely
4 clothed Phoenix for this reason.
5 Samantha described incidents of
6 abuse toward Phoenix, but cast
7 blame on Karl. Samantha admitted
8 she forced Phoenix to eat her own
9 vomit and stated Karl used to
10 shoot at Phoenix with a BB gun,
11 'just for fun'.

12 - Samantha stated that there was
13 blood on the basement floor where
14 Phoenix was found. She and Karl
15 cleaned the blood from the floor
16 and repainted it. She stated that
17 if anyone were ever to ask about
18 Phoenix's whereabouts, the story
19 they provided was that she had
20 gone to live with her father in
21 Ontario."

22

23 From your understanding of Samantha Kematch's statement, is
24 this an accurate summary?

25 A Yes.

1 Q When Karl McKay was first remanded into custody,
2 what was his original charge?

3 A Second degree murder at the time.

4 Q And what was Ms. Kematch's initial charge when
5 she was remanded into custody?

6 A It was aggravated assault. Those were the
7 serious charges that they, that they were charged with.

8 Q I understand that on March 15th, 2006, their
9 charges were both upgraded to first degree murder?

10 A Yes, after consultation with Mr. Rick Saull, then
11 Crown attorney prosecuting the case.

12 Q So that takes us through the arrest of
13 Ms. Kematch and Mr. McKay for Phoenix Sinclair's murder.
14 I'd now like to turn my attention and your attention to the
15 search for Phoenix's body and the discovery of the body.

16 When Mr. McKay and Samantha Kematch were
17 arrested, the body of Phoenix was still missing. I
18 understand you were involved in the investigation to locate
19 her body.

20 A Yes, I was.

21 MR. MASCARENHAS: If we could, please, while
22 we're on page 4078, if we could just scroll down to page
23 4079, Madam Clerk, or sorry, if we could go up a little bit
24 just at the bottom of the page there. Thank you.

25

1 BY MR. MASCARENHAS:

2 Q Where it says on March 11, 2006, it indicates
3 that,

4

5 "... investigators attended to the
6 area of the Fisher River dump with
7 the map Karl Wesley McKay had
8 drawn ..."

9

10 Did you have a chance to look at that map?

11 A I did, yes. I was a crude hand-drawn map for a
12 very large wooded area forest in central Manitoba.

13 Q And on that March 11th attempt to locate the body
14 based on that map, were you one of the investigators that
15 attended to the Fisher River dump?

16 A I was not, no. Members, officers with the RCMP
17 serious crimes unit were.

18 Q Now on March 17th, 2006, at the bottom of page
19 4078,

20

21 "... investigators attended
22 to Headingley Correctional
23 Institution ..."

24

25 If we can scroll down just to page 4079, Madam Clerk,

1 "... requesting McKay's
2 cooperation in locating the body
3 of Phoenix Sinclair. Karl McKay
4 agreed to accompany investigators
5 to Fisher River and show them
6 where he and Kematch had buried
7 Phoenix Sinclair."

8

9 Were you one of the investigators who, who attended to
10 Headingley and spoke to Mr. McKay?

11 A Yes, I was.

12 Q Were you by yourself or were you with others?

13 A I was with Corporal Norm Charette. He's a
14 sergeant now but Corporal Norm Charette was the officer who
15 initially interviewed Mr. McKay.

16 Q And it was just the two of you?

17 A Just the two of us, yes. And at that time I
18 clearly remember Headingley was having a little bit of a
19 riot again and we were in a very small room to conduct that
20 interview, it was a little bit difficult.

21 Q Now I understand just from reading the executive
22 summary, at the scene Mr. McKay provided a videotaped
23 re-enactment to investigators illustrating the actions of
24 the offence. Did you witness this re-enactment?

25 A Yes, I did. I was present.

1 Q Can you tell us, can you describe for us what the
2 re-enactment contained?

3 A Initially when we arrived at the location outside
4 of Fisher River, outside of the community of Fisher River
5 where, where Mr. McKay indicated that this had occurred, we
6 traveled into the, into the bush on snowmobile and we
7 walked through the snow up to our hips till we found a spot
8 in a little bit of a clearing and Mr. McKay, Karl McKay
9 said this is the spot here. He's judging by the, by the
10 trees and the lay of the land, so to speak, and then he
11 adjusted a little bit more and he said, no, actually this
12 is the spot right here and he put an X in the snow. And we
13 asked him if he was certain, he said he was. We traveled
14 back to our vehicles at the road. If my memory serves it
15 was maybe a kilometre, maybe a mile. I'm not too sure
16 exactly how far, it was quite a ways. And then we went
17 back in again and this time with a video camera and we
18 videotaped him describing how, how he and Samantha had
19 brought Phoenix to that location and the manner that they
20 had buried her which was under just very, it was a very
21 shallow grave and how her body was positioned, how we would
22 find her if we were to find her that way and what they did
23 to try to disguise her. They said that they had watched TV
24 shows and learned that if you put, could put pepper in
25 there that this would, you know, deter police dogs from

1 finding her. And I recall them, I recall a witness
2 describing this, saying that they were watching television
3 with Kematch and McKay afterwards and how Kematch and McKay
4 said well if I was going to get rid of a body, this is how
5 I would do it and I would put pepper in there. And sure
6 enough, McKay said that they had, they had put pepper in
7 there and that was Samantha's idea.

8 Q Sorry, did you find the body on that trip?

9 A That trip, no. The snow was up to our hips.

10 Q From looking at the executive summary, on
11 March 18th, 2006, it appears that investigators returned to
12 the site and removed snow from the site; is that correct?

