

IN THE MATTER OF:

Commission of Inquiry into the Circumstances
Surrounding the Death of Phoenix Sinclair

CROSS-EXAMINATION OF: CECIL ROSNER

CROSS-EXAMINED BY: MS. JANET JARDINE and
MR. KRIS SAXBERG

EXAMINATION DATE: MAY 28TH, A.D. 2012

ORIGINAL

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Cross-Examination on Affidavit, viva voce upon oath, of **CECIL ROSNER**, had and taken by Colleen McFall, a duly sworn Official Examiner in and for the Province of Manitoba, at the law offices of Aikins, 30th Floor - 360 Main Street, in the City of Winnipeg, in the Province of Manitoba, on Monday, May 28th, A.D. 2010, commencing at the hour of 10:00 o'clock in the forenoon.

APPEARANCES:

For the Media Group	Mr. Jonathan Kroft and Ms. Bailey Chisick Aikins 30th Floor - 360 Main Street Winnipeg, MB R3C 4G1
For Intertribal Child and Family Services	Ms. Janet Jardine and Mr. Hafeez Khan Booth Dennehy LLP 387 Broadway Winnipeg, MB R3C 0V5
For CFS General, North, South, ANCR	Mr. Kris Saxberg and Mr. Luke Bernas D'Arcy & Deacon LLP 2200 - One Lombard Place Winnipeg, MB R3B 0X7
For Kim Edwards and Steve Sinclair	Mr. Jeffrey Gindin and Mr. David Ireland Gindin, Wolson, Simmonds, Roitenberg 1200 - 363 Broadway Winnipeg, MB R3C 3N9

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<p>Page 1</p> <p>1 MONDAY, MAY 28TH, A.D. 2012</p> <p>2 (Upon commencing at 10:00 a.m.)</p> <p>3 CECIL ROSNER, Sworn</p> <p>4 EXAMINED BY MS. JARDINE:</p> <p>5 1. Q Mr. Rosner, before we start I have a few</p> <p>6 questions that I'm going to direct towards your</p> <p>7 counsel just to sort of truncate matters a little</p> <p>8 bit. Mr. Kroft, can you confirm, please, who it</p> <p>9 is that you represent in relation to this motion?</p> <p>10 MR. KROFT: Yes. I represent CBC, CTV, Global</p> <p>11 and the Winnipeg Free Press.</p> <p>12 MS. JARDINE: And at one point in time you</p> <p>13 represented The Sun as well?</p> <p>14 MR. KROFT: I did.</p> <p>15 MS. JARDINE: And no longer?</p> <p>16 MR. KROFT: And they decided not to</p> <p>17 participate any further, yes.</p> <p>18 MS. JARDINE: Do your clients agree to be</p> <p>19 bound by any order made as a result of this motion?</p> <p>20 MR. KROFT: My clients will be bound to the</p> <p>21 extent that the order covers them, has jurisdiction, but I'm</p> <p>22 not sure I'm taking a position beyond that because I don't</p> <p>23 know what the order is. If it's an order outside</p> <p>24 jurisdiction, I wouldn't be bound I suppose. I'm not sure</p> <p>25 what you mean.</p> <p>Page 2</p> <p>1 MS. JARDINE: But at present you're not making</p> <p>2 any jurisdictional challenges to the authority, the</p> <p>3 Commissioner, to make this order?</p> <p>4 MR. KROFT: No.</p> <p>5 MS. JARDINE: And do you know of the</p> <p>6 intentions of The Sun regarding being bound by any order</p> <p>7 that's made?</p> <p>8 MR. KROFT: No.</p> <p>9 MS. JARDINE: And your client isn't being</p> <p>10 produced today as an expert, or is he?</p> <p>11 MR. KROFT: He has not given any opinions in</p> <p>12 his Affidavit, unless you take issue with that, I don't</p> <p>13 think he did, so that issue hasn't come up.</p> <p>14 MS. JARDINE: All right, so in answer to the</p> <p>15 question, he's not --</p> <p>16 MR. KROFT: Well, I don't think the issue</p> <p>17 comes up. I believe I could qualify him as an expert in</p> <p>18 journalism should that be required, but he hasn't given any</p> <p>19 opinion evidence, so that doesn't come up, so I haven't</p> <p>20 tried to qualify him.</p> <p>21 MS. JARDINE: Okay. I guess I'm just asking</p> <p>22 in the course of this examination if he feels the need to</p> <p>23 give an opinion, will you then be putting him forward as an</p> <p>24 expert?</p> <p>25 MR. KROFT: Well, that will be your choice and</p>	<p>Page 3</p> <p>1 if you ask him for an opinion, you'll have to live with the</p> <p>2 consequences.</p> <p>3 MS. JARDINE: I have no intention of asking</p> <p>4 him, I'm just saying in the course of his answers if he</p> <p>5 chooses to give one.</p> <p>6 MR. KROFT: I have not led expert evidence</p> <p>7 from this witness.</p> <p>8 MS. JARDINE: Okay. And his answers are meant</p> <p>9 to be binding on all of your clients that are participating</p> <p>10 in this motion, then?</p> <p>11 MR. KROFT: This is a cross-examination on an</p> <p>12 Affidavit, not a discovery, and his answers will be evidence</p> <p>13 in -- the matter involves all -- as I understand it, your</p> <p>14 application would apply to all media.</p> <p>15 MS. JARDINE: Yes.</p> <p>16 MR. KROFT: And I have a representative group.</p> <p>17 But I'm not sure the question really fits with a cross-</p> <p>18 examination.</p> <p>19 MS. JARDINE: His evidence is being put</p> <p>20 forward on behalf of the Media Group? You haven't put</p> <p>21 forward any other Media representative evidence. So that's</p> <p>22 why I was asking; is his evidence meant to be representative</p> <p>23 of the Media evidence in relation to this motion?</p> <p>24 MR. KROFT: He's a witness in this matter that</p> <p>25 we have called. He's not representing any organization,</p> <p>Page 4</p> <p>1 he's --</p> <p>2 MS. JARDINE: He's not representing the CBC?</p> <p>3 MR. KROFT: Well, he's a witness. This isn't</p> <p>4 an examination for discovery, it's a cross-examination. I'm</p> <p>5 not sure what your question is.</p> <p>6 MS. JARDINE: He's here as a representative of</p> <p>7 one of the parties; CBC?</p> <p>8 MR. KROFT: Well, he works for CBC, yes.</p> <p>9 BY MS. JARDINE:</p> <p>10 2. Q Now, let's look at your Affidavit if we</p> <p>11 could, please, Mr. Rosner. In paragraph two you</p> <p>12 make reference to the fact that you've been</p> <p>13 involved in a number of inquests and inquiries.</p> <p>14 Could you tell us how many you've been involved in</p> <p>15 covering?</p> <p>16 A I haven't counted them up. I've been in a</p> <p>17 supervisory role at CBC for close to twenty years,</p> <p>18 so there have been quite a few inquiries and</p> <p>19 inquests over the period of that time that I would</p> <p>20 have involvement in.</p> <p>21 3. Q Right. I'm just trying to narrow down those</p> <p>22 numbers. Are we talking about tens? Hundreds?</p> <p>23 A I don't think it would be hundreds.</p> <p>24 4. Q So somewhere between ten and a hundred?</p> <p>25 A Sure.</p>
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1 5. Q In paragraphs six to eight you reference
2 three inquests involving children. And those were
3 all inquests, not inquiries; correct?

4 A That's right.

5 6. Q And were there any publication bans applied
6 for in those inquests to your knowledge?

7 A Not with respect to professional witnesses.
8 There may have been other publication bans with
9 respect to other matters, but with respect to
10 professional witnesses, that's not my
11 understanding.

12 7. Q That wasn't my understanding either, so I'm
13 glad you confirmed that. And in fact in the
14 Tracia Owen's matter that you reference in
15 paragraph eight, the media made an application in
16 which they sought to have some sealed documents
17 unsealed; correct?

18 A That's right.

19 8. Q And that was not successful all the way to
20 the Court of Appeal level; correct?

21 A I think you're right.

22 9. Q And I also understand that after that
23 application was lost at the Court of Appeal level,
24 that the media never showed up again at the Tracia
25 Owen's inquest. Do you know anything about that?

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1 A Not specifically.

2 10. Q Do you know whether or not CBC did any
3 further coverage of the Tracia Owen inquest after
4 that time?

5 A I don't recall.

6 11. Q So you can't say one way or the other?

7 A No.

8 12. Q Do you have any examples or excerpts of
9 articles where you can show that social workers'
10 names were published in any of those three cases?

11 A I don't have any with me right now. I've
12 certainly reviewed a number of these cases. There
13 have been examples of that.

14 13. Q Where social workers' names were reported in
15 the media?

16 A Yes.

17 14. Q And why didn't you attach those to your
18 Affidavit?

19 A Well, we attached the mandates and in some
20 cases the actual reports of the inquests which
21 were public documents.

22 15. Q Right, but you know this isn't about public
23 reports of inquest judges, this is about
24 publication in the media.

25 A Right.

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1 16. Q So I'm asking you why didn't you choose to
2 put in, if you had examples, of instances where
3 social workers' names had been published in
4 relation to these inquests?

5 MR. KROFT: I object to that question.

6 BY MS. JARDINE:

7 17. Q Why didn't you put them in? On what grounds?

8 MR. KROFT: On the grounds that it's
9 irrelevant and he hasn't led it. If you want to ask him
10 about the questions you can, but are you suggesting he had
11 some obligation to swear to things other than he's sworn to?

12 MS. JARDINE: No, I'm suggesting that if
13 someone is putting forward their best evidence as you would
14 think they would in the circumstances, he would, if he had
15 evidence to that effect, he would have attached it. It's a
16 legitimate question, why didn't he.

17 MR. KROFT: The answer is because we helped
18 him draft the Affidavit. And he clearly knows more than we
19 did when he drafted it.

20 MS. JARDINE: I'm sorry, I don't understand
21 that. He knows more than you did when he drafted it?

22 MR. KROFT: About some of the media coverage.

23 MS. JARDINE: So you're saying he didn't share
24 that?

25 MR. KROFT: I'm not saying anything other than

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1 that we drafted the Affidavit.

2 BY MS. JARDINE:

3 18. Q Okay. So in answer to my question, then, why
4 didn't you draw that information forward to put in
5 your Affidavit?

6 A I thought it was sufficient to show that
7 here's the report of an inquest, a public
8 document, and that would demonstrate that there
9 was no publication ban. The report was released,
10 it was public, it was free for anybody to report
11 or not report.

12 19. Q Okay, but getting back to my earlier
13 questions, there were no publication bans sought
14 in those relating to the professionals; correct?

15 A That's my understanding.

16 20. Q So the fact that there was no publication
17 bans in relation to this isn't a surprise if
18 nobody sought one; correct?

19 A Okay.

20 21. Q They're not just granted without somebody
21 seeking them; correct?

