



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

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

Transcript of Proceedings
Public Inquiry Hearing,
held at the Winnipeg Convention Centre,
375 York Avenue, Winnipeg, Manitoba

TUESDAY, JANUARY 8, 2013

APPEARANCES

MS. S. WALSH, Commission Counsel

MR. D. OLSON, Senior Associate Counsel

MR. R. MASCARENHAS, Associate Commission Counsel

MR. S. PAUL, for Department of Family Services and Labour

MR. T. RAY, for Manitoba Government and General Employees Union

MR. K. SAXBERG, for General Child and Family Services Authority, First Nations of Northern Manitoba Child and Family Services Authority First Nations of Southern Manitoba Child and Family Services Authority Child and Family All Nation Coordinated Response Network

MR. H. KHAN, for Intertribal Child and Family Services

MR. J. GINDIN and **MR. D. IRELAND**, for Mr. Nelson Draper Steve Sinclair,
Ms. Kimberly-Ann Edwards

MR. J. FUNKE , for Assembly of Manitoba Chiefs and Southern Chiefs Organization Inc.

MR. W. HAIGHT, for Manitoba Métis Federation and Métis Child and Family Services Authority Inc.

MS. V. RACHLIS, for Winnipeg Regional Health Authority

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3

4 THE COMMISSIONER: Yes.

5 MR. HAIGHT: Yes --

6 THE COMMISSIONER: Mr. Haight.

7 MR. HAIGHT: Yes, Mr. Commissioner. I have
8 sought standing through your counsel to ask a few questions
9 this morning. I've been granted that opportunity.

10 Ms. Willox, my name is Bill Haight and I
11 represent Helen Waugh and I expect you'll be happy to know
12 that I have only a few questions for you.

13 MS. WALSH: Just for the formality, Mr. Haight
14 requested the ability to cross-examine this witness but I
15 think the formal standing has to be addressed by you,
16 Mr. Commissioner, but I acknowledge that the request has
17 come through our office and I have made you known of it.

18 THE COMMISSIONER: Yes. And are there others
19 besides Mr. Haight that are seeking leave with respect to
20 this witness?

21 MS. WALSH: There are, Ms. Rachlis and
22 Mr. Buchwald, are all counsel for witnesses who would
23 otherwise not have standing to cross-examine, who have all
24 sought that standing in writing.

25 THE COMMISSIONER: All right. Anybody want to

1 speak to the request to those three people? If not, I'll
2 grant the right to cross-examine with respect to this
3 witness. And now that, will Mr. Haight come in turn or has
4 that --

5 MS. WALSH: I think Mr. Haight has already
6 discussed the order of cross-examination with other
7 counsel.

8 THE COMMISSIONER: With other counsel, all right.

9 MR. HAIGHT: Yes, yes, I have, sir.

10 THE COMMISSIONER: All right.

11

12 **SHELLY LYNN WILLOX**, previously
13 sworn, testified as follows:

14

15 CROSS-EXAMINATION BY MR. HAIGHT:

16 Q Ms. Willox, I believe you indicated to commission
17 counsel that while you were a CRU, you spoke with Ms. Waugh
18 on several occasions or many occasions?

19 A Yes, I did.

20 Q And sufficient occasions, as I understand it,
21 that you would recognize her voice over the phone?

22 A Yes.

23 Q You don't know each other personally but you
24 would speak to each other on the phone enough that you
25 would recognize each other's voice?

1 A That's correct.

2 Q And Ms. Waugh, as I understand it, did not have a
3 direct line that you could call at EIA. You would call the
4 investigation line, as I understand it, and either she or
5 one other person might pick that phone up?

6 A That's correct.

7 Q And it was not always Helen Waugh that you spoke
8 to when you were seeking demographic information relating
9 to any particular file?

10 A That's correct.

11 Q And I think you indicated that some EIA reps were
12 more helpful than others?

13 A Yes, I did.

14 Q And that Helen Waugh was generally helpful when
15 you had a request?

16 A Yes, she was.

17 Q And if you reached Ms. Waugh and requested a
18 search, she would do it for you?

19 A Yes.

20 Q You have no recollection of Ms. Waugh ever
21 refusing to comply with a request for a search?

22 A No, I do not.

23 Q And you would agree with me, Ms. Willox, that
24 when you look at your report and you look at Ms. Waugh's
25 note of the discussion that you and she had on December 1,

1 2004, that they both seem to record a very different
2 telephone conversation?

3 A Yes, they do.

4 Q And your report indicates that you contacted EIA
5 to inquire about demographic information from Ms. Waugh?

6 A Correct.

7 Q Whereas Ms. Waugh's note indicates that you were
8 calling to inform that Samantha Kematch is living with
9 Wes McKay, the father of her newborn baby?

10 A That's the way it's recorded, yes.

11 Q Yes. And you have no independent recollection of
12 this conversation?

13 A Other than what's recorded in my documentation,
14 no.

15 Q Right. You rely solely on your notes. You have
16 no recollection independent of those notes?

17 A That's correct.

18 Q Right. And would you agree with me that it's a
19 fair interpretation of looking at your report and
20 Ms. Waugh's notes that there appears to have been a
21 miscommunication occur between you and Ms. Waugh?

22 A I suppose that's a possibility but it's hard for
23 me to say.

24 Q Yes. But that would be a fair interpretation of
25 those two notes; would you agree with that?

1 A Yes, but I could also, I guess, I mean I have a
2 question about the way Ms. Waugh had documented her
3 involvement or our conversation and wonder -- my intent
4 always was to call to request demographic information. My
5 intent of that call was not to record that they were
6 involved in a common-law relationship. I question and
7 would like, out of curiosity, like to know if, for example,
8 on other cases where I called for demographic information
9 was it always, I guess the process of the EIA person who
10 answered that inquiry line to document on every case note
11 as to whether or not CFS called to inquire for demographic
12 information or did she take the information that I had
13 provided her and did she document it in a manner that was
14 purposeful for your, for the EIA department?

15 Q And you appreciate that I'm not here to answer
16 that sort of question.

17 A And I understand that, but that's just my, I
18 guess, question to know so that I could understand why the
19 information was documented in that manner.

20 Q But the point is, is that you don't have an
21 independent recollection of that discussion?

22 A No, I do not.

23 Q And you have indicated that it would be a fair
24 interpretation of the two notes, yours and hers, that a
25 miscommunication occurred.

1 A Miscommunication in what sense?

2 Q Well, I think you've already answered that
3 question. I was, I was just trying to summarize what you
4 said. But you said yesterday you thought that it would be
5 a fair interpretation, that looking at those two notes,
6 that there was a miscommunication.

7 A I guess it could be said there was a
8 miscommunication. Whether it was --

9 Q And having no independent recollection of that
10 discussion, you're not able to say here today whether it
11 was you that miscommunicated or Ms. Waugh that
12 misinterpreted what you were seeking?

13 A I suppose, yes.

14 Q Now when you prepared your report that we went
15 through yesterday with commission counsel and I have asked
16 that it be brought up on the screen and you'll see page 3
17 of 4 in front of you, Ms. Willox, and I'll refer to it in a
18 moment, but when you prepared this report I assume that you
19 would attempt to record events in the sequence in which
20 they occurred.

21 A I would assume, yes.

22 Q Right. In fact that was your, your habit, was it
23 not?

24 A Generally, yes.

25 Q So an event that occurred at 9:00 a.m. on a given

1 day would be recorded prior to an event that occurred at
2 11:00 a.m. on that same date?

3 A Should be, yes.

4 Q Yes. And when you would seek advice from your
5 supervisor and the supervisor would give you advice, you
6 would make a note of the advice given, would you not?

7 A Generally, yes.

8 Q Yes. And because it was something that you felt
9 you couldn't make a decision on and you had to seek advice
10 and you would be careful to make sure that you recorded
11 what that advice was?

12 A Yes.

13 Q And you'd want to record that advice completely
14 as well?

15 A Yes.

16 Q And you indicated in your response to commission
17 counsel that the presence of another adult in the home that
18 you were looking into in 2004 was not as significant an
19 event as it is today.

20 A That's correct.

21 Q And then if you look at your report and it's on
22 your screen. This is, sir, for the record, commission
23 disclosure 36951 -- excuse me, 1795, page 36951. And in
24 the middle of that page, Ms. Willox, it refers to your
25 consultation with Ms. Faria, your supervisor. It says:

1 "After reviewing the recorded
2 documentation on CFSIS ..."

3

4 And I'm reading now from the fourth full paragraph in the
5 middle of the page,

6

7 "... this worker ..."

8 Being you,

9 "... consulted with supervisor,
10 Faria, with respect to the
11 Agency's role with respect to this
12 matter. Faria agreed that this
13 matter should be referred to
14 intake for ongoing follow up and
15 assessment of the home environment
16 at this time."

17

18 And we had a -- you had a lengthy discussion with
19 commission counsel about that yesterday. So by the -- and
20 then thereafter I note that on December, the next note is:

21

22 "On Dec. 1/04 this worker left a
23 ... message for the SOR, asking
24 that she reconnect with the Agency
25 to report Samantha's expected date

1 of discharge."

2

3 And then the next note relates to your discussion with
4 Ms. Waugh:

5

6 "On Dec. 1/04 this worker
7 contacted EIA to inquire about the
8 demographic information ..."

9

10 So based upon the sequence of that, those
11 paragraphs within the report, I'm assuming, and based upon
12 the answers that you've just given, that you contacted
13 Helen Waugh after you had already sought advice from your
14 supervisor, Ms. Faria.

15 A It appears that way, yes.

16 Q Yes. And so by the time that you contacted and
17 had the telephone discussion with Ms. Waugh, you had been
18 told by your supervisor and believed that this matter was
19 to be referred to intake?

20 A Correct.

21 Q And you were aware that in 2004 the issue of an
22 individual in the home was not as significant at that point
23 in time as it is today?

24 A Correct.

25 Q And you were aware that, or you believed, excuse

1 me, that a home assessment was to be done in the home that
2 in fact Wes McKay was living in?

3 A Correct.

4 Q And there's no note, you agree, after your
5 discussion with Ms. Faria, of you being required to seek
6 the demographic information regarding Wes McKay, you agree
7 that there's nothing like that in your notes?

8 A No, there is not.

9 MR. HAIGHT: Thank you, Ms. Willox. Those are
10 all my questions.

11 THE COMMISSIONER: Ms. Rachlis?

12 MS. RACHLIS: Yes, good morning, commissioner,
13 good morning.

14 THE WITNESS: Good morning.

15 MS. RACHLIS: My name is Vivian Rachlis for the,
16 for the record, sir. I'm counsel for the Winnipeg Regional
17 Health Authority and I have just a few questions for this
18 witness.

19

20 CROSS-EXAMINATION BY MS. RACHLIS:

21 Q Ms. Willox, first of all, I think you just
22 confirmed to counsel for Ms. Waugh and you confirmed, you
23 indicated to commission counsel yesterday that you really
24 have no independent recollection of the matters that you
25 testified about yesterday, correct?

1 A That's correct.

2 Q And you gave some evidence yesterday with respect
3 to your practices with respect to recording of your notes
4 and I think you indicated yesterday that there's a, there
5 were a couple of methods at the time that you used to
6 record notes. First of all, you might make handwritten
7 notes in a steno pad?

8 A That's correct.

9 Q And you indicated that at times you simply typed
10 your, your discussions directly into a Word document which
11 would then become a part of your intake report, or I'm
12 sorry, your CRU report.

13 A That's correct.

14 Q And that with respect to the method that you used
15 on the occasion that we were dealing with yesterday, you
16 can't remember whether it was one of those methods,
17 correct?

18 A That's correct.

19 Q And can you, can you recall whether it was -- can
20 you say whether it was one or the other of those methods or
21 might it have been some other method altogether?

22 A It would have been one of those two methods.

23 Q Okay, all right. And you indicated yesterday as
24 well that with respect to the report that you prepared,
25 your CRU report that was discussed yesterday, you -- when

1 that report was ultimately prepared, you might have put
2 some additional -- if you were basing your notes on your
3 steno pad notes, you might have put in some additional
4 words or sentences to flesh out the notes that you took in
5 your steno pad; is that fair to say?

6 A Yes.

7 Q All right. You recall giving that evidence
8 yesterday?

9 A Yes.

10 Q All right. And with respect to what was actually
11 going on at the time that you had discussions with
12 Nurse Wu, who I represent, I want to ask you a couple of
13 questions about the context of that discussion. First of
14 all, you indicated yesterday that it came in the door and
15 the matter came to you because of a contact from a hospital
16 social worker at the Women's Hospital, correct?

17 A That's correct.

18 Q A source of referral who has previously given
19 evidence in these proceedings. When the matter, when you
20 undertook that matter, the matter wasn't considered a child
21 protection investigation, correct?

22 A That's correct.

23 Q All right.

24 A Well, it was considered a child protection
25 investigation in the sense that I was following up, but

1 there was not a child protection concern reported.

2 Q All right.

3 A We were attempting to either validate or
4 substantiate whether there was a child protection concern
5 that required our involvement.

6 Q All right. So you were notified that Samantha
7 Kematch had given birth to a baby at Women's Hospital.
8 That came to your attention and you were following up on
9 that?

10 A Correct.

11 Q All right. Now in -- you testified yesterday
12 with respect to a number of conversations and activities
13 that led to your conversation with the Public Health nurse,
14 Ms. Wu. I'm going to go directly to your conversation with
15 Ms. Wu. When you connected with Ms. Wu, that was, my
16 understanding is that what led to that was that you left a
17 telephone message for her on December 3rd, 2004, correct?

18 A Correct.

19 Q And that Ms. Wu returned the call to you later
20 that afternoon?

21 A Yes, she did.

22 Q All right. And when you were -- when the two of
23 you were live, so to speak, you, I take it that you did not
24 indicate to Ms. Wu that you were performing a child
25 protection investigation per se. That is nowhere in your

1 notes.

2 A No, those words are not in my notes.

3 Q All right. And Ms. Wu didn't indicate to you
4 that she had any child protection concerns, correct?

5 A No, she did not.

6 Q All right. So yesterday, when you made reference
7 to the conversation between Ms. Wu and yourself, you used
8 the expression "play on words" and to me a play on words
9 means a pun or something like that, but I think what you
10 were trying to say yesterday is that no one said anything,
11 that you didn't say you were performing a child protection
12 investigation, correct?

13 A I didn't say I was performing a child
14 investigation. I said our agency was following up to
15 determine, based on concerns that were reported to us, to
16 see if there was a concern from her perspective with
17 respect to the family.

18 Q All right. So you did not explicitly say to
19 Ms. Wu that you were performing a child protection
20 investigation?

21 A No, I did not use those words.

22 Q All right, all right. And so you didn't use
23 those words and Ms. Wu, you indicated yesterday, what you
24 implied from your conversation with her is that she didn't
25 have any child protection concerns, correct?

1 A That's correct.

2 Q And you indicated yesterday that you reminded
3 Ms. Wu of her obligations under the Child and Family
4 Services Act to report if she considered that a child was
5 in need of protection?

6 A That's correct.

7 Q And that she did not indicate to you that she had
8 any concerns that there was a child in need of protection
9 in this case.

10 A That's correct.

11 Q All right. And what you implied from that, as
12 you testified yesterday, was that, was that she not only
13 understood her obligations under the Child and Family
14 Services Act, but that she in fact didn't feel that there
15 was any evidence supporting her making any steps to report
16 in this case, taking any steps, I should say.

17 A Sorry, the last part of what you said was that
18 she did not feel?

19 Q You, you indicated yesterday in your testimony
20 that you implied from that conversation that she not only
21 understood her duty to report --

22 A Correct.

23 Q -- correct, but that in this case she didn't feel
24 that there was anything that supported her duty to report,
25 that there was any, any child protection concern in this

1 case.

2 A That was my interpretation, yes.

3 Q All right. Now you indicated yesterday that, I
4 believe that you started at the crisis response unit, CRU,
5 in 2002 and at that point you had been practicing social
6 work for three years, correct?

7 A '99 to 2002, yes, three years.

8 Q All right. And can you remember the month that
9 you started at CRU in two thousand --

10 A September 2002.

11 Q I'm sorry?

12 A September 2002.

13 Q All right. So we're talking about a conversation
14 that took place with my client in December of 2002, or
15 2004, I'm sorry. You had been working in the crisis
16 response unit for two years at that time?

17 A That's correct.

18 Q All right. And at that point in time, I take it
19 you were generally familiar with some of the things that
20 Public Health nurses do in the course of their duties as
21 Public Health nurses based on your two years' experience?

22 A I believe so, yes.

23 Q All right. But, you know, certainly your job was
24 in the child protection field?

25 A Um-hum.

1 Q Public Health nursing was, was an external field,
2 in fact I think you referred to the Public Health program a
3 as a collateral source. It was outside --

4 A Correct.

5 Q -- of your area of concern. But I take it
6 generally you were familiar with some of the things that
7 Public Health nurses do with --

8 A Generally, yes.

9 Q -- postpartum women and newborn babies? They do
10 things like check mothers for recovery from child birth,
11 correct?

12 A Correct.

13 Q And check whether there's any breastfeeding
14 concerns, correct?

15 A Correct, yes.

16 Q They weigh the newborn --

17 A Weigh.

18 Q -- and examine the newborn?

19 A Discuss feeding.

20 Q All right. And you were generally aware that
21 those were health related matters that Public Health nurses
22 would attend to, correct?

23 A Correct.

24 Q You testified yesterday, Ms. Willox, with respect
25 to the part of the conversation with Ms. Wu whereby she

1 indicated that she would have to have, obtain consent from
2 her client to have a further discussion, correct?

3 A Yes.

4 Q And you were asked yesterday what you understood
5 the Public Health nurse was actually, would be seeking
6 consent to obtain. Do you remember being asked that
7 question by commission counsel?

8 A Vaguely, yes.

9 Q All right. And in your answer to commission
10 counsel, you indicated that while you understood that the
11 Public Health nurse would be seeking consent with respect
12 to providing you with other health information. Do you
13 recall giving that answer?

14 A Yes.

15 Q All right. And you indicated a moment ago that
16 you were aware generally that Public Health nurses do
17 things like check a woman postpartum, check breastfeeding,
18 check the child, weigh the, weigh the newborn baby.

19 A Yes.

20 Q So I take it that when you understood that the
21 Public Health nurse would be seeking, would need to seek
22 consent, that you were -- you did understand at the time
23 that the consent she would be seeking was in relation to
24 that other information?

25 A That was my interpretation, yes.

1 Q All right. I'd like to go to commission
2 disclosure 0002, which is the section 10 report and you
3 were asked some questions about that report yesterday.

4 UNIDENTIFIED PERSON: Need a page number.

5 MS. RACHLIS: I'm sorry?

6 UNIDENTIFIED PERSON: A page number?

7 MS. RACHLIS: Page number is 161, I believe.

8

9 BY MS. RACHLIS:

10 Q And I believe you indicated yesterday that in
11 your testimony that you were not interviewed in connection
12 with this report.

13 A This is which report, sorry?

14 Q This is the section 10 report prepared by
15 Ms. Christianson-Wood.

16 A I did have email contact. Ms. Christianson-Wood
17 did ask me a series of questions via email.

18 Q All right. You were not interviewed
19 personally --

20 A No, I was not.

21 Q -- with respect to this report. And I believe
22 you indicated yesterday that with respect to all of the
23 reports produced in connection with this, this death, that
24 you were not provided with a full copy of -- you haven't
25 been provided with a full copy of any of these reports,

1 correct?

2 A That's correct, yes.

3 Q And that you were not provided with even the
4 excerpts that you have been provided with now until you
5 were starting to get ready for these proceedings?

6 A That's correct.

7 Q All right. Now with respect to the, the section
8 of this particular report, commission disclosure 0002, you
9 were asked some questions yesterday about the paragraph at
10 the top of page 161 and commission counsel asked you
11 whether that paragraph, in reference to the conversation
12 with my client, was accurate. Do you recall being asked
13 that question yesterday afternoon?

14 A Yes, I do.

15 Q And my note of your answer, Ms. Willox, is that
16 you said that this was accurate for the most part but then
17 you went on to refer to the phrase that indicates that the
18 PHN refused to provide information or to agree to call if
19 there were concerns. And you, your testimony yesterday,
20 Ms. Willox, I understood to be, that fairly that's not
21 accurate, that that reference was not accurate with respect
22 to your discussion with the Public Health nurse and that in
23 particular Ms. Wu did understand her duty to report and
24 that she did not refuse to call if there were any concerns.
25 I think you gave that evidence yesterday.

1 A Yes, and I guess I gave that yesterday as the way
2 it is where Public Health refused to provided information.
3 She, in essence, answered my question by saying,
4 acknowledging her obligation to report, but she did not
5 clearly advise me she did not have child protection
6 concerns and she did not provide me with any other
7 information about her client.

8 Q All right. And with respect to that, Ms. Willox,
9 I take that it would have been -- although you, you implied
10 something from her conversation, it would have given you
11 greater security if she confirmed that she had no child
12 protection concerns. That's what you were saying
13 yesterday.

14 A Yes, just like I'm being asked if I clearly
15 advised her if I -- or if I clearly indicated to her that I
16 was conducting a child protection investigation, she did
17 not clearly advise me that she did not have child
18 protection concerns.

19 Q All right. So there were things to be implied
20 from both sides --

21 A Yes.

22 Q -- of the conversation. And with respect to the
23 phrase that the PHN refused to agree to call if there were
24 concerns, that's not accurate, is it?

25 A No, she did not say that during our conversation.

1 Q All right.

2 MS. RACHLIS: Those are my questions. Thank you.

3 THE COMMISSIONER: Mr. Buchwald?

4 MR. BUCHWALD: Good morning, Mr. Commissioner. I
5 just wish to advise that I will not have any questions for
6 this witness.