13 A I wasn't part of the forensic excavation, that we
14 had forensic experts do that.

15 Q Were you at -- did you attend to the site that
16 day on March 18th though?

17 A On March -- I don't believe I did, no.

18 Q From reading the executive summary:

19

20 "A preliminary examination of the
21 scene revealed a small mound of
22 soil beneath the snow as well as
23 clear plastic protruding from the
24 ground. A body recovery team
25 consisting of the chief medical

1 examiner, RCMP forensic
2 identification unit, and RCMP
3 serious crimes investigators began
4 a search of the area. While
5 Phoenix Sinclair's body was not
6 discovered at the site, evidence
7 that she had been buried at that
8 location was uncovered. It was
9 apparent that the shallow grave
10 had been disturbed by animals.
11 Due to the depth of snow in the
12 wooded location, a search of the
13 surrounding area would resume when
14 the snow melted."

15

16 You were not present that day but as lead investigator did
17 you have knowledge of this occurring?

18 A Yes.

19 Q From the next paragraph, it's indicated that:

20

21 "The soil in the immediate area,
22 identified as the final resting
23 place of Phoenix Sinclair, was
24 transported to the Department of
25 Anthropology at the University of

1 Winnipeg. A team of
2 Anthropologists, with experience
3 in the recovery of human remains,
4 was assembled to sift through the
5 soil. During this process, bones
6 and flesh were recovered as well
7 as materials used to wrap
8 Phoenix's body at the time of her
9 death/burial."

10

11 In regards to those remains that were found, it
12 appears that on April 7th a DNA warrant was obtained and
13 investigators attended the Winnipeg Remand Centre and
14 obtained a sample of blood from Samantha Kematch. Did you
15 have any knowledge of this DNA test?

16 A Yes, I did. Yeah, this was the action that was
17 taken to try to determine if these remains, the remains
18 that we had, the remains that we later found and the
19 evidence that we found at the scene was being compared.
20 And also that we had a sample from Phoenix's birth seized,
21 a blood sample from a heel prick to make the match. We
22 made a number of different matches, attempts at making a
23 match.

24 Q And so you were aware that there was a positive
25 match between Ms. Kematch and the remains that were found

1 that day and Phoenix Sinclair's blood?

2 A Yes.

3 Q At that date were you aware if they found any
4 other evidence, either remains of Phoenix Sinclair or other
5 material?

6 A Not that I'm aware, no. Sorry, there was, yes,
7 there was a piece of plastic and raincoat like material.
8 That seemed to match the description that McKay and Kematch
9 said when they buried Phoenix that this was the material
10 they used to wrap her up, which in turn was consistent with
11 what DOE 1 and DOE 2 had described.

12 Q Did you personally return to the site to continue
13 the search for the body at any point?

14 A I did, yes. I returned later that spring when
15 the snow had melted with a, with a team of forensic experts
16 and a search party.

17 Q And when would that have been?

18 A That was on April, sorry, April 20th, 2006.

19 Q And you just indicated that the reason for the
20 delay from March to April 20th was because you were waiting
21 for the snow to melt.

22 A That, that sounds like this year, yes.

23 Q And you told us that you were involved in, you
24 went out with a team. Who, who comprised this team?

25 A The team consisted of a couple of forensic

1 anthropologists. Myra Sitchon is one that I recall. Myra
2 was with the Pickton investigation. So we had two forensic
3 anthropologists. We had forensic identification RCMP
4 investigators and we also had an RCMP search party.

5 Q At this time were you able to locate Phoenix's
6 remains?

7 A Yes, we did.

8 Q And were her remains intact?

9 A No, her remains had been disturbed by animals.
10 Her remains were removed from the shallow grave and they,
11 they weren't very far away if my memory serves me correct.
12 They were found, they were found in a little bit of a
13 clearing that I remember and not spread out a great
14 distance. They were more or less together. And we didn't
15 find all of her remains; we found most of her remains.

16 Q I also understand that you performed a forensic
17 search of the property in Fisher River where Phoenix was
18 reported to have been murdered.

19 A I didn't, but the RCMP investigative team did,
20 yes.

21 Q Were you able to find any blood on the basement
22 floor?

23 A No, the basement floor had been painted over and
24 we weren't able to corroborate that aspect, no. But the
25 basement floor, having been painted over, did, did

1 corroborate other statements where witnesses have said they
2 had purposely painted that floor over to hide, to hide the
3 blood.

4 Q Was that consistent with what you heard from
5 DOEs 1 and 2 and from Samantha Kematch's statement?

6 A That's correct, yes. We also found BB's outside
7 of the home. Our, our forensic identification experts or
8 ident people, with a metal detector, found BB's outside
9 near the home, against the home, so to speak.

10 Q And that is also consistent with testimony
11 you received from the DOEs in regards to the treatment
12 that --

13 A Yes, and a few other witnesses as well, like
14 Matthew McKay.

15 Q We now know that Phoenix was murdered on
16 June 11th, 2005 and that her remains were not discovered
17 until April 20th, 2006. Do you have any comments on why
18 the death went undiscovered for so long?

19 A Yes. This wasn't -- from a police perspective
20 this wasn't reported to us. We had no knowledge of this
21 young girl going missing. We didn't know until, until late
22 on March 6th it was reported to the police. And we did
23 manage to, in the course of about three days, we did manage
24 to, to essentially solve the case and have arrests and then
25 within a week after finding the location, was successful in

1 that aspect, but I guess the reason that this -- in my
2 opinion?

3 Q Yes.

4 A My perspective is that the mother and the father
5 -- as I mentioned earlier on about how the family is the
6 closest one to this child and then it spreads out as far as
7 the police and the courts. There were, there were -- the
8 mother and the father were very deceptive.