22 A That's my understanding.

23 22. Q And what you did attach, if we can look at
24 your attachment at Exhibit A, for example, isn't
25 the report itself, but it looks like an index and

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1 table of contents.
2 MR. KROFT: We have the report. It was just a
3 matter of volume. If you'd like to mark it, you can use our
4 copy.
5 MS. JARDINE: No thanks, I'm just going on the
6 basis of what's in his Affidavit.
7 BY MS. JARDINE:
8 23. Q And the report, excerpt that you have
9 attached from what I can tell references the name
10 of one case worker, Ron Overland, and we don't
11 know whether or not he was the case worker
12 directly involved in the care or if he was there
13 in some other capacity based on what you've
14 attached, do we? We can't tell from looking at
15 Exhibit A what kind of evidence Overland gave?
16 A That's why Mr. Kroft is offering to provide
17 you with the full report.
18 24. Q I appreciate that, but I'm not here to cross-
19 examine on evidence I haven't had an opportunity
20 to review in advance because it wasn't included in
21 your Affidavit. I'm here to cross-examine on what
22 is included in your Affidavit and what is before
23 the Commissioner. And this is what you chose to
24 put before the Commissioner. I'm saying to you
25 Exhibit A doesn't give us an indication, does it,

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1 of what kind of evidence that case worker gave?
2 A You are right.
3 25. Q Do you know what, if any, consequences were
4 suffered by any of the social workers that were
5 named as witnesses in Judge Conner's report?
6 A No.
7 26. Q And at paragraph seven you make reference to
8 the Patrick Redhead inquest. And you attached
9 that report in its entirety at Tab B, also a very
10 lengthy two hundred and forty some odd page
11 report. And I'd ask you to flip to page 13 of
12 that report, please. Have you got it, Mr. Rosner?
13 A Yes.
14 27. Q If you look at the second paragraph starting
15 with "the reason for this leave of absence"; do
16 you see that paragraph?
17 A Yes.
18 28. Q So in that paragraph Judge Giesbrecht who was
19 the holder of the inquest indicates that there was
20 in camera evidence given that ought not to be
21 disclosed in the report and one of the reasons
22 that she states is in the last part of that
23 paragraph where she says it's not in the public
24 interest to disclose that in camera evidence. So
25 at least in this case we know that there was a

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1 circumstance under which the holder of the inquest
2 determined certain evidence ought not to be
3 published; correct?
4 A Yes, my reading of that is that the issue
5 related to a matter not directly pertinent to the
6 inquest.
7 29. Q That was one of the reasons she indicated,
8 but she also indicated that it wasn't in the
9 public interest to disclose that evidence;
10 correct?
11 A Correct.
12 30. Q And again do you know of any consequences or
13 effects on any of the social workers that are
14 named in that report?
15 A No.
16 31. Q In paragraph eight you talk about the Tracia
17 Owen matter which again was another inquest. And
18 in fact, there has never been an inquiry before in
19 Manitoba in relation to a child, has there, to
20 your knowledge, child in care?
21 A I don't recall.
22 32. Q You don't know one way or the other, then?
23 A No.
24 33. Q My understanding is that this is the first,
25 but I stand to be corrected. You don't have any

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1 information one way or the other on that?
2 A No.
3 34. Q You don't specifically recall an inquiry that
4 was covered by the media in relation to a child in
5 care?
6 A I can't.
7 35. Q And in the Tracia Owen, paragraph eight, you
8 say in the third sentence, "social workers",
9 plural, "and other professional witnesses
10 testified at the inquest and the names of these
11 witnesses are included in the public report".
12 Now, you didn't attach that report in its
13 entirety, but it is attached to Mr. Bear's
14 Affidavit. Have you got Mr. Bear's Affidavit
15 handy? Perhaps you can look at the report.
16 MR. KROFT: We don't have the Affidavit, but
17 we do have a copy of the full inquest report, yes.
18 BY MS. JARDINE:
19 36. Q I'm just not sure, when I read the report I
20 don't see any social workers' names in there. I
21 see administrators involved and various agencies
22 mentioned. No social workers. I can tell you
23 specifically the names of the people I see
24 mentioned and you tell me if you consider those
25 social workers and if that's who you're

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1 referencing, okay? So the names specifically that
2 I see are Pat Alphonso Cox who was the provincial
3 placement desk worker. I can tell you what page
4 if you'd like.
5 A Sure.
6 37. Q Sure, that's at page 15, paragraph 70.
7 A Mmm-hmm.
8 38. Q Is that one of the people you're calling a
9 social worker?
10 A Yes.
11 39. Q On what grounds are you saying that that
12 person was a social worker?
13 A I don't -- I'm not sure that we've defined
14 the term, so it's kind of hard to work with this.
15 40. Q It's a term that you used --
16 A It is.
17 41. Q -- in your Affidavit.
18 A These are staff of child welfare agencies.
19 42. Q So when you say social workers, you could be
20 referencing in your Affidavit in fact staff of
21 care agencies versus actual front line social
22 workers?
23 A I think that's fair to say.
24 43. Q So you don't know whether or not Patricia
25 Alphonso Cox is a front line social worker who

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1 actually deals, or dealt with the Tracia Owen
2 case, case work, front line worker?
3 A Well, I mean, the report says that she's the
4 provincial placement desk coordinator and the
5 function of the position is to be responsible for
6 the selection, prioritization, maintenance and
7 development of placements for children in
8 residential and specialized resources in Manitoba.
9 44. Q Right, and we agree that that's an accurate
10 description of what a placement desk worker does?
11 A Mmm-hmm.
12 45. Q As distinct from a social worker on the --
13 front line social worker who does the actual care
14 and following up and the case work, front line
15 work with the child?
16 A Mmm-hmm.
17 46. Q Sorry, you have to say yes or no for the
18 record.
19 A Yes.
20 47. Q So you don't know whether or not this person
21 was a front line case worker. You're just going
22 based on what the report says?
23 A I'm going based on what the report says.
24 48. Q And the only ones that I see mentioned in
25 here in reference to the various agencies are

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1 Michael Bear on page 29 --
2 A Mmm-hmm.
3 49. Q -- at paragraph -- you have to say yes or no,
4 I'm sorry, for the record.
5 A Yes.
6 50. Q Paragraph 120, it refers to him as the
7 executive director of Southeast Child and Family
8 Services. So you're not suggesting he was a front
9 line social worker?
10 MR. KROFT: You're contradicting some of the
11 evidence that was filed on behalf of the Applicant, so I
12 just point that out.
13 MS. JARDINE: On behalf of which Applicant?
14 MR. KROFT: Ms. Kehler's Affidavit where she
15 talks about the front line involvement of all social
16 workers.
17 MS. JARDINE: Okay, but do we even know that
18 Mr. Bear is a social worker?
19 MR. KROFT: According to the definition that
20 was put forward by the Applicants he is.
21 MS. JARDINE: In relation to this specific
22 case, though, the Tracia Owen case, he wasn't acting as a
23 front line social worker, was he?
24 MR. KROFT: I mean, I just point that out, I'm
25 not objecting.

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1 BY MS. JARDINE:
2 51. Q He was put forward in that case and gave
3 evidence, as far as I read it, as the executive
4 director and administrator?
5 A I'm sorry?
6 52. Q My question is from the reading of the case
7 and the report, Michael Bear wasn't a front line
8 worker, he was the executive director. His
9 evidence that he gave was in relation to that
10 administrative position? If you read the first
11 sentence of paragraph 120 --
12 A Yeah, he was the executive director of
13 Southeast Child and Family Services.
14 53. Q Right, and he was there to articulate the
15 manner in which the child welfare is administered
16 in --
17 A Yes.
18 54. Q -- rural reserves? That was what he was
19 giving evidence about, not about specific care of
20 Tracia Owen? He wasn't involved specifically one-
21 on-one with Tracia Owen?
22 MR. KROFT: Do you know that?
23 THE WITNESS: I don't know.
24 BY MS. JARDINE:
25 55. Q From the report? It doesn't indicate that he

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1 was. And you don't know either way?
2 A I do not.
3 56. Q And the next one mentioned is at page 30,
4 paragraph 128; Glory Lister who is the policy and
5 program advisor to Southeast Child and Family
6 Services. And the purpose of her testimony was to
7 describe the conditions of Little Grand Rapids
8 Reserve. Do you see that?
9 A Yes.
10 57. Q So you don't know whether or not she was a
11 front line social worker involved with Tracia
12 Owen?
13 A I don't.
14 58. Q The next one is at page 33, paragraph 137;
15 Elsie Flett is the CEO of the Southern First
16 Nation Child and Family Services Authority.
17 A Yes.
18 59. Q She was there giving evidence on the
19 Southeast Child and Family Services Agency and its
20 responsibility, at 138?
21 A Mmm-hmm.
22 60. Q So again you don't know whether or not she
23 was a front line social worker in relation to
24 Tracia Owen?
25 A I don't.

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1 61. Q The last one mentioned is at page 41,
2 paragraph 175; Linda Burnside was the Authorities'
3 relations director with the Department of Family
4 Services and Housing?
5 A Yes.
6 62. Q And you don't know whether or not she was a
7 social worker involved in Tracia Owen's care,
8 front line?
9 A The distinction you're making is like direct
10 contact with Tracia Owen?
11 63. Q Right, having to deal with Tracia Owen's
12 care.
13 A Well, she may well have had to deal with
14 Tracia Owen's care in a supervisory role.
15 64. Q But you don't know that?
16 A No.
17 65. Q Are there any others who you have described
18 in paragraph eight as social workers that you can
19 point to in that report that would have been
20 involved in the front line social work care of
21 Tracia Owen?
22 A I don't believe so.
23 66. Q And again do you know of any adverse effects
24 of any of the witnesses --
25 A No.

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1 67. Q -- that gave evidence, social worker
2 evidence, in the Tracia Owen's case?
3 A No.
4 68. Q Have you seen the responses from some of the
5 public of the articles that were published in The
6 Sun at a preliminary level in relation to this
7 matter?
8 A I've seen some of that material.
9 69. Q Did you, for example, see the material
10 attached to Shirley Cochrane's Affidavit?
11 A I've seen some of the comments attached to
12 Winnipeg Sun stories. It may have been in that
13 Affidavit.
14 70. Q So you know, for example, that there were
15 comments from the public that those case workers
16 involved should be criminally charged, and in one
17 case somebody referenced that they should be shot?
18 MR. KROFT: Why don't you show him the
19 document you're cross-examining on.
20 MS. JARDINE: Sure, I can do that. Do you
21 have a copy of that?
22 MR. KROFT: I could get one if you want to
23 take a break.
24 BY MS. JARDINE:
25 71. Q No, it's okay, I can show you my copy if

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1 you'd like. Before I forget, I'm sorry, sir, a
2 little oversight on my part, I should have gotten
3 you at the very outset to identify your Affidavit
4 and get it marked as an exhibit.
5 A Mmm-hmm.
6 72. Q So you can confirm this is the Affidavit that
7 you swore?
8 A Yes.
9 73. Q Minus all of my handwritten marginal notes.
10 A Sure.
11 MR. KROFT: Do you want to mark his copy
12 because it's clean?
13 MS. JARDINE: It's clean. Could we do that,
14 please? Mark that as the first exhibit.
15 Exhibit #1: Affidavit of Cecil Rosner
16 BY MS. JARDINE:
17 74. Q Before I get too comfortable in my chair on
18 the other side of the table, I'll just walk this
19 over to you, and I'll show you this is Shirley
20 Cochrane's Affidavit, Exhibit B to her Affidavit.
21 And this is the blog comments as you can see,
22 readers' comments in response to an article in The
23 Sun. That's the date that I printed it off, but I
24 don't think that's the date that it was published.
25 You can see comments like "it should be looked at

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1 already criminal charges" in relation to the
2 comments regarding those involved in the previous
3 article which was an MGEU letter about the workers
4 involved. And then there's a comment there "who
5 was the case worker that took that poor kid back,
6 should be shot". Do you see that?
7 A I see that.
8 75. Q Had you seen that before?
9 A Yes.
10 76. Q You see here's another comment. It says "the
11 workers that are protected by that union that were
12 assigned to her should also do jail time"?
13 A Yes.
14 77. Q Another one down just below that where it
15 says "evil" "I" star "c-k-i-n-g", all in caps,
16 "evil care givers and the workers who failed the
17 child". Do you see that?
18 A I see it.
19 78. Q Another one, "several so called social
20 workers should be raked over the coals and maybe
21 even do time for this and many other cases". Do
22 you see that?
23 A Yes.
24 79. Q Another one, "I say everyone involved in this
25 case, especially those charged with the protection

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1 of this beautiful child, be incarcerated for
2 complicity". Do you see that?
3 A Yes.
4 80. Q So that's the kind of comments that the media
5 coverage has elicited thus far in relation to
6 social workers to your knowledge; is that correct?
7 You were aware of that?
8 A I have seen those before.
9 81. Q And you'll agree with me, sir, that this
10 Phoenix Sinclair Inquiry is a very high profile
11 inquiry?
12 A I agree.
13 82. Q Will you also agree with me, sir, that social
14 workers in Child and Family Welfare Agencies
15 perform a very valuable role in protecting
16 children in need of care?
17 A You want my opinion on that?
18 83. Q I'm just asking if that's what you
19 understand, the social workers' role in the Child
20 and Family Services' industry.
21 A Sorry, can you repeat it?
22 84. Q Sure. That they perform a valuable role in
23 protecting children in need of care?
24 A I agree with that.
25 85. Q And if they don't or can't do their job

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1 effectively, that children will suffer?
2 A Sounds logical.
3 86. Q Were you involved, sir, in the Terrence
4 Yellowback case?
5 A I don't recall.
6 87. Q Do you recall the circumstances of that case?
7 That was where CBC was wanting to protect its
8 right to not share information it obtained with
9 the police?
10 A Yes, thank you.
11 88. Q Do you recall that?
12 A I do recall it.
13 89. Q And the basis for the court order that it
14 sought at that time was that it would have an
15 adverse effect on the appearance of independence
16 of the media and on future actions of members of
17 the public and of the press?
18 A That's correct.
19 90. Q And there was a concern that it could lead to
20 a loss of credibility and appearance of
21 impartiality if police were to have access to
22 information that media gathered?
23 A That's right.
24 91. Q And that those were important qualities that
25 would allow the media to do its job effectively

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1 was to maintain that sense of protection?
2 A Correct.
3 92. Q Elsewhere in your Affidavit you talk about a
4 number of other inquiries where there were
5 professionals, various professional witnesses
6 involved; correct? And do you know if those
7 professional witnesses returned to their same jobs
8 and their same communities with the same people
9 after these inquiries and after there was
10 publication of their names?
11 A Like in all cases?
12 93. Q Right, I'm asking if you know, if you have
13 knowledge of what happened with all of these
14 individuals after; if they went back to their same
15 communities and their same jobs?
16 A I don't know --
17 94. Q You don't know that?
18 A -- those cases.
19 95. Q And is it fair, then, to say that you don't
20 know if any of them suffered any adverse effects
21 from their names being published by the media?
22 A That's fair to say.
23 96. Q And similarly you don't know if there were
24 any adverse effects on the public interest as a
25 result of that?