7 THE COMMISSIONER: All right, thank you.

8 MR. BUCHWALD: Thank you.

9 THE COMMISSIONER: I understood you did, that's
10 why I called you. Fine.

11 MR. BUCHWALD: Thank you.

12 THE COMMISSIONER: Mr. Paul, you're next.

13

14 CROSS-EXAMINATION BY MR. PAUL:

15 Q Good morning, witness. My name is Sacha Paul.
16 I'm one of the lawyers for the department and Winnipeg
17 Child and Family Services.

18 A Good morning.

19 Q Good morning to you. I will say what every
20 lawyer says, I just have a few questions. Just to recap
21 your evidence from yesterday, just so I understand what was
22 said, your involvement in this case occurred or starts on
23 December 1, 2004?

24 A That's correct.

25 Q And in essence it spans until December 7, 2004,

1 when you type up the report?

2 A That's correct.

3 Q And from your report I understand that most of
4 your investigations, calls, et cetera, occurred from
5 December 1 to December 3?

6 A Yes.

7 Q Right. So in essence we're talking about a span
8 of anywhere from three days to one week?

9 A Correct.

10 Q And that's the sum total of your involvement in
11 this particular file?

12 A Yes, it is.

13 Q And of course this one week occurred in 2004?

14 A Yes.

15 Q And that is now some eight years ago.

16 A Correct.

17 Q My notes of what you told the commissioner
18 yesterday, quite fairly, that you had no statistics with
19 respect to the issue of workload, that's correct?

20 A Correct.

21 Q So fairly then you wouldn't be able to tell the
22 commissioner the number of calls coming into CRU at a given
23 time?

24 A No, I would not.

25 Q And you wouldn't be able to tell the commissioner

1 the number of referrals going from CRU to intake?

2 A No, I would not.

3 Q And you wouldn't be able to tell the commissioner
4 the length of time a case stayed at CRU?

5 A No.

6 Q Of course at this time your job as a CRU worker,
7 your job is not to collect statistics?

8 A Correct.

9 Q And I think my understanding of the evidence and
10 where this issue ultimately ended up, was that you fairly
11 told the commissioner that you don't recall anyone telling
12 you to keep files longer at CRU?

13 A There was no directive that we were to keep files
14 longer at CRU. It was just a process that happened as a
15 result of a request for ongoing services.

16 Q Right. But no directive from anybody?

17 A No, not that I recall.

18 Q And back to this particular case, my
19 understanding of your evidence is that again you told the
20 commissioner that your supervisor didn't tell you the
21 reason why the file came back to you.

22 A That's correct.

23 Q In essence, the supervisor told you to undertake
24 some certain steps but not the reasons why she's asking you
25 to do these certain steps?

1 A Correct.

2 Q I think your evidence also is generally the
3 nature of work at CRU is that it's cyclical?

4 A Correct.

5 Q Some times then can be busier than others?

6 A True.

7 Q I think you also told the commissioner that you
8 don't recall how busy you actually were those eight years
9 ago in December?

10 A That's true, yes.

11 Q And I think you told the commissioner and
12 Ms. Walsh that you don't remember feeling any pressure to
13 close files due to workload?

14 A Correct.

15 Q And of course you wouldn't be able to speak to
16 the workload for that particular week in December 2004?

17 A Correct.

18 Q You wouldn't be able to tell me the vacation
19 schedules of your other workers at CRU in December 2004?

20 A Correct.

21 Q You wouldn't be able to tell the commissioner if
22 they took any sick days for that particular week in
23 December 2004?

24 A Correct.

25 Q If we can move slightly to another area. My

1 understanding is that this concept of devolution finally
2 took place in May of 2005, would you agree with me on that
3 point?

4 A Yes.

5 Q And essentially what's happening in May of 2005
6 is that a number of family service agencies are being
7 created at that time.

8 A Correct.

9 Q At this point, in May of 2005, tier 1 and tier 2
10 intake remained in Winnipeg?

11 A Yes.

12 Q Right. In essence, what was happening was that
13 the long-term family service units were restructuring?

14 A Correct.

15 Q There was some aboriginal agencies being created,
16 other non-aboriginal agencies being created, et cetera.

17 A Correct.

18 Q And again, we're just focusing on May of 2005 at
19 this time. And again, your job as a CRU worker is to
20 respond to the calls that are coming in.

21 A Correct.

22 Q Sometimes these calls are information only.

23 A Correct.

24 Q Sometimes these calls would be people seeking
25 community resources, day care information, et cetera?

1 A True.

2 Q Those are not calls that trigger child protection
3 investigations or concerns?

4 A True.

5 Q These are calls, in essence, that can be dealt
6 with simply by picking up the phone and responding to that
7 particular call at that time?

8 A That's correct.

9 Q And of course sometimes, as is your function, you
10 will get calls that raise child protection concerns?

11 A Yes.

12 Q And your job as a CRU worker is to start to work
13 up the information, gather that information?

14 A That's correct.

15 Q Right. In the event that CRU determines that
16 there's an immediate safety issue, CRU will respond to that
17 particular call then and there, correct?

18 A That's correct.

19 Q For example, if a child is two years old and is
20 wandering the streets, CRU is going to go out then and
21 there?

22 A That's correct.

23 Q And sometimes of course, as you've indicated, the
24 job with CRU is to work up the documentation, work up the
25 information so you can have a better understanding of the

1 file.

2 A That's correct.

3 Q In fact, that's something that you did here by
4 calling various other collaterals?

5 A Correct.

6 Q Right. But all that is initiated, all that is
7 started by someone calling you guys?

8 A Correct.

9 Q And when I say call I also mean letters or
10 walk-ins, people contacting you?

11 A Correct.

12 Q And you would agree with me that the issue of
13 referrals coming into CRU isn't related to how the family
14 service units are restructuring during the period of
15 devolution?

16 A That's correct.

17 Q My understanding then is that as we moved into
18 the May 2005 devolution, would you agree with me that from
19 January 2005 to May 2005, family service units were not
20 taking new referrals so that they could do their paperwork
21 of transitioning files to the new aboriginal agencies?

22 A That was occurring. I don't remember the
23 timeframe that occurred, but that was occurring, yes, in a
24 period of time.

25 Q Okay. And would you then agree with me or in a

1 position to comment that as these units are focusing on
2 paperwork, that the preservation and reunification teams
3 are the ones picking up the new referrals coming in from
4 intake, are you aware of that?

5 A I'm not sure. I -- now that you say that, that
6 might be, that could be true.

7 Q Okay.

8 A I don't recall exactly.

9 Q Would you agree with me that during this same
10 time period the community programming department was
11 volunteering to assist in the transition, are you aware of
12 that?

13 A Not specifically, no.

14 Q Okay. Are you aware that during this period part
15 time staff were approached to increase their hours and many
16 did?

17 A No, I'm not.

18 Q Are you aware that social work students were
19 approached to do work on a casual basis during this period?

20 A No, I was not.

21 Q And are you aware that recent retirees were also
22 approached to do additional work during this time period?

23 A No, I was not.

24 Q And would you be aware that additional
25 administrative staff were hired to assist in this

1 transition at this time?

2 A No, I was not.

3 MR. PAUL: Those are my questions,
4 Mr. Commissioner.

5 THE COMMISSIONER: Thank you, Mr. Paul.

6 Mr. Saxberg?

7 MR. SAXBERG: Thank you, Mr. Commissioner.

8

9 CROSS-EXAMINATION BY MR. SAXBERG:

10 Q My name is Kris Saxberg and I act for ANCR, Diva
11 Faria and Diana Verrier, along with the three authorities
12 other than the Métis Authority. And if we could just call
13 page 36764 up to the monitor and that's from CD1790.
14 Now --

15 THE COMMISSIONER: Just a minute till I find it.
16 36764?

17 MR. SAXBERG: That's right.

18 THE COMMISSIONER: Do I have this, commission
19 counsel?

20 MS. WALSH: Mr. Commissioner, I don't think you
21 do because it wasn't part of the material that we copied
22 for you for the direct examination.

23 THE COMMISSIONER: All right, that explains
24 it.

25

1 BY MR. SAXBERG:

2 Q Ms. Willox, this matter, the Phoenix, your
3 involvement with Phoenix Sinclair, arose because of a
4 referral from a social worker at the Health Sciences
5 Centre, correct?

6 A That's correct.

7 Q And in front of you I've put a note from that
8 social worker and they indicate at the top there's, there
9 are three dates, June 28th, July 8th and November 22nd,
10 '04, do you see that?

11 A Yes, I do.

12 Q Were you aware in doing your assessment of the
13 file, that the hospital social worker had met with
14 Samantha Kematch on three occasions prior to the referral
15 to you in December of 2004?

16 A Based on my recollection of my report I do not
17 believe I was aware of that.

18 Q Right. So the hospital social worker, who
19 testified here as SOR #4, had met with Samantha on three
20 occasions prior to the referral to you and had not
21 indicated any child protection concerns but you were not
22 aware of that information in doing your assessment of the
23 file, were you?

24 A I don't believe so.

25 Q And of course that would be fairly important

1 information for you to know that a social worker had met
2 with Samantha on three occasions and hadn't had any
3 concerns?

4 A It would be helpful to know, yes.

5 Q Would have augured in favour of that, the
6 ultimate decision you made in terms of closing the file,
7 wouldn't it?

8 A It would be a factor to consider, yes.

9 Q In that direction though.

10 A Yes.

11 Q The direction of closing the file, to be clear,
12 right?

13 A Yes.

14 Q And of course you know that Tracy Forbes from
15 intake had visited with Samantha in July of 2004, correct?

16 A That's correct.

17 Q And she hadn't observed any child protection
18 concerns doing her investigation, correct?

19 A That's correct.

20 Q And that would have been something that would
21 have been at the forefront of your considerations in terms
22 of your analysis of the file and your ultimate decision to
23 close it, correct?

24 A I believe so, yes.

25 Q So you have two social workers who had visited

1 with Samantha on four occasions in, in a five month period
2 and there had been no concerns as a result of those
3 meetings. That's something that, that would favour closing
4 the file as a result of no child protection concerns,
5 right?

6 A Yes, it would.

7 Q Now if we could turn to CD1795 which is Samantha
8 Kematch's file and page 36953. That's your report,
9 Ms. Willox. And, Mr. Commissioner, that's the December
10 2004 report by the witness. Oh sorry, I'm misspeaking.
11 It's -- I'm actually turning to the prior intake before
12 Ms. Willox's involvement which is the July 2004 --

13 THE COMMISSIONER: Page number what?

14 MR. SAXBERG: It's page number 36953.

15 THE COMMISSIONER: Yes, I have it.

16

17 BY MR. SAXBERG:

18 Q Now if we could scroll down the document through
19 to the next page and, the following page, please. And I'll
20 ask you to just continue to scroll and then I'll let you
21 know where to stop.

22 Can you stop right there. And I'm looking at the
23 last paragraph and now, Mr. Commissioner, we're on page
24 36956. This is Tracy Forbes' report and it's the previous
25 intervention by CFS before your involvement, okay?

1 A Okay.

2 Q And I'm looking at -- firstly, you reviewed this
3 document as part of your work, correct?

4 A I believe so, yes.

5 Q That would be your routine practice and pretty
6 much the practice of other CRU workers, that they always go
7 to that last --

8 A The most recent.

9 Q You're going to go to the most recent
10 intervention because it's going to have the most recent
11 information.

12 A That's correct.

13 Q And here, on this, on this document in the final
14 paragraph, the fourth line from the bottom reads:

15

16 "Samantha advised that her main
17 support is her boyfriend who is a
18 trucker and stays with her when he
19 is in the city."

20

21 Do you see that?

22 A Yes, I do.

23 Q So that would have been information that you
24 would have been considering in terms of your work, that
25 being that there's a boyfriend who is a support, who is a

1 trucker, has a job, and stays at the house occasionally,
2 correct?

3 A I suppose, yes.

4 Q And in terms of doing prior contact checks, in
5 2004 it wouldn't be the policy of CFS to do prior contact
6 checks on boyfriends, correct, on people that don't live in
7 the home?

8 A That's correct.

9 Q And of course you would encounter many situations
10 with clients, single parents who have boyfriends that don't
11 live in the home and you wouldn't be doing prior contact
12 searches on those individuals, correct?

13 A That's correct.

14 Q And were you aware that at the meeting on
15 November 22nd, between Samantha Kematch and the hospital
16 social worker, SOR #4, Samantha Kematch advised the
17 hospital social worker that she was not sure of the
18 long-term relationship with Mr. McKay?

19 A No, I'm not.

20 Q And were you aware at the time that you were
21 doing your work that the plan at that point in time was
22 that Mr. McKay would not even attend at the birth?

23 A No, I was not.

24 Q And just in terms of doing the prior contact
25 searches, you don't know whether or not you did a search of

1 McKay, of the name McKay on its own, you don't recall?

2 A That's correct.

3 Q If you did a search, we've seen the information
4 from the department's agreed statement of facts that you'd
5 get a lot of hits under the name McKay, correct?

6 A That's correct.

7 Q And that you'd also get multiple hits if you
8 typed in Wes McKay or Wesley McKay, you'd get multiple hits
9 as well, correct?

10 A I believe so, yes.

11 Q And with all those hits that show up, there might
12 be, there's information behind each of those hits there
13 would be files that you'd have to go into to look at,
14 correct?

15 A That's correct.

16 Q And what I'm wondering is you didn't know
17 anything about Mr. McKay other than he was the father of
18 this child, correct?

19 A That's correct.

20 Q You didn't know --

21 A And the common-law to Ms. Kematch.

22 Q This -- well, you've got the report that says
23 he's a boyfriend and you've heard from someone, I suppose,
24 that he's common-law?

25 A My source of referral is reporting that he is the

1 father and the common-law to Ms. Kematch.

2 Q Okay. That's the hospital social worker?

3 A Yes.

4 Q But you don't know, for instance, how old he is?

5 A Sorry, how?

6 Q You don't know how old he is?

7 A That's correct.

8 Q You don't know how tall he is, what he looks
9 like?

10 A Correct.

11 Q You don't know who his past partners were?

12 A Correct.

13 Q You know absolutely nothing other than his name,
14 that he's a common-law and he's the father of this new
15 child, correct?

16 A Correct.

17 Q So if you were to call up one of these files,
18 these multiple McKay hits, you called it up and you looked
19 in it and you saw information about an individual and prior
20 contact, how would you know that that person was the McKay
21 that you were looking for?

22 A I wouldn't know for certain until I obtained his
23 date of birth.

24 THE COMMISSIONER: Till what?

25 THE WITNESS: Until I obtained his date of birth.

1 BY MR. SAXBERG:

2 Q Right, right. It's not even you wouldn't know
3 for certain, you wouldn't know at all because the
4 information in those files that you'd be reading about
5 Mr. McKay wouldn't have any information in them that would
6 indicate a connection with Samantha Kematch, correct?

7 A Correct.

8 Q They wouldn't -- and none of the information in
9 any of those files would indicate a connection with Phoenix
10 Sinclair?

11 A Mostly likely not, probably no.

12 Q And they wouldn't say anything about him being
13 the father of this new child?

14 A Correct.

15 Q So there wouldn't be any connection between any
16 of that information in those files at all and this, this
17 bare name that you have.

18 A True.

19 Q So you needed a birth date not just to type in to
20 do a search to get a quick result and find out what the
21 file is, you needed it to make a connection between the
22 information at CFSIS and this Mr. McKay that you're being
23 told about by the hospital social worker, correct?

24 A That's correct.

25 Q That's the reason you need the birth date,

1 correct?

2 A Yes, that's correct.

3 Q And so you attempt to get the birth date from
4 Employment and Income Assistance, correct?

5 A Correct.

6 Q And essentially the short story is they don't
7 give it to you. That's --

8 THE COMMISSIONER: They don't what?

9 MR. SAXBERG: They don't give you the birth date.

10

11 BY MR. SAXBERG:

12 Q They won't give you the birth date, is that the
13 short story?

14 A Correct.

15 Q So you can't make that connection between all
16 those files on CFSIS and the Mr. McKay that the hospital
17 social worker is reporting is the father of this new child,
18 correct?

19 A That's correct.

20 Q And in fact, Employment and Income Assistance,
21 according to your evidence, goes even further and says
22 there is no common-law, tell you there is no common-law in
23 that house.

24 A No.

25 Q There's not expected to be a common-law in that

1 house, correct?

2 A That's correct.

3 Q So if there's no common-law in that house there's
4 no need to do a prior contact check, correct?

5 A Correct.

6 Q Now notwithstanding all that, you still
7 recommended to send the file up to intake because there was
8 a lengthy prior history involving Samantha Kematch,
9 correct?

10 A That's correct.

11 Q Now that, that's seriously erring on the side of
12 caution; would you agree with me?

13 A Yes, I would.

14 Q And reasonable people can disagree in terms of
15 whether a file should be opened or advanced, reasonable
16 people within CRU and, sorry, and at intake. Could, could,
17 you know, in terms of, the question as to whether a file
18 should be closed or whether it should move on from CRU to
19 intake, sometimes people at CFS would disagree on that
20 question, correct?

21 A That's correct.

22 Q And, and there is no right answer because it's a
23 judgment call, correct?

24 A That is correct.

25 Q And in this case you erred on the side of caution

1 in the sense of moving the matter forward to intake
2 notwithstanding that there were no child protection
3 concerns being presented at all and just on the basis that
4 there was this lengthy prior contact history, correct?

5 A That is correct.

6 Q And just from a CRU perspective, there's no
7 downside to just moving files up to intake, is there?

8 A Not at all.

9 Q The downside is if you were to take a file and
10 have to give, take that tough look and make that tough
11 decision on it, because you know that in all cases that
12 you're working on your decisions can have very impactful --

13 A Serious --

14 Q -- results?

15 A -- implications, yes.

16 Q Serious consequences if you make a decision in
17 good faith to close a file and then something bad happens
18 and that's what you're faced with every day, isn't it?

19 A Yes, it is.

20 Q And so you know from your perspective, you being
21 the CRU worker, the easy way is to send it to intake, let
22 them do a more thorough analysis and decided whether to
23 close the file or to advance it past intake on to family
24 services, correct?

25 A That's correct.

1 Q Now if we could turn to, we're on CD1795, which
2 is Samantha Kematch's file, page 36943, and this time I'm
3 turning to, to your report, Ms. Willox. And if we could
4 scroll down a couple of pages, just a bit more to the -- do
5 you see the recommendation -- we're on page 36945,
6 Mr. Commissioner, right now. And this is the point where
7 on December the 1st, the first day you get the file, the
8 day you get the file, you recommend that it be open for
9 assessment and intervention.

10 A That's correct.

11 Q And that's by intake, not CRU, correct?

12 A Yes.

13 Q And so if you scroll to the next page and stop
14 right there, on previous documents, separate document, you
15 had signed off on that and, and you handed that report in
16 to your supervisor, Diva Faria?

17 A Yes.

18 Q She then returned the file to you the next day?

19 A Yes.

20 Q And in the paragraph under "Interventions" on
21 December 2nd, it says:

22

23 "On Dec. 2/04 this worker received
24 the above referral information
25 back from CRU supervisor, Faria,

1 for ongoing follow up and
2 assessment. Worker was directed by
3 Faria to connect with the mother,
4 offer the family supports, and
5 close the file to CRU - if the
6 Agency is unable to mandate
7 services within the home at this
8 time."

9

10 Do you see that?

11 A Yes, I do.

12 Q Now the direction from, from Ms. Faria includes
13 to close the file at CRU, subject to being unable to
14 mandate services, correct?

15 A Correct.

16 Q And this commission's heard evidence from Carolyn
17 Parsons. She testified that she remembered speaking to
18 Diva Faria about this and suggesting that this, and saying
19 that this was the plan that she would have recommended as
20 the intake supervisor. That's evidence that this
21 commission has heard. And so I'm putting to you, I want to
22 ask you, were you told or do you recall being told by
23 anyone that the file was returned after consultation with
24 intake supervisor, Carolyn Parsons?

25 A I do not recall being told that.

1 Q But that's -- is that something that -- that's
2 something that certainly occurred on other files, correct,
3 where there would be a consultation between the supervisor
4 at CRU and the supervisor at intake and a file would be
5 returned to CRU?

6 A Yes.

7 Q And that would occur even before it was formally
8 entered on CFSIS and transferred from one, from CRU to
9 intake, there would be, there could be in situations where
10 there would be informal discussions first of all, correct?

11 A Yes.

12 Q And that would just make common sense because why
13 go through all the administrative work of transferring the
14 file up when the supervisor at CRU knows that there may be
15 an issue with this file with the supervisor at intake so
16 might as well talk to them in advance; is that fair?

17 A Yes.

18 THE COMMISSIONER: But you don't know whether
19 that took place here?

20 THE WITNESS: I'm not sure. I was not advised if
21 the conversation occurred or not with the intake
22 supervisor.

23

24 BY MR. SAXBERG:

25 Q And Ms. Parsons had testified that that's what

1 happened.

2 THE COMMISSIONER: Pardon?

3 MR. SAXBERG: Ms. Parsons had testified that's
4 what her recollection was. She's the supervisor of intake.

5

6 BY MR. SAXBERG:

7 Q So and I just wanted to see if that refreshed
8 your memory in terms of being told why you had received the
9 file back.

10 A No, it did not.

11 Q And you worked as a supervisor recently.

12 A Yes.

13 Q And, and it's not the case, it's not the case
14 these days, anyway, that it's a matter of conflict between
15 supervisors at CRU and intake, it's more a matter of
16 consultation; is that fair?

17 A That's correct.

18 Q You're working together to determine who should
19 do the work and whether the file should advance and two
20 heads are better than one.

21 A That's correct.

22 Q In making that decision, correct?

23 A Yes.

24 Q So there's nothing negative about CRU file going
25 up to intake and intake saying, well you know, perhaps it's

1 best if we close this file or that we have some further
2 work done along the direction of closing it.