9 THE COMMISSIONER: You mean the mother and the --

10 THE WITNESS: The boyfriend, sorry.

11 THE COMMISSIONER: Yes.

12 THE WITNESS: Mother and the boyfriend, I
13 apologize for that, that's -- thank you. The mother and
14 the boyfriend were very deceptive and tricking, tricking
15 their family. They were moving around that caused
16 jurisdictional problems, that caused jurisdictional
17 problems obviously for, for the child welfare agencies, but
18 it also caused problems for the school when she was
19 registered for school and then not attending the school and
20 then they're moving again, that these things all compounded
21 and their deception and lying, lying to family, saying that
22 Phoenix Sinclair was off with her father in Ontario. That
23 was -- those, those all throw up roadblocks for anyone, not
24 just the police.

25

1 BY MR. MASCARENHAS:

2 Q We've also heard evidence in this inquiry about
3 children under the age of five being especially vulnerable.
4 In your role in the serious crimes unit, do you come across
5 missing children investigations regularly?

6 A Yes. And since that time I'm in our historical
7 case unit, I'm in our cold case unit now, and we have
8 Project Disappear in Manitoba and that is a long-term
9 missing persons initiative for all the police agencies,
10 that's through the Manitoba Association of Chiefs of
11 Police. Project Disappear comprises mostly of a public
12 website. Sorry?

13 Q Are there any particular challenges in keeping
14 track of a young child like Phoenix Sinclair?

15 A Yes. Challenges, the challenges lie with, the
16 challenges lie with the family taking the initiative for,
17 to take a child to a health centre so that, so that there's
18 documentation to be made. If a person wants to keep a
19 child from, from a clinic, if a person wants to not
20 register a child in school and then move around, like in
21 Phoenix's case, she'll get lost. And it becomes, from a
22 police perspective, it becomes very difficult to, to try
23 and go back through time, to try and go through different
24 jurisdictions of police going through different
25 jurisdictions of child welfare agencies and different

1 schools and then to try and gather records when you can't
2 get a search warrant if there's no offence and a missing
3 person is not a, is not a criminal case. There's not an
4 offence generally for missing persons investigations. So
5 to gather, to gather information you are really up against
6 it to do that.

7 The challenges -- a missing persons case is
8 extremely important. A missing, a missing person isn't
9 just well they're going to show up, you know, they'll show
10 up later or they usually do this sort of thing, you know,
11 especially Phoenix, she didn't just go off and start
12 something on her own obviously. Here she, you know she's
13 left at the mercy of everybody around her. So in those, in
14 those cases, if, if you're being deceptive and if people
15 aren't looking after, like the mother and the boyfriend
16 aren't looking after her and pulling her away from these
17 things, it will be very difficult for any investigative
18 agency to try and, to try and work back in time.

19 Q But like, but regardless of the deception by the
20 parents, you're able to -- you received the file on
21 March 7th, correct?

22 And by March 9th you had arrested both
23 Ms. Kematch and Mr. McKay, is that also correct?

24 So regardless of parental deception, you were
25 able to basically bring people into custody within 72 hours

1 of receiving the case.

2 THE COMMISSIONER: You have got to answer it.

3 THE WITNESS: Pardon?

4 THE COMMISSIONER: We don't get a nod.

5 MR. MASCARENHAS: Can we get a yes or no answer?

6 THE COMMISSIONER: You have to answer.

7 THE WITNESS: Sorry. Yes, yes, that's true.

8

9 BY MR. MASCARENHAS:

10 Q And you've been involved in other murder
11 investigations during your time at the serious crimes unit;
12 is that correct?

13 A Yes.

14 Q Do you have any comments in regards to how this
15 case compared to other cases?

16 A This case was, this case on a personal note, this
17 case was extremely, extremely difficult for everybody
18 involved. This case was extremely difficult for the police
19 on a personal level. This was extremely difficult for the
20 courts at the time, I remember. This case was very, very
21 difficult. This case really tugged at everybody. At the
22 same time, that's what drives you to want to solve a case
23 like that. That's what makes you want to get the answer
24 for something like this.

25 Q And you just mentioned that you remember it was

1 tough for the courts. I understand that you testified at
2 the criminal trial as well?

3 A I did, yes.

4 MR. MASCARENHAS: Those are all my questions for
5 the witness, Mr. Commissioner.

6 THE COMMISSIONER: Thank you, Mr. Mascarenhas.

7 Now will there be questions for this witness? If
8 they're going to be a while we'll take a break. If there's
9 not going to be, we'll ...

10 MR. GINDIN: I think the, I think the consensus
11 is that we have a short break.

12 THE COMMISSIONER: All right. Fifteen minutes?
13 Ten minutes? Fifteen minute break, try to hold it to that.
14 Thank you.

15

16 (BRIEF RECESS)

17

18 THE COMMISSIONER: Mr. Paul?

19 MR. PAUL: Thank you, Mr. Commissioner.

20

21 CROSS-EXAMINATION BY MR. PAUL:

22 Q It is Sacha Paul for the record. I'm one counsel
23 to Winnipeg Child and Family Services and the Department.
24 I just have a couple of questions for you. In terms of the

1 issue of the access to the sealed files, and correct me if
2 I'm wrong on this. My understanding of your notes is that
3 you ask an agency known as Cree Nation about accessing
4 sealed files?

5 A That's correct.

6 Q And they said no?

7 A Yes.

8 Q And that was the only agency that you asked for
9 files at that time and they said no at that time?

10 A On that date, yes.

11 Q Yeah. Then if I can move on to a final area that
12 my friend was asking you some questions about. My
13 understanding of your evidence is that it was your opinion
14 that Samantha Kematch and Wesley McKay were very deceptive,
15 correct?