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1 A Adverse effects on the public interest?
 2 97. Q Right.
 3 A I'm not sure what that means.
 4 98. Q I'm talking about anybody who gave evidence
 5 and whose name was published, if them going back
 6 into the community was -- any way adversely
 7 affected the public interest.
 8 A As opposed to affecting their interest?
 9 99. Q Correct.
 10 A I still am trying to grasp what that means.
 11 100. Q Let's see if I can give an example. For
 12 example, do you know if any of the nurses or
 13 doctors involved in any of the inquiries that you
 14 mentioned went back into the community and carried
 15 on their work in their professions, if there was
 16 any public interest adversely affected as a result
 17 of that, or the people didn't seek out their help
 18 as doctors and nurses because of their being
 19 published?
 20 A Oh, did it affect others in their relation to
 21 those people, is that what you're asking me?
 22 101. Q Right. I'm asking if the public interest in
 23 getting assistance from these other professionals
 24 whose names were published --
 25 MR. KROFT: Perhaps the public interest is

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1 causing some difficulty.
 2 BY MS. JARDINE:
 3 102. Q Sure, I'll try and see if I can come up with
 4 a different phrase. Do you know if anybody in the
 5 public was deterred from seeking the professional
 6 assistance of any of those witnesses whose names
 7 were published?
 8 A I do not.
 9 103. Q Those are all my questions, thank you, Mr.
 10 Rosner. I think Mr. Saxberg might have some
 11 questions for you. We're going to take a little
 12 break first.
 13 (PROCEEDINGS RESUMED PURSUANT
 14 TO BRIEF ADJOURNMENT)
 15 EXAMINED BY MR. SAXBERG:
 16 104. Q Good morning, Mr. Rosner.
 17 A Good morning.
 18 105. Q You can speak for CBC in terms of their
 19 position on matters in the context of this motion;
 20 correct?
 21 A Correct.
 22 106. Q And you're the instructing client to counsel
 23 with respect to this motion?
 24 MR. KROFT: No.
 25 MR. SAXBERG: Is that with respect to CBC or

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1 with respect to the Group as a whole?
 2 MR. KROFT: I think that's privileged
 3 information, so I'm not inclined to answer that or the
 4 witness answer that.
 5 BY MR. SAXBERG:
 6 107. Q Okay, but you certainly can speak on behalf
 7 of CBC and its position with respect to this
 8 publication ban application; correct?
 9 A Yes.
 10 108. Q And unless I ask for your personal opinion,
 11 can we agree that all your answers will be the
 12 expression of CBC's position?
 13 MR. KROFT: No.
 14 MR. SAXBERG: I'm just making it clear that
 15 when I'm asking, I'm asking about CBC's position, not his
 16 own. He's already indicated that he can speak about CBC's
 17 position.
 18 MR. KROFT: He's a witness. You can ask him
 19 about things that he knows about. It's not an examination
 20 for discovery and he's not speaking on behalf of anybody but
 21 his evidence. So you can ask him any questions you like.
 22 If you want CBC's position, you should ask me.
 23 MR. SAXBERG: Well, I fundamentally disagree
 24 with that. He is here not in his own individual capacity,
 25 he's here as the managing editor of the CBC.

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1 MR. KROFT: No.
 2 MR. SAXBERG: Mr. Rosner is not a party to
 3 this proceeding.
 4 MR. KROFT: You know, Mr. Saxberg, we can
 5 argue this if you like. Mr. Rosner is a witness that has
 6 been called by the Group of Media Defendants with this
 7 public interest brief and he's presented as such. He's
 8 filed an Affidavit and you're entitled to cross-examine him
 9 on it. If you want to know the positions of any of my
 10 clients, then you can ask me. But ask him about the
 11 evidence, that's what he's here to talk about.
 12 MR. SAXBERG: I'll ask him questions, you can
 13 object to each specific question, we'll deal with it from
 14 there.
 15 BY MR. SAXBERG:
 16 109. Q Have you read all of the Affidavits filed in
 17 this publication ban proceeding?
 18 A All the Affidavits that have been filed by
 19 all the parties?
 20 110. Q Yes.
 21 A Have you read the Cheryl Regehr Affidavit
 22 that was filed by my clients?
 23 A I reviewed quite a few of the materials that
 24 are available online, but I can't -- you know, if
 25 you showed it to me, I might be able to refresh my

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1 memory.

2 111. Q Okay, when we come to it -- you have reviewed

3 some of the material in preparation --

4 A Yes, I have, yes.

5 112. Q -- for today. I want to show you a decision

6 from the Manitoba Court of Appeal I'm sure you're

7 familiar with. It's a 2008 decision from the

8 Manitoba Court of Appeal, and you're familiar with

9 that decision, sir?

10 MR. KROFT: Have you read that decision

11 recently?

12 THE WITNESS: I'm just -- can I just --

13 MR. KROFT: Why don't we go on a break and let

14 us look at it.

15 MR. SAXBERG: I'm only going to refer him to

16 one quote.

17 MR. KROFT: Whatever you would like us to

18 read, that's fine, but you should give him an opportunity,

19 so why don't you --

20 BY MR. SAXBERG:

21 113. Q Yes, absolutely. Let me just back it up,

22 then, to try and short-circuit this. CBC made an

23 application for access to CFS records in the

24 Tracia Owen's inquest.

25 A Yes.

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1 114. Q Is that correct?

2 A That's correct.

3 115. Q And what I've put in front of you is the

4 Court of Appeal's decision with respect to that

5 request by CBC to access CFS records. Do you

6 agree?

7 A Yes.

8 116. Q And you were personally involved in that

9 case?

10 A I was not.

11 117. Q You were not?

12 A No.

13 118. Q Could you turn to paragraph 31? And midway

14 through the paragraph there's a sentence that

15 begins with "while freedom of the press".

16 MR. KROFT: Could we just read the paragraph?

17 Would you give us a minute?

18 BY MR. SAXBERG:

19 119. Q Sure. And I'm looking at one sentence, it's

20 the one that starts with "while freedom of the

21 press". Do you see that? I'm going to read it

22 out. "While freedom of the press should be given a

23 very high level of protection, preservation of the

24 efficacy of the child protection system is of at

25 least equal importance.". Do you see that?

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1 A I do.

2 120. Q Do you agree with the Court of Appeal that

3 the preservation of the efficacy of the child

4 protection system is of at least equal importance

5 with the freedom of press?

6 A Do you want my opinion about that?

7 121. Q Yes.

8 A I'd have to really study this further. I

9 mean, freedom of the press is guaranteed in the

10 Constitution. I'm not a lawyer. I don't have any

11 expert knowledge on where the child protection

12 system stands in terms of constitutional

13 guarantees.

14 122. Q But what the Court of Appeal here is simply

15 saying is that if there's a balancing between the

16 right of freedom of the press and the integrity of

17 the child protection system, that it's at least a

18 draw.

19 A I see that.

20 123. Q Do you agree that protecting the child

21 protection system is an important function?

22 A Certainly.

23 124. Q Yes. Are you aware that the CFS Act -- are

24 you aware of the CFS Act? Have you seen it?

25 A Some of the provisions, yes.

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1 125. Q Have you seen the Declaration of Principles?

2 A I can't recall.

3 126. Q I'll show you a copy. I've put in front of

4 you the first page of the CFS Act which includes a

5 Declaration of Principles. In terms of your work

6 with CBC and your coverage of inquests, you have

7 some knowledge of the CFS Act; is that fair?

8 A Correct.

9 127. Q The very first principle in this Act, number

10 one, is "the safety, security and well-being of

11 children and their best interests are fundamental

12 responsibilities of society". Do you see that?

13 A I do.

14 128. Q Do you agree with that?

15 A I do.

16 129. Q And that would be a fundamental

17 responsibility of CBC as well, wouldn't it, in

18 terms of its journalistic coverage?

19 A We pay a lot of attention to that in our

20 coverage.

21 130. Q And so you're agreeing with my statement that

22 it would be a fundamental responsibility of CBC to

23 concern itself with the best interests of the

24 children?

25 MR. KROFT: Don't answer the question. I

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1 object.
2 MR. SAXBERG: You've got to put on the record
3 the basis of your objection.
4 MR. KROFT: It's a question of law that you're
5 asking. You're asking him what the legal rights are of CBC.
6 MR. SAXBERG: No, I don't think I asked that.
7 MR. KROFT: Why don't we read back the
8 question.
9 (Court Reporter reads back Question #130)
10 MR. KROFT: You're saying a legal
11 responsibility.
12 MR. SAXBERG: I'm asking if that is an
13 important factor for CBC to consider when it is covering
14 child protection matters.
15 MR. KROFT: I don't object to that question.
16 THE WITNESS: It is, I agree with you. It is
17 an important factor.
18 BY MR. SAXBERG:
19 131. Q Does CBC have a policy with respect to its
20 coverage of child protection matters?
21 A Not specifically. I mean, CBC does have a
22 number of policies under its journalistic
23 standards and policies, some of which touch upon
24 children in different ways.
25 132. Q But are there specific policies with respect

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1 to how the CBC covers child protection cases?
2 A Nothing specific other than what's set out in
3 legislation.
4 133. Q So would you agree that one of the functions
5 of the journalists working underneath you at CBC
6 is to consider the efficacy of the child
7 protection system when it is covering child
8 protection matters?
9 A Consider the efficacy. I don't know really
10 what you mean there.
11 134. Q Well, I was just using the Court of Appeal's
12 term, but consider the functioning, well-being, to
13 use a more understandable term, of the child
14 protection system when you're covering child
15 protection matters.
16 A I don't think that's a primary objective of
17 our reporting when it comes to these matters, to
18 consider the efficacy of the system.
19 135. Q And by efficacy I mean the well-being of the
20 system. You don't want to hurt the system in
21 covering the news on child protection cases?
22 A Well, we generally don't want to hurt
23 individuals or institutions, but sometimes
24 coverage of individuals and institutions can cause
25 harm to those individuals and institutions.