3 A That's correct.

4 Q Now another piece of information that you
5 weren't, you weren't expressly aware of but I'm going to
6 put to you would have been important in terms of the work,
7 your work on the file, is that the Public Health nurse,
8 Ms. Wu, had no child protection concerns and she had
9 documented that in her file expressly. You didn't know
10 that except through this, as you say, wordplay?

11 A Yes.

12 Q But if she had told you straight out, I was at
13 the house on December 2nd, which she was, and I saw
14 Samantha and the baby and I have no child protection
15 concerns, if she told you that, that would have been
16 important information to you, correct?

17 A Yes.

18 Q And it would have been important information in
19 the direction of the final decision you ultimately made
20 which was to close the file, correct?

21 A That's correct.

22 Q But she didn't tell you that directly, instead
23 you're saying that she was indirect about it, about that
24 information?

25 A Yes.

1 Q Now in terms of Ms. Faria's supervision of you on
2 this file, she wouldn't have known about what, if any,
3 searches you made on CFSIS, correct?

4 A Possibly not, no.

5 Q Well, generally she wouldn't, she wouldn't know
6 anything other than what's in that report that you provide
7 to her that she's to sign off on, correct?

8 A That's correct.

9 Q And you were a supervisor, you've been in her
10 shoes --

11 A Yes.

12 Q -- recently and so you know, how many of these
13 reports do you get every day as the supervisor of CRU?

14 A Specifically speaking I cannot say, but a lot.

15 Q A lot. Like we're talking about maybe 10 to 15,
16 three or four page reports on separate families where this
17 important decision --

18 A If not more, yes.

19 Q If not more. And every one of them you know
20 could have serious consequences if you sign off on it and
21 it's a closing for instance, correct?

22 A That's correct.

23 Q But you've got to, as the supervisor, look at
24 these, as you say 10 to 15, maybe more, files every day and
25 make that judgment call, correct?

1 A That's correct.

2 Q And that's what Ms. Faria would have had to have
3 done on December 7th when she signed off on this file. She
4 would have been inundated in the same way with reports on
5 other files, correct?

6 A That's correct.

7 Q And in addition to that work -- so as a
8 supervisor, it's not the supervisor's job to redo the work
9 of the CRU worker, is it?

10 A No, it is not.

11 Q It wouldn't be the supervisor's job to go and do
12 a CFSIS search on, on her own, would it?

13 A No, it is not.

14 Q And so Ms. Faria, in reviewing this file and
15 ultimately signing off on your, on your recommendation, she
16 wouldn't have had a clue about Mr. McKay or his history,
17 correct?

18 THE COMMISSIONER: Or do you know that?

19 THE WITNESS: Sorry, do I know?

20 THE COMMISSIONER: Whether she had a clue about
21 McKay's, was it presence?

22 MR. SAXBERG: No. His, his, his -- the
23 information that was put to this witness the other day
24 about his domestic violence past.

25 THE WITNESS: His history.

1 MR. SAXBERG: His history.

2 THE WITNESS: She would have only known what was
3 contained within the report.

4

5 BY MR. SAXBERG:

6 Q Right, and that's the point that I'm making is
7 that her job, she's going -- she's supervising six workers
8 as you were at the time.

9 A Yes.

10 Q Or you later were, sorry, and those six workers
11 are all submitting reports and she's going on what's in the
12 reports and not doing independent work, correct?

13 A That's correct.

14 Q And you just couldn't do independent work because
15 there's not enough hours in the day.

16 A That's correct.

17 Q Okay. In terms of prior contact checks, at the
18 time you were involved in the Phoenix Sinclair case, the
19 intake module was not in place, correct?

20 A That's correct.

21 Q And we've heard evidence about the intake module
22 from other witnesses and you mentioned it yourself
23 yesterday. It's a new system that's used at CRU and intake
24 and abuse intake at, currently at ANCR, correct?

25 A That's correct.

1 Q And it came in, to effect in, around May of 2005;
2 is that your understanding?

3 A Yes, I received training in April of 2005.

4 Q And one of the improvements, you had mentioned
5 that it's an improvement to the delivery of services,
6 correct?

7 A Yes, I believe so.

8 Q And, and the commission will hear full evidence
9 on that in phase two, but one item that I thought salient
10 to your involvement in this case is that in the intake
11 module prior contact check is mandatory or automatic when
12 you're adding a person, correct?

13 A That's correct.

14 Q So you, if you're going to add a name to that, to
15 the heading important others or it's --

16 A Family group section.

17 Q -- family group section, those other important
18 individuals involved in the family, now it's automatic on
19 the computer you must do a prior contact check, correct?

20 A That's correct.

21 Q And that wasn't the case in 2004?

22 A That's correct.

23 Q And the other, another difference with the intake
24 module is that where there was this safety assessment form
25 where you had to pick the response time back in 2004,

1 correct?

2 A Yes.

3 Q And on that form commission counsel had taken you
4 to that form and you had noted a 48 hour response time on
5 your involvement after checking off the other box under 48
6 hours?

7 A That's correct.

8 Q And there, you'll agree, there's a discretion in
9 that old system back in 2004 in terms of response time.
10 There was a discretion in terms of what the issue was and
11 what the response time could be that, that the person
12 filling out that safety assessment could exercise?

13 A Yes.

14 Q And now with the intake module, you select the
15 issues, the intake module automatically tells you what the
16 response time is, correct?

17 A That is correct.

18 Q So that discretion isn't there to that extent?

19 A That's correct.

20 Q And you're -- are you aware that in this case --
21 the commission's heard some evidence about, about a dispute
22 as to whether a particular matter was a 24 hour response
23 time or a 48 hour response time or a five day response
24 time. Are you aware of any of that?

25 A I'm sorry, what is the question?

1 Q There's been issues before this commissioner
2 about safety assessments and whether it was appropriate
3 that they be categorized as 24 hour response time or 48
4 hour response time or five day response time. Are you
5 familiar with --

6 THE COMMISSIONER: Are you asking her about that,
7 the form that it lays out those alternatives?

8 MR. SAXBERG: Yes.

9 THE COMMISSIONER: Or are you asking her about a
10 specific case in which that form was used?

11 MR. SAXBERG: Right (inaudible), you're right.
12 Let me just think about --

13 THE COMMISSIONER: You should make it clear what
14 you're questioning about.

15 MR. SAXBERG: Yes.

16

17 BY MR. SAXBERG:

18 Q I'll come at it a different way and see if I need
19 to ask that question. You gave some, all I'll call it, my
20 word, vague evidence about overhearing a discussion by
21 other CRU workers about a supervisor changing reports. Do
22 you remember that?

23 A Yes, I do.

24 Q Now as a CRU worker, your supervisor was
25 Diva Faria?

1 A Yes, she was.

2 Q And you're not saying she ever changed any of
3 your work without consulting you, correct?

4 A Not that I'm aware of, no.

5 Q She certainly changed your work but she consulted
6 with you?

7 A If she felt that there was further work or
8 services or changes that needed to be made, I believe she
9 would generally come and have a conversation with me about
10 that and discuss that.

11 Q Right, but it was her decision?

12 A Yes.

13 Q That's her job. Just like when you were the
14 supervisor --

15 A That's correct.

16 Q -- if you wanted to change a report, it's going
17 to get changed but what you're saying is you would consult
18 with the CRU worker?

19 A That's correct.

20 Q And the issue that you were raising is the
21 problem that was being identified was that those type of
22 changes were being made but the worker maybe wasn't being
23 consulted about it or advised of it.

24 A Yes.

25 Q Okay. And you're not suggesting that these

1 changes were to the detriment of anyone, correct?

2 THE COMMISSIONER: Just a minute. What, what do
3 you mean?

4 MR. SAXBERG: The changes that she's suggesting
5 were made without advising the worker that the changes were
6 made were a detriment to anybody.

7 THE COMMISSIONER: Who's anybody?

8 MR. SAXBERG: The family, the subject matter of
9 it.

10 THE COMMISSIONER: I don't understand your
11 question.

12 MR. SAXBERG: First of all -- well, let me --
13 I'll try to back it up.

14

15 BY MR. SAXBERG:

16 Q The changes that you're talking about, we'd be
17 talking about punctuation changes, correct?

18 A Yes.

19 Q Grammar changes?

20 A Yes.

21 Q We're not talking about, about anything that is a
22 significant change that would affect the decision or
23 recommendation of a worker?

24 A No. But I'm not sure if you're attempting to
25 question me about the -- like I had been asked yesterday

1 during my testimony if I was aware of conversations that
2 had occurred amongst other CRU staff about concerns that
3 their reports had been changed and in what context those
4 reports had been changed.

5 THE COMMISSIONER: That's what you were asked
6 about yesterday.

7 THE WITNESS: Yes. And I'm not sure if that's
8 what you're referencing to today?

9 MR. SAXBERG: Yes, that is exactly what I'm
10 questioning you about. I'm asking you about --

11 THE COMMISSIONER: Well, let her answer the
12 question now she knows that's what you're questioning her
13 about.

14 THE WITNESS: So with respect to the other
15 individuals in my unit who felt that their reports had been
16 altered by their supervisor, were those changes detrimental
17 or what the nature of those changes were, I do not know.

18

19 BY MR. SAXBERG:

20 Q Okay, so you don't know. And, and that's as far
21 as it goes. You don't know if the changes they were
22 talking about were as minor as a punctuation change or
23 something, something more important. You don't know,
24 correct?

25 A I do not know, sir, no.

1 Q Okay. And the people that you heard this
2 information from, one of them would have been Debbie
3 DeGale?

4 A Yes.

5 Q and Debbie DeGale is your mother-in-law, correct?

6 A That's correct.

7 Q And other than Ms. DeGale, have any of the
8 individuals that you overheard testified here to your
9 knowledge?

10 A I'm sorry, do ...

11 Q Have any of the individuals that you say you
12 overheard --

13 THE COMMISSIONER: Well, first of all does she
14 know who the individuals were?

15

16 BY MR. SAXBERG:

17 Q Yeah, do you know the individuals are?

18 A There were conversations that were had, including
19 Debbie DeGale, Barb Klos and Richard Buchkowski.

20 Q Okay. And, and -- okay. So Barb Klos has
21 testified here and she hasn't talked about this, so I'm not
22 going to ask you anything about what she said or what you
23 overheard from her. My understanding is that
24 Mr. Buchkowski --

25 A Yes.

1 Q -- is simply saying that there were punctuation
2 and grammatical changes made to his reports and that's it.
3 That's what his evidence is. Are you aware of that?

4 A No. Just to clarify, I didn't pay -- that topic
5 was not of great importance to me. I did not experience a
6 report of my own being changed. I acknowledged that those
7 conversations had occurred. What the context of those
8 conversations were I am not sure.

9 Q Okay. And in terms of, you've already said, you
10 know, and this never happened with your supervisor, but at
11 times the other supervisor would, would be working with you
12 because they, they traded off for each other.

13 A She would, Diana would provide coverage if Diva
14 Faria was not available.

15 Q Right. And you have, and you're not alleging
16 that that supervisor in any way made any change to any
17 report you prepared without them later telling you about
18 it, correct?

19 A Not to my knowledge, no.

20 MR. SAXBERG: Okay, those are my questions.
21 Thank you very much.

22 THE COMMISSIONER: Thank you, Mr. Saxberg.

23 Mr. Gindin?

24 MR. GINDIN: Mr. Commissioner, I wonder if we
25 could have a short break before I --

1 THE COMMISSIONER: Yes, we're close to the time
2 that we'd be taking a break, so we'll take our mid-morning
3 15 minute break now.

4

5 (BRIEF RECESS)

6

7 THE COMMISSIONER: Mr. Gindin?

8

9 CROSS-EXAMINATION BY MR. GINDIN:

10 Q Good morning, Ms. Willox, my name is Jeff Gindin.
11 I represent Kim Edwards and Steve Sinclair.

12 A Good morning.

13 Q I have some questions for you. This morning you
14 were asked a question by Mr. Paul about workload, pressure
15 to close files back in 2004 and I think you said you didn't
16 recall feeling any pressure to close files at that time,
17 correct?

18 A I believe so, yes.

19 Q That doesn't mean there wasn't any, you just
20 don't recall?

21 A That's correct.

22 Q And in fact yesterday I think you said that upon
23 reflection there likely was based on what's going on today
24 still?

25 A Yes.

1 Q Right?

2 A Yes, however I don't recall specific feelings of
3 being pressured but the general feeling of the workload at
4 that time, that there was an increase in work at CRU.

5 Q All right. Now Mr. Saxberg asked you some
6 questions and he asked you about three meetings by a
7 witness by the name of SOR #4 prior to the referral that
8 you received and you recall he mentioned some dates,
9 June 28th, July 8th and November 22nd of '04. And I think
10 you indicated that you didn't know anything about those
11 previous meetings.

12 A No, I did not.

13 Q And that had you known them perhaps that might
14 have had some effect on your, a decision which you made.

15 A It would have been taken into consideration.

16 Q All of those meetings, however, took place before
17 Samantha had a newborn.

18 A Correct.

19 Q And obviously having a newborn is quite a
20 significant factor?

21 A Yes, it is.

22 Q And something quite new, right?

23 A Yes.

24 Q And we also know now that that newborn had
25 Wesley McKay as (inaudible) the father.

1 A That's correct.

2 Q And that's again something that wasn't the case
3 with respect to previous children?

4 A Yes.

5 Q And I think Mr. Saxberg referred you to some
6 reports indicating that some reference to the fact that
7 they knew something about Wes McKay being a trucker and
8 staying with Samantha when he was in town, right?

9 A Yes, that was contained in the July 2004 closing
10 summary.

11 Q Yes. That particular summary, in describing
12 Mr. McKay, used the word he was her main support.

13 A I believe so, yes.

14 Q Yes. And of course you didn't know at that time
15 that you became involved about the violent history that
16 Mr. McKay had based on what you've been advised since,
17 correct?

18 A That's correct.

19 Q We've also heard some evidence, and I think this
20 was referred to you, that according to EIA, May the 28th of
21 '04, Wesley McKay claimed Phoenix on his budget and there's
22 an actual computer printout that they showed us. I think
23 you were shown that earlier yesterday.

24 A Yes.

25 Q That's again something you weren't aware of?

1 A Correct.

2 Q So contacting EIA to find out about Wesley McKay,
3 sure would have been nice if you became aware of that
4 information.

5 A I agree.

6 Q And I think you said yesterday that your usual
7 practice would be to review some of the history --

8 A Yes.

9 Q -- with respect to Samantha and in fact that was
10 a very important factor for you in deciding that there
11 should be some sort of intervention, right?

12 A Yes.

13 Q And in fact, if we can have page 36947 brought
14 up, and this is part of your report that you were shown
15 earlier I believe and in paragraph 2, part way down, you
16 say:

17

18 "Worker advised Mary ..."

19

20 That's Mary Wu, right?

21 A Yes.

22 Q

23 "...that the Agency has previously
24 had extensive involvement with
25 Samantha ..."

1 I take it from that phrase alone that you were obviously
2 aware of a lot of the history.

3 A Yes.

4 Q Because you describe it as extensive involvement
5 which in fact is the case.

6 A Yes.

7 Q All right.

8

9 "... and indicated that Samantha
10 has four children -- only two of
11 which are in her care."

12

13 So you were obviously aware that other children were
14 apprehended.

15 A Yes.

16 Q Or at least her first child was apprehended.

17 A Yes, with one deceased.

18 Q And you were also aware that Phoenix herself was
19 apprehended at birth?

20 A I believe so.

21 Q Yeah. And that another child had died?

22 A Yes.

23 Q And now she was having yet another child?

24 A Yes.

25 Q All of these things you termed or you deemed to

1 be quite significant?

2 A Yes.

3 Q And then you say:

4

5 "Worker reported that the Agency
6 has had some pretty serious
7 concerns in the past ..."

8

9 Okay. So you're not just saying they've had a concern but
10 you describe it as pretty serious concerns in the past.

11 A Yes.

12 Q And that's the way you felt on December the 3rd
13 when you were advising Ms. Wu about past history and your
14 concerns, right?

15 A Yes.

16 Q Now between December the 3rd when you felt this
17 way, until December 7th when the file was closed, there
18 really isn't anything that occurred in that period of time
19 of any significance, was there?

20 A No.

21 Q Some efforts were made to connect with Samantha?

22 A Yes.

23 Q They were unsuccessful?

24 A Yes.

25 Q And I think you told us yesterday that upon

1 reflection and after seeing some of the reports and having
2 more information given to you, that there's certain things
3 you wish you would have done, or now you agree that perhaps
4 should have been done.

5 A Yes.

6 Q For example, maybe making an effort or somehow
7 seeing Samantha directly --

8 A Yes.

9 Q -- was one of the things you said. And certainly
10 maybe speaking with Wes directly.

11 A Yes.

12 Q That would have been a good idea, right. And as
13 well, in this report you talk about the fact that Mary Wu
14 told you that she needed permission from Samantha before
15 she could give you more information.

16 A Yes.

17 Q And now we know that on December the 6th, before
18 you closed the file, she actually got that permission.
19 We've heard evidence of that?

20 A Yes.

21 Q And upon reflection I think you'd agree it would
22 have been a good idea to talk to her after she got the
23 permission and see if there was anything else she could
24 impart to you.

25 A Yes.

1 Q But that, that didn't happen?

2 A No, it did not.

3 Q And so no one that you know of actually went out
4 to try and see Wesley or Samantha or contact Ms. Wu again
5 between December the 3rd and this, and the 7th?

6 A That's correct.

7 Q Now you were also asked by Mr. Saxberg just a
8 little while ago, about the things that you overheard with
9 respect to Ms. Verrier; do you --

10 A Yes.

11 Q -- recall that? The things you heard people
12 saying about reports being altered or changed, right?

13 A Yes.

14 Q And the people in question, you named
15 Debbie DeGale --

16 A Yes.

17 Q -- as mentioning something to you. You indicated
18 she's your mother-in-law now.

19 A Yes.

20 Q Was she your mother-in-law when these
21 conversations were taking place when she told you these
22 things?

23 A No, she was not.

24 Q Were you involved with her son at that time as
25 well still?

1 A No, I was not.

2 Q No. So she wasn't connected to you at that time
3 the way she is now?

4 A No, she was a colleague.

5 Q A colleague just at that time, I see. And so at
6 that time, which would be -- are we talking about 2004 when
7 these discussions were taking place, approximately?

8 A Approximately. I don't remember specific dates.

9 Q And these people that you say talked about this
10 kind of thing to you, have they talked to you about those
11 kinds of things since?

12 A No, I have indicated that I'm not interested in
13 talking about anything pertaining to the inquiry.

14 Q But at that time you heard from several people --

15 A I overheard several conversations. I did not
16 partake in those conversations. I know they occurred.

17 Q So I'm not suggesting you said anything or took
18 part, but you overheard people talking about Ms. Verrier
19 possibly --

20 A They were talking amongst themselves.

21 Q Some which?

22 A They were talking amongst themselves and I
23 overheard those conversations.

24 Q Now I suggest to you that if the changes they
25 were talking about had to do with grammar, that wouldn't be

1 something they'd be talking about, would it?

2 A I don't know if everyone felt the same way.

3 Q Um-hum.

4 A I don't recall what the general context of those
5 conversations were. Whether Mr. Buchkowski felt it was
6 grammar and Ms. DeGale did not, I do not recall. I did not
7 feel personally vested in that conversation and I do not
8 recall specifics of that conversation.

9 Q But you do recall they were talking about it and
10 there were several people talking about it?

11 A Yes.

12 Q And you heard them talking about it?

13 A I overheard them talking, yes.

14 Q Are you talking about one time or several
15 times?

16 A I don't -- like I testified yesterday, I don't
17 recall how many times but I believe that it was, did occur
18 on more than one occasion.

19 THE COMMISSIONER: And was there a person
20 identified who had done the changing?

21 THE WITNESS: My understanding from the overall
22 conversation was that Ms. Verrier had altered reports.

23 MR. GINDIN: So whatever --

24 THE WITNESS: In what context, I am not sure.

25

1 BY MR. GINDIN:

2 Q Whatever the details were, they found it
3 necessary to talk about it?

4 A Yes.

5 Q All right. You also indicated yesterday that at
6 one point you were a registered social worker.

7 A Yes.

8 Q And then I think you just didn't renew your
9 registration, is that --

10 A That's correct.

11 Q Now do you recall why it was in the first place
12 that you chose to be registered or what the advantage was?

13 A I believe after I had completed my bachelor of
14 social work degree, I don't remember exactly the time that
15 I was registered but it was very early in my career was
16 when I inquired and I registered and subsequent to that I
17 did not renew my registration.

18 Q Do you recall why it was that, or what advantage
19 you deemed there to be by registering?

20 A No, I do not.

21 Q You told us that you didn't receive any training
22 in standards until you were actually on the job for almost
23 10 years?

24 A Yes, October 2009.

25 Q And as far as risk assessment training you didn't

1 receive any of that until 2011?

2 A That's correct.

3 Q This is after you were already working for some
4 12 years?

5 A Yes.

6 Q With respect to information sharing, and we've
7 heard that, about different issues in that area, you're
8 saying it's more difficult now than it was before?

9 A Yes, most certainly.

10 Q In what way?

11 A At the present time we are not allowed to contact
12 Employment and Income Assistance or Manitoba Health in an
13 attempt to obtain any demographic information on a family.

14 Q When you say they you mean workers, social
15 workers?

16 A Yes, social workers, CRU staff and social workers
17 at the agency.

18 Q When did that happen?

19 A It has progressed to this point over a period of
20 time. I don't recall the exact date where we were advised
21 that we were no longer to contact them directly. There was
22 a process period where it went from not to contact, we were
23 to submit a form via fax to request information. We were
24 then advised that we are not to submit the form either. We
25 are to email and request information, but we are not to

1 contact them via phone.