16 A Correct.

17 Q And of course they were moving around from
18 jurisdiction to jurisdiction --

19 A Yes.

20 Q -- as I understand your evidence.

21 A Yes.

22 Q And as an investigator, that poses difficulties
23 in terms of trying to get to the bottom of things; is that
24 fair to say?

1 A For, for tracking them down, yes.

2 Q Right. And I think your comment would be was
3 that they were throwing up roadblocks to being found, if I
4 could put it that way.

5 A Yes, that's true, um-hum.

6 Q And those roadblocks would apply to someone like
7 you as an investigator?

8 A Yes, but we did find them.

9 Q Eventually yes, and we'll get to that. But those
10 roadblocks, nonetheless, posed a challenge for any
11 investigator, whether they're in the police system or the
12 child welfare system.

13 A They would, yes.

14 Q And my understanding then, again your evidence,
15 is that the RCMP moved quite swiftly in terms of moving
16 from a call into the ultimate arrest three days later.

17 A Yes.

18 Q Right. And the sole reason that the RCMP started
19 down the path of course was that you guys got a call about
20 a murder, correct?

21 A Yes.

22 Q And somewhat, I think you could fairly describe
23 as horrific abuse.

24 A Yes.

1 Q And so the very first call that's coming down
2 your door is a call about, again the notes aren't in front
3 of me, about a young child being murdered and being choked,
4 essentially tortured.

5 A Yes.

6 Q And that of course led to an immediate course of
7 action by the RCMP to go and investigate this and three
8 days later there is an arrest.

9 A Yes, what could be more high profile than that?

10 Q Right. And again, the sole reason that you start
11 down that process is because someone gave you a call that
12 there's an issue that you have to investigate.

13 A Yes.

14 Q Right.

15 MR. PAUL: Mr. Commissioner, those are my
16 questions.

17 THE COMMISSIONER: Thank you, Mr. Paul.

18 Mr. Gindin?

19

20 CROSS-EXAMINATION BY MR. GINDIN:

21 Q For the record, Jeff Gindin, representing Kim
22 Edwards and Steve Sinclair.

23 Just a couple of questions, Corporal. You
24 mentioned earlier the CPIC system.

1 A Yes.

2 Q Which is a way for you to search out the criminal
3 record, for example, of a particular individual.

4 A Yes.

5 Q And that's what you did here --

6 A Yes.

7 Q -- with respect to Wes McKay --

8 A Yes.

9 Q -- and came across a certain history that was
10 quite relevant to you, right?

11 A Yes.

12 Q Now has any agency like CFS or any other similar
13 agency ever called you or other RCMP members to ask about
14 checking someone's criminal record?

15 A They have, yes.

16 Q That does happen?

17 A It does happen, yes.

18 Q And when it does happen do you give them the
19 criminal record?

20 A We share that information with them. Our policy
21 is that we would like, that we require a written request.
22 If it's an urgent situation the written request could come
23 after, I suppose, but that's our policy that we would like
24 a written request and we will share that information with

1 them.

2 Q So if CFS would have called you at any time, by
3 you I mean the RCMP or the Winnipeg Police --

4 A I understand, yes.

5 Q -- and requesting the criminal record of someone
6 like Wes McKay or other people, that's something that is
7 shared with them?

8 A Yes.

9 Q That didn't happen in this case as far as you
10 know, prior to your investigation?

11 A No, not to my knowledge. I -- that would require
12 a search through the database of searches that were made.
13 But to my knowledge, no.

14 Q And it's a fairly easy process for you to check
15 out the criminal record of somebody fairly quick?

16 A Very quickly, yes.

17 THE COMMISSIONER: What does that mean?

18 THE WITNESS: I will just go on the computer. I
19 will go onto the icon for CPIC. I will enter the person's
20 name, date of birth, whatever information that I might have
21 about them. The more information, the more accurate that
22 it is, and basically I'll press the button and their
23 criminal record will show up, also any other court orders
24 and that sort of thing.

1 THE COMMISSIONER: What information on McKay did
2 you have to go in and get what you did get?

3 THE WITNESS: When I, when I did a search of
4 McKay on the system, I requested present court orders that
5 he might have, conditions, indicators of violence and that
6 sort of thing.

7 THE COMMISSIONER: Well, what did you have about
8 him?

9 THE WITNESS: I got his criminal record.

10 THE COMMISSIONER: No --

11 MR. GINDIN: I think the question was what
12 information did you have in the first place.

13 THE COMMISSIONER: What -- how, how -- did you
14 just have his name? Did you have date of birth? Did you
15 have residence? What, what did you put into the system
16 about him to get what you got?

17 THE WITNESS: I can't recall, but if I didn't
18 have all of the information, let's just say I just had his
19 name, Karl with a "K", Wesley McKay, it may come up with
20 five different individuals with similar or the same name
21 and it will give me a score. It will give me, like if he
22 has brown eyes and I know he has brown eyes and I enter in
23 brown eyes, it will be a higher score and a better chance
24 of a match. So I could, without a date of birth, without

1 any information, I could just enter in name and sex and I
2 can just enter that in there. The only criteria that I
3 absolutely must have is an approximate age. So if I put in
4 that he's 30 years old, I can get anywhere up to 40 or down
5 to 20, 10 years either way. If I get no hits I'll just
6 move the age around. But I don't need, I don't necessarily
7 need a date of birth to make the query.

8 THE COMMISSIONER: Do you know that when you made
9 this search whether this was the only Karl Wesley McKay's
10 name that came up?

11 THE WITNESS: No, I don't and at the time I don't
12 recall, sorry, Your Honour, what information I inputted
13 into CPIC to get that out, but the information I did get
14 back was, I knew that was Karl Wesley McKay, I did.