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1 136. Q And you obviously --
2 A And we try to balance in all of our coverage
3 the public's right to know of vital information,
4 holding people and institutions to account and the
5 harm that it might cause.
6 137. Q Correct, you do balance the harm against the
7 benefit of the story to the public interest?
8 A We do.
9 138. Q Okay. And so I'm saying that the child
10 protection system and its well-being is one of
11 those factors that you're going to be balancing?
12 A In that respect, yes.
13 139. Q Do you know what CBC's position is as to
14 whether or not it agrees with the Court of Appeal
15 that the efficacy of the child protection system
16 is at least of equal importance to the freedom of
17 the press?
18 MR. KROFT: Don't answer that.
19 MR. SAXBERG: Did you want to answer it, Mr.
20 Kroft? You said you were going to answer the evidence of
21 CBC.
22 MR. KROFT: You're asking whether CBC agrees
23 with the Manitoba Court of Appeal decision?
24 MR. SAXBERG: Yes.
25 MR. KROFT: The answer is that the CBC does

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1 not have a position on whether it agrees or not with the
2 Manitoba Court of Appeal, but agrees that it's subject to
3 the jurisdiction of the Manitoba Court of Appeal within the
4 geographic region that the Manitoba Court of Appeal takes
5 care of.
6 MR. SAXBERG: Okay. I next want to ask some
7 questions about the Rivers' Affidavit, if you want to place
8 that in front of the witness.
9 MR. KROFT: I don't have it with me. If you
10 want to take a break, I'll get it.
11 MR. SAXBERG: And get the Cheryl Regehr
12 Affidavit as well.
13 (PROCEEDINGS RESUMED PURSUANT
14 TO BRIEF ADJOURNMENT)
15 BY MR. SAXBERG:
16 140. Q Mr. Rosner, do you have any knowledge as to
17 whether or not the CBC has taken a position with
18 respect to the Court of Appeal's assertion that
19 preservation of the efficacy of the child
20 protection system is of at least equal importance
21 to the freedom of the press?
22 A I have no knowledge.
23 141. Q Now, I want to refer you to Bruce Rivers'
24 Affidavit. Perhaps you could just take a quick
25 look at it to familiarize yourself as to whether

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<p>Page 37</p> <p>1 or not you've reviewed it.</p> <p>2 MR. KROFT: Off the record?</p> <p>3 MR. SAXBERG: If he needs that amount of time.</p> <p>4 Off the record for a moment.</p> <p>5 (OFF-THE-RECORD)</p> <p>6 BY MR. SAXBERG:</p> <p>7 142. Q Mr. Rosner, just before I ask you questions</p> <p>8 relating to the information in the Affidavits that</p> <p>9 you just reviewed, can you confirm that as the</p> <p>10 managing editor at CBC, that you're the person</p> <p>11 that's ultimately responsible for the content of</p> <p>12 the stories that run in your broadcast?</p> <p>13 A That's right.</p> <p>14 143. Q And so you're the gatekeeper, as it were, in</p> <p>15 terms of ensuring that those stories meet with</p> <p>16 CBC's policies?</p> <p>17 A Yes.</p> <p>18 144. Q Including policies with respect to</p> <p>19 maintaining confidentiality in sources of</p> <p>20 referral, for instance?</p> <p>21 MR. KROFT: I think he said there were no</p> <p>22 specific policies that he was aware of.</p> <p>23 MR. SAXBERG: No, that was with respect to</p> <p>24 something in child protection cases and coverages.</p> <p>25 BY MR. SAXBERG:</p>	<p>Page 39</p> <p>1 Do you see that?</p> <p>2 A I see it.</p> <p>3 151. Q Paragraph 16?</p> <p>4 A I see paragraph 16.</p> <p>5 152. Q The assertion that public scrutiny and media</p> <p>6 attention can lead to a dramatic spike in the</p> <p>7 number of apprehensions; does CBC have any</p> <p>8 information contrary to that assertion?</p> <p>9 A Not that I'm aware of.</p> <p>10 153. Q Does CBC have any information contrary to the</p> <p>11 assertion that public scrutiny can result in</p> <p>12 social workers leaving the profession?</p> <p>13 MR. KROFT: Sorry, what paragraph?</p> <p>14 BY MR. SAXBERG:</p> <p>15 154. Q Paragraph 18.</p> <p>16 A Are you talking generally or with respect to</p> <p>17 the Toronto CFIS?</p> <p>18 155. Q I'm talking about both, in terms of whether</p> <p>19 CBC has any knowledge contrary to the assertion</p> <p>20 that public scrutiny can result in social workers</p> <p>21 moving to different jobs or moving out of the</p> <p>22 profession.</p> <p>23 A I don't.</p> <p>24 MR. KROFT: Sorry --</p> <p>25 THE WITNESS: I can't speak for --</p>
<p>Page 38</p> <p>1 145. Q You have specific policies in terms of your</p> <p>2 practices for your stories that are posted on your</p> <p>3 website; correct?</p> <p>4 A Correct.</p> <p>5 146. Q But you're the gatekeeper, as it were, to</p> <p>6 ensure that the reporters are complying with those</p> <p>7 policies?</p> <p>8 A That's right.</p> <p>9 147. Q And one of the policies being weighing the</p> <p>10 harm that could be caused by the story against the</p> <p>11 benefit of the story being made available to the</p> <p>12 public; correct?</p> <p>13 A Right.</p> <p>14 148. Q That's right?</p> <p>15 A That's correct.</p> <p>16 149. Q Now, in terms of Mr. Rivers' Affidavit, he</p> <p>17 provided evidence that public scrutiny of social</p> <p>18 workers can lead to unintended negative</p> <p>19 consequences. Did you get that from the</p> <p>20 Affidavit?</p> <p>21 A Yes.</p> <p>22 150. Q One of the unintended negative consequences</p> <p>23 of public scrutiny that he asserts he experienced</p> <p>24 was a dramatic spike in the number of</p> <p>25 apprehensions. And he says that at paragraph 16.</p>	<p>Page 40</p> <p>1 MR. KROFT: Don't answer that for a moment.</p> <p>2 The assertion in 18, if that's what we're talking about, is</p> <p>3 something that Mr. Rivers asserts, and I don't have a</p> <p>4 problem if you want to see whether he has any knowledge</p> <p>5 about what Mr. Rivers is speaking about. You've gone beyond</p> <p>6 that in your question and I have a problem with that. And</p> <p>7 just before I interrupt you again, the other point is you</p> <p>8 can ask this witness to his knowledge, but to ask about the</p> <p>9 corporate information that CBC has or not you can appreciate</p> <p>10 is not the kind of question that is appropriate. CBC is a</p> <p>11 national organization. So if you want an undertaking or</p> <p>12 something about what they have in their records, I don't</p> <p>13 think that's what you mean, though.</p> <p>14 MR. SAXBERG: I'm simply asking if he has</p> <p>15 information as a result of his coverage of child protection</p> <p>16 matters that's contrary to anything Mr. Rivers is asserting.</p> <p>17 And I'm just going through each item.</p> <p>18 MR. KROFT: I have no problem. We're on 18.</p> <p>19 BY MR. SAXBERG:</p> <p>20 156. Q Do you have any information that is contrary</p> <p>21 to the assertion that public scrutiny can lead to</p> <p>22 social workers wanting to get out of the business,</p> <p>23 as it were?</p> <p>24 MR. KROFT: Sorry, where did he make that</p> <p>25 assertion? You've directed us to 18 and he said something</p>

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1 that he saw.

2 BY MR. SAXBERG:

3 157. Q At paragraph 18 and I was paraphrasing and
4 being euphemistic, I guess, when I say leaving the
5 business, but I think it's accurate to what he's
6 saying in paragraph 18 which is "I began to see a
7 pattern of staff who were involved in these
8 inquests either leave the child welfare field all
9 together, move out of the province or move into
10 positions where they perceive there to be less
11 risk". Do you have any --

12 A I have no knowledge of this, whether his
13 analysis is correct, incorrect, whether he has the
14 research to back that up. I have no knowledge
15 about this.

16 158. Q Isn't this the type of information that CBC
17 would want to consider in determining whether the
18 harm associated with a particular story is
19 outweighed by the interest to the public in
20 covering the story?

21 A Part of the determination of every story we
22 cover involves considerations like that. We
23 generally look at the specifics, the specifics of
24 the person we're going to be interviewing, the
25 specifics of the facts surrounding any particular

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1 story and we make an assessment that way. I mean,
2 this Affidavit is talking about some impressions
3 or opinions and references certain research. But
4 I'm no expert in this field, this particular field
5 of research. I also -- you know, I guess I -- in
6 reading this I don't see a distinction being made
7 between testifying at the inquests themselves and
8 the subsequent media coverage. I don't see that
9 distinction drawn in this Affidavit actually in
10 terms of where the stress levels have come about.
11 It's just something I note in reading this.

12 159. Q Okay, thank you for that. In the Affidavit
13 of Cheryl Regehr, which relates to research she
14 conducted in the area of public inquiries into the
15 deaths of children, she indicates at paragraph 12
16 that the inquiry process cited in her surveys as
17 being highly stressful and resulting in exposure
18 to highly distressing memories, et cetera, amongst
19 workers who responded in her survey; do you see
20 that?

21 A I do.

22 160. Q Paragraph 12?

23 A She's talking about the inquiry process.

24 161. Q That's right. And then in paragraph 13 she
25 says "the media attention intensified that

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1 effect". Do you see that?

2 A I do.

3 162. Q Do you have any -- does CBC have any
4 information contrary to the assertion that media
5 attention is going to intensify the negative
6 harmful effects of participating in an inquiry
7 that social workers have complained of in these
8 various studies?

9 A I don't have any evidence like that either
10 way, one way or the other.

11 163. Q You will agree that if media attention of
12 inquiries can have unintended negative
13 consequences to the child protection system,
14 that's something that the CBC is going to want to
15 consider in terms of how it covers these events?

16 A To the individuals or to the entire system?

17 164. Q To the system. Not the individuals, the
18 system.

19 A You know, it's -- I think we need to define
20 that more. Our principal responsibility is to
21 find the truth out about important situations. If
22 it transpires that by finding out the truth of an
23 important situation some system is negatively
24 affected, then that's not going to be a major
25 factor in preventing our reporting the truth of a

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1 particular situation. It is a consideration
2 always in terms of balancing truth-seeking versus
3 potential harm.

4 165. Q And we speak of harm, if we want to be more
5 specific, we can say if the media coverage leads
6 to a spike in apprehensions, that is something
7 that the CBC would consider as a harm in terms of
8 that balancing process?

9 A You know, quite honestly I would -- these are
10 really interesting Affidavits and submissions, but
11 it's kind of one piece of probably a very big
12 research puzzle, and I'd really like to review the
13 entirety of the research on these matters before I
14 could give you opinions or considerations on it.

15 166. Q Okay, well, let me just ask you as the
16 managing editor.

17 A Yeah.

18 167. Q And maybe this is the first that you've been
19 informed about these studies about the harm that
20 can result from inquiries of media coverage. Let
21 me just ask you; do you agree that if there is a
22 different way you can tell the story that will
23 avert the negative consequence of more kids coming
24 into a care, that would be something that CBC
25 should consider?

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1 A A different way. Different from?
 2 168. Q Well, for instance, not disclosing the name
 3 of a social worker and showing their image. If
 4 that has the effect of reducing the negative
 5 consequences that result from inquiries, that
 6 therefore -- that then impact the efficacy of the
 7 child protection system, is that a measure that
 8 CBC would consider?
 9 A I think with respect to inquiries and
 10 inquests, generally our viewpoint is we respect
 11 the decision of the Provincial Judge in the case
 12 of an inquest or the Commission in the case of an
 13 inquiry in terms of its determination as to what
 14 evidence ought to be -- is reportable and what
 15 evidence isn't.
 16 169. Q I just want to ask you about CBC's plans for
 17 coverage of the Phoenix Sinclair Inquiry. You
 18 agree that this Inquiry will attract a lot of
 19 media attention?
 20 A Likely.
 21 170. Q And it will attract a lot of the CBC's
 22 attention in terms of stories that it broadcasts?
 23 A We'll definitely be covering it.
 24 171. Q Do you plan to cover the Inquiry on a daily
 25 basis either through your postings on the internet

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1 or stories on TV?
 2 A I can't say that with certainty right now.
 3 It depends on the duration and the particular
 4 witnesses called and so forth.
 5 172. Q Do you foresee, though, that there will be
 6 regular reporting of the Inquiry by the CBC?
 7 A Probably.
 8 173. Q And will the CBC be posting updates with
 9 respect to what's happening at the Inquiry on the
 10 internet?
 11 A When we have reporters covering it, most
 12 likely that will happen.
 13 174. Q Would you agree that the Phoenix Sinclair
 14 Inquiry has the capability of being one of the
 15 major stories of the year for CBC here in
 16 Winnipeg?
 17 A I don't know honestly.
 18 175. Q Is it your job as the managing editor to
 19 assign which stories the reporters are going to
 20 work on?
 21 A And through my delegates.
 22 176. Q So at this point as we sit here today, would
 23 you agree, though, that it looks like the Sinclair
 24 Inquiry will be given a lot of attention by your
 25 newsroom?