2 Q Any idea why that new rule would come in? Were
3 you given any reasons?

4 A I am not privy to the exact answer. Some of the
5 information that I have heard is that Employment and Income
6 Assistance, for example, was feeling that the volume of
7 calls that they were receiving from Child and Family
8 Services was causing problems for their workload and for
9 their staff to handle workload issues and as a result they
10 were attempting to deal with their workload issues within
11 their own department.

12 Q So before you were allowed to call and I think
13 you told us that you usually received cooperation in those
14 days.

15 A Yes.

16 Q People would answer your questions. And now it's
17 more complicated. You have to, it progressed to filling
18 out a form first and now you have to email them?

19 A Yes.

20 Q And do you have any personal experience that it
21 takes much longer to get an answer?

22 A Yes, I do.

23 Q And by much longer, what, do you mean a week
24 rather than a phone call?

25 A When we first were using the form it would take

1 anywhere from a few hours to maybe a week or more. We
2 expressed to Employment and Income Assistance that the
3 process was not working for us which at one point in time
4 it was advised that we could email and that so far the
5 email system appears to be working more effectively.

6 Q So these days when you make an email request, how
7 long does it take to get an answer?

8 A It depends. It might be a matter of minutes to
9 matter of hours.

10 Q So what way is it more difficult then if it's
11 taking less time to get an answer?

12 A The answer that we get is whether or not an
13 individual is in fact involved with Employment and Income
14 Assistance and the name of the case worker. It is then our
15 responsibility to attempt to contact the case worker to ask
16 for any demographic information or involvement with, with
17 the family.

18 Q So it's a more cumbersome process now?

19 A Yes, and that's if that case worker is available
20 in the office meeting with clients, available to take our
21 call or leave messages to wait for a return phone call or a
22 return phone call from a covering worker.

23 Q Back in 2004, when you were involved with this
24 file, did you have occasion to contact EIA sometimes just
25 to provide information to them?

1 A Generally no.

2 Q For example, if you found out something new, like
3 in this example you've got Samantha at the hospital and you
4 see that there's a new person involved in her life. Would
5 that not be some information that you might want to advise
6 EIA of?

7 A That's not -- having a new partner and reporting
8 that information to EIA is not really a child protection
9 role. My general purpose for calling EIA was always
10 usually to gather demographic information, try to ascertain
11 who was residing in the family home, a partner, how many
12 children, their home address, contact information and
13 potentially the name of an assigned EIA worker to have
14 further have discussion if needed about their contact with
15 their client.

16 Q Are you saying you never contacted EIA just to
17 provide them some information about a new partner or?

18 A I may have on occasion but generally that was not
19 my intent.

20 Q You were talking about a new partner --

21 A Yes.

22 Q -- showing up in a family.

23 A Yes.

24 Q And that more emphasis is now placed on checking
25 that person out.

1 A Yes.

2 Q Back in 2004, wasn't it simply the logical thing
3 to do anyway without having to have a policy or a new rule?

4 A Yes, it is.

5 Q Obviously someone like Wesley McKay who happens
6 to move in, sure would be nice to know what sort of
7 background they have.

8 A Yes.

9 Q So you didn't really need a policy or any change
10 to appreciate that that would be an important thing to
11 check out?

12 A Yes.

13 Q On the issue of whether you did a search on
14 Wesley McKay, my understanding is that you don't have any
15 real independent recollection of a lot of what went on back
16 then?

17 A That's correct.

18 Q So you have to rely on the notes that are shown
19 to you and the reports that you made?

20 A Yes.

21 Q And there are no notes that you made a search?

22 A No, there are not.

23 Q And had you in fact even begun to make a search
24 and find out certain things, we now know that there would
25 be other steps you'd have to take --

1 A Yes.

2 Q -- to continue on.

3 A Yes.

4 Q And isn't -- wasn't it your position that doing
5 that kind of search is something that would take hours and
6 hours and that often workers just wouldn't have enough time
7 to, to do something like that?

8 A Depending on the nature of the involvement, yes.

9 Q Had you done a search you certainly would have
10 made notes?

11 A I would hope so, yes.

12 Q And had you discovered anything in that search of
13 any consequence you would have marked that down somewhere?

14 A I would hope so, yes.

15 Q And you've also told us that if you knew the
16 things that were revealed to you from this file, you
17 certainly wouldn't have recommended closing the file?

18 A That's correct.

19 Q So since you did recommend closing the file,
20 can't we not assume that you didn't do a search?

21 A I suppose so.

22 Q After talking to Ms. Wu, the impression I had was
23 that you were being asked, or it was suggested to you that
24 if you had a specific concern rather than a general
25 concern, you might have gotten a response from her. Am I

1 correct in that impression?

2 A Yes.

3 Q So in other words, had you said, for example,
4 does it appear that she has drug abuse issues, is it your
5 feeling that she would have actually answered that
6 question?

7 A I guess if I had indicated to Ms. Wu that the
8 agency had received information that Ms. Kematch was using
9 substances and asked her to clarify if that had been her
10 experience, she would have answered me, yes.

11 Q So it seems as though she's saying that had you
12 asked something more specific she might have been able to
13 tell you but since it was a general question she couldn't?

14 A That's my understanding, yes.

15 Q Does that make sense to you?

16 A Yes.

17 Q It does?

18 A Because I did not indicate a specific child
19 protection concern, she therefore felt that I guess she
20 wanted to speak to her client first because although she
21 acknowledged her obligation to report, she did not disclose
22 a child protection concern on her behalf and wanted to
23 speak to her client about sharing the remainder of her
24 involvement with her client.

25 Q She told you though that she realized she had an

1 obligation to --

2 A Yes.

3 Q -- report something that was of concern?

4 A Yes.

5 Q You asked if there was any concerns. She didn't
6 come right out and say yes there are, correct?

7 A No, she did not.

8 Q Okay. Nor did she say, no, there are not?

9 A No, she did not.

10 Q And you still had some reservations?

11 A Yes, I did.

12 Q Right. The way you described it was a small
13 element of uncertainty remained?

14 A Yes.

15 Q At one point you called to see when Samantha was
16 being discharged from the hospital.

17 A That is correct.

18 Q I take it you did that for a reason.

19 A Yes, I did.

20 Q You wanted to know when she was being discharged
21 so that that could be followed up on, is that basically it?

22 A My intent, I believe at that point in time, was
23 that since the matter was being referred to intake, I
24 wanted to ascertain her discharge date so that the ongoing
25 worker would be aware as to when to expect her at home.

1 Q Okay. But no arrangements were made to see her
2 after she was discharged?

3 A No, they were not.

4 Q One last area, you were talking yesterday about
5 the fact that eventually you became a supervisor yourself
6 for, did you say a couple of years?

7 A Yes.

8 Q And that time period again was?

9 A September 2010 to September 2012.

10 Q And I was a bit confused about some of the
11 changes that you observed being supervisor in this recent
12 period versus the way it was back in 2004. You told us
13 that you kept some notes back in 2004, sort of a notepad.

14 A Yes.

15 Q And you would then prepare your reports from that
16 notepad?

17 A Yes, if I didn't also enter information directly
18 into a Word document.

19 Q And obviously you took from that notepad the
20 things that you felt were relevant and put them in the
21 report, right?

22 A Yes.

23 Q And then the notepad was shredded?

24 A Eventually, yes.

25 Q When you say eventually when would that have

1 been?

2 A Generally I would try to keep those notes for a
3 period of time, say a year or so, in the event that a
4 client or someone contacted me back so that I could
5 reference back to the notes that I had made. I don't
6 recall with this specific case exactly how long I kept
7 those notes or at what point I finally put them in the
8 shredding.

9 Q Okay. Do you recall whether it would be prior to
10 you finding out about Phoenix Sinclair's murder or after?

11 A I have no idea.

12 Q It's possible that you would have shredded the
13 notes after finding out about the death and the murder
14 trial and the inquiry?

15 A I don't recall at what point in time I learned of
16 the inquiry or the death of Phoenix. In that steno pad
17 would be a running account for as long as the pad was, how
18 many days. I don't know what period of time that steno pad
19 was, how long I kept that steno pad, I don't recall. I
20 have no idea.

21 Q Okay. And in 2004 did you say there were regular
22 meetings with your supervisor or it was more ad hoc?

23 A We would consult on a case by case basis as we
24 were not case carrying. But there was supervision that
25 occurred, for example to discuss any performance issues or

1 other issues that would arise. How frequently those
2 supervision meetings occurred, I don't recall.

3 Q And when you became a supervisor, was there a
4 change in that area?

5 A Yes, there is an expectation that those, that the
6 supervision occur every two weeks to 30 days.

7 Q But that still doesn't happen, does it?

8 A Well the form is expected to be submitted to HR
9 every 30 days, so ...

10 Q That's the expectation?

11 A That's the expectation.

12 Q But it isn't always the case?

13 A It's improving and it is getting closer to that.

14 Q Okay.

15 A We recently have a new supervisor at CRU. I
16 don't know if my supervision has occurred within the last
17 30 days, I don't believe so.

18 Q And one of the changes you mentioned was that
19 now, before a file is closed, the child must be seen.

20 A Yes.

21 Q Do you know when that came in?

22 A I don't recall the date, no.

23 Q That's clearly a terrific idea, isn't it?

24 A Yes, it is.

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

1 THE COMMISSIONER: Thank you, Mr. Gindin.

2 All right, anybody else before Mr. Ray?

3 I guess not. Then Mr. Ray, please.

4 MR. RAY: Yes, Mr. Commissioner. I'd just like a
5 moment with Ms. Rachlis, if I may.

6 THE COMMISSIONER: Sure.

7 MR. RAY: Thank you.

8 THE COMMISSIONER: Mr. Ray, if you want a five
9 minute adjournment, I'll certainly give it to you.

10 MR. RAY: I don't think that's necessary,
11 Mr. Commissioner.

12 THE COMMISSIONER: Okay.

13 MR. RAY: Thank you.

14 THE COMMISSIONER: That's fine, take your time.

15 MR. RAY: Thank you, Mr. Commissioner.

16

17 CROSS-EXAMINATION BY MR. RAY:

18 Q For the record, Trevor Ray. Some questions for
19 you, Ms. Willox. You were asked some questions about CD992
20 and it's page 19634, if we could just bring that up on the
21 screen, please.

22 THE COMMISSIONER: One nine six three four?

23 MR. RAY: Six three four, I'm sorry.

24 THE COMMISSIONER: One nine six three four. I
25 have it.

1 MR. RAY: And if you could just scroll down a
2 little bit so we can see close to the bottom. That's,
3 that's fine.

4

5 BY MR. RAY:

6 Q You see there's a statement there it says:
7 "Recording Outline: Closings - CRU". And then the second
8 sentence of subparagraph (a) it says:

9

10 "If there is a previous case
11 history, a file review shall be
12 conducted prior to closing."

13

14 I think your evidence was that you reviewed the prior
15 closing of Tracy Forbes. We know from the evidence that
16 we've heard that this, this file or the combination of
17 Ms. Kematch's protection file, Mr. Sinclair's protection
18 file, Phoenix Sinclair's protection file, they're totaling
19 in the hundreds and hundreds and hundreds, close to a
20 thousand pages. Is it your expectation given that
21 paragraph that you, as a CRU worker, would be expected to
22 review all of that information prior to making a decision
23 to close the file?

24 A I don't believe so, no.

25 Q You gave some evidence about notepads and what

1 they would have contained regarding your notations about
2 your involvement in this file. Could you just clarify your
3 practice as it relates to taking notes and entering them
4 into the CFSIS system? I think you said you had two
5 practices. Sometimes you would take handwritten notes and
6 later enter them into CFSIS?

7 A Yes.

8 Q And other times you would just record directly
9 into CFSIS and by that you mean just type the material?

10 A Type directly into a Word document.

11 Q Okay. So the notes that you took, if you took
12 handwritten notes in this case --

13 A Yes.

14 Q -- how shortly after you took them would you have
15 entered them into CFSIS?

16 A My involvement concluded on the 7th, so generally
17 I would record them if not that day, the following day.

18 Q So very shortly after you would have made them?

19 A Yes.

20 Q And is that true for all of your CRU
21 involvements?

22 A Yes, because we are a very short term service.

23 Q That was my next question.

24 A It's an expectation that file recording needs to
25 be completed as CRU's involvement needs to be completed

1 within a 24 and a 48 hour period. And technically the
2 standard on case note recording is a 24 hour period.
3 Twenty-four hours is the time period expected for case
4 notes to be recorded and documented.

5 Q Thank you. Ms. Walsh asked you a question as to
6 whether you followed up with EIA and subsequent to your
7 initial contact with them where you indicate in your notes
8 here that you were seeking demographic information on
9 Karl McKay. Your evidence was you called to get that
10 information that they gave you the response and due to the
11 response you didn't get the information you were seeking.
12 Given the response that Samantha was, had Phoenix on her
13 budget and there was not expected to be anyone else, any
14 other common-law person tied to that file, what else would
15 you expect that you learn if you did follow up? Why would
16 you have a reason to follow up, if any?

17 A Do you mean follow up with the family?

18 Q No, with EIA, phoning EIA again.

19 A I'm not sure. I mean, I guess at some point in
20 time there could have been a potential change or an add to
21 her budget but I would have no indication or way of knowing
22 at what point in time that may occur, so I would need to
23 keep calling back repeatedly.

24 Q Okay, thank you. I'd just like to take you to
25 your report, if I can. This is page 36947. Ms. Walsh and

1 I believe Ms. Rachlis also asked you whether you used the
2 catch phrase with Ms. Wu, that you were calling about child
3 protection concerns.

4 A Right.

5 Q And I think your evidence was that you couldn't
6 recall whether you verbally told Ms. Wu that you were
7 calling about child protection concerns. Is that --

8 A Correct. It was asked whether I had specified
9 whether the concerns I was calling about were child
10 protection concerns.

11 Q Okay. And I'd just like you to review page
12 36947, starting with, about a third down the way down the
13 page where it states:

14

15 "Worker advised Mary that the
16 Agency has previously had
17 extensive involvement with
18 Samantha ..."

19

20 I've reviewed the report and by my count I see that on that
21 page alone there are four references to either the term
22 child protection concern or risk to a child. Based on your
23 notes, does that assist you in recalling whether you would
24 have told Ms. Wu that you were calling about a child
25 protection concern?

1 THE COMMISSIONER: Your question is whether this,
2 her report --

3 MR. RAY: Assists --

4 THE COMMISSIONER: -- helps her to recall whether
5 she did or she didn't?

6 MR. RAY: Whether she told Ms. Wu that she was
7 calling about a child protection concern.

8 THE WITNESS: I believe so and in my opinion it
9 was. Like I had testified yesterday, I identified myself
10 to Ms. Wu as a child protection worker at a child
11 protection agency. I advised her of her obligation to
12 report if she is aware of a child protection concern in a
13 family home.

14

15 BY MR. RAY:

16 Q Do you have any other reason that you can think
17 of that you would call the Public Health nurse to make
18 those --

19 A No, I cannot.

20 Q Are there restrictions within the Child and
21 Family Services Act that prevent you from calling in this
22 case a collateral such as the Public Health nurse or a
23 collateral such as an EIA worker that would prevent you
24 from disclosing information that you learn in the context
25 of working on a file in CFS?

1 A Technically, according to confidentiality rules,
2 if I have child protection concerns about Ms. Kematch I
3 should not be sharing that information with my collateral.
4 In this particular case I went out on a limb, so to speak,
5 in expressing to Ms. Wu that although I didn't have a
6 current concern, I was attempting to determine or assess
7 whether there was a new concern in the home by, I guess
8 kind of saying in the past there has been involvement and
9 there has been serious concerns in the past, can you share
10 with me if you currently have any concerns.

11 Q We've learned through the course of this inquiry
12 that in fact child protection matters are extremely
13 confidential.

14 A Yes, they are.

15 Q Would you disclose anything about a file to a
16 collateral unless you were looking for a child protection
17 concern?

18 A No, I would not.

19 Q We heard evidence that Ms. Wu did in fact later
20 obtain permission from Ms. Kematch to disclose information
21 to CFS and the note in Ms. Wu's note, the indication in
22 Ms. Wu's notes are should CFS call back. What was your
23 understanding at the time you ended your conversation with
24 Ms. Wu as to what she was going to do if she did obtain
25 Ms. Kematch's permission?

1 A She had indicated to me that she would like to
2 speak to her client in an attempt to obtain permission.
3 She did not indicate to me whether she would call me back
4 or whether she would in fact speak to Samantha or
5 Ms. Kematch to see if she would give permission. At that
6 point in time I had indicated to her that I was going to be
7 referring it to my manager and suggest that she speak to
8 her manager subsequently so that the concerns about the
9 problem with sharing information could be discussed at the
10 managerial level.

11 Q So, so she said to you before she told you
12 anything she wanted to get the permission of her client?

13 A Yes.

14 Q And we know from her notes that she did go and
15 she did get that permission from her client.

16 A Yes.

17 Q Would it be your expectation that having received
18 that permission that she would call you back?

19 THE COMMISSIONER: Well, I, I thought you said
20 that there was no discussion about whether she'd call you
21 back or not.

22 THE WITNESS: I don't recall having a discussion
23 with her and her confirming that she would or wouldn't call
24 me back.

25 THE COMMISSIONER: Isn't that the answer?

1 MR. RAY: Well, she says there's no discussion.
2 I'm asking her what her expectation would be just from a
3 social worker perspective.

4

5 BY MR. RAY:

6 Q If that person got the permission would you
7 expect, would you as a social worker expect that she would
8 call you back or would you keep calling to have to bother
9 her to see if she had got permission yet or not.

10 A For example, with any collateral, whether it was
11 Public Health, school personnel, health personnel, doctor,
12 physician, any type of professional, if they were aware of
13 the fact that I was calling, seeking information to see if
14 in fact there was a child protection concern that needed to
15 be reported and she had obtained consent from her client to
16 speak openly with me and she did have a child protection
17 concern, I would have the expectation that she would call
18 me back.

19 Q I'd like to turn you to the, some of the findings
20 in the report or one of the findings in the report at
21 page 47. If you could scroll down a little bit please to
22 the heading, it's in bold, finding 34. Ms. Walsh asked you
23 if you agreed -- she read you the finding, the heading, the
24 part in bold, finding 34, and she asked you if you agreed
25 with the finding and you indicated yes. I think you said

1 that you agreed in hindsight. Do you necessarily agree
2 with what's contained, all the information contained below
3 as recorded by Mr. Koster? And you can take your time to,
4 to review it. I understand you agree with the finding but
5 he makes another, a number of other comments.

6 THE COMMISSIONER: Now what's your question?
7 I've just got the document.

8 MR. RAY: I'm sorry, Mr. Commissioner. The
9 witness agreed with the F34 that's in bold, when that
10 finding was put to her. What was not put to her was the
11 information contained below the finding and I was just
12 asking the witness if she agrees with everything below,
13 below the heading and if not, if there's something she
14 disagrees with she could indicate.

15 THE WITNESS: The information contained below, I
16 don't necessarily agree with based on the information that
17 I had at the time. Do I agree that it was at that point
18 catastrophic that the file was closed? At that point in
19 time, no, I do not agree with that. In hindsight, knowing
20 the information that I do now that's available regarding
21 Mr. McKay, yes, it was an error that the file was closed
22 and it would have been preferential that the file had been
23 referred to intake as originally requested so that further
24 demographic information could have been collected and
25 ongoing follow-up with the family completed and provided

1 whatever services may have been deemed necessary at that
2 time. But based on the information that I had and the
3 concerns or lack thereof that were being reported to me at
4 the time, do I agree based on solely the report that I
5 provided that it was catastrophic that the file was closed
6 at that time? No.

7

8 BY MR. RAY:

9 Q There's a statement that says a new young baby
10 was in the home and this only added stress and risk to an
11 unstable home. Did you have any knowledge or information
12 that indicated that it was an unstable home at the time?

13 A No, I did not.

14 Q Did you have any indication one way or the other?

15 A No, I didn't, which was part of my intent for
16 contacting Public Health to determine if they could shed
17 any light on to the family's functioning and the home
18 environment.

19 Q If we could just scroll up to the next page,
20 please.

21 THE COMMISSIONER: Now are you dealing with
22 matters that came up in cross-examination?

23 MR. RAY: I believe so, Mr. Commissioner. She
24 was asked whether she had agreed with finding 34. What she
25 was not asked was, further was --

1 THE COMMISSIONER: By whom, Mr. Gindin?

2 MR. RAY: No, Ms. Walsh when she went through the
3 reports.

4 THE COMMISSIONER: All right.

5 MR. RAY: I haven't, I haven't dealt with
6 anything other than issues that came up in cross-
7 examination --

8 THE COMMISSIONER: All right.

9 MR. RAY: -- at this point.

10 THE COMMISSIONER: Carry on.

11 MR. RAY: No, I'm sorry, scroll to the next page
12 and I said up. Okay, that's -- I was just not sure what
13 remained of that paragraph.

14

15 BY MR. RAY:

16 Q You were asked some questions by Mr. Haight about
17 your involvement with Ms. Waugh. I assume that you don't
18 know why she recorded what she did.

19 A I don't know?

20 Q Whether there was a miscommunication or not as
21 Mr. Haight has suggested, you don't know why Ms. Waugh
22 wrote what she did, obviously?

23 A No, I do not.

24 Q Okay. And is it your practice to call EIA to
25 give them information?

1 A No, it is not.

2 Q And if you would please turn to page 36945 and if
3 you'd just read paragraph 2. You have an indication there.
4 After speaking with the source of referral you noted
5 Wes McKay and you said date of birth unknown, correct?

6 A Yes.

7 Q Okay. And then you scroll down, if you could --
8 thank you. You then call on December 1st, '04. Is that
9 the same day that you had received the information from the
10 source of referral?

11 A Yes, it is.

12 Q So the same day you contact the EIA worker and in
13 the last sentence of -- there's a second paragraph that has
14 on December 1st, 2004, this worker contacted EIA. The last
15 sentence says:

16

17 "Therefore the date of birth for
18 Wes McKay could not be obtained."