15 THE COMMISSIONER: Sorry, Mr. Gindin.

16 MR. GINDIN: That's fine.

17 THE COMMISSIONER: Go ahead.

18 THE WITNESS: What information was available to
19 me at the time, I'm sorry, I just don't remember what, what
20 information I had for date of birth and that sort of thing.

21

22 BY MR. GINDIN:

23 Q So you can't recall if you had the date of birth
24 at the time of your search?

1 A Sorry?

2 Q You can't recall if you had the date of birth at
3 the time of your search?

4 A Off the top of my head, no, sorry, I don't recall
5 what information I had.

6 Q Do you recall having any particular difficulty
7 locating the person you thought was Wes McKay?

8 A No, no difficulty at all. If I can recall from
9 my notebook, I think that it was probably a pretty, pretty
10 quick check.

11 Q Okay. Now you also told us that sometimes you
12 try and get a file from, or information on a file from CFS
13 and they refuse for privacy reasons, right?

14 A That can happen, yes.

15 Q That happens. Do you think from your experience
16 that that should be something that's easier for the police
17 to get?

18 A I would like to hope that all the information
19 that we would ask that we would be able to get. Should it
20 be easier? I think so, I think it should be easier. Now
21 the answer to that I don't know if it's having people more
22 aware or better trained or maybe some better communication
23 between the police and Child and Family Services or
24 whatever agency it might be, but I think in general that

1 all information should be better shared and easier to
2 access.

3 Q You told us that when you observed Samantha --

4 A Yes.

5 Q -- both around the time of her arrest and when
6 you were, whenever you made observations of her after
7 that --

8 A Yes.

9 Q -- that she appeared emotionally flat.

10 A That's correct, that's the best term that I could
11 forward to.

12 Q We heard evidence here that when Phoenix was born
13 on that very day or the next day, she was described to us
14 here by a social worker even then as emotionally ambivalent
15 towards the child.

16 A Yes.

17 Q Would you agree that that's an accurate
18 description five years later when you saw her?

19 A Yes, I do, and having read the investigation,
20 having conducted the investigation at the time, having read
21 the Child and Family Services reports and if I'm not
22 mistaken a report of a psychologist, consistently, everyone
23 says the same thing about her, yes.

24 Q And that's what you noticed as well?

1 A I noticed that in the two hours, I believe it
2 was, that I interviewed her. It was consistently that way.

3 Q And this was after Phoenix's death?

4 A That's right, yes.

5 Q Now just one other thing. I was looking at your
6 notes and I noticed that there was something there about
7 you making a call to Chris Zalevich, who is a social
8 worker --

9 A Yes.

10 Q -- I believe on the basis that he would have been
11 one of the last social workers to have dealt with this file
12 before it was closed, correct?

13 A Yes, I'm familiar with that, yes.

14 Q Now did you get a response?

15 A I noted in my notebook at March 7th, 2:30 p.m., I
16 call -- sorry, his name?

17 Q Chris Zalevich, is that --

18 A Zalevich?

19 Q Yes.

20 A Zalevich, but there was no answer and at that
21 time within 10 minutes I had learned that welfare, Child
22 and Family -- sorry, not Child and Family Services but
23 welfare assistance had a record of Phoenix Sinclair. That
24 was the time the investigation shifted away from getting

1 the information from Child and Family Services and going
2 down the avenue of utilizing welfare to locate her.

3 Q I see. So --

4 A But I didn't get a call from him. I don't
5 recall, and I didn't note if I left him a message though.

6 Q Okay. But likely you would have left him a
7 message to call you back, I would think.

8 A It was pretty important at the time that I, I did
9 determine that obviously from this investigation, but I
10 would only have to speculate that I would have left him a
11 message, sorry.

12 Q Yeah. But there's no notes about him having
13 called you back?

14 A No, I have no record of him calling back and I
15 have no recollection of that.

16 Q You were talking about these roadblocks that seem
17 to have been put up, making things more difficult. Some of
18 them, of course, were put up after the death, right, as in
19 pretending someone else was Phoenix and that kind of thing?

20 A Yes, yes.

21 MR. GINDIN: Okay. Those are my questions.
22 Thank you.

23 THE COMMISSIONER: Thank you, Mr. Gindin.

24 THE WITNESS: Thank you.

1 THE COMMISSIONER: Mr. Khan?

2 MR. RAY: I'm sorry. Just have a moment,
3 Mr. Commissioner?

4 THE COMMISSIONER: Yes.

5 MR. RAY: Thank you.

6 MR. PAUL: Mr. Commissioner, I know this is
7 unusual but there was some questions and answers arising
8 from Mr. Gindin's cross-examination. I'd like to ask
9 something arising out of that if it doesn't trouble this
10 commission at all.

11 THE COMMISSIONER: Well, I certainly want to get
12 all of the facts out fairly.

13 MR. GINDIN: I have no problem with it, if that
14 matters.

15 THE COMMISSIONER: That was my concern. If you
16 have no problem, I have no problem. Please proceed.

17 MR. PAUL: Okay, thank you. Sorry, again for the
18 record, Sacha Paul.

19

20 CROSS-EXAMINATION BY MR. PAUL:

21 Q My friend, Mr. Gindin, was asking some questions
22 about CPIC and how that, that worked.

23 A Yes.

24 THE COMMISSIONER: About how what, CFSIS?

1 MR. PAUL: CPIC, sorry.

2 THE COMMISSIONER: CPIC, yes, CPIC.

3

4 BY MR. PAUL:

5 Q I'm not sure what CPIC stands for again.

6 A Canadian Police Information Centre, it's our
7 database.

8 THE COMMISSIONER: I've heard about it for years.

9 MR. PAUL: Unfortunately I'm new to this system.

10

11 BY MR. PAUL:

12 Q Correct me if I'm wrong, but my understanding was
13 that you ran this CPIC search on the 8th, is it?

14 A March 8th, 8:40 a.m.

15 Q Okay. And that would have been the day after you
16 interviewed I think the various DOEs 1, 2 and 3; is that
17 correct?