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1 A Yes.
 2 177. Q Now, were you part of the Media application
 3 that sought to have cameras broadcast the Brian
 4 Sinclair Inquest?
 5 A Yes.
 6 178. Q And the judge denied that motion for cameras
 7 to broadcast the inquest; correct?
 8 A Correct.
 9 179. Q And were you part of the Media Group that
 10 applied to broadcast the Graham James' sentencing?
 11 A Yes.
 12 180. Q And the judge in that case also denied the
 13 request to have cameras in that proceeding;
 14 correct?
 15 A Right.
 16 181. Q Would you agree that there have never been
 17 cameras allowed at inquests dealing with or
 18 touching on the child welfare system?
 19 A In Canada or in Manitoba?
 20 182. Q In Manitoba.
 21 A There have never been cameras allowed at any
 22 inquest in Manitoba to my knowledge.
 23 183. Q Okay. And you'd agree from your knowledge of
 24 child protection matters and reporting on them
 25 that there are special prohibitions relating to

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1 child protection matters versus other inquests
 2 that don't touch on child protection concerns;
 3 correct?
 4 A I'm sorry, could you say that again?
 5 184. Q There are special statutory restrictions in
 6 terms of coverage of child protection matters that
 7 are applicable at inquests?
 8 A I'm not familiar with that.
 9 185. Q Okay. And in the Phoenix Sinclair Inquiry
 10 there will be a camera available to CBC at every
 11 day of the hearing subject to the determination of
 12 this motion; limitation imposed by the
 13 determination of the motion for the publication
 14 ban. Correct?
 15 A That's my understanding.
 16 186. Q And do you understand that there's only
 17 certain witnesses to which this publication ban is
 18 going to apply?
 19 MR. KROFT: Well, that's kind of defeatist
 20 from my point of view.
 21 MR. SAXBERG: Pardon me?
 22 MR. KROFT: You're asking if the ban is
 23 granted --
 24 BY MR. SAXBERG:
 25 187. Q It will only apply to certain witnesses that

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1 testify at the Inquiry; correct?
 2 A As we've defined the professional witnesses.
 3 MR. KROFT: Whatever your motion says and
 4 whatever the MGEU motion says, we agree with that.
 5 BY MR. SAXBERG:
 6 188. Q The point is at this Inquiry there will be a
 7 camera that will be feeding to CBC and even if
 8 this publication ban is successful, there will be
 9 many witnesses that you will be able to broadcast
 10 using that camera; correct?
 11 A That's my understanding.
 12 189. Q And that's a first as you said in terms of
 13 public coverage of an inquest; correct?
 14 A No.
 15 190. Q For inquests that doesn't happen is the only
 16 point I'm making.
 17 MR. KROFT: Start again and ask the question.
 18 BY MR. SAXBERG:
 19 191. Q You don't have cameras available for
 20 inquests. You've already confirmed that; correct?
 21 A Right.
 22 192. Q And in terms of an inquiry, your Affidavit
 23 has indicated that there have been other inquiries
 24 in which there have been camera feeds.
 25 A Yes.

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1 193. Q Is that correct?
 2 A Many.
 3 194. Q But none of them have dealt with the child
 4 protection system; correct?
 5 A If you're asking me has there been a camera
 6 present at any inquiry that has touched upon the
 7 child welfare system in Manitoba?
 8 195. Q Yes.
 9 A I'm not aware.
 10 196. Q And of course cameras are not allowed in
 11 child protection cases at court; correct?
 12 A Cameras are not allowed in court all
 13 together.
 14 197. Q Okay. And with respect to child protection
 15 cases, there are prohibitions in terms of what the
 16 media can report?
 17 A Yes.
 18 198. Q And those include that the media cannot
 19 publish the name of any witness in a child
 20 protection proceeding; correct?
 21 MR. KROFT: Don't answer that, that's a legal
 22 question. We take issue with that.
 23 BY MR. SAXBERG:
 24 199. Q Well, I'm asking for the CBC's policy on
 25 covering child protection proceedings and whether

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1 its policy allows it to publish the names of
 2 witnesses.
 3 A I actually would have to review that. I'm
 4 not certain.
 5 200. Q I'm going to show you a story from CBC News
 6 relating to coverage of a child protection matter.
 7 A Right.
 8 201. Q I put before you an article that we took off
 9 the internet from CBC --
 10 A Yes.
 11 202. Q -- entitled "dad of girl in custody hearing
 12 laments limited role in her life".
 13 A Yes.
 14 203. Q You're familiar with this story?
 15 A Yes.
 16 204. Q And it's the story of the family who had sent
 17 a young girl to school with neo-Nazi symbols;
 18 correct?
 19 A Right.
 20 205. Q And there was a child protection proceeding
 21 wherein CFS was seeking permanent guardianship of
 22 the children, and CBC covered that story; correct?
 23 A Correct.
 24 206. Q And in the story CBC does not identify the
 25 witnesses; correct?

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1 A Correct. Where the witnesses can lead --
 2 where identification of witnesses can lead to
 3 identification of children in care, we will not
 4 identify witnesses.
 5 207. Q That's right. But as a separate matter as
 6 well, you -- the CBC specifically did not publish
 7 the name of the CFS case worker testifying on
 8 this, and I refer you to the sixth paragraph.
 9 A The sixth paragraph doesn't talk about any
 10 testimony that I can see.
 11 208. Q Okay. I'm reading the paragraph that says
 12 "CFS case workers were alerted and went to the
 13 family's apartment". It goes on from there.
 14 A Right.
 15 209. Q In terms of CBC not identifying the case
 16 workers in this story, simply you'll agree that
 17 CBC didn't identify the social workers in this
 18 story?
 19 A I don't see any names of social workers in
 20 the story. I don't know that we knew of any names
 21 of social workers.
 22 210. Q Can you tell me as to whether the fact that
 23 the social workers' names were not included in
 24 this story in any way restricted the information
 25 that's being conveyed?

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1 A This is not a story about a proceeding, it's
2 a story talking about the individuals involved
3 that I can -- I'll just quickly read it all. It
4 talks about a custody hearing taking place.
5 Honestly I don't remember enough about the
6 circumstances surrounding this story to know
7 whether this story was produced as a result of a
8 reporter being present at that hearing or whether
9 it's with interviews with these individuals.

10 211. Q But in any event, the social worker's name is
11 not disclosed?

12 A There's no name of any social worker in that
13 story.

14 212. Q And that doesn't in any way negatively affect
15 the ability of the reporter to tell this
16 particular story, does it?

17 A I don't know how to answer that.

18 213. Q Well --

19 A This is -- every -- you know --

20 214. Q Would this story have communicated something
21 -- did this story need the name of the social
22 worker to communicate --

23 A I don't know.

24 215. Q You don't know?

25 A I don't. I'd have to go back and review all

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1 the facts surrounding this story to give you a
2 response as to whether including the name of the
3 social worker might have illuminated something
4 further.

5 216. Q CBC has broadcast stories about child
6 protection hearings in the past; is that fair?

7 A I believe so, yes.

8 217. Q Has CBC to your knowledge ever published the
9 name of a social worker?

10 A I'd have to go back and check.

11 218. Q But as you sit here today, you can't say that
12 CBC has published the names of social workers
13 covering those cases?

14 A I can tell you it's fairly -- coverage of
15 those types of hearings are quite rare, because of
16 the fact that we are unable to identify the
17 parties.

18 219. Q Does CBC have a position as to whether or not
19 it has to refrain from publishing the name of a
20 witness in a child protection hearing?

21 MR. KROFT: Are you asking about a position in
22 this hearing or are you asking does it have a policy?

23 BY MR. SAXBERG:

24 220. Q Well, I believe that he's earlier stated that
25 the policy was the Act, the CFS Act. Right?

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1 A Essentially.

2 221. Q And the Act doesn't allow publishing the
3 names of witnesses in child protection hearings;
4 correct?

5 MR. KROFT: That's an issue in this case. Our
6 position is it allows the publication of names of
7 professional witnesses, but not the names of the children.
8 That's our position in this case.

9 BY MR. SAXBERG:

10 222. Q Has CBC ever gone to court, other than this
11 proceeding, in order to assert the position that
12 it is entitled to publish social workers' names
13 when they testify in child protection hearings?

14 A I don't know.

15 223. Q In the inquest relating to Tracia Owen, CBC
16 was not allowed to use exhibits that were filed in
17 that proceeding that were considered to be CFS
18 records; correct?

19 A I believe that's correct.

20 224. Q And in the Phoenix Sinclair Inquiry you're
21 aware that CBC and the other media outlets will be
22 able to access the exhibits that are filed in the
23 proceeding?

24 A It will be up to the Commissioner to decide
25 which exhibits are accessible to the media and

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1 which aren't.

2 225. Q Okay. I'm putting to you are you aware,
3 though, that what's being proposed by the
4 Commission is that all exhibits will be available
5 to the media and published on the Phoenix Sinclair
6 Commission website. Are you aware of that?

7 A I saw that, yes.

8 226. Q And that's something that never happened in
9 the past at an inquest; correct?

10 MR. KROFT: I'm sorry, what?

11 BY MR. SAXBERG:

12 227. Q Where documents, exhibits that are CFS
13 records were available to the media.

14 MR. KROFT: You're talking about CFS records
15 in particular?

16 BY MR. SAXBERG:

17 228. Q Yes. Has it ever been the case that at an
18 inquest the media has been allowed to access CFS
19 records?

20 A I can't -- I don't know. I mean, generally
21 exhibits at inquests are accessible unless there's
22 some statutory reason they ought not to be, or the
23 judge determines they ought not to be. I can't
24 tell you right now whether every single exhibit
25 that touches upon some child welfare issue has

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1 ever been publicly released or not. I don't know.
 2 229. Q Okay. Well, you know that in the Tracia
 3 Owen's inquest that the exhibits that related to
 4 CFS records were not available to the media. And
 5 you've confirmed that already; correct?
 6 A Yeah, I'm just going to repeat that I don't
 7 have enough of the background of that to tell you
 8 what specifically was requested. I don't -- I
 9 wasn't involved in this.
 10 230. Q But in the Phoenix Sinclair Inquiry you've
 11 already indicated there's going to be access to
 12 CFS records, and that's different than the Tracia
 13 Owen's inquest. You'd agree with that?
 14 A It appears to be.
 15 231. Q So we have two things that are different,
 16 then, in terms of the access to information here;
 17 one is that there will be a camera at the Phoenix
 18 Sinclair Inquiry and the second is that there will
 19 be access to CFS records for the first time.
 20 Would you agree with that?
 21 A Again I can't agree about your first time
 22 part because I don't know. I agree there will be
 23 a camera at this Inquiry as there is at the vast
 24 majority of all inquiries in Canada. And I agree
 25 that there are no cameras at inquests in Manitoba.

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1 I'll agree with you on that much.
 2 232. Q Okay. And then in terms of access to CFS
 3 records, this will be a first where the media has
 4 access to CFS records, isn't it?
 5 A I don't know.
 6 233. Q Have you ever had access to CFS records?
 7 When I say "you", I mean the Royal you, CBC.
 8 A I don't recall.
 9 234. Q Based on those two observations, would you
 10 agree with me that media access to this Inquiry as
 11 it relates to the exposure of the child welfare
 12 system is far greater even with the relief sought
 13 in the publication bans than in inquests?
 14 A Well, there will be a presence of a camera.
 15 That's a tangible difference. And I really don't
 16 know, I'm not qualified enough to know the
 17 workings of inquests versus inquiries in this
 18 respect to tell you how much of a difference there
 19 otherwise would be.
 20 235. Q We'll just put aside inquests and inquiries
 21 for a moment and I'll try it this way; in terms of
 22 access to information about the child welfare
 23 system, you'd agree that the media is limited in
 24 its access to information about the child welfare
 25 system in child protection matters, in hearings or

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1 stories about the child protection system;
 2 correct?
 3 A I think the media has access to them, it's
 4 just prohibited from reporting on them.
 5 236. Q It's prohibited from reporting on child
 6 protection matters. For instance, it cannot see
 7 child protection records?
 8 MR. KROFT: Sorry, are you asking him for
 9 legal questions? Because these are complex legal questions
 10 and they're not true some of the things you're saying. So
 11 if you want his legal opinion, that's fine --
 12 MR. SAXBERG: I'm not asking for anything
 13 about a legal opinion. He's the managing editor and --
 14 MR. KROFT: I know what he does.
 15 MR. SAXBERG: -- and he's responsible for the
 16 content of stories.
 17 MR. KROFT: So what's the question?
 18 BY MR. SAXBERG:
 19 237. Q So the questions are with respect to coverage
 20 of the child welfare system, there are
 21 restrictions in terms of media coverage in the
 22 regular course; correct?
 23 A Yes.
 24 238. Q You can't see CFS records; correct?
 25 A Well, if they're filed in a court pocket,

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1 then --
 2 MR. KROFT: As a matter of law there are
 3 circumstances when you can see CFS records, including the
 4 Court has the discretion to release them. So you're asking
 5 general legal questions which I don't agree with. If you
 6 want to ask him about his experience or his knowledge,
 7 you're free to do that.
 8 BY MR. SAXBERG:
 9 239. Q In your experience have you ever, in
 10 reporting a story on child protection, been able
 11 to access CFS records?
 12 A I can't recall.
 13 240. Q But at this Inquiry you will be able to, and
 14 that's a difference that you'll acknowledge;
 15 correct?
 16 A Well, if I can't recall, then I can't really
 17 acknowledge your difference.
 18 241. Q I think you're being unfair to be candid in
 19 the sense that you've already indicated that you
 20 have some familiarity with the CFS Act and as a --
 21 A There's all kinds of circumstances that
 22 records become public. Things are released under
 23 access to information, lawsuits can be filed. All
 24 kinds of bits of information make their way to the
 25 public sphere in different ways. And I can't -- I