19

20 Given your comment in the second paragraph and given your
21 comment in that paragraph I just directed you to, does that
22 assist you in recalling whether or not you were -- why you
23 were calling EIA?

24 A I believe I called EIA like I did every case, to
25 obtain demographic information.

1 Q And in fact, Mr. Saxberg, in cross-examination,
2 put to you that even had you known all the information
3 about Mr. McKay, without a date of birth you would never
4 have been able to piece Mr. McKay together and Ms. Kematch
5 together and you said you agreed with that. Given your
6 practice and given the notation and given that fact that
7 you would never have been able to find, piece that together
8 without a date of birth, does that assist you in recalling
9 what you were searching for when you called EIA?

10 THE COMMISSIONER: What's the question?

11 MR. RAY: Does that assist you in recalling why
12 you were calling EIA?

13 THE WITNESS: I believe I called EIA in attempt
14 to try to obtain Mr. McKay's date of birth so that a search
15 could be completed and I could attempt to determine if
16 there had been prior child welfare contact with Mr. McKay
17 and what the nature of that involvement was.

18

19 BY MR. RAY:

20 Q We expect to hear evidence from Mr. Buchkowski
21 who had this file subsequent to you that he initially
22 called EIA and he was seeking demographic information from
23 them and he was then able to get a response from them that
24 indicated they had a listing for Ms. Kematch, okay.
25 Mr. Buchkowski then phones back later that same day and the

1 EIA worker he speaks to at that time now does indicate that
2 they did have information on the system that assisted him
3 in locating a proper address for Ms. Kematch, okay. Have
4 you had any experience with EIA in terms of receiving that
5 type of, an inconsistent feedback from EIA?

6 A Yes. Like I think I mentioned yesterday, the
7 information we got from EIA was not always accurate. There
8 were periods of times where trying to obtain information
9 from Employment and Income Assistance was more difficult
10 and it was often dependant on whether it was their
11 workload, how busy they were, the specific individual you
12 received on the phone. So I am not surprised by that.

13 Q Mr. Haight asked you some questions about what
14 you were trying to do at the time you were calling EIA
15 because you had made a decision, as it indicates in your
16 report you had made a decision at a specific time to refer
17 the file to intake and then chronologically following your
18 report it then indicates you followed EIA, or called EIA
19 for information.

20 A Yes.

21 Q Can you think of why you would have called EIA to
22 obtain information after making a decision to refer a
23 matter to intake?

24 A Yes, because initially I wanted to consult with
25 my supervisor to determine if this was something that

1 should even be opened. Based on the prior history I wanted
2 to receive confirmation from my supervisor that this is a
3 matter that should be followed up because of Ms. Kematch's
4 history. Subsequent to receiving confirmation from
5 Ms. Faria that the matter should be opened and we agreed it
6 should be referred to intake at that point in time, I began
7 my usual process for opening a file and processing the
8 matter at CRU which included me calling EIA in an attempt
9 to obtain demographic information for the family.

10 Q And why, why were you attempting to obtain
11 demographic information for the family?

12 A Like I've said before, I do that on every case,
13 make sure of correct names, spelling of names, dates of
14 birth, to determine who is the family home, is there a
15 common-law in the home. What is the family's current
16 address, contact phone number and if I feel necessary or if
17 I'm looking for other, more specific information to obtain
18 the name of the EIA case worker and their phone number for
19 contact.

20 Q Is one of the functions and roles of CRU to try
21 to obtain information, whether demographic or otherwise, so
22 that that information can be provided to intake if a file's
23 later provided to intake?

24 A Sometimes, yes.

25 Q Do you recall if you were calling EIA in this

1 situation in order to get demographic information to, to
2 refer to intake when you had made the decision to refer the
3 file to intake?

4 A After I consulted with Ms. Faria, we agreed that
5 the file would be referred to intake. So my intent was to
6 call EIA to obtain as much accurate demographic information
7 as I could at that point in time so that the information
8 that was referred to intake was update, up to date and
9 accurate.

10 Q And so you would do that -- would you do that
11 regardless of whether you were referring the matter to
12 intake or not?

13 A Yes.

14 Q Mr. Paul asked you a number of questions about
15 workload and he asked you questions about whether you knew
16 if certain people were on vacation, whether you knew if
17 certain people were off sick and he then described to you a
18 number of steps that, to their credit, the department took
19 to try to alleviate workload problems around the time of
20 devolution and you said you weren't sure about a number of
21 those things. Does what Mr. Paul put to you change your
22 evidence about whether you felt your workload was very high
23 at the time in 2004 and continuing?

24 A No, it does not.

25 Q Mr. Gindin asked you whether there was pressure

1 to close files around the time that you had this particular
2 case. Would you ever close a file that, in your
3 assessment, should have stayed open?

4 A No, definitely not.

5 Q You gave some evidence in cross-examination by
6 Mr. Gindin about the problems you experience in calling EIA
7 versus faxing forms I think, and now you're allowed to
8 email EIA for information. Do I understand your evidence
9 to be that previously, and I don't know what the timeframe
10 was and perhaps you can tell us, you were simply allowed to
11 call EIA directly and request information?

12 A Yes, in 2004 that was the practice. We would
13 call the inquiry line, request information to determine if,
14 for example, Ms. Kematch was active and involved and be
15 seeking social assistance, her current address, contact
16 phone number, date of birth and those individuals listed on
17 her budget.

18 Q Okay. And Mr. Gindin asked you how it's more
19 cumbersome now. Can you tell us how the process now is
20 more cumbersome than the process that existed before?

21 A Well like I was explaining, at one point in time
22 were expected to fill out the form and there was a delayed
23 response in getting the information. When we expressed the
24 fact that that process was not working for us it switched
25 to us being requested to email the information. When we

1 request, for example, if Ms. Kematch is currently open and
2 receiving services, the answer we will receive back is the
3 name of a case worker and a phone number for that
4 individual. We then have to try to attempt to contact that
5 case worker with Employment and Income Assistance, leave a
6 message, hope to try and reach them on the phone, go
7 through the process of trying to determine if that worker
8 is in the office, reach a covering case worker and if in
9 the event we leave a voice message, wait until that EIA
10 case worker calls us back or attempt to return the call
11 again at a subsequent time.

12 Q Mr. Gindin was suggesting that perhaps you should
13 have asked Ms. Wu more specific questions and that the
14 example he put to you was, for example perhaps you could
15 have asked her whether she was aware of whether there was
16 any drug use in the home. As a social worker, if Ms. Wu
17 observed drug use in the home, for example, went out and
18 saw in particular Ms. Kematch, who was breastfeeding at the
19 time, using drugs or under the influence of drugs, what
20 would your expectation be of the Public Health nurse,
21 whether she would report those things or whether she was
22 obligated to report those types of things to you or not?

23 A Given that Ms. Wu acknowledged her obligation to
24 report, it would have been expected that if she had
25 witnessed or had knowledge of child protection concerns,

1 for example, Ms. Kematch using substances while caring for
2 her child, breastfeeding, et cetera, she would have been
3 obligated to report those concerns to me or the agency
4 through the intake line.

5 Q Does that obligation exist whether or not you
6 call Ms. Wu to even make an inquiry?

7 A Yes, she is obligated regardless of whether the
8 agency contacts her first.

9 Q I just have one question for you about the
10 conversations you were alleged to have overheard at some
11 point in time. Were any -- to your recollection were any
12 of those conversations about this file, Phoenix Sinclair
13 file specifically?

14 A Not that I recall.

15 MR. RAY: Thank you. Those are my questions.

16 THE COMMISSIONER: Thank you, Mr. Ray.

17 Ms. Walsh?

18 MS. WALSH: Mr. Commissioner, I have maybe ten
19 minutes of re-examination but if you would indulge me with
20 a five minute break.

21 THE COMMISSIONER: Yes.

22 MS. WALSH: Thank you.

23 THE COMMISSIONER: That will allow us to complete
24 just about in due time, so we'll take a five minute
25 break.

1 (BRIEF RECESS)

2

3 THE COMMISSIONER: All right, Ms. Walsh?

4 MS. WALSH: Mr. Commissioner, Ms. Rachlis has
5 asked that she speak to one matter.

6 THE COMMISSIONER: Pardon?

7 MS. WALSH: Ms. Rachlis has asked to have
8 standing to speak to one matter.

9 THE COMMISSIONER: All right, yes.

10 MS. RACHLIS: Thank you, Mr. Commissioner. As
11 you know my client does not have standing, has only limited
12 standing with respect to this witness and so we don't have
13 an opportunity to make further submissions as I understand
14 it. And I want, I knew that you would want to be
15 absolutely certain, Mr. Commissioner, with respect to any
16 suggestions that have been put to witnesses. My friend,
17 Mr. Ray, a moment ago put to the witness certain things
18 with respect to her recording of her conversation with my
19 client, Mary Wu, and the questions had to do with the
20 paragraph involved referring a few times to child
21 protection matters or child protection concerns. Mr. Ray
22 put to the witness that commission counsel and myself had
23 asked her certain questions previously. The question that
24 I had asked was, actually differed from the question that
25 was asked by commission counsel yesterday with respect to

1 the word "concerns". My narrow question this morning was
2 whether the witness advised my client during the telephone
3 discussion that she was conducting a child protection
4 investigation. It was not a question in relation to a
5 general discussion about child protection concerns. The
6 question was whether the witness advised my client that an
7 investigation was under way and she did answer in response
8 to my question this morning that she did not explicitly,
9 she did not advise my client that there was an
10 investigation under way.

11 THE COMMISSIONER: Well, that certainly will be
12 on the record.

13 MS. RACHLIS: Thank you very much.

14 THE COMMISSIONER: Thank you.

15

16 RE-EXAMINATION BY MS. WALSH:

17 Q Ms. Willox, I have just a few areas that came up
18 in cross-examination that I want to clarify. You said that
19 in 2004 there was not a policy to do a prior contact check
20 of people who were not living in the home. Is that what,
21 is my understanding correct?

22 A I don't know if there was a policy or not but the
23 general practice was is that we weren't always conducting
24 prior contact checks on other individuals or adults
25 residing in a family home.

1 Q You were or were not?

2 A We were not always.

3 THE COMMISSIONER: You were not always what?

4 THE WITNESS: It was not always practice, for
5 example. Like in the situation where Mr. McKay was or was
6 not necessarily residing in the home, if we knew he was
7 residing in the home we would generally try to do a prior
8 child welfare contact, however it wasn't as emphasized as
9 it was, as it is today that, I mean at that point in time
10 we had information Mr. McKay was her common-law partner. I
11 was attempting to ascertain his date of birth so that a
12 prior contact check could be completed. But the emphasis
13 on completing those prior contact checks on all other
14 adults residing in the family home was, it's not as strict
15 as it is today.

16

17 BY MS. WALSH:

18 Q But you're not saying that you didn't think
19 Mr. -- that you -- let me go back to my, my original
20 question because I just want to confirm then what your
21 knowledge was as to where Mr. McKay was living at the time
22 that you opened the file.

23 A According to the source of referral Mr. McKay was
24 the common-law, or Ms. -- yeah, Mr. McKay was the common-
25 law to Ms. Kematch.

1 Q Correct. And in fact when you opened the file
2 you opened it, re Samantha Kematch and Wes McKay at one
3 address on McGee Street?

4 A That's correct.

5 Q And you said that you had read the previous
6 intake summary from July of 2004 where Ms. Forbes noted
7 that when she went to the door to see Samantha, Wes opened
8 the door and that later Samantha confirmed that Wes was her
9 main support and stayed with her in the house when he was
10 in the city?

11 A That's correct.

12 Q And then after that you received a call from the
13 source of referral who advised you that Samantha had a new
14 baby, the father of that baby was Wes McKay, and they were
15 living common-law?

16 A Correct.

17 Q Now in terms of how much time a prior contact
18 check would have done if you had done one, you said in
19 cross-examination, I think you agreed that there would have
20 been numerous results or could have been numerous results
21 if you had looked for Mr. McKay?

22 A Yes.

23 Q So let's go to Exhibit 22, page 5, please.

24 THE COMMISSIONER: Do I have that?

25 MS. WALSH: That was filed yesterday,

1 Mr. Commissioner. It's entitled "Admission as to facts of
2 the Department of Family Services and Labour, volume 3".

3 THE COMMISSIONER: It's exhibit 20 what?

4 MS. WALSH: Twenty-two.

5 THE COMMISSIONER: Yes, I have it.

6 MS. WALSH: Page 5.

7 THE COMMISSIONER: Yes.

8 MS. WALSH: You have that, Mr. Commissioner.

9 Can you scroll up, please, so we can see the, the
10 full page? Thank you.

11

12 BY MS. WALSH:

13 Q Now, Ms. Willox, you'll see that page 5 shows the
14 summary of search results. If you had entered into PCC, a
15 search, the name Wes McKay, which was the name that you
16 were aware of, right?

17 A Yes.

18 Q And it shows that if you had typed in Wes McKay
19 and just approximated his age as being, for example, close
20 to the age of Samantha Kematch, so 32, that in fact only
21 two names would have come up by way of search results. You
22 see that?

23 A Yes.

24 Q And so if you had done the search and come up
25 with those two names, you could have clicked on those two

1 names in a matter of minutes, right?

2 A Correct.

3 Q And as we saw from what we reviewed yesterday,
4 one of these two names was in fact the correct Wes McKay?

5 A Yes.

6 Q And certainly, even if you did not know that he
7 was the correct Wes McKay, one of these two names had --

8 MR. RAY: Sorry, just I want to object. The
9 witness is indicating agreement. I think she's just
10 indicating agreement with what Ms. Walsh is saying. She
11 doesn't have any personal knowledge as to what she would
12 have found or what she personally knows.

13 THE COMMISSIONER: Well, as long as Ms. Walsh's
14 question is clear I see nothing improper about it.

15 MR. RAY: I just want to make sure for the record
16 that it indicates that she's not agreeing that she knows --

17 THE COMMISSIONER: I don't know what she's agreed
18 to. Let's find out from her based upon the questions that
19 are put to her.

20 MR. RAY: The question was just put to her
21 that --

22 THE COMMISSIONER: Well, I'll ask Ms. Walsh to
23 restate her question --

24 MR. RAY: That would be fine.

25 THE COMMISSIONER: -- but I want to hear from the

1 witness.

2 MR. RAY: That would be fine. They indicated --
3 the witness indicated correct.

4 THE COMMISSIONER: All right. Then we'll have
5 the questions put and get her answers. You can take your
6 seat.

7 MR. RAY: I'll just wait for the question.

8 THE COMMISSIONER: Well I think you should take
9 your seat.

10

11 BY MS. WALSH:

12 Q So, Ms. Willox, we confirmed that if you had done
13 the search the admission of facts shows that only two names
14 would have come up and you know, based on your work as a
15 CRU worker, that you could have clicked on those two names
16 in a matter of minutes, right?

17 A Yes.

18 Q And we know from the information that we reviewed
19 yesterday that is set out in Exhibit 19, that the first
20 individual that had these names, of these two names, was an
21 individual who had concerning information?

22 A Yes.

23 Q And so even if you did not know whether, because
24 you said you did not have Mr. McKay's birth date, correct?

25 A Correct.

1 Q But even if you didn't have Mr. McKay's birth
2 date, there were only two names that came up, that would
3 have come up with respect to this search, Wes McKay of that
4 age, one of whom had information that was of concern, if
5 you had see that information, that would have warranted
6 enough concern to do further investigation or to refer the
7 matter to do further investigation to verify whether or not
8 that was the Wes McKay living with Samantha Kematch, right?

9 A Yes.

10 THE COMMISSIONER: Now is that what you object
11 to?

12 MR. RAY: No, Mr. Commissioner. The only thing I
13 was objecting to was the way Ms. Walsh was putting the
14 question to the witness. The witness agreed with
15 Ms. Walsh, which I have no problem with, but it was, it
16 was, seemed to me that what she was saying when she -- her
17 response suggested that she knew that at the time and, and
18 I just wanted to clarify that she's just agreeing with
19 Ms. Walsh as to what Ms. Walsh is putting to her today.

20 THE COMMISSIONER: Well but she's, she's given --
21 since we had our little exchange, she's asked three
22 questions, I think it's three --

23 MR. RAY: Yeah.

24 THE COMMISSIONER: -- and specific questions and
25 she got specific answers.

1 MR. RAY: I have no difficulty with the answers
2 that were given and the questions that were asked.

3 THE COMMISSIONER: All right. That's -- if you
4 had I wanted to hear you.

5 MR. RAY: No.

6 THE COMMISSIONER: All right, thank you.

7 THE WITNESS: I guess myself, I would like
8 clarification. Just during the process of preparing and
9 reading for the inquiry, during a review of the section 4
10 report, Mr. Koster indicated that he himself, at the time
11 of completing the section 4, had done a PCC or a prior
12 contact check of CFSIS under the name of Wes, Wesley McKay,
13 and he had found himself that there was in fact six
14 individuals with the name of Wes or Wesley McKay or
15 alternate versions of that name, five of which were adult
16 males. I'm not clear or sure at this point in time what I
17 would have found in 2004. Based on this information that's
18 being presented to me by Ms. Walsh, I'm assuming that this
19 is the information that I would have found, although I'm
20 wondering if this is the same information as what
21 Mr. Koster found.

22

23 BY MS. WALSH:

24 Q Well, we'll be hearing from Mr. Koster --

25 A Okay.

1 Q -- eventually, certainly. But mostly I wanted to
2 confirm, based on the information that we've been given
3 from the department, the department has admitted how much
4 time it would have taken you to deal with this information
5 and what you would have done with it and those are my
6 questions that you answered.

7 THE COMMISSIONER: Well, let me assure you that
8 your counsel have the opportunity of questioning Mr. Koster
9 when he appears here.

10 THE WITNESS: Okay.

11 MS. WALSH: Absolutely. Thank you.

12

13 BY MS. WALSH:

14 Q And just for the sake of thoroughness, still in
15 Exhibit 22, page 9, this is the search done again on
16 Wes McKay, the name that, that you had, but this time
17 trying a different age, an age, the age of 62, so looking
18 at Mr. McKay if he were older. And the result of this
19 search show only one individual that would have been
20 clicked on.

21 MR. RAY: I just -- sorry, I just want to object
22 because I think the results of the search, if you scroll
23 down, it indicates many more people with the last name
24 McKay. I think Ms. Walsh is correct in that it would
25 indicate this number of Wes McKays, but I think the

1 evidence in the document shows that there is many more
2 people with the last name McKay but different first names
3 and different initials. It's just for the record.

4

5 BY MS. WALSH:

6 Q You were looking for Wes McKay, right?

7 MR. RAY: I'm not objecting to that. I'm just
8 saying that the search doesn't show only two people, it
9 shows many people.

10 MS. WALSH: It shows two people being even
11 with -- it shows two people with the name Wes McKay.

12 MR. RAY: That's my point. Not, not just two
13 hits, but I think your question to the witness was, was two
14 hits and it doesn't just show two hits, it shows two hits
15 with the name Wes McKay --

16 MS. WALSH: Okay.

17 MR. RAY: -- it shows many more people with the
18 last name McKay.

19 MS. WALSH: Whose names were not Wes.

20 THE COMMISSIONER: All right. Now what your next
21 question?

22

23 BY MS. WALSH:

24 Q So I just wanted to confirm that if you had --

25 MS. WALSH: I think it's, yeah -- what's the

1 problem?

2 MR. RAY: The list here is (inaudible).

3 MS. WALSH: Okay, I'll deal with that, sure.
4 I'll go through that.

5 Mr. Ray has some concerns about how the screen
6 shot looks, the full screen shot.

7 THE COMMISSIONER: How what?

8 MS. WALSH: How the full screen shot looks in
9 this exhibit. So that's, that's fine. Let's, let's deal
10 with that. Let's start with the paragraphs that outline
11 what, what this admission of facts is. So --

12 THE COMMISSIONER: Well now this document was
13 filed yesterday as an admission of facts by the Department
14 of Family Services and Labour, am I correct?

15 MS. WALSH: That's correct.

16 THE COMMISSIONER: You didn't call a witness from
17 the department to identify the document and what it means,
18 did you?

19 MS. WALSH: No, because they've given us this
20 admission of, of facts.

21 THE COMMISSIONER: Well, but where's the
22 explanation as to what --

23 MS. WALSH: I'm just about to go through that.

24 THE COMMISSIONER: -- what those charts are?

25 MS. WALSH: I'm just about to go through that,

1 Mr. Commissioner.

2 THE COMMISSIONER: With this witness?

3 MS. WALSH: Yes.

4 THE COMMISSIONER: All right. If this witness is
5 qualified to deal with that. If not, I would want someone
6 from the department to come here and tell me what it is
7 their agreement is.

8 MS. WALSH: Sure. And we had hoped, we had
9 thought that by getting this admission of facts we could
10 save time on having one witness. I think it's fairly
11 clear, or by avoiding one witness, but if, if you would
12 like and would find it helpful to have a witness walk us
13 through this, I think that's, that's a good idea. But let
14 me just address --

15 MR. RAY: Just to --

16 MS. WALSH: -- what I think is Mr. Ray's concern.

17 MR. RAY: Just to add to what your comment was,
18 Mr. Commissioner, I don't know whether it would be helpful
19 to call a witness or not and I guess, as counsel to many
20 social workers, that's the problem. I don't know really
21 the background on how this was generated and what, what the
22 witness would or would not say as you've expressed as a
23 concern and I don't -- you know, I guess we can wait to see
24 if Ms. Willox is able to comment, but that's kind of the
25 problem I'm in is I don't know how this is generated and

1 what someone would say about how it was generated and what
2 it all means and the process for reviewing all this.

3 THE COMMISSIONER: Well, you have another
4 question for the witness, I take it.

5 MS. WALSH: I do, I have some more questions for
6 the witness and then, and then certainly we can call a
7 witness from the department.