18 A That's correct.

19 Q Is it possible you could have got the date of
20 birth of Wes McKay from one or more of the DOEs?

21 A It's, it's possible or it's also possible that I
22 could have received that from the Winnipeg Police Service
23 report at that time.

24 Q Okay.

1 MR. PAUL: Sorry, Mr. Commissioner, those are all
2 my questions and I appreciate it. Thank you.

3

4 CROSS-EXAMINATION BY MR. KHAN:

5 Q Corporal Baker, my name is Hafeez Khan, I'm
6 counsel for Intertribal Child and Family Services. And
7 just so things are clear, during your investigations was
8 Intertribal, did Intertribal hold back any information?

9 A Not, not that I knew of, no.

10 Q Were they cooperative with you?

11 A Yes, Randy Murdock, I believe, was his name, he
12 was, he was cooperative, yes.

13 Q Okay, thank you. And just so that the
14 commissioner's clear with respect to access information,
15 Mr. Gindin asked you and you clarified that if CFSIS,
16 sorry, if a social worker would have called you and asked
17 for information on someone's record, you'd be prepared to
18 provide, you'd be prepared to provide it, correct?

19 A Yes.

20 Q But just so the commissioner's -- my
21 understanding of, of other information such as
22 investigative notes and so on, that does require a court
23 order to obtain because there may be redactions required;
24 is that correct? Or are you able to speak to that?

1 A I could. So if Child and Family Services is
2 requesting?

3 Q The file.

4 A From the police?

5 Q Yes.

6 A It depends on the circumstances. If somebody
7 would need some specific information from, from an
8 occurrence, because CPIC, CPIC is not an occurrence
9 registry, that, we have a different system for that. All
10 police forces have their own proprietary system,
11 proprietary system for occurrences, if there's an alarm at
12 somebody's house, the details of the alarm; if there was a
13 fight, the details of a fight. Those, those are an
14 occurrence system, that is not on CPIC, that is not. If
15 somebody wanted information about there's a person who is
16 involved in a fight in a house, that would not be on CPIC,
17 that would be on our occurrence system and we, we can
18 provide that information without a court order as well to,
19 to a like-minded investigative agency. Our policy says
20 that we can provide information, not just from CPIC but we
21 can provide information from, from our databases, from our
22 investigations to like-minded investigators, like-minded
23 agencies. We just need a written request.

24 Q And the only reason I ask you is I do regular

1 work for, regular CFS work and my understanding is that if
2 I do want the actual file, a court order is required.

3 A If you would like -- let's just say you would
4 require, can I have the entire investigation for the Smith
5 file and now you're not asking for specific particulars of
6 an investigation --

7 Q I'll give you an example.

8 A -- like the whole file.

9 Q I'll give you an example. So there's Mr. Smith,
10 there's a trial coming forth, coming ahead. A request is
11 made for Mr. Smith's file with the RCMP. My understanding
12 is that a court order is required in part because there are
13 redaction issues that may arise.

14 A Yes, okay. Okay, if you would like the
15 information that the police have on Mr. Smith from our
16 databases, then you -- now is this a like-minded
17 investigator for like-minded investigation? For example,
18 is it a Child and Family Services investigator for, for a
19 child abuse investigation wanting to know about Mr. Smith.
20 I will provide whatever information that I determine is
21 relevant for Child and Family Services investigators. But
22 if a Child and Family Services investigator says I'm
23 thinking of putting, placing a child in a residence and
24 Mr. Smith resides there, can you give me all the

1 information on Mr. Smith. Well I can give you this
2 information that I determine is relevant, but if you want
3 all the information on Mr. Smith, whether, even if it's not
4 relevant, then you'll have to make an access to information
5 request and that would be through the Privacy Act request
6 through the federal government, but it's not a court
7 understanding is my understanding.

8 Q I understand, but again, the example I'm giving
9 you is where the parent, we're seeking information on a
10 parent where there's a child protection concern --

11 A Sorry?

12 Q On a parent where there's a child protection
13 concern, that's what I'm referring to, not, not to a third
14 party of any sort. So you're saying that that information
15 is, all that information is provided without a court order?

16 A Yes, if it's relevant and it's for an
17 investigative agency such as Child and Family Services for
18 the investigation, they will explain what it is to us, we
19 will provide that information without a court order, yes.

20 Q Okay, thank you. That's not, that's not my
21 experience but thank you very much.

22 A I understand. And now, I'm just going to mention
23 this too. For -- when I was explaining about us having
24 difficulty getting information, access to information, I

1 can, I can understand that there may be circumstances too
2 where you may ask for information from a police officer and
3 they may be equally inclined to say no because no is maybe
4 the easier thing to do, so I can understand, I can
5 understand what you're saying. For me, my experience, and
6 children are the most important people that we have and we
7 have to do the best we can to protect them and the policies
8 that we have are not policies to say no, they're policies
9 to guideline, policies or guidelines to help us do things,
10 to help us share that information. I would share, if
11 you're asking me, sorry --

12 Q Thank you.

13 A -- I would share that information.

14 Q Thank you, that's very helpful.

15 A That's just my experience.

16 Q Thank you very much.

17 MR. KHAN: Thank you, Mr. Commissioner.

18 THE COMMISSIONER: Thanks, Mr. Khan.

19 Anybody else before I ask Mr. Katz? Mr. Ray?

20 MR. RAY: I'm just confirming one thing,

21 Mr. Commissioner --

22 THE COMMISSIONER: All right.

23 MR. RAY: -- if I may.

24 THE COMMISSIONER: Take your time. Please.

1 MS. BOWLEY: Mr. Commissioner, it's Bernice
2 Bowley and --

3 THE COMMISSIONER: Yes.

4 MS. BOWLEY: -- as a lawyer for a witness I would
5 like to ask this witness a few questions.

6 THE COMMISSIONER: Who's your client?

7 MS. BOWLEY: Diva Faria.

8 THE COMMISSIONER: Yes.

9

10 CROSS-EXAMINATION BY MS. BOWLEY:

11 Q Now, Corporal Baker, you were the lead on the
12 team that investigated the missing person and/or homicide
13 of Phoenix Sinclair?