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1 would have to research this question to really
2 give you a proper answer in terms of has any of
3 this material ever found its way to the media and
4 the public, and I just can't do that.
5 242. Q Okay. Absent going to court, does CBC, to
6 your knowledge, have access to CFS records?
7 A No.
8 243. Q No?
9 A Going to court?
10 244. Q Other than by going to court which is the
11 example that you gave as to how you could get
12 access to these records, does CBC have access to
13 CFS records?
14 A Currently? I mean, we interview people all
15 the time in different jobs. People give us
16 information all the time from their workplaces.
17 Some of it may be confidential information, some
18 of it may not be confidential. I'd be happier if
19 you gave me some specific example. There are
20 occasions when we have access to all kinds of
21 information that is otherwise confidential.
22 245. Q And you're not allowed to broadcast it;
23 correct?
24 A That's right.
25 246. Q And if you came across CFS records, you would

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1 not be allowed to broadcast them without a court
2 order; correct?
3 MR. KROFT: I object to the question.
4 MR. SAXBERG: I'm asking him if CBC's aware of
5 that, if he's aware of that as the managing editor.
6 MR. KROFT: You're asking a legal question.
7 MR. SAXBERG: But he has to be informed of the
8 law in order to do his job, so he has to have an
9 understanding of it. He's the gatekeeper of what goes into
10 the stories.
11 MR. KROFT: Is it your legal opinion that
12 there are no circumstances, sir, when child welfare records
13 are ever made public? Is that your legal opinion that
14 you're providing now?
15 MR. SAXBERG: I can say that definitively, a
16 hundred percent, yes.
17 MR. KROFT: Okay. Well, my legal opinion is
18 different, so if you want to ask him about his practice, if
19 you want to ask him about his understanding of the law if he
20 knows, you can ask him that, but you're cross-examining him
21 on a statute.
22 MR. SAXBERG: I disagree, but we'll go on,
23 I'll try it a different way.
24 BY MR. SAXBERG:
25 247. Q There are many different circumstances where

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1 the media will not publish the identity of a
2 person in a story; correct?
3 A Yes.
4 248. Q For instance, legislative bans such as those
5 relating to adolescents or young offenders; is
6 that correct?
7 A Right.
8 249. Q You won't publish the names or identities of
9 victims of sex crimes; right?
10 A Right.
11 250. Q You don't publish the name of children that
12 are subject to child protection hearings?
13 A Correct.
14 251. Q Or the families involved in those
15 proceedings; correct?
16 A Correct.
17 252. Q Do those restrictions impinge on CBC's
18 ability to tell the stories?
19 A Sometimes.
20 253. Q In what way? Can you give me an example?
21 A Any restriction on something that can be
22 reported, it means that there's less reported and
23 it may, under some circumstances, give the
24 audience a lesser understanding of what the full
25 circumstances of the situation are.

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1 254. Q Now, other than the legislative restrictions
2 in terms of publishing names, the media and the
3 CBC in particular voluntarily chooses to not
4 publish names in certain circumstances; correct?
5 A Correct.
6 255. Q CBC may choose not to publish the name of a
7 vulnerable person if his or her identity is not
8 essential to an understanding of the facts in the
9 story; is that correct?
10 A That is correct.
11 256. Q And that also goes with respect to children,
12 children in general, where the name of the child
13 is not required to understand the facts of the
14 story?
15 A Yeah, these are all case-by-case
16 determinations we make based on the specific
17 facts.
18 257. Q And of course CBC chooses at times to not
19 disclose the identity of sources?
20 A Correct.
21 258. Q And is there a criteria in which CBC employs
22 in determining whether it will grant a request of
23 the source not to be disclosed?
24 A There's a number of guidelines and subject to
25 very thorough discussion before we come to the

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1 determination to grant that confidentiality.
 2 259. Q You did a story recently about Judge Lori
 3 Douglas -- sorry, it's not recently, it's August
 4 of 2010 -- as to why CBC will not publish certain
 5 photographs. Do you recall that?
 6 A Yes.
 7 MR. SAXBERG: Can we mark as the next exhibit
 8 that article that was titled "dad of girl in custody hearing
 9 laments limited role in her life".
 10 MR. KROFT: It's a CBC article; right?
 11 THE WITNESS: Yes.
 12 Exhibit #2: CBC article re "dad of girl in
 13 custody hearing laments limited role in her
 14 life"
 15 MR. KROFT: Can you give me a minute?
 16 MR. SAXBERG: Yes.
 17 (PROCEEDINGS RESUMED PURSUANT
 18 TO BRIEF ADJOURNMENT)
 19 BY MR. SAXBERG:
 20 260. Q Have you had a chance to review the story?
 21 A Yes.
 22 261. Q This is a story that you wrote about why CBC
 23 would not publish the photographs relating to a
 24 matter concerning Judge Lori Douglas; correct?
 25 A Well, it was a story about why we were doing

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1 the story, why we were telling the story, and the
 2 issue of the photographs is a part of that.
 3 262. Q And CBC decided to not publish photographs
 4 that it had available to it in order to tell that
 5 story; correct?
 6 A Correct.
 7 263. Q And the reason being that CBC determined that
 8 the harm in doing so would outweigh any benefit in
 9 broadcasting those photographs; correct?
 10 A Correct.
 11 264. Q And in the second last paragraph of the
 12 article you write "Any news organization has a
 13 social responsibility to its audience to seek out
 14 important truths that will serve the public's
 15 interest. It also has a responsibility to
 16 minimize unnecessary harm while doing so, to be
 17 careful and sensitive in the preservation of
 18 controversial stories.". Do you see that?
 19 A Yes.
 20 265. Q So that's something -- it's part of your job
 21 in balancing the harm that may occur as a result
 22 of publishing certain material in a story against
 23 the benefit of exposing the story; correct?
 24 A Correct.
 25 266. Q And it's not always easy to find that

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1 balance; correct?
 2 A Correct.
 3 MR. SAXBERG: I'd like to mark this as the
 4 next exhibit.
 5 Exhibit #3: Article re Judge Lori Douglas
 6 BY MR. SAXBERG:
 7 267. Q I want to show you a CBC story that was done
 8 on a used car dealership. This is a story
 9 entitled "used luxury vehicles may not be all they
 10 seem: CBC investigation". Are you familiar with
 11 this story?
 12 A Yes.
 13 268. Q And it's fair that the story is based on
 14 information that was given to CBC from a
 15 confidential source?
 16 A In part.
 17 269. Q Pardon me?
 18 A In part.
 19 270. Q In part. And the story indicates that this
 20 confidential informant asked that his identity be
 21 concealed out of fear of reprisal. Do you see
 22 that?
 23 A Is it okay if I ask Jonathan a question --
 24 271. Q Sure.
 25 A -- before I answer?

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1 MR. KROFT: I need to take a minute.
 2 MR. SAXBERG: Sure.
 3 (PROCEEDINGS RESUMED PURSUANT
 4 TO BRIEF ADJOURNMENT)
 5 MR. KROFT: Okay, Mr. Saxberg, go ahead.
 6 BY MR. SAXBERG:
 7 272. Q I just wanted to ask with respect to the
 8 policy of CBC in maintaining a source's
 9 confidentiality when that source claims to fear a
 10 reprisal. Is it fair that CBC will not publish
 11 the name of a person in a story if the person
 12 fears reprisal?
 13 A So as I was saying earlier, these are case-
 14 by-case determinations. We look at all the facts
 15 surrounding the case. And it's a subjective
 16 determination at the end. We don't give blanket
 17 promises of confidentiality to people. But there
 18 are certain circumstances where if we can
 19 determine that there's a legitimate fear of severe
 20 repercussions, job loss, something substantial, we
 21 may then grant that source confidentiality,
 22 bearing in mind that there could be circumstances
 23 into the future which might include public
 24 inquiries or court appearances in which that
 25 confidentiality might have to be revealed.

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1 273. Q Are you saying that the media would
2 voluntarily offer the name of a source in a court
3 case?
4 A We always tell -- we let people know that --
5 the people we're granting confidentiality to, what
6 the particular consequences might be, and one of
7 those consequences could be somewhere down the
8 line a judge or an inquiry commissioner requiring
9 that identify to be provided.

10 274. Q Right, but CBC would oppose that in every
11 instance; correct?
12 A Yes, if we granted the confidentiality.

13 275. Q And I know you said that the granting of
14 confidentiality is on a case-by-case basis. In
15 this case what was the specifics relating to the
16 fear of reprisal? What was the nature of the
17 fear?
18 MR. KROFT: I'm objecting to that on the basis
19 that it's irrelevant.

20 BY MR. SAXBERG:

21 276. Q Well, you are aware that in this case there's
22 a plethora of Affidavit evidence indicating the
23 social workers' fear of reprisal if their names
24 are published; correct?
25 MR. KROFT: That is one of the arguments that

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1 has been raised.
2 BY MR. SAXBERG:

3 277. Q So I want to know where CBC -- CBC is
4 allowing confidentiality of those names in certain
5 cases. I want to know what the threshold of fear
6 has to be before that confidentiality is accepted.
7 MR. KROFT: I don't mind you asking those
8 kinds of questions in a general way, although they may or
9 may not be relevant. But with respect to the particular
10 case which is under litigation that you're familiar with --
11 MR. SAXBERG: Yes.
12 MR. KROFT: -- I'm going to take a rather
13 strict view of relevance and not give you the latitude that
14 I'm otherwise inclined to give you. But if you can phrase
15 the questions more generally, that's fine.
16 MR. SAXBERG: Yes, and I understand that
17 concern.

18 BY MR. SAXBERG:

19 278. Q So what is the level of the threshold of
20 concern that you need to see before you'll grant
21 the confidentiality?
22 A It has to be serious, it has to be observable
23 and it has to be something that's more than just a
24 preference or a whim. And every case is
25 different. The facts in every case are different.

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1 And individual determinations are governed by the
2 specific facts of all the cases.

3 279. Q Have you personally formed a view as to
4 whether or not the concerns of social workers as
5 they've expressed them in this case about fear of
6 reprisal are legitimate?
7 A I have difficulty with the argument for the
8 following reason; I don't know what all of these
9 witnesses will be saying. I don't know how much
10 accountability each and every one of them will be
11 asked to provide. We don't know all the facts and
12 circumstances the way we did in this case and in
13 all the other cases when we make that
14 determination. It seems that what you're
15 requesting is some sort of blanket provision that
16 there should be confidentiality when we don't know
17 facts yet.

18 280. Q Well, with respect to Intertribal CFS,
19 evidence has been put forward as to the facts of
20 that agency and its workers involved in this case.
21 MR. KROFT: Well, I mean, I did not discuss
22 with this witness the cross-examination because I treated
23 him as if he were an excluded witness. So he is not
24 familiar with the cross-examination which is when that
25 evidence was provided. If you'd like to identify the role

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1 that each of those social workers had -- I mean, you haven't
2 put any evidence of the danger to anybody in specific.
3 MR. SAXBERG: I'm talking about the Affidavit
4 of Shirley Cochrane.
5 MR. KROFT: Maybe you could point out where
6 she speaks about any specific social worker circumstance.
7 BY MR. SAXBERG:

8 281. Q I'll come back to that, I'll move on. At
9 some point, though, in your coverage of the
10 Phoenix Sinclair Inquiry you're going to be
11 considering the specific evidence of individual
12 social workers and weighing that against the
13 potential harm to those social workers in terms of
14 their interaction with families and to the system
15 in general; is that fair?
16 A Well, but I think we need to make a
17 distinction. I mean, it would be highly unusual,
18 and I honestly can't think of another
19 circumstance, there may be some, in which a
20 witness is allowed to testify at a public inquiry
21 without any ban on publication whereby media
22 outlets determine independent of the determination
23 of the Commission that there should be
24 confidentiality granted to that particular
25 witness. It would be quite unusual for something

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1 like that to take place. So I just want to ensure
2 that -- like we've been talking -- you've provided
3 some other examples. These are examples of
4 stories that have come our way, people that have
5 approached us, and we made determinations as to
6 whether to grant confidentiality. This is a very
7 different thing. This is a commission of inquiry
8 set up to find out all the circumstances relating
9 to a particular matter. And the Commission makes
10 a determination as to whether that evidence should
11 be public or not. So it would be quite unusual
12 for an individual media outlet to take an
13 alternative viewpoint of that.