8 THE COMMISSIONER: Well, I think if, if, if
9 Mr. Ray or anyone else wants someone called from the
10 department to, to go through this document, then I think it
11 would be appropriate.

12 MS. WALSH: Certainly.

13 THE COMMISSIONER: All right.

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

15

16 BY MS. WALSH:

17 Q So let's review what this whole admission of
18 facts is so that we're certain that you understand what it
19 is I'm asking you about. Let's start with page 2 of the
20 document, please. Can you scroll up so -- good, wonderful.
21 Thank you. So it starts by identifying that:

22

23 "A common search done on CFSIS and
24 the Intake Module is known as a
25 'Prior Contact Check' ... A

1 [prior contact check] allows one
2 to determine if a given person has
3 had prior contact with the child
4 welfare system, recorded on CFSA
5 ... and also can be used to find a
6 given person's open child welfare
7 case, recorded on CFSA.

8
9 [Prior contact] searches are
10 conducted by entering the
11 individual's first name and last
12 name, any other 'known as' names,
13 gender and approximate age/date of
14 birth. As of 2000 - 2005, the PCC
15 search created a list of 50
16 closest matches based on
17 variations of those names that are
18 based on spelled-alike, sound-
19 alike, age-alike, as well as
20 gender-alike. A PCC will then
21 give a percentage match indicating
22 how similar the search is to the
23 person records in CFSIS."

24

25 And I believe, Ms. Willox, I asked you yesterday whether

1 you were familiar with that procedure and you said you
2 were.

3 A Yes.

4 Q Okay. Let's go to the next page, please.

5

6 "The individual conducting the PCC
7 search may then review the results
8 generated by the search, and the
9 information contained in CFSIS, to
10 determine which, if any, of the
11 closest matches is the person he
12 or she is looking for."

13

14 That was the process that you were familiar with?

15 A Yes.

16 Q So once you typed in an individual's name, if, if
17 results came up, then you could click on the results that
18 came up and see what that individual's record was, if they
19 had a record in CFSIS?

20 A Yes, you'd go through each individual person down
21 the list to determine if they had prior contact or what
22 their record has been.

23 Q And you wouldn't have to go through, if there
24 were a hundred people you wouldn't have to go through a
25 hundred people, you would go through the closest match?

1 A Yes, if you knew an approximate age or if you
2 knew the date of birth it would hopefully bring up,
3 according to a 99 percent match or very close there to the
4 individual that you were looking for.

5 Q Right. And then paragraph 4 says:

6
7 "Information about a person's past
8 relationships or children may
9 assist a worker in linking a given
10 search to the person that they are
11 looking for.

12
13 CFSA is continuously being
14 updated. In order to determine
15 what a PCC would have looked like
16 in 2004, one must do a PCC now.
17 Person records with names similar
18 to the subject of the search and
19 which were created after 2004 must
20 be extracted to approximate a PCC
21 in 2004."

22
23 So what that shows, if we go, for instance, to
24 page 9, under the heading "Summary of Search Results" you
25 see that the box or the graph identifies whether or not the

1 person was on CFSA in 2004.

2 A Yes.

3 Q And you understand how to read that. So where it
4 says Wes McKay, age 11, 81 percent match, and it says he
5 was not on CFSIS or in CFSA in 2004, do you understand that
6 to mean that if you had done a search in 2004 that second
7 individual would not have shown up?

8 A Yes.

9 Q Okay. So let's go back to page 3, please. So
10 then paragraph 6 says:

11

12 "If one does a PCC as of December
13 2012, on the below parameters the
14 results are attached:

15 a. Wes McKay with an
16 estimated birth date of January 1,
17 1980 (Age 32), the screenshots are
18 attached as Appendix A."

19

20 And that's the first appendix that I referred you to at
21 page 5 that we just looked at which is right -- if we look
22 at page 5, see that's appendix A and those show the results
23 if one had done a PCC with Wes McKay with a birth date of
24 32, or an age of 32. Those are the results that would have
25 shown up.

1 A Okay.

2 Q Okay. And that's, that's what you and I just
3 discussed. Then paragraph 6, let's go back to page 3,
4 please, paragraph 6. It goes on to say:

5

6 "b. Wes McKay with an estimated
7 birth date of January 1, 1950 (Age
8 62), the screenshots are attached
9 as Appendix B."

10

11 And appendix B is found at page 9. Let's go to that,
12 please. And that's the second summary of results that I
13 showed you if you had entered in the name Wes McKay but
14 this time with an older age.

15 A Okay.

16 Q Okay. Let's go back to page 3, please. Then
17 paragraph 6 goes on to talk about the results if one
18 entered Karl Wesley McKay, age 32, or Karl Wesley McKay
19 with age 62. But you knew Mr. McKay as Wes McKay, right?

20 A Yes.

21 Q Did you have the name Karl?

22 A I don't believe so.

23 Q So I'm not, I'm not asking you about how long it
24 would have taken you to deal with those search results.
25 That's why I only asked you about how long it would have

1 taken you to deal with the search results in appendices A
2 and B, because those are the only ones that relate to Wes
3 McKay.

4 Okay, so let's go to paragraph 7 if you can
5 scroll down, please. Then the admission goes on to say:

6
7 "When a worker does a PCC, the
8 worker will estimate the
9 approximate age of the subject of
10 the search based on the
11 information available to the
12 worker."

13

14 Now if you had his, if you had known for sure his date of
15 birth, then you would have put that in, right?

16 A Correct.

17 Q But you told me that you knew that you could do a
18 PCC without knowing that information for sure by putting in
19 an approximate date of birth.

20 A Yes.

21 Q Okay. So here the document explains:

22

23 "The dates January 1, 1980 and
24 January 1, 1950 have been used as
25 assumed ages. The 1980 date

1 assumes that McKay was close in
2 age to Ms. Kematch and the 1950
3 date assumes that McKay was older
4 than Ms. Kematch."

5

6 A Yes.

7 Q You understand that?

8 A Yes.

9 Q Okay. Paragraph 8 says:

10

11 "The person known to be the
12 correct Karl Wesley McKay is
13 manually highlighted in dark blue
14 in each of the four appendices.
15 Persons with similar names are
16 manually identified by a red
17 rectangle around the name."

18

19 If you go to the next page, please. And then the admission
20 goes on to explain at paragraph 9:

21

22 "In all of the appendices:

23 a. if a last name is other
24 than 'McKay', the last name has
25 been redacted other than the first

1 letter of the last name ..."

2

3 So that we can see that all of us verify that it's
4 something other than McKay. And,

5

6 "b. if a first name is other
7 than Wes, Wesley, Welsey, Carl,
8 Karl, the first name has been
9 redacted other than the first
10 letter of the first name.

11 c. all middle names have been
12 redacted other than the middle
13 name for Karl Wesley McKay.

14 d. all ages shown on the
15 appendices are as at December
16 2012.

17

18 The percentage match associated
19 with the correct Karl Wesley McKay
20 in each of the four appendices is
21 as of December 2012. The
22 percentage match associated with
23 the correct Karl Wesley McKay in
24 2004 may have been different."

25

1 And that's because as the document, my understanding is, is
2 because as the document said earlier, people, subsequent
3 people have been added to the system since 2004 and that's
4 -- would you agree that that's how the system would work,
5 you understand that?

6 A Yes.

7 Q And so that's why on this summary of search
8 results the department has shown who was in the system in
9 2004 and who was not to help us identify what the system
10 would have looked like if a search had been done in 2004.

11 A Okay.

12 Q With respect to entries -- I think we're done
13 that. Let's go to the next page, please. So then we
14 looked at the summary of a PCC if you had done one, if one
15 had been done of the search results for Wes McKay. Can you
16 scroll up so we can see the whole page, please? Wes McKay,
17 the name you knew, age 32, would have shown up, two
18 individuals with that name within that top percentage match
19 in 2004.

20 A Okay.

21 Q Do you have any problem understanding that?

22 A No.

23 Q Okay. Then let's just go to the next page,
24 please. So what we've just looked at is the summary of the
25 results that show up on the page we're about to look at, on

1 the next page. So page 5 is the summary of the results
2 that show up on page 6 and following. So let's stay with
3 page 6. So as the document indicated, the correct Wes
4 McKay is identified in blue and the other Wes McKays whose
5 names are close to an information are identified in red.
6 And as the document indicated, if the first name was not
7 Wes, then the name has been redacted so you see how that
8 reads? Except for the first letter, so that we can all
9 verify that the name in fact is not Wes.

10 A Okay.

11 Q So that -- and let's go to the next page, please,
12 and you've got -- keep going. Those three pages show all
13 of the search results for someone named Wes McKay with the
14 birth date that you or that could have been put in as 32.
15 And let's just scroll back up for a minute, the previous
16 page. That's good, thank you. So you see that, and I
17 asked you because the search results say, the summary of
18 the search results say that, and we're looking at page 5,
19 only two of the Wes McKays that had shown up were actually
20 in the system in 2004. So of the results, that long screen
21 shot, only two of them were there in 2004, the one aged 50
22 and the one aged 33. So the one who was 11 wasn't in the
23 system at the time.

24 A Okay.

25 Q So this is a demonstration of what the screen

1 would have looked like if a search had been done in 2004
2 and I asked you how long it would have taken you to click
3 on the two names that were there and you gave me your
4 answer.

5 A Yes.

6 Q One question, the name Wes McKay, with the
7 correct first name, doesn't come up as the very first
8 individual listed, number 81 on the list. I want to know
9 what your practice was when you did a PCC and you've got a
10 screen like this, would you look for just the first name
11 that came up or would you have scrolled through until you
12 found a name that matched the name that you were looking
13 for?

14 A I would generally attempt to scroll down and look
15 through a list of the names to see if I could find a
16 potential match.

17 Q So the name -- so you would have looked to see if
18 you could find the name Wes McKay?

19 A Yes, or Wesley.

20 Q Okay, thank you.

21 MS. WALSH: Mr. Commissioner, unless you have any
22 questions about this document I wanted to move on to
23 another area.

24 THE COMMISSIONER: No, I have no questions but
25 just what I said earlier, if anyone feels they want to have

1 someone from the department come and speak to the
2 interpretation of the document then they should make that
3 request to you.

4 MS. WALSH: Thank you.

5

6 BY MS. WALSH:

7 Q One of the reasons that you recommended that the
8 matter be referred to intake on December 1st, 2004, was to
9 investigate Wes McKay, right?

10 A Yes.

11 Q And when the file was closed on December 7, 2004,
12 that investigation had not been done?

13 A That's correct.

14 Q And in fact at that time the agency had no
15 knowledge about Wes McKay in the context of Phoenix
16 Sinclair?

17 A That's correct.

18 Q You were asked some questions in cross-
19 examination about your work as a supervisor. One of the
20 major responsibilities of a supervisor is to provide the
21 approval for closings or transfers?

22 A Yes, a supervisor's responsibility is to read
23 each and every case that is generated by the CRU workers.

24 Q And I think your evidence was that you don't redo
25 the work that the worker did but you would need to review

1 their report?

2 A It's your expectation and your responsibility as
3 a supervisor to review the report and ensure that any
4 service delivery items that needed to be provided to the
5 families at that point in time was completed and if not,
6 return the matter to the case worker for that intervention
7 to be completed.

8 Q And one of the things that as supervisor you
9 would be looking for would be to see whether there was any
10 significant information missing from the report?

11 A That's correct.

12 Q And that kind of information would include
13 information about the adults living in the home?

14 A Yes, it would.

15 Q You said you called EIA because you were looking
16 for demographic information about Wes McKay?

17 A Yes.

18 Q You never asked them to search his name
19 specifically though?

20 A Not that I'm aware of. I don't recall though.
21 But according to my notations I did not.

22 Q My last question, to the extent that you had
23 handwritten notes in a steno pad, you said that you
24 destroyed them but not immediately.

25 A Generally my practice was I would keep those, any

1 notations I made on any family in that notepad for a period
2 of time and then I would discard of them usually in the
3 shredder to ensure confidentiality.

4 Q So is that because those notepads had information
5 that was not necessarily included in the Word document that
6 went into CFSIS?

7 A No, just those notes needed to be, you need to
8 ensure that your information, any documentation, reports,
9 notes that you have made on families is confidential. As a
10 CRU worker, I would deal, take maybe say, as a
11 guesstimation, of 15 phone calls a day on the phone and all
12 of those 15 calls I took, if I did 10 openings there would
13 be at least 10 pages, if not more, depending on how much
14 information I wrote on each family, one after the other,
15 located in that steno pad. Once the steno pad was
16 completed, I would lock it in my desk drawer and I would
17 start a new steno pad and I would keep those for case
18 reference in the event a collateral or the individual that
19 I had spoken to on the phone contacted me back in the
20 future and had questions about the information that I had
21 provided or service delivery. So I kept those steno pads
22 for a period of time as a reference back in addition to the
23 notes and case recordings that I had made on the Word
24 document and handed it in to my supervisor.

25 Q But if all the information that was in the notes,

1 in the steno pad, was transferred to the Word document then
2 you wouldn't need to keep the steno pads.

3 A Correct.

4 Q So that was my question, was the reason that you
5 kept the steno pads for a period of time was because they
6 may have contained information that was not transferred
7 into the Word document?

8 A No. The information that I would have documented
9 in the steno pads would have been transferred in to my Word
10 document. Just like back in 2004, every report and prior
11 to that as a family service worker, every report and
12 document that I generated I saved on the computer under my
13 own personal drive as a back-up copy for future reference.
14 It was just something that I did. Each worker had their
15 own individual style of recording case notes and how they
16 kept those notes and for what period of time they kept
17 those notes. There was no policy as to how long I was to
18 keep those notes. It was my general practice that I would
19 keep those just in case, for a case reference, for a period
20 of time.

21 Q Just in case what?

22 A Like I said, a collateral or if someone contacted
23 me back and I wanted to refer back to confirm okay, on this
24 date I spoke to this person, that person. During that list
25 of contacts there may have been something that I had

1 written, for example, say a non-child welfare contact which
2 I did not generate a CRU report for but there might have
3 been some type of date and time with a source of referral's
4 name indicating that they had called on that date. So I
5 kept that information as a reference in the event that I
6 ever needed it in the future.

7 Q So the information in a steno notepad was not
8 identical to the information that was entered into the Word
9 document on CFSIS?

10 A Any child protection concerns or information that
11 a source of referral had reported to me, would have been
12 transferred into the Word document if I had not typed into
13 the Word document while I was speaking to the source of
14 referral.

15 Q I don't think you answered my question.

16 A You're asking me if the information on my steno
17 pad would have been different from the information
18 contained in my CRU report.

19 Q If there was information in your steno pad that
20 was not transferred into the CRU report.

21 A There should not have been. I used those steno
22 pads as a way to take notes. If I didn't type directly
23 into a Word document, I used those steno pas to take notes
24 and then that information was transferred and transcribed
25 into full sentences into my Word document.

1 Q But you did keep the steno pads for a period of
2 time after your involvement with a file ended?

3 A Yes, I did.

4 Q And that was in case you needed to refer back to
5 them?

6 A Yes.

7 MS. WALSH: Thank you. Those are my questions.

8 THE COMMISSIONER: Thank you, Ms. Walsh.

9 Well, witness, you're finally finished and I
10 thank you for your attendance here and your participation
11 over the last day and a half.

12 THE WITNESS: Thank you very much.

13

14 (WITNESS EXCUSED)

15

16 THE COMMISSIONER: All right. Now it's one
17 o'clock. Do you want to adjourn till 2:30 or 2:15?

18 MS. WALSH: I think, Mr. Commissioner, our next
19 witness, our first witness of the afternoon is testifying
20 by a telephone conference --

21 THE COMMISSIONER: Yes.

22 MS. WALSH: -- and so I don't think we have any
23 leeway there. We're going to have to be back for two
24 o'clock.

25 THE COMMISSIONER: All right. I guess that's the

1 way it is for all of us. So we'll reconvene here in an
2 hour's time.

3 MS. WALSH: Thank you.

4 THE COMMISSIONER: Thank you.

5

6 (LUNCHEON RECESS)

7

8 THE COMMISSIONER: All right, Mr. Olson.

9 MR. OLSON: We're ready for the next witness who
10 is testifying by video.

11 THE COMMISSIONER: But not an SOR?

12 MR. OLSON: No. So she will appear on the
13 screen, I hope.

14 THE COMMISSIONER: Right. She's on my screen.

15 MR. OLSON: There we go.

16 THE CLERK: Ms. Waugh, can you hear me?

17 THE WITNESS: Yes, I can.

18 THE CLERK: All right. I'm going to administer
19 an oath. Is it your choice to swear on the Bible or affirm
20 without the Bible?

21 THE WITNESS: Can you speak up a little bit?

22 THE CLERK: I'm going to administer an oath. Is
23 it your choice to swear on the Bible or affirm without the
24 Bible?

25 THE WITNESS: I'll swear on the Bible.

1 THE CLERK: Okay. Do you have a Bible there?

2 THE WITNESS: Oh, no, I don't.

3 THE CLERK: Okay, let's --

4 THE WITNESS: Sorry.

5 THE CLERK: Okay, we'll affirm then.

6 THE COMMISSIONER: That's just what I wondered
7 when you asked the question. Go ahead.

8 THE CLERK: If you could stand for a moment. Can
9 you stand up for a moment? Just state your full name to
10 the court.

11 THE WITNESS: Helen Elizabeth Waugh.

12 THE CLERK: And spell me your first name.

13 THE WITNESS: Helen, H-E-L-E-N.

14 THE CLERK: And your middle name, please?

15 THE WITNESS: Elizabeth.

16 THE CLERK: In the usual spelling?

17 THE WITNESS: E-L-I-Z-A-B-E-T-H.

18 THE CLERK: And your last name, please?

19 THE WITNESS: Waugh, W-A-U-G-H.

20

21 **HELEN ELIZABETH WAUGH,** by

22 videoconference, affirmed, testified

23 as follows:

24

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

1 DIRECT EXAMINATION BY MR. OLSON:

2 Q Good afternoon, Ms. Waugh. Can you see me okay?

3 Are you able to see me?

4 A Yes.

5 Q And can you see your counsel, Mr. Haight?

6 A Well, is he to the far right? I can see somebody
7 waving at me. Oh yeah, okay.

8 Q You can see him now?

9 A Okay, kind of.

10 MR. HAIGHT: Hi, Ms. Waugh.

11 THE WITNESS: Yes.

12

13 BY MR. OLSON:

14 Q So let, let me know if you have any difficulty
15 hearing me. I'm not sure how it's coming through on your
16 end.

17 A Okay.

18 Q So I understand that in 2000 you began working at
19 Employment and Income Assistance in the investigative unit
20 of the Department of Family Services in Winnipeg?

21 A I did, I was.

22 Q Okay. And what was your position?

23 A I was a specialist in the investigative unit.

24 Q Okay. Was that your, was that the position you
25 held in December of 2004 when you had involvement in the

1 Phoenix Sinclair matter?

2 A It was.

3 Q And then after, after that period you worked for
4 Employment and Income Assistance in Thompson, Manitoba?

5 A No, no, I wasn't in Thompson.

6 Q You were never in Thompson?

7 A No. I had phoned Mr. Haight and I told him that
8 after I read the notes.

9 Q Okay.

10 A No, I was never in Thompson, no.

11 Q So did you work somewhere after, after 2004?

12 A No, I was -- no, I was with Employment and Income
13 Assistance my whole 22 years.

14 Q Okay. And you've since retired?

15 A I have.

16 Q When was that?

17 A I retired in 2007.

18 Q Can you just tell me what was, what your position
19 involved in 2004? What did you do?

20 A Okay. I took third party concerns from the
21 general public and --

22 THE COMMISSIONER: Could we -- just a minute.
23 Could we get the volume down just a little?

24 THE WITNESS: There were certain things that ...

25

1 BY MR. OLSON:

2 Q I see you're looking at some -- are those some
3 notes you have in front of you?

4 A They are.

5 Q You can't use the notes for the purpose of giving
6 your evidence today.

7 A Oh, okay.

8 Q So you'll just have to try to remember as best
9 you can, okay?

10 A Okay.

11 THE COMMISSIONER: She's taking a last look.

12 THE WITNESS: Well, besides taking calls from the
13 general public and we took them from the police service
14 when they phoned for information and I worked with
15 residential tenancies and did the reports for all the
16 provinces to see if there were people collecting in both
17 provinces and ...

18

19 BY MR. OLSON:

20 Q Before you go on, would you, could you put your
21 notes aside?

22 A Um-hum.

23 Q Thank you. Did you have anything to do with
24 budgeting?

25 A No, nothing at all. No, that was the financial

1 worker, I believe, who would do that.

2 Q Were you responsible for conducting
3 investigations to determine whose budget someone should be
4 on?

5 A No.

6 Q We've heard evidence that EIA worked with
7 something called SAMIN, S-A-M-I-N.

8 A Um-hum.

9 Q That was the computer system?

10 A Um-hum.

11 Q Is that right?

12 A It was. Yes, it was.

13 Q And can you just briefly tell us what sort of
14 information SAMIN would have on it?

15 A Well, it would have client information.

16 Q So, for example, demographic information?

17 A Yes. It would have the case number, the name of
18 the person and what office they were at when they, when the
19 was case opened.

20 Q Would it include things like date of birth,
21 address?

22 A Date of birth, yeah, yes.

23 Q And whoever is residing with the person, whoever
24 is on their budget?

25 A And -- yes.

1 Q Did Child and Family Services have access to
2 these files?

3 A I don't believe so.

4 Q Okay. I understand that you would receive calls
5 from time to time from Child and Family Services workers
6 requesting information; is that right?