14 A Yes, yes.

15 Q And you elicited the assistance of the two EIA
16 provincial investigators as well?

17 A Yes.

18 Q How many other RCMP officers did you have on your
19 team --

20 A Throughout?

21 Q -- to work on this investigation with you?

22 A Oh we had many, many. I don't know how many for
23 sure but at that time that I enlisted the assistance of the
24 EIA investigators, three RCMP investigators at that time.

1 It was growing day by day.

2 Q In the first three days how many RCMP
3 investigators did you have?

4 A By the, by the end of three days or the start of
5 three days?

6 Q Just prior to making the arrests.

7 A Just prior to making the arrest, my -- only a
8 guess, only a guess, 25, only a guess.

9 Q Thank you. And in that 72, the first 72 hour
10 period, would you have devoted much of your working time to
11 the Phoenix Sinclair case?

12 A Yes, myself, that's what, that's what I did
13 during that 72 hour period.

14 Q So you concentrated solely on that case in the
15 first 72 hours?

16 A Absolutely, that was so important, yes.

17 Q And many of your team members concentrated solely
18 on that case in the first 72 hours?

19 A And we focused more so -- they, they became more
20 and more involved, yes.

21 Q And your investigation initiated as a result of
22 your interviews of DOEs 2 and then 1, correct?

23 A Yes.

24 Q And as a result of those interviews, you had a

1 direct account from witnesses, correct?

2 A Yes.

3 Q An eyewitness account from witnesses to the abuse
4 and the murder?

5 A Yes.

6 Q And as a result of those direct eyewitnesses'
7 accounts, you took the steps that you described in the
8 first 72 hours to then make those arrests.

9 A Yes.

10 Q Thank you.

11 MS. BOWLEY: Mr. Commissioner, that's all that I
12 have for this witness.

13 THE COMMISSIONER: Thank you, counsel.

14 Now is there -- Mr. Ray?

15 MR. RAY: No thank you, Mr. Commissioner.

16 THE COMMISSIONER: All right. So Mr. Katz?

17

18 CROSS-EXAMINATION BY MR. KATZ:

19 Q Yes, I do want to clarify one point, if I could
20 Corporal Baker.

21 A Yes.

22 Q Mr. Khan was asking you about obtaining
23 cooperation and sharing police information --

1 A Yes.

2 Q -- with investigative agencies. If I understood
3 your answer correctly, and maybe I didn't and correct me if
4 I didn't, you were talking about sharing that information
5 with an investigative agency for an investigative purpose.

6 A That's correct.

7 Q Okay. Can you imagine other contexts where the
8 request for that kind of information, the preference might
9 be for the party seeking it to get a court order?

10 A To get a court order from the police?

11 Q Yeah. I'll give you an example.

12 A Yes, if they're a non-investigative agency.

13 Q For example, there's an ongoing, say there's an
14 ongoing child protection proceeding in the court or a
15 family law proceeding in the court and one of the parties
16 to such a proceeding wanted information from the RCMP about
17 somebody involved in the matter.

18 A And one of the parties would not be an
19 investigative agency?

20 Q Or for an investigative purpose outside of that
21 hearing.

22 A Yes.

23 Q Your answer is yes, you --

24 A Yes.

1 Q -- the preference would be to seek a production
2 order?

3 A Yes, if it's -- sorry. As you, as you described
4 in the court process if one of the parties was requesting
5 police information for the purposes of court --

6 Q Yes.

7 A -- and that to me is for court, the investigation
8 has already been completed, it's for court purposes --

9 Q Yes.

10 A -- that's different I think.

11 Q So again, just to clarify, you can imagine
12 circumstances where the information simply wouldn't be
13 handed over subject to a request.

14 A Yes, I know. I don't, I don't know necessarily
15 about a court order. My understanding and experience is
16 it's been an access to information request and they
17 would -- that's been my experience. Now if it comes to a
18 court order it doesn't come across my desk at my, at my
19 level. It comes across my desk as I've been told now that
20 I will get the information and redact what there is in that
21 information and forward it to our privacy people to send
22 that information. So if a court order is drafted, I won't
23 know about a court order. If there's a decision to be made
24 at a level as you described, I wouldn't make that decision.

1 My decisions are made by like-minded investigators. If a
2 Child and Family Services investigator wants information
3 I'll ask why. If it's for an investigation and it's
4 appropriate, I will give them that information on a written
5 request. For court purposes, that would probably, in my
6 experience with the RCMP, that would probably go to another
7 level above me if it's, if it's for that. I'm sorry, I
8 can't answer that as --

9 Q All you can do is answer the best, to the best of
10 your ability.

11 MR. KATZ: That's the only question I have.
12 Thank you, Mr. Commissioner.

13 THE COMMISSIONER: Thank you, Mr. Katz.
14 Counsel?

15 MR. MASCARENHAS: Mr. Commissioner, I have just a
16 couple of brief points for the witness in re-examination.

17 THE COMMISSIONER: Right.

18

19 RE-EXAMINATION BY MR. MASCARENHAS:

20 Q Corporal Baker, your evidence was that in regards
21 to parents in deceiving the system by moving, they
22 sometimes move from jurisdiction to jurisdiction.