14 282. Q But you'd agree this is a unique Inquiry
15 because it's dealing with the child welfare system
16 which is based on confidentiality and privacy of
17 the families that are served by these workers?
18 A Every inquiry, every inquiry in Manitoba has
19 dealt with all kinds of confidential issues,
20 whether they be inquiries into wrongful
21 convictions where we see access to confidential
22 police reports. I mean, it's routine for
23 inquiries to present as evidence documents that --
24 and information that otherwise under the normal
25 set of circumstances would be confidential.

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1 283. Q Now, in a story that the Winnipeg Free Press
2 did about Peter Nygard, you're quoted. And I'm
3 showing you the story, on the second page. I'm
4 going to refer you to the second page and the
5 highlighted quote that's attributed to you and
6 I'll ask you a question about it. I'll give you a
7 moment to read it. But in the interim, if we
8 could mark the "used luxury vehicles" article as
9 the next exhibit.

10 Exhibit #4: Article re "used luxury vehicles
11 may not be all they seem: CBC investigation"

12 BY MR. SAXBERG:

13 284. Q The quote attributed to you in this story is
14 "I'm also concerned that this action and the
15 attempted interference with CBC's investigation
16 may have a chilling effect on the willingness of
17 individuals to speak with journalists and
18 producers about the matters being researched and
19 investigated". Do you see that?

20 A Yes.

21 285. Q And you still agree with -- you agree that's
22 an accurate quote?

23 A It is.

24 286. Q And you agree with me that what you're saying
25 is that it's important to maintain source

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1 confidentiality and that it be seen that that
2 confidentiality is maintained so that people won't
3 be afraid to come forward and disclose things to
4 the media; correct?

5 A Correct.

6 287. Q So in that case the suggestion is that the
7 downside of withholding the identity of that
8 information from the public is outweighed by the
9 upside of the truth being revealed?

10 A Well, this is a -- this matter deals with an
11 attempt to, like an attempt at prepublication,
12 barring the publication of a story before it's
13 happened. That's what this case was all about.

14 288. Q Right.

15 A And it's within that context that I made
16 those comments.

17 289. Q Would you agree that there would be a
18 chilling effect if sources of referral weren't
19 confident that they were going to be kept
20 confidential?

21 A You used the term "sources of referral" and I
22 don't actually know what that means.

23 290. Q Sorry, I'm referring to informants, media
24 informants.

25 A People who come to the media seeking

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1 confidentiality?

2 291. Q Yes.

3 A Yes.

4 292. Q What's the term that you use for those?

5 A Confidential sources.

6 293. Q Okay, confidential sources; that confidential
7 sources would be less likely to come forward if
8 there was a greater risk of them being exposed?

9 A Yes.

10 294. Q Is that fair?

11 A Yes.

12 295. Q And in this case would you agree that social
13 workers may similarly be encouraged to come
14 forward with information if their names are kept
15 out of the paper or --

16 A It's a completely different circumstance.
17 These people are not voluntarily coming forward.
18 I may be wrong. The witnesses to this Inquiry,
19 are they being subpoenaed? I mean, you're talking
20 about different things here. You're trying to
21 draw an analogy that with respect I don't think
22 can be drawn. Like in a journalistic context,
23 people voluntarily approach media. They say "I
24 have really important information, but I'm fearful
25 about consequences to myself, therefore, I won't

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1 talk to you at all unless you give me some
2 guarantees". But I can't see the analogy to a
3 public inquiry there.
4 296. Q Well, would you not agree that social workers
5 -- that part of this inquiry is going to deal with
6 hearing from social workers about the system and
7 systemic issues and how it can be improved?
8 A Well, the inquiry, as I understand it, is
9 into all the circumstances related to Phoenix
10 Sinclair's death and to give the public a full
11 understanding of what took place there.
12 297. Q Wouldn't the same logic apply that if social
13 workers were granted confidentiality, that more of
14 them would come forward with information about how
15 the system works, if they have concerns about the
16 system?
17 A I don't know. I suspect some people might be
18 compelled to -- in many public inquiries relevant
19 people are often compelled to come forward. Some
20 people may choose not to come forward, other
21 people may voluntarily come forward. I don't know
22 what the case is with respect to the potential
23 witnesses in this Inquiry.
24 298. Q But how would the Commission know if there
25 was a specific social worker out there that had

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1 something to offer without them coming forward?
2 MR. KROFT: Sorry, are you talking about the
3 Phoenix Sinclair circumstances of death?
4 BY MR. SAXBERG:
5 299. Q I'm talking about there's an Inquiry here and
6 the Commission has said "anyone who's got
7 information, come forward and tell us about it".
8 They've said that over and over again.
9 MR. KROFT: But there's a witness list that's
10 been compiled already and we know all the people who are
11 applicants and will be subject to the order, although you
12 haven't disclosed it for understandable reasons to us. But
13 if you're talking about the circumstances of the death of
14 Phoenix Sinclair, that part of the Inquiry, I don't
15 understand the question. I think the witness is entitled to
16 an explanation of that, because the Commission does know --
17 isn't there already a witness list?
18 MR. SAXBERG: Well, that's a very good
19 question. I don't think that there is. There should be,
20 we're close enough to it, but I don't think there is a
21 witness list.
22 BY MR. SAXBERG:
23 300. Q But in any event, whether there is or isn't
24 isn't important. The point is it's an inquiry and
25 the point of that is for people to come forward

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1 and tell the Commissioner what information they
2 have. And wouldn't this kind of confidentiality
3 being granted to social workers assist in that
4 endeavour? That's the question I'm asking.
5 A Assist in them coming forward to the Inquiry?
6 301. Q Yes.
7 A That's something for the Commission to
8 determine.
9 302. Q Now, the Media, I understand it, is not
10 objecting to sources of referral, and I'm using
11 that as a term of art in the child welfare field,
12 from being confidential in the Phoenix Sinclair
13 Inquiry. Is that correct?
14 MR. KROFT: No. The position that the Media
15 articulated is on the record from when we appeared before
16 Commissioner Hughes. The Media's position is that it is not
17 going to be participating in those applications and
18 reserving its right, once it knows the facts which it
19 doesn't currently have, to apply if there's an order granted
20 to set it aside, but they're not being active in those
21 particular applications now. That's the position.
22 MR. SAXBERG: Which is to say that the Media
23 is not opposing the application of eight sources of
24 referrals, to have the publication ban apply to them?
25 MR. KROFT: No, that's not the position.

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1 MR. SAXBERG: Okay. Then what is the
2 position?
3 MR. KROFT: The position is that the Media
4 does not have the facts -- first of all, the Media Group,
5 right, it's four people, I can't speak for anybody else,
6 four institutions, and they are reserving their rights to
7 object once they have the facts. They are not moving in
8 advance of the hearing to get facts in order to determine
9 whether or not they would oppose or consent. They're taking
10 effectively no position yet.
11 MR. SAXBERG: And is the reason for taking no
12 position or one reason for taking no position at this point
13 in time based on the same logic for which the Media allows
14 for confidential informants?
15 MR. KROFT: No.
16 BY MR. SAXBERG:
17 303. Q Are you aware, sir, in terms of sources of
18 referral that in the child protection system when
19 CFS receives a call or information from a person
20 about a child protection concern, that it's
21 obligated to ensure the confidentiality of the
22 source of that referral? Are you aware of that?
23 A I'm not aware of the specifics, but that
24 sounds very logical.
25 304. Q And are you aware that the reason for

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1 maintaining the confidentiality of sources of
2 referral is so that the public isn't discouraged
3 from reporting concerns about children?
4 A That sounds reasonable.
5 305. Q Out of fear of reprisal from those that are
6 the subject of the concerns. Is that fair?
7 A Yeah, fair.
8 306. Q And would you agree, then, that for the same
9 reasons that the media allows for confidential
10 sources, it doesn't publish the name of
11 confidential informants, that sources of referral
12 in child protection matters should similarly be
13 afforded a publication ban or that same treatment
14 as confidential informants?
15 A As I mentioned, each of our determinations is
16 very case specific. There's no blanket kind of
17 policy that governs all of a particular class of
18 people.
19 307. Q Would you agree that the restriction that's
20 being sought here, that is a publication ban on
21 the name and image of social workers, is a minimal
22 restriction?
23 A I'm not sure I understand.
24 308. Q I'm asking you about whether you would
25 consider the publication ban on naming witnesses

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1 and revealing their images as being a minor
2 restriction, medium restriction or a major
3 restriction. What do you consider?
4 A It's really impossible for me to answer that
5 before I know the facts that will come out of this
6 Inquiry. There could be all kinds of
7 circumstances in which the public would not be
8 well-served by not knowing the identity of
9 particular individuals, but that would be based on
10 the facts that come out. And it's impossible to
11 determine that in advance.
12 309. Q In what situation would the public be not
13 served by not knowing the name of an individual in
14 this case?
15 A There's any number; that an individual may
16 have been active elsewhere in another
17 jurisdiction. An individual may have a particular
18 background and have a track record of doing X, Y
19 or Z. There could be any number of circumstances
20 in which it will be important to know the
21 identity.
22 310. Q Do you see a distinction between knowing the
23 identity of the witness and publishing the
24 identity of the witness?
25 A I see the distinction.

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1 311. Q Is there anything -- let me back up. Why do
2 you need to publish the names of social workers,
3 show their images, in order to tell the story of
4 what's transpiring at the Inquiry?
5 A You know, you could also ask why do we have
6 an open court principle, why do we need to have
7 reporters attend court all together. I think
8 there's a general feeling in society that
9 transparency is a good thing. And certainly the
10 courts have adopted an open court principle
11 allowing media to come in and freely report
12 everything that the judge determines can be freely
13 reported. It's a general principle in our society
14 that the more the public knows about what goes on
15 in the justice system and also in public inquiry
16 -- the very nature of a public inquiry is that the
17 public needs to be informed about things. So
18 those are the reasons I think it's important.
19 312. Q But I was asking for the specific reason why
20 you would need to name a social worker in order to
21 adequately convey what's happening at the Inquiry.
22 A I mentioned that -- as I've already
23 mentioned, it depends on the facts and connections
24 can be drawn to who that person might be, who that
25 person has connections to. That may be of great

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1 public interest. And without the ability to name
2 those individuals, that portion is going to be
3 lost to the public.
4 313. Q You'll agree, though, that there is no
5 restriction being sought in this case with respect
6 to what the CBC can report about what any witness
7 is saying at the Inquiry?
8 MR. KROFT: Is that right? There's a number
9 of motions and I think in some of them they've gone further
10 than -- I wish it were so. And if you tell me that's so, I
11 will take your word for it, but I didn't recall reading all
12 the motions that way. And there was some requests in some
13 motions, for example, I think for an in camera --
14 MS. JARDINE: Right, in Bill Gange's motion I
15 believe, yes.
16 BY MR. SAXBERG:
17 314. Q Well, I'll just limit the question to the
18 relief sought by MGEU, ICFS and the Authorities.
19 MR. KROFT: If you could just, for the
20 witness, tell him what the particular relief is, then it
21 will remind me as well.
22 BY MR. SAXBERG:
23 315. Q MGEU, ICFS, and the Authorities are seeking a
24 publication ban that will limit the media in
25 reporting the names of certain social workers and