7 A Yes, I would.

8 Q When you received a call for information, I want
9 to directly focus on 2004, when you received a call what
10 was the process for searching? For example, if someone --

11 A By name and --

12 Q Sorry, go ahead.

13 A Name and birth date and I could also do it by
14 social insurance number.

15 Q So if you had a name --

16 A By social insurance number.

17 Q If you had a name of a person you could do a
18 search?

19 A Name and birth date were the most common.

20 Q Okay. But would you need both? Would you need
21 both the name and a birth date?

22 A Yes, it would accurate that way.

23 Q Be more accurate?

24 A With both the name and the birth date.

25 Q But could you search, for example, if someone

1 just gave you the name, could you do a search?

2 A Well, I could but there could be more than one
3 person with the same name --

4 Q Okay, so --

5 A -- you know.

6 Q You may get multiple results, search results?

7 A Pardon?

8 Q You may get multiple search results in that case?
9 That's what you're saying, if you just had a name you might
10 get more than one match? Did you understand the question?

11 A No, you'll have to speak up.

12 Q If you search using only a name what you're
13 saying is you may get more than one search result, you may
14 get several names back; is that right?

15 A If there were more than one person with the same
16 name.

17 Q Right. Am I right that in 2004 if you had, if
18 you had the name of the person and their birth date you
19 could do a search and you would see all the files that
20 person was connected to?

21 A I can't recall, sorry.

22 Q You can't recall that, okay. Were you able to
23 search someone's file to determine who or which individuals
24 were on that file?

25 A Well, it would be on that INCA screen, I believe.

1 Q So on a INCA screen you would see --

2 A It would be the applicant.

3 Q You would see the applicant and you would see --
4 would you see other people connected to the applicant?

5 A And then the list of people that were on, um-hum.

6 Q Okay. What is an INCA screen?

7 A Well it's a profile screen, I believe.

8 Q It's, pardon me?

9 A Profile screen.

10 Q It's a profile screen and it's within the SAMIN
11 system?

12 A Yes.

13 Q Okay. And would the INCA screens have case notes
14 as well? Would case notes be recorded on the INCA screen?

15 A No, I believe I had to go into another screen for
16 that.

17 Q Okay. But there would be case notes recorded on
18 the system?

19 A Yes.

20 Q In 2004, what was the relationship like with CFS
21 in terms of information sharing?

22 A Well we would give them information.

23 Q So if they asked you for --

24 A You know, these clients were on our system.

25 Q If they ask you for information about a

1 particular individual, for example, a date of birth or
2 address or whose on the budget, you could share that
3 information with the worker?

4 A We would, yes.

5 Q Okay.

6 A As far as I'm concerned we worked very closely
7 together because we were dealing with children.

8 Q And was that pursuant to a policy or was that
9 just a practice that had developed, or do you know?

10 A No, I, I can't recall. I don't know.

11 Q Would CFS call you to also share information with
12 EIA?

13 A Well on certain occasions, I guess, because
14 Ms. Wiebe had called me or called our information line to
15 let us know when the baby was born.

16 Q Okay, and we'll get into that specific call
17 shortly. But generally speaking, would workers call in to
18 EIA and share information with you, was that something that
19 would occur?

20 A No, I don't believe so.

21 Q Not typically, okay. And when it comes to the
22 information that CFS workers would request, what typically
23 would they be looking for, what sort of information?

24 A Can you repeat that question?

25 Q When a CFS worker would contact you, what sort of

1 information would they typically be looking for? For
2 example, would they want to know the person's residence,
3 who was on their budget, where they were living, that sort
4 of thing?

5 A I believe it was mainly the address of where they
6 were living and if they were on social assistance.

7 Q So they'd call to find out if they were on social
8 assistance?

9 A Um-hum, yes.

10 Q Okay. I want to move on to your specific
11 involvement in the Phoenix Sinclair file. Do you have any,
12 do you have any independent recollection of being involved?

13 A Well, the only thing was, my only involvement was
14 the phone call from Ms. Wiebe.

15 Q Do you recall the phone call or do you have to
16 rely on your notes?

17 A Well, I don't recall it specifically because we
18 received, you know, several calls --

19 Q In other words this isn't a, this isn't a
20 situation --

21 A -- from other workers.

22 Q This isn't a situation that would stand out in
23 your mind as being unique, the call you received from
24 Ms. Wiebe?

25 A No.

1 Q Okay.

2 A No, it isn't.

3 Q I want to take you to Ms. Wiebe's recording of
4 the call. If you could -- I think you have documents in
5 front of you there. One of them is commission
6 disclosure --

7 A I do.

8 Q One of them is commission disclosure 1795. Do
9 you see that tab?

10 A Yes.

11 Q And if you flip through it you'll see page 36949.

12 A 36949?

13 Q That's right. Do you have it in front of you?

14 A Yes, I do.

15 Q We're just having a technical difficulty getting
16 the document up on our screen here. Okay. If you could
17 turn please, so the document you're looking at, this is the
18 CRU intake form prepared by Ms. Wiebe dated December 1st,
19 2004. If you go to page --

20 A Yes, I have it.

21 Q Okay. If you go to page 36951 ...

22 A Okay, I have it.

23 Q Do you see the second last paragraph on the page
24 that begins, "On December 1, 2004"?

25 A Yeah, I do.

1 Q Okay. Now I understand you, you would not have
2 seen this prior to your involvement in this inquiry; is
3 that right?

4 A That's correct.

5 Q Okay. But you have seen it now that you've been
6 involved?

7 A I have.

8 Q Okay. What she's written here is:

9

10 "On Dec. 1/04 this worker
11 contacted EIA to inquire about the
12 demographic information of
13 Samantha's common-law partner,
14 Wes McKay. Worker was advised by
15 EIA that Samantha only has one
16 child listed on her budget, and
17 that there is not expected to be a
18 common-law partner residing in the
19 home. Therefore the date of birth
20 for Wes McKay could not be
21 obtained."

22

23 Do you have any recollection of this conversation?

24 A I don't. And I don't think I noticed -- I
25 wouldn't have had anything to do with a, you know,

1 common-law partner and saying something like that.

2 Q And sorry, which part are you referring to there?

3 A Well, the it was not expected to be a common-law
4 partner living in the, in the house, in the home.

5 Q You're saying you would not have had that
6 information to share?

7 A No, I would have never said anything like that.

8 Q Okay. Is that something you would share though
9 if you had that information?

10 A No, I think I'd have left it up to the worker.

11 Q Okay.

12 A To the EIA counselor/worker.

13 Q Okay. So in other words would, would EIA have
14 that kind of information to share with CFS?

15 A I don't know, but I believe so. I believe they
16 would.

17 Q They would? So if you looked in SAMIN you would
18 tell whether or not there should be someone else, there
19 would be someone else expected to be on Samantha's budget;
20 is that, is that right?

21 A They would have been listed.

22 Q Do you know why this call came to you?

23 A No, I really don't.

24 Q Was there just --

25 A I don't know why it came in on the information

1 line.

2 Q Okay. So it came in on an information line
3 though and you were one of the workers working on that
4 information line?

5 A Yes.

6 Q So it was just by chance that you picked up the
7 phone?

8 A Well, we had, we had two lines, I believe, on the
9 information line, so if one was busy it would roll over to
10 the other line.

11 Q And you were, you were the operator of one of the
12 lines?

13 A Yes.

14 Q When you get a, when you would receive a call
15 like this what would you do?

16 A Well if it was, if it was from Child and Family
17 Services I'd give them the information as best I could.

18 Q Well, Ms. Wiebe has recorded here that she's
19 inquired of you about the demographic information of
20 Samantha's common-law partner, Wes McKay. So if that was
21 the inquiry, you, as the EIA worker taking the call, what
22 would you do?

23 A Well, I would look at the information screen, it
24 had all our information on it.

25 Q So you would do a search?

1 A The INCA screen, yes.

2 Q Okay. And what would you, what would you --

3 A It would have ...

4 Q What would you search?

5 A It would have the name and birth dates.

6 Q Okay. And whose name and birth date?

7 A The person they're looking for.

8 Q Do you recall if you, if you did a search in this
9 case?

10 A I don't recall, sorry.

11 Q Okay. Can you recall whether or not Ms. Wiebe
12 specifically asked you if you had information about
13 Wes McKay?

14 A No.

15 Q You don't have any recollection one --

16 A If she would have I would have given it to her,
17 sir.

18 Q Okay. So if she specifically would have asked
19 you that question you would have provided the information
20 to her is what you're saying?

21 A Yes.

22 THE COMMISSIONER: If she had the information, I
23 assume.

24 MR. OLSON: Right.

25

1 BY MR. OLSON:

2 Q And that's, of course, if you had the information
3 to give.

4 A Right.

5 Q And if we look, if you could just turn in front
6 of you there's commission disclosure 1578, if you look on
7 the tabs in that binder, page 28185.

8 A (Inaudible), okay, I have it.

9 Q Okay. My understanding is that this document is
10 a record for Karl Wesley McKay; is that right?

11 A 28155?

12 Q 28 --

13 A 28155?

14 Q No, 28185.

15 A Is that the letter you are referring to?

16 Q Pardon me?

17 A Is that the letter you are referring to?

18 Q No, page 28185. It's, I believe it's an INCA
19 screen.

20 A Well, I just have three, three pages in that one
21 and INCA is 28155, 28208 and 28209, that's all I have in
22 this, in that disclosure 1578.

23 MR. HAIGHT: Hi Helen, it's Bill.

24 THE WITNESS: Yes.

25 MR. HAIGHT: This is the document that I sent to

1 you last week when we sent the binder. There was an
2 individual page that had been provided to me last week that
3 you hadn't seen prior to last week.

4 THE WITNESS: Okay, sorry. I put it on the left-
5 hand side of the binder, sorry.

6

7 BY MR. OLSON:

8 Q That's okay. You have, you have the document in
9 front of you now?

10 A I do.

11 Q My understanding is that this is an INCA screen
12 that would come up if you searched the name Karl McKay; is
13 that right?

14 A That's right.

15 Q Okay. And if you search Wes, if you searched Wes
16 McKay in the system would it also come up?

17 A I can't recall.

18 Q This shows a case effective date of May 8th,
19 2002. What, what does that mean?

20 A Well, I believe it was probably the date that he
21 started social assistance.

22 Q Okay. And then beneath, look under involvements,
23 it has his name and then it has birth date?

24 A Yes.

25 Q Would that be his birth date, that is Mr. McKay's

1 birth date?

2 A Well, it would be.

3 Q And then social insurance --

4 A It would be his birth date.

5 Q And his social insurance number is beside it,
6 right?

7 A Yes.

8 Q And his, his Manitoba Health number is beside
9 that, his PHIN number.

10 A That's right, yes.

11 Q And so if you, if the worker asked you, for
12 example, to search Karl McKay, you could provide this
13 information; is that right?

14 A I could, I could.

15 Q And you can't tell us whether or not you would
16 get this information if the worker asked for Wes McKay; is
17 that right?

18 A No, I can't recall, sorry.

19 Q Okay. In any case, if you were asked for the
20 information about, you know, what is Wes McKay's birth date
21 and you have that information you would have provided it is
22 what you're saying?

23 A You bet I would have, yes.

24 Q In front of you, you should have another
25 document. It's a similar screen shot from SAMIN. It's

1 page number 28316.

2 A In which section?

3 Q This is in 1579.

4 THE COMMISSIONER: 283 what?

5 MR. OLSON: 28316.

6 THE COMMISSIONER: Yeah.

7

8 BY MR. OLSON:

9 Q If it's easier for you this would be your
10 recording of the call with Ms. Wiebe.

11 A Okay, I have it.

12 Q You have it. Now can you just confirm that this
13 is in fact your entry?

14 A Yes, it is.

15 Q It says, I'm looking under Samantha Kematch where
16 it says case name. So that indicates that this is Samantha
17 Kematch's social assistance file; is that right?

18 A 28316 is, is my case note.

19 Q Right. But your case note, your case note is the
20 note that's at the bottom of the page, the last note on the
21 page; is that right?

22 A Yes, that's right, yes.

23 Q And the note above that, you never, you never
24 made that note, that was someone else?

25 A No, no, it was a worker, I believe, of the

1 client.

2 Q The EIA worker of the client?

3 A Yes.

4 Q Because you weren't, you were not Samantha
5 Kematch's EIA worker, were you?

6 A No.

7 Q Okay. This is from Samantha Kematch's EIA file,
8 this page, is it?

9 A No, I don't, I don't know what you're getting at.

10 Q The page that's in front of you --

11 A The case note --

12 Q This case --

13 A -- that ...

14 Q This case note is from --

15 A The above line?

16 Q If you can just wait for the question and then
17 you might understand what I'm asking. This case note that
18 we're looking at here, this page --

19 A Okay.

20 Q -- that's in front of you, that comes from
21 Samantha Kematch's employment and insurance assistance
22 file; is that right?

23 A Yes.

24 Q Okay, thank you. Now the note that have here,
25 this is a note you enter after Shelly Wiebe called you?

1 A Yes.

2 Q And would you be making this note at the same
3 time you're on the phone with her?

4 A Well, it was -- no, they were written down on, on
5 paper first and then transferred to the case note.

6 Q Okay. And how soon after you get off the phone
7 do you put the note into the SAMIN system?

8 A Well, right after --

9 Q Okay. It says December 1 --

10 A -- you know.

11 Q It says:

12

13 "Dec. 1/04 - caller, Shelly Wiebe,
14 CFS, to inform us that Samantha is
15 living common law with Wes McKay.
16 Father of newborn baby just
17 yesterday, Nov. 30/04. He is
18 listed at the hospital as the
19 father of the baby."

20

21 And then it has "Helen Waugh". Is that an accurate -- do
22 you recall taking this note?

23 THE COMMISSIONER: The question was whether the
24 witness recalls preparing this note?

25 MR. OLSON: That's right.

1 THE COMMISSIONER: I don't know if she can hear
2 me.

3 THE WITNESS: I have, I have no recollection of
4 that whole discussion about --

5

6 BY MR. OLSON:

7 Q Okay, you have no recollection?

8 A Of the discussion, whole discussion.

9 Q There was no mention here of any request for
10 information about Mr. McKay's demographic details, for
11 example, his date of birth. If you had been asked for that
12 information would you have made a note of it?

13 A I would have.

14 Q And so because it's not here does that indicate
15 that you weren't asked it? Are you able to say that?

16 A I (inaudible) don't say that.

17 Q What was your practice in terms of what you would
18 record in your case notes?

19 A Well, what do you mean, like calls from Child and
20 Family Services or calls from the general public?

21 Q Calls from Child and Family Services, calls of
22 this nature.

23 A Well, I don't believe we received many calls like
24 this.

25 Q This call seems to suggest that Ms. Wiebe was

1 sharing information with you about the family situation.
2 Is that, is that what, what occurred? Is that what this
3 call records, this note records?

4 A It sounds like it but I don't know why she would
5 have informed the information line.

6 Q Because you said that wasn't typical that CFS
7 would share --

8 A No.

9 Q -- information with EIA?

10 A No, they wouldn't call -- no, no.

11 Q In your experience would, would CFS ever call
12 other than to obtain demographic information?

13 A That's all.

14 Q So when you look, when you look back at what
15 Ms. Wiebe recorded, that we looked at earlier, that she
16 contacted you to inquire about the demographic information
17 of Samantha's common-law partner, Wes McKay, do you -- is
18 that -- do you think that's what the call is about? Are
19 you able to say?

20 A Well, again, if she would have asked me for
21 information like that, I would have given it to her.

22 Q And you know you didn't give her that
23 information; is that right?

24 A No, I can't recall. If she would have asked me,
25 you know, I would have given it to her.

1 Q Is the information that Ms. Wiebe recorded that
2 Samantha only has one child listed on her budget and
3 there's not expected to be a common-law partner residing in
4 the home, was that accurate information?

5 A Well, I wouldn't have given that to her.

6 Q You would not have given that to her?

7 A No, I would never have said something like that.

8 Q Would you have told her who was on Samantha
9 Kematch's budget?

10 A I would have.

11 Q And in this case was Wes --

12 A Like who was on file with her.

13 Q Right. In this case was Wes McKay on her budget?

14 A Well, it will be on the INCA screen.

15 Q Did you know if he was on her budget or not?

16 A No, I can't recall what was on there.

17 Q Did you have any other involvement aside from
18 this one call on this file?

19 A About this -- no, nothing.

20 MR. OLSON: Those are my questions. Thank you
21 very much. There will other questions from other lawyers
22 for you.

23 THE WITNESS: All right, thanks.

24 THE COMMISSIONER: All right. Who wants to
25 question the witness first before Mr. Haight? Anybody with

1 questions? Mr. Ray?

2 MR. RAY: Mr. Commissioner, I will have a few
3 questions. I'm just consulting with my client for a moment
4 and then I just need to speak to Mr. Saxberg, so I don't
5 think we need an adjournment but I will just be a moment.

6 THE COMMISSIONER: All right. Well, maybe you
7 can tell the witness. I'm not sure she can hear me,
8 Mr. Olson, it will just be two or three minutes.

9 MR. OLSON: Other counsel just need a couple of
10 minutes to confer and then someone will come up and have
11 some questions for you, okay.

12 THE COMMISSIONER: Just stay put.

13 THE WITNESS: Yeah, okay.

14 THE COMMISSIONER: Mr. Ray?

15 MR. RAY: My apologies, Mr. Commissioner.

16 THE COMMISSIONER: No problem.

17

18 CROSS-EXAMINATION BY MR. RAY:

19 Q Ms. Waugh, my name is Trevor Ray. I represent a
20 number of social workers, including Ms. Wiebe with whom you
21 had a conversation about this file and the processes that
22 were taken when she called you. Just making a note. If
23 you can indulge me for one moment.

24 Ms. Waugh, we've heard information from social
25 workers, including Ms. Wiebe, now Willox, that they would

1 frequently call collaterals such as yourself as an EIA
2 worker or a public health nurse and request information
3 from them in the course of conducting an investigation into
4 child protection matters. And I believe you've stated in
5 your evidence that you did receive calls like that from
6 time to time, is that, is that my understanding of your
7 evidence, that's correct?

8 A Yes.

9 Q And are you aware that the reason they're calling
10 you is to obtain information to assist them in determining
11 whether they're looking for correct people or to determine
12 whether certain people are on another person's EIA budget,
13 are you aware that that's why they call you?

14 A I'm sorry, I didn't hear the last part.

15 Q Are you aware that Child and Family Services
16 workers would call you in order to obtain information to
17 help them piece together whether or not there was a child
18 protection concern on a specific file?

19 A Yes.

20 Q You are aware of that?

21 A Yes.

22 Q And in fact your evidence was that if you knew
23 that they were calling you for that reason, you would
24 assist because, I think I'm paraphrasing your evidence but
25 you would assist that you're both working together to try

1 to help a child. That's essentially what your evidence
2 was?

3 A That's right.

4 Q Okay. And your evidence was also that a Child
5 and Family Services worker would not be calling you to give
6 you information that typically they are calling you to
7 obtain information, that's correct as well?

8 I think your evidence was that you stated that
9 they would not call you to, to give you information, they
10 would always be calling you to obtain information from you,
11 correct? That's what Ms. Wiebe said --

12 A Yes.

13 Q Yeah. Ms. Wiebe testified --

14 A Yes, they would call, yeah.

15 Q Ms. Wiebe testified that she would never call
16 Employment Income Assistance worker to give them
17 information about a specific person --

18 A Okay.

19 Q -- and that rather she would call and be seeking
20 information from you --

21 A Okay.

22 Q -- to help her.

23 A Okay.

24 Q Is that -- you'd agree with that, correct?

25 A Well, no, I thought she was calling to give

1 information.

2 Q No, but my, my question is, I understand your
3 note and I'll get to that in a moment, but generally
4 speaking, I understood your evidence to be that Child and
5 Family Services workers would call you to obtain
6 information, not to give you information, that was -- when
7 you were received when these types of calls.

8 A They would want information from us, yes.

9 Q Correct, thank you. And so then this call,
10 assuming for the moment that you recorded the call
11 correctly, if you did recall, record the call correctly it
12 would be an out of the norm, so to speak, for a family
13 services worker such as Ms. Wiebe to call you and give you
14 information. That wouldn't be normal, would it? She'd be
15 normally calling you to get information?

16 A To get information, right.

17 Q Okay. And the type of information they're
18 frequently calling to obtain from you is, are things like a
19 date of birth, for example, correct?

20 A (Inaudible).

21 Q I'm sorry, what was your answer to that?

22 A Yes.

23 Q And they are --

24 A And where they were living.

25 Q Pardon me?

1 A And where they were living, the address.

2 Q Correct, address they would frequently call and
3 request. Whether certain people were on another's budget,
4 like their social assistance budget, they would also
5 request that information, correct?

6 A Well they would ask if other people are living in
7 the home.

8 Q Were living in the home with, with another
9 individual?

10 A Yes.

11 Q Would they also ask whether one individual was
12 covered by another individual's social assistance file?

13 A I don't recall, sorry.

14 Q Okay. Now in fairness to you, I think you've
15 indicated that you don't recall specifically this, this
16 conversation with Ms. Wiebe; is that correct?

17 A I'm sorry, I don't.

18 Q Sorry, I'm referring to her as Ms. Wiebe because
19 at the time that she was dealing with you that was her
20 name. You know her as Ms. Wiebe, correct?

21 A Can you please speak up?

22 THE CLERK: Leave a space between words. There
23 has to be a space in between your words.

24 MR. RAY: I'll withdraw the question. I think
25 it's evident that who she was dealing with.

1 BY MR. RAY:

2 Q So based on your practice and what you typically
3 would expect in these types of conversations, would you
4 agree with me that it's very probable that Ms. Wiebe was
5 calling you to request information from you and that it's
6 possible that you simply failed to record that she was
7 asking for information about Mr. McKay?

8 A No, no, I would have recorded it.

9 Q Okay. Well let's take you to Ms. Wiebe's
10 recording for a moment. If you look at page, if you look
11 at page 36945, please.