23 A Yes.

24 Q And I understand that as lead investigator you

1 did have access, at least a file review of Phoenix's file
2 as well in CFS care.

3 A Access to a file review of --

4 Q A summary of -- you were aware of the basics of
5 Phoenix's life?

6 A Yes.

7 Q And would you agree with the statement that
8 Phoenix lived in Winnipeg from her birth until April of
9 2005?

10 A Yes.

11 Q And from there she moved to Fisher River until
12 she was murdered?

13 A Yes.

14 Q So she only lived in Winnipeg and Fisher River?

15 A And Steinbach, if I'm not mistaken, early in her
16 life.

17 Q When she was first apprehended?

18 A Yes, sorry.

19 Q Thank you. The second point I wanted to clarify
20 with you is I believe you told Mr. Gindin that welfare or
21 EIA had a record of Phoenix. What did you -- what record
22 were you referring to when you said that?

23 A That welfare had a record of Phoenix, I was
24 referring to the application that McKay and Kematch had

1 made to provincial welfare for, for assistance for their
2 family and they received assistance for Phoenix Sinclair.

3 Q That was the application to add Phoenix Sinclair
4 as a dependant --

5 A Yes.

6 Q -- to Mr. McKay's file?

7 A Yes, that's the one.

8 Q And how did this information form your
9 investigation?

10 A Pardon me?

11 Q How did the information, this application, inform
12 your application?

13 A Inform our investigation?

14 Q Yes.

15 A It led actually to the possibility that Phoenix
16 Sinclair maybe still there. It led to the possibility that
17 either she was, I guess remote chance that maybe she was
18 still alive but it also, it also led to the conclusion
19 ultimately that they were, through deceit they were -- how
20 to describe it, sorry. I'll just have to say, I guess,
21 that it led to the conclusion that she may still be alive
22 and that the parents were, they were being greedy for the
23 money.

24 Q Thank you.

1 A That's, that's my personal thought at the time
2 and that's what, that's what they were doing.

3 Q Thank you. Those are all my questions.

4 A And I will mention, sorry, one more thing that in
5 the landlord agreement, the tenant landlord agreement they
6 initially wrote down that they had three children and then
7 they changed it two children, that they were, they were
8 covering their tracks when they were moving around. There
9 was some deceit there.

10 Q Thank you.

11 MR. MASCARENHAS: Those are all my questions,
12 Mr. Commissioner.

13 THE COMMISSIONER: Thanks, Mr. Mascarenhas.

14 Well, witness, that completes your time on the
15 stand. Thank you very much --

16 THE WITNESS: Thank you.

17 THE COMMISSIONER: -- for your assistance to the
18 inquiry.

19 THE WITNESS: Thank you, Mr. Commissioner.

20 MR. MASCARENHAS: Mr. Commissioner, I believe
21 that's our only witness today and we will have more
22 witnesses on Monday.

23 THE COMMISSIONER: All right. I want to just
24 take a look at now -- you can leave the stand, witness, at

1 any time.

2 THE WITNESS: Thank you, Mr. Commissioner.

3

4 (WITNESS EXCUSED)

5

6 THE COMMISSIONER: Next week we'll be into
7 phase 2.

8 MR. MASCARENHAS: Not immediately but yes, by
9 some point next week.

10 THE COMMISSIONER: Yes, by the middle of the
11 week. Now I see that, that a number of the parties with
12 standing have days designated to them. Do I assume that in
13 those days they will be calling the evidence?

14 MS. WALSH: Yes, Mr. Commissioner, I will address
15 that at the outset of phase 2 exactly how phase 2 is going
16 to be proceeding.

17 THE COMMISSIONER: Yeah, my only concern is that,
18 that I know some of the witnesses in phase 3 are coming
19 from a distance and I want to be sure that we go through
20 phase 2 hopefully in accordance with the timetable, so
21 that's why I'm asking you have those dates been agreed upon
22 by the various parties that have standing that have days
23 allotted to them?

24 MS. WALSH: Yes, they have. I have discussed

1 with the various parties to whom I've given an opportunity
2 to lead their own evidence that in budgeting their time
3 they have to factor in time for questions from other
4 parties and intervenors where allowed. But it's a good
5 point and, yes, we're definitely sticking to our schedule.

6 THE COMMISSIONER: Well, if, if -- I notice that
7 there is one day's break, is there not, when -- yes, the
8 15th of May, if we needed an extra day.

9 MS. WALSH: And actually as we speak, I think
10 Ms. Ewatski at our office is scheduling some witnesses for
11 that day who -- the schedule is being revised as we speak
12 and counsel will be anxiously looking for it, but the
13 actual days that we're sitting haven't changed, the number
14 of days.

15 THE COMMISSIONER: And will those, for instance
16 the Southern Authority and the General Authority and the
17 Assembly of Chiefs and the Union and the Department, will
18 their counsel be leading the witnesses?

19 MS. WALSH: Yes, yes.

20 THE COMMISSIONER: Well and you've discussed the
21 timeframe and everything with them?

22 MS. WALSH: Yes.

23 THE COMMISSIONER: All right. That was my
24 concern that we try to -- when we're going into a different

1 phase we try to hold to the schedule for the convenience of
2 everybody.

3 MS. WALSH: Thank you.

4 THE COMMISSIONER: All right. Anything else
5 today? If not, we stand adjourned until 9:30 on Monday
6 morning. We'll be in this building but somewhere else, I'm
7 told.

8 MS. WALSH: I think in the lower level.

9 THE COMMISSIONER: Lower level, all right. We're
10 adjourned now.

11 (PROCEEDINGS ADJOURNED TO APRIL 22, 2013)