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<p>Page 85</p> <p>1 showing their identity. And I'm asking if that 2 restriction in any way inhibits CBC's ability to 3 report on the evidence that's being adduced at the 4 Inquiry? How does it restrict CBC's ability to 5 tell the story? 6 A It might. A person may be related to another 7 person. That might be very relevant to the facts 8 of the case and that couldn't be reported. A 9 person may have been appointed or gotten a job 10 from somebody else and you can't reveal that and 11 that might be a pertinent fact in the Inquiry. 12 There's any number of scenarios in which that 13 might prove to be pertinent. 14 316. Q Do you understand that it's the system, the 15 child welfare system that's the subject of the 16 Inquiry, not individuals? 17 MR. KROFT: I object to the question. 18 MS. JARDINE: Sorry, I have to go. 19 MR. KROFT: Why don't we take a quick break. 20 MR. SAXBERG: Sure. 21 (PROCEEDINGS RESUMED PURSUANT 22 TO BRIEF ADJOURNMENT) 23 MR. SAXBERG: Could we mark the Nygard 24 Winnipeg Free Press story as the next exhibit. 25 Exhibit #5: Winnipeg Free Press story re</p>	<p>Page 87</p> <p>1 320. Q I want to show you an article that's somewhat 2 notorious in this case already. It was marked as 3 Exhibit G in the Supplementary Affidavit of Janet 4 Kehler, so you've probably seen it. It's a front 5 page article from the Winnipeg Sun. 6 MR. KROFT: Do you have the article itself? 7 BY MR. SAXBERG: 8 321. Q Yes. The first page is a headline from the 9 Winnipeg Sun. Have you seen that before? 10 A Yes. 11 322. Q And the headline shows a picture of Phoenix 12 Sinclair and then underneath it in large upper 13 case font is the word "cowards". Do you see that? 14 A Yes. 15 323. Q Do you believe that -- does the CBC have a 16 position that social workers are cowards? 17 A No. 18 324. Q You'd agree with me that this headline, this 19 story, is an example of sensational journalism? 20 A You know, I'm here to give you opinions in 21 terms of -- or information in terms of my position 22 with the CBC, so I feel a little bit uncomfortable 23 commenting about editorial judgments made by other 24 news organizations. 25 325. Q Well, I understand that it's uncomfortable to</p>
<p>Page 86</p> <p>1 Peter Nygard 2 BY MR. SAXBERG: 3 317. Q I'd asked you if the restriction that's being 4 sought is minimal in your mind and you said, I 5 think you said "it may be, may not be, it depends 6 on the specific facts that come out"; is that 7 fair? 8 MR. KROFT: Well, the record will show. He 9 answered that question and it will say what it says. 10 MR. SAXBERG: Right, and I just want to make 11 sure that I understand what it is that he's saying. 12 MR. KROFT: Do you need it read back? I don't 13 want him to keep answering the same question over and over. 14 MR. SAXBERG: Well, I don't think that the 15 answer was clear and I guess that's -- 16 THE WITNESS: It depends on the facts that 17 emerge. 18 BY MR. SAXBERG: 19 318. Q It may wind up being a minimal restriction, 20 it may not be, depending on the facts is what 21 you're saying? 22 A That's what I'm saying. 23 319. Q I take it that CBC is opposed to the 24 sensationalization of stories. Is that fair? 25 A Yes, that is fair.</p>	<p>Page 88</p> <p>1 have to call down one of your colleague 2 institutions. However, I think it's fair for me 3 to ask for your confirmation that as a managing 4 editor and someone who has years and years of 5 experience in journalism, based on that to get 6 your confirmation that is really a sensational 7 headline. 8 A You could call it that. 9 326. Q Do you have a position, does CBC have a 10 position as to whether or not that kind of media 11 coverage is going to negatively affect the ability 12 of social workers to deliver services to children 13 and families? 14 MR. KROFT: Do you want to put that a 15 different way? It's not a fair question. 16 BY MR. SAXBERG: 17 327. Q Well, would you agree -- we've talked about 18 the balancing that has to go on between the 19 content of stories in the search for truth and the 20 harm of those stories. Would you agree that a 21 headline such as this is going to harm the child 22 protection system? 23 A The system? 24 328. Q Yes. 25 A I don't -- I don't know.</p>

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1 329. Q Is it not going to make it difficult for
2 social workers to deal with the families that they
3 work with on a day-to-day basis when the front
4 page of the paper calls them cowards?
5 MR. KROFT: Are you asking for an opinion from
6 him on the child welfare system?
7 MR. SAXBERG: I don't think I came close to
8 that type of question.
9 MR. KROFT: Then I misunderstood, I'm sorry.
10 What's the question?
11 MR. SAXBERG: I'm asking him as the gatekeeper
12 for content for his media organization and as someone who
13 weighs the harm that could be caused by stories. I'm asking
14 if he has the opinion that this type of sensationalism could
15 harm the child protection system.
16 THE WITNESS: I don't know how to answer,
17 honestly. I think everyone recognizes that our world is
18 full of opinions and bloggers and commenters and media and,
19 you know, way more so today than has ever been the case.
20 And you'd have to really undertake an analysis of how much
21 people pay attention to -- serious attention to things like
22 this to get a really good handle on a good analysis of that.
23 MR. SAXBERG: Could we mark this document, the
24 two pages, as the next exhibit. That will be the cover and
25 the article that follows.

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1 Exhibit #6: Cover and article from the
2 Winnipeg Sun re "cowards"
3 BY MR. SAXBERG:
4 330. Q I just will ask one more question about this
5 article in Exhibit 6, though. On the second page,
6 third paragraph, Tom Brodbeck, the author, writes
7 "the Inquiry hasn't even started yet and already
8 one of Manitoba's biggest unions wants this thing
9 to be a whitewash". Could you confirm that if the
10 publication ban as sought by MGEU is ordered, the
11 Inquiry will not be a whitewash?
12 MR. KROFT: Sorry, are you suggesting to him
13 that that comment was made in respect to the publication
14 bans? Is that what it was --
15 MR. SAXBERG: Yes.
16 MR. KROFT: Okay, sorry.
17 THE WITNESS: Sorry, what was your question
18 again?
19 BY MR. SAXBERG:
20 331. Q Well, the question is if the publication ban
21 that MGEU is seeking is ordered, will that mean
22 that the Inquiry is a whitewash?
23 A You want my opinion?
24 332. Q Yes.
25 A I think it will mean that we may not get as

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1 full a picture as we could have. Will that amount
2 to a whitewash? You're asking me to speculate on
3 all the information that's going to come out of
4 this Inquiry. I can't do that.
5 333. Q Well, remember that -- let me ask you this;
6 when confidential informants come forward to CBC
7 and CBC doesn't publish their identity, are those
8 stories whitewashes?
9 A No.
10 334. Q No, they're not? And wouldn't that similarly
11 be the case here?
12 A If what you're saying is will the bulk of the
13 actual information come out at the Inquiry, the
14 actual words and information being put by the
15 witnesses anyway, then I'll agree with you, yes,
16 it will. However, as I mentioned earlier, some of
17 the connections that might be relevant may not
18 emerge, may not be reportable.
19 335. Q Right, and that's a very good distinction,
20 may not be reportable.
21 A Right.
22 336. Q However, the Commissioner himself will
23 receive information as to those connections and
24 witnesses' names; correct?
25 A Correct.

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1 337. Q So the ultimate result of the Inquiry will
2 not in any way be diminished by the publication
3 ban?
4 A I mean, once there's a publication ban, I
5 believe that constricts the Commissioner from what
6 he can put in his final report as well. I could
7 be wrong. That's my understanding.
8 338. Q Just one final area. I'm going to show you
9 an article from the Winnipeg Free Press and I've
10 just included the first page because that's where
11 the quote that I want to refer you to is found.
12 Underneath the heading "Agency" -- I'm going to
13 actually give you the full article. Page two, the
14 third paragraph, I'll read it into the record;
15 "Phoenix's file was transferred to a native-run
16 agency in late 2003. There is no indication of
17 any interaction between the child, the family and
18 agency workers on her file from that point on. It
19 is not clear which native agency the child was
20 referred to." Do you see that?
21 A Yes.
22 339. Q Are you aware that that statement is
23 factually incorrect?
24 A I don't know.
25 340. Q If you were aware, if CBC was aware that the

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1 file was not transferred to a native-run agency,
 2 then did nothing, would that affect whether or not
 3 you were opposing a publication ban with respect
 4 to those workers from that agency?
 5 A Sorry, if CBC was aware -- can you repeat
 6 what you said?
 7 341. Q The allegation in the story is that the
 8 Phoenix Sinclair file was transferred to a native-
 9 run agency in late 2003 and that the native-run
 10 agency did nothing.
 11 A Right.
 12 342. Q It's a pretty serious allegation?
 13 A Right.
 14 343. Q The truth of the matter is that there was no
 15 such transfer to any native agency.
 16 A Okay.
 17 344. Q And therefore, the fact of that native agency
 18 doing nothing is a serious allegation that's false
 19 and is casting aspersions or blaming individuals
 20 at that agency for something they had nothing to
 21 do with. For your reference, that's information
 22 that's part of this motion in the Affidavit from
 23 Shirley Cochrane.
 24 MR. KROFT: That's the position of Shirley
 25 Cochrane?

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1 BY MR. SAXBERG:
 2 345. Q Yes, who is the executive director of
 3 Intertribal CFS. Do you understand that?
 4 A Yes.
 5 346. Q Does that knowledge now, knowing that this
 6 agency had nothing to do with this case, does that
 7 not affect the CBC's balancing of whether or not
 8 the publication ban with respect to social workers
 9 for that agency is important in this case?
 10 A Does it have an impact on our position
 11 regarding the publication ban?
 12 347. Q Yes, with respect to social workers for that
 13 agency.
 14 A It doesn't have any impact on our position
 15 respecting our position on the publication ban.
 16 348. Q If the workers at that agency had nothing to
 17 do with the Phoenix Sinclair file on the one hand,
 18 but on the other hand their dealings with their
 19 own community and their ability to service their
 20 caseloads is harmed, isn't that something that the
 21 CBC should consider in terms of its position?
 22 MR. KROFT: Sorry, you understand we don't
 23 accept as truth either of those things. You're asking him
 24 to speculate if those two things were true, would it affect
 25 the position on the Inquiry?

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1 MR. SAXBERG: Well, earlier I believe the
 2 witness said that it's the context, it's the evidence, the
 3 information as to what the workers did that is going to
 4 determine ultimately whether or not this is a minimal
 5 restriction or something other than that and whether or not
 6 it's an appropriate restriction.
 7 MR. KROFT: You made two factual assumptions
 8 that I don't -- you can ask this witness if he has any
 9 knowledge of it, but bundled into your question was, number
 10 one, the truth of the assertion of Shirley Cochrane, which
 11 you appreciate we have no disclosure, so we don't know
 12 whether that's right or wrong. And number two, your
 13 allegation that if their names are published it will harm
 14 their community, which we also disagree with, and in fact,
 15 we think there's evidence to the contrary. So this isn't a
 16 have-you-stopped-beating-your-wife-yet question and I know
 17 you're not intending it to be that, but we don't accept
 18 either of the premises or don't know if they're true in the
 19 case of Shirley Cochrane's evidence.
 20 BY MR. SAXBERG:
 21 349. Q Well, would you agree that if the media is
 22 publishing incorrect statements about social
 23 workers and their involvement in this file, that
 24 that could have a harmful effect on the delivery
 25 of child welfare services?

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1 A If the media's publishing incorrect
 2 information about anything, they should seek to
 3 correct that information as quickly as possible.
 4 MR. SAXBERG: That was my last question.
 5 Thank you for your patience and I'm sorry that it took so
 6 long.
 7 MR. KROFT: I just have two in re-direct, both
 8 relate to Ms. Jardine's questions.
 9 RE-DIRECT EXAMINATION BY MR. KROFT:
 10 350. Q Ms. Jardine put to you the full report on the
 11 Tracia Owen Inquest and was asking you to pick out
 12 the names of social workers that were named. And
 13 I think during a break you picked out one that you
 14 hadn't picked out when you went through it, and if
 15 so, you may want to just correct the record.
 16 A This is Rhonda Wasicuna on page 19.
 17 351. Q Thank you.
 18 MR. KAHN: Which paragraph?
 19 THE WITNESS: 85.
 20 MR. KHAN: Sorry, what was the question?
 21 MR. KROFT: Ms. Jardine had been going through
 22 each of the social workers and she skipped that one and Mr.
 23 Rosner didn't pick it up and I think at the end, you'll
 24 correct me if the transcript says otherwise, she said "so
 25 that's all the social workers, right", or something to that

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1 effect. I believe he agreed with that and then on the break

2 --

3 MR. KHAN: So you're just pointing out a name
4 that wasn't mentioned?

5 MR. KROFT: Correct.

6 MR. KHAN: Thank you.

7 BY MR. KROFT:

8 352. Q The other question; Ms. Jardine had raised
9 with you a case that she referred to as the
10 Yellowback case.

11 A Right.

12 353. Q And drew an analogy I believe to something
13 about this case. I'm just wondering if you can
14 put on the record what it was that the Yellowback
15 request was I believe from the police to the
16 media.

17 A That was a case involving -- a press
18 conference was held by one or two Aboriginal
19 organizations to talk about an incident that had
20 taken place on a Northern First Nation involving
21 Mr. Yellowback, and subsequent to that press
22 conference we were served with a production order
23 asking us to turn over our tapes. We and some
24 other media outlets were served with a production
25 order asking us to turn over our tapes of the

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1 press conference, which we opposed and were
2 successful in having the production order quashed.

3 MR. KROFT: Those were all the questions I
4 had.

5 (Adjourned generally at 1:14 p.m.)

REPORTER'S CERTIFICATE

I, Colleen McFall, an Official Examiner, Q.B., in and for the Province of Manitoba, do hereby certify that the foregoing pages of typewritten matter are a true and accurate account of the evidence and proceedings in this matter as taken by me in stenotype, to the best of my skill and ability.

Colleen McFall

Colleen McFall
Official Examiner, Q.B.

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