12 A Which section would that be?

13 Q Oh, it's CD1795, commission disclosure 1795, page
14 36945. It's Ms. Wiebe's report that she wrote.

15 A You said 945?

16 Q I'm sorry, maybe your page number is different
17 than ours. 36951, do you have a 36951 there?

18 A Yeah, I do.

19 Q It's Ms. Wiebe's report. If you just look at the
20 second paragraph of the page 36951.

21 A The second, okay.

22 Q Ms. Wiebe, Ms. Wiebe has given evidence that she
23 received a call from a social worker at the hospital and
24 that she received information about a Mr. Wes McKay and
25 that she did not have the date of birth which was something

1 that would be important to her, that's the type of
2 information you testified that social workers would
3 commonly call you for, correct, a date of birth?

4 A Right, right.

5 Q And after speaking with the social worker, you'll
6 see Ms. Wiebe recorded specifically on December 1st that
7 because she didn't have the date of birth from the social
8 worker at the hospital, she called you. And she called you
9 specifically to ask for information about Mr. McKay. Do
10 you see that? It's in the fifth paragraph that starts with
11 December 1st, 2004?

12 A Yes.

13 Q Now --

14 A Yes, I see it.

15 Q You see it?

16 A Um-hum.

17 Q And your recording indicates that she did call
18 you -- excuse me. Your recording is that she called you
19 and that's correct, right?

20 A Yes.

21 Q And your recording indicates that she advised you
22 that she was, that Mr. McKay was living common-law with
23 Ms. McKay or Ms. Kematch and was the father of a newborn,
24 correct?

25 A Yes.

1 Q And that information is consistent with what's
2 recorded by Ms. Wiebe, correct, in her recording, that she
3 called you, she's asking about a Wes McKay, right?

4 A I would have provided her with information.

5 Q Isn't it possible, Ms. Waugh, given your
6 inability to recall anything about the call, that this is
7 simply a miscommunication between yourself and Ms. Wiebe,
8 that Ms. Wiebe was seeking specific information from you as
9 she's recorded and that you simply recorded it incorrectly?
10 Ms. Waugh?

11 A No, it was, it was my understanding that she was
12 just passing information on to us.

13 Q Right. And as you've testified already, that
14 would not be the norm. The norm is that she's calling you
15 to request information.

16 A No. Or yeah --

17 Q Right, that was your evidence.

18 A -- for information, right.

19 Q Right. Your evidence --

20 A But I do not recall her ...

21 Q I appreciate you don't recall. Your evidence was
22 that the norm is that a social worker will call you to
23 request information which Ms. Wiebe records as what she
24 did, that she did call you to request information. She did
25 also provide you with information, which is correct, but

1 the only notation that your notes are missing, and I'm
2 suggesting it's an error, error, is that she was seeking
3 additional information from you about Mr. McKay in addition
4 to telling you why she was looking for that information,
5 which would be the norm for a social worker to do in terms
6 of trying to get information from an EIA worker. Would you
7 agree with me that that's possible?

8 A Well, I guess it was miscommunication then.

9 Q If you could turn to page 28316.

10 A What section is that in?

11 Q That's commission disclosure 1579.

12 A Can you give me the page number again?

13 Q 28316.

14 A Okay, I have it.

15 Q I believe that's your recording.

16 A It is.

17 Q Okay. Now I'm just going to read to you
18 Ms. Wiebe's recording, okay? Ms. Wiebe --

19 THE COMMISSIONER: You're reading from what?

20 MR. RAY: I, I'll tell you, Mr. Commissioner,
21 just reading from page 36951, which is the, Ms. Wiebe's
22 report which I've just discussed with the, with the
23 witness. I just want to read it to her while she's looking
24 at her current document.

25

1 BY MR. RAY:

2 Q Ms. Wiebe recorded that she was advised by you
3 that Samantha, Samantha Kematch, only has one child listed
4 on her budget and that there is not expected to be a
5 common-law partner residing in the home. Okay, that's
6 what, that's what she recorded that she was told by you,
7 okay?

8 If you look at your page, 28316, there's no
9 information that you have that would suggest that that
10 recording is incorrect, is there?

11 A No, there isn't.

12 MR. RAY: I believe I'm just about finished,
13 Mr. Commissioner. I'll just have a moment to review my
14 notes.

15

16 BY MR. RAY:

17 Q Ms. Waugh, you indicated you retired in 2007; is
18 that correct?

19 A It is.

20 Q At the time --

21 A It is.

22 Q Yes. At the time you dealt with this file, my
23 understanding is that CFS could telephone an EIA worker and
24 as you have described there would be a sharing of
25 information if provided you had the information; is that

1 correct?

2 A Right.

3 Q Are you aware of any change to that practice
4 where EIA was instructed or a policy was created which
5 would prevent them from sharing information in that same
6 manner?

7 A No.

8 Q When I say in that same manner, I mean by a
9 telephone call as opposed to a more formal manner, such as
10 a fax or a requirement to provide the request in writing.
11 Did that ever change, do you know?

12 The evidence is that there was a change in the
13 policy and that CFS social workers were required to request
14 information by faxed forms. Do you recall that?

15 A No, I don't.

16 Q Do you recall receiving any training that would
17 have suggested you were not to share information with EIA
18 workers due to privacy concerns about your individual
19 clients?

20 A No.

21 Q You don't recall that? You don't know if it --
22 it may have happened after you retired?

23 A (Inaudible).

24 MR. RAY: Thank you, Ms. Waugh. Those are my
25 questions.

1 THE COMMISSIONER: Witness, there may be others.
2 Yes, there's Mr. Saxberg is coming.

3 MR. SAXBERG: Thank you, Mr. Commissioner.
4

5 CROSS-EXAMINATION BY MR. SAXBERG:

6 Q It's Kris Saxberg and I act for ANCR, it's a CFS
7 agency in Winnipeg, and three of the authorities that
8 regulate agencies in Manitoba.

9 THE COMMISSIONER: Now I take it you're going to
10 cover ground different from what Mr. Ray did.

11 MR. SAXBERG: I sure hope so.

12 THE COMMISSIONER: Yeah.
13

14 BY MR. SAXBERG:

15 Q Ms. Waugh, when you were discussing matters with
16 CFS employees and they were seeking out demographic
17 information, you'd call up the computer screen relating to
18 the client that they were asking about?

19 A I would.

20 Q And so if you have in front of you, it's from
21 CD1579, which I understand to be the Employment and Income
22 Assistance file of Samantha Kematch. If you could call up
23 page 28312, or sorry, 314. I understand that you have an
24 excerpt of some of the file, some of the screens from
25 Samantha Kematch's file. Could you just flip to the first

1 page, you can tell us the page number at the bottom right?

2 A 28314, I have it.

3 Q But I believe the package that you have starts at
4 28312 or 313?

5 A 313.

6 Q Okay. I just want you to leaf through that
7 entire excerpt that you have from the file of Samantha
8 Kematch and tell me, other than your note, up to the date
9 of December 1st, 2004, if there's any mention of a
10 Wes McKay.

11 A No. It looks like mine is the first entry.

12 Q Right. And, and in those other pages and the
13 information on the Samantha Kematch file, there's no
14 indication of a common-law partner being involved with
15 Samantha Kematch, is there?

16 A No, not that I can see.

17 Q Right. And I don't know what other additional
18 information you've been given from Samantha Kematch
19 Employment and Income Assistance file, but you've indicated
20 when you would be talking to a CFS employee you would have
21 called up the screen on the individual they were dealing
22 with, correct?

23 So in this case you would have --

24 A Yes.

25 Q -- called up the screen that deals with Samantha

1 Kematch, the material that you're looking at here, correct?

2 A Yes.

3 Q And I just want to confirm and because you had a
4 chance to look at this material, maybe you can just, can
5 short circuit this and you can answer the question
6 directly. The Employment and Income Assistance information
7 on Samantha Kematch up to the date of your involvement,
8 December 2004, would indicate there is no common-law
9 partner, correct?

10 A Well, no, not that I can see, no.

11 Q Okay. And it would also indicate that attached
12 to Phoenix Sinclair's, attached to Phoenix Sinclair -- or
13 sorry, attached to Samantha Kematch is one child, Phoenix
14 Sinclair. That's what this information shows?

15 You may be at a disadvantage in that you don't
16 have the entire file, Samantha Kematch file before you
17 today as you would have back in December of 2004, right,
18 you only have an excerpt from the file?

19 A Well, no, I just have certain pages.

20 Q Right. And in those pages does it indicate that
21 Phoenix Sinclair is a child under Samantha Kematch as part
22 of the household?

23 And my information is, and it's information
24 that's in this file and other pages, but you don't have
25 those pages before you. Is there anything in the pages

1 that you have that show you that Phoenix Sinclair is a
2 child attached to Samantha Kematch?

3 A On 28317, the general follow up on December the
4 3rd.

5 Q If I could just have the clerk call up page
6 28379. This is from the same file and there's a document
7 that shows that Phoenix Sinclair is attached to the
8 Samantha Kematch file in that December 2004 period. Do you
9 have any information contrary to that that Phoenix was
10 attached?

11 A No, I don't.

12 Q Pardon me?

13 A No, I don't.

14 Q Okay. And so all this really just leads to this
15 assertion, from reading the record of Samantha Kematch's
16 EIA file at CD1579, it shows that Samantha Kematch had
17 attached to her one child and then there's no reference to
18 a common-law partner in that information. So if you were
19 looking at this information in December of 2004 that's
20 precisely what you would have communicated to Shelly
21 Willox, which is exactly what she wrote, is that not fair?

22 A That is true.

23 MR. SAXBERG: Okay. Those are my questions.
24 Thank you.

25 THE COMMISSIONER: Thank you, Mr. Saxberg.

1 All right. Mr. Haight?

2 MR. HAIGHT: Mr. Commissioner, I've been --

3 THE COMMISSIONER: Is there nobody else?

4 MR. HAIGHT: I've been looking around and --

5 THE COMMISSIONER: I gather you're next.

6 MR. HAIGHT: -- looking for naught, so yes, and

7 nobody seems to have any further questions. I just have a

8 few questions, Ms. Waugh.

9

10 CROSS-EXAMINATION BY MR. HAIGHT:

11 Q I just want to confirm what your role was with
12 EIA. You referred to yourself as an investigation
13 specialist, I believe is the word. My understanding is
14 that you would take calls, make a record of those calls and
15 enter those records on the file so that investigators with
16 EIA could then follow up on that information; is that
17 correct?

18 A Yes.

19 Q Yes. Your role was not an investigator?

20 A No.

21 Q Your role was to take --

22 A No.

23 Q Your role was to take calls and make accurate
24 records of those calls?

25 A It was.

1 Q So that others who were carrying out
2 investigations could then follow up on those notes that you
3 made?

4 A Yes.

5 Q And in your evidence to commission counsel, you
6 indicated, when you were read the portion of the report
7 from Shelly Wiebe relating to a common-law partner and I'll
8 just have you refer to it. It is the note that you've been
9 referred to a few times at commission disclosure 1795,
10 Ms. Waugh, page 36951.

11 A Okay, I have it.

12 Q And it's that paragraph that you've been asked
13 about so much here today. When you were asked by
14 commission counsel about that paragraph and the entry there
15 is not expected to be a common-law partner residing in the
16 home, your evidence was that you would not have said
17 anything like that, would have left it up to the EIA worker
18 is what you said.

19 A Worker.

20 Q Yes.

21 A Right.

22 Q And why is it that you say that, ma'am?

23 A Well, I wasn't involved, Mr. Haight, with the
24 file at all.

25 Q Okay. Is there something in the wording --

1 A I, I --

2 Q Sorry, go ahead.

3 A Well, I wasn't a counselor or financial worker
4 or, you know, a worker, and I was not involved with it at
5 all.

6 Q Okay. And, and --

7 A So how would I know, you know.

8 Q Right. But you would know by looking at the
9 file, you could see if there --

10 A Well, I wouldn't give that information, I don't
11 believe.

12 Q Okay. The role that you played, just to return
13 to that for a moment, was to keep accurate notes and so
14 that investigators could follow up. You knew that
15 investigators were relying upon the accuracy of your notes,
16 that is, the investigators at EIA?

17 Let me ask it another way, Ms. Waugh. You
18 understood that when notes that you made would be relied
19 upon by investigators for their accuracy in order to carry
20 out EIA investigations?

21 A Yeah, I believe so.

22 Q Yes, okay.

23 MR. HAIGHT: Thank you, Mr. Commissioner. No
24 further questions. Thank you, Ms. Waugh.

25 THE COMMISSIONER: Thank you, Mr. Haight.

1 MR. HAIGHT: If you just want to stay there.
2 Commission counsel may have something more for you,
3 Ms. Waugh.

4 MR. OLSON: I don't, I have no further questions.
5 Thank you, Ms. Waugh.

6 THE WITNESS: Okay, you're welcome.

7 THE COMMISSIONER: All right, witness. Thank you
8 very much for being available for us today and your
9 testimony is completed, so you can take your leave wherever
10 you are. I don't know if she heard me.

11 THE WITNESS: Thank you.

12 THE COMMISSIONER: Thank you.

13

14 (WITNESS EXCUSED)

15

16 THE COMMISSIONER: Now, Mr. Olson, we'll take a
17 break?

18 MR. OLSON: Take a break and then we'll --

19 THE COMMISSIONER: Let's see, we're at 3:30,
20 let's see if we can limit it to ten minutes, that's a
21 target and we'll see what we can do.

22 MR. OLSON: Very good.

23

24 (BRIEF RECESS)

25

1 THE COMMISSIONER: All right, Mr. Olson.

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

5 THE WITNESS: The Bible's fine.

6 THE CLERK: All right. Can you reach the Bible?
7 Just take the Bible in your right hand. State your full
8 name to the court.

9 THE WITNESS: Mary Wu.

10 THE CLERK: And spell me your first name.

11 THE WITNESS: M-A-R-Y.

12 THE CLERK: And your last name, please?

13 THE WITNESS: W-U.

14

15 **MARY WU**, sworn, testified as
16 follows:

17

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

19

20 DIRECT EXAMINATION BY MR. OLSON:

21 Q Ms. Wu, I understand that you're a public health
22 nurse?

23 A That's correct.

24 Q And for how long have you had that position?

25 A Since 1988.

1 Q Since '88?

2 A Yes.

3 Q That's with the Winnipeg Regional Health
4 Authority?

5 A It was previously the City of Winnipeg Public
6 Health Department.

7 THE COMMISSIONER: Pull your chair in, witness.

8 THE CLERK: Yeah, it's turned on.

9

10 BY MR. OLSON:

11 Q Sorry, you said it was previously with the City
12 of Winnipeg Health Department?

13 A Previously the department that I worked for was
14 the City of Winnipeg Health Department.

15 Q Okay. You also have a bachelor of nursing?

16 A That's correct.

17 Q When did you obtain your degree?

18 A In 1988.

19 Q And from which university?

20 A From the University of Manitoba.

21 Q I want to talk to you about your position as a
22 public health nurse generally as it was in 2004. Can you
23 tell me what you did as a public health nurse in 2004, what
24 sort of -- what were your duties?

25 A A large part of my job would be seeing new moms

1 in the postpartum period with their newborns. Some parts
2 of my job would include communicable disease investigation,
3 school health, immunizations. On rare occasions if there
4 was an outbreak or a fire evacuation we also would be
5 involved in that.

6 Q I'm having a little bit of difficulty hearing
7 you. I wonder if you could pull the microphone a little
8 closer.

9 A Can you hear me now?

10 Q That's better.

11 A Okay. My job as a public health nurse mostly
12 involved the maternal child public health or postpartum
13 moms with their new babies. It can be prenatal health as
14 well. It could be communicable disease investigations,
15 school health, immunizations. On rare occasions if there's
16 an outbreak or a fire evacuation public health sometimes
17 were involved as well.

18 Q Okay. Is it fair to say the bulk of your work
19 was the postnatal visits with mothers?

20 A That would be correct.

21 Q Okay. From whom did you receive referrals?

22 A In regards to the postpartum, our referrals
23 are --

24 Q Right, and I want to limit your evidence today to
25 that, to those specific types of visits --

1 A Okay.

2 Q -- or work.

3 A Okay. Well the referrals could come from the
4 hospital, could come from a doctor's office, social
5 workers, other agencies, schools. The public can call and
6 generate their own referral.

7 Q So they could come from almost anywhere?

8 A It's possible, yes.

9 Q The referral is it, you know, this person is
10 about to deliver or has just had a baby, can you visit; is
11 that what the referrals are like?

12 A It can be, yes.

13 Q Okay. Are they mandatory? Is a visit by the
14 public health nurse mandatory following the birth of a
15 child?

16 A Our services are offered but it is a voluntary
17 service.

18 Q It's voluntary?

19 A That's correct.

20 Q Does that mean you obtain the consent of the
21 mother before visiting?

22 A Well, generally the hospital asks the mothers
23 permission before they send out the referral and when I get
24 the referral we call the mother and see if they're
25 receptive to a follow up.

1 THE COMMISSIONER: Is this after the mother's
2 gone home?

3 THE WITNESS: That's, yes, that's when we get the
4 referral in regards to a postpartum visit.

5

6 BY MR. OLSON:

7 Q Okay. And do you sometimes see the mother prior
8 to the delivery of the baby before she goes home?

9 A We -- not if they're in the hospital having just
10 given birth, but we can sometimes receive prenatal
11 referrals from the community and at which point I would see
12 them when she's still pregnant.

13 Q Okay. When you receive, when you would receive a
14 referral, what was your practice? Just take us through
15 what happens.

16 A For prenatal or postpartum?

17 Q Let's go with prenatal at this point.

18 A If I get a prenatal referral, typically I would
19 give the client a call, introduce myself, explain a little
20 bit about my role and see if she has any questions or
21 concerns, if she has any needs that I could support her on,
22 and go from there.

23 Q Okay. And is that what happened in this
24 particular case, it was a prenatal referral?

25 A Yes.

1 Q As a public health nurse, would you be focusing
2 primarily on the mother and the baby, I guess if it's
3 prenatal the baby to come or after birth, the baby as well?

4 A Yes. Generally if I see a mom prenatally, my
5 focus would be primarily on her. Similarly if it's
6 postpartum it would be mostly focused on the mom and the
7 newborn. However, if she has other issues or concerns that
8 she brings up, I would certainly either acknowledge them or
9 address them or refer her on.

10 Q Would you do any kind of assessment of other
11 family members, other children in the home?

12 A If it became obvious to me that there was an
13 issue then I may, you know, assess it or talk to the parent
14 about it.

15 Q Would you actively be looking to see if there
16 were issues or concerns?

17 A What do you mean that I would actively look for
18 it?

19 Q Would you, would you -- would part of your
20 function as a public health nurse be to determine whether
21 there are other concerns around the family in terms of its
22 functioning, how things are going with other family
23 members?

24 A If the, if the issue came up during my discussion
25 with the mom, then, yes, it is possible that I would

1 discuss those issues as well.

2 Q Okay. Typically what's on your mind when you're
3 visiting the mother following the delivery of baby?

4 A On my initial visit my primary focus is to make
5 sure that the mom and the baby are medically stable and
6 that they're managing okay and that their needs are, basic
7 needs are met.

8 Q Okay. What are the requirements in terms of
9 record keeping?

10 A Well, I think the department has, we have files
11 on all of our clients and it's required of us to record and
12 document any interaction that we may have had with the
13 client and other agencies that may have contacted us.

14 Q So any interaction you had with respect to the
15 client or that particular file would be documented in a
16 chart?

17 A That's correct.

18 Q Okay. And we'll take a look at the specific
19 chart relating to Ms. Kematch in a few moments. What other
20 sort of information would you generally keep in the
21 client's chart?

22 A Just any interaction that I would have had with
23 the client. Sometimes if I've given the client information
24 about resources, I sometimes will include a copy of that in
25 the file just for my record and for my recollection.

1 Q What about information about other family
2 members, other children?

3 A Sometimes if I'm on a home visit and I make
4 reference or acknowledge that they're present sometimes
5 they are documented in the file.

6 Q Would there typically be a, a demographic section
7 in your chart that you would keep with respect to all the
8 family members or whoever is residing in the home?

9 A At the beginning of our chart there is a
10 demographic sheet where one can record the mother and the
11 infant and any other family members that may be present or
12 reside in that home.

13 Q And when you say one may record that, was it your
14 practice to record that sort of information in every chart?

15 A If the information is available to me then I do
16 record it. I don't always make a point of asking them for
17 every single member that lives in the home.

18 Q Is it fair to say that's not your focus as a
19 public health nurse, that is collecting the demographic
20 information about the family members?

21 A It's generally not my focus if I'm going in for a
22 postpartum referral.

23 Q Okay. To whom did you report in 2004?

24 A In 2004 my team manager was Nettie Strople.

25 Q Is -- when you say a team manager is that

1 something different than a supervisor?

2 A No. The term has evolved over the years that
3 I've worked, but really supervisor, team manager, manager
4 is probably similar

5 Q Okay. And what sort of supervision would
6 Ms. Strople provide? And this, again, in 2004.

7 A She was my team manager and she managed our team
8 of other nurses and home visitors and other staff, so if
9 there were concerns that I had, then I would bring it forth
10 to my manager, or team manager.

11 Q Would she have, would she review your files or
12 your charts or anything like that?

13 A Well that would be part of her job if she wanted
14 to review any of our charts. Certainly if there was any
15 performance issue or if there was, our normal performance
16 appraisals that we get every couple of years then she would
17 ask for a couple of files for review.

18 Q But in terms of input into what's happening with
19 a particular family, does she review your chart to see what
20 has been done or what you're, what you're doing in terms of
21 your job?

22 A In general she doesn't review every chart that I,
23 I handle.

24 Q In 2004, if you had a child protection concern
25 involving a patient or a family member of a patient, what

1 was your practice?

2 A Well in 2004 and always in my practice, if there
3 was a child protection concern then I would report it to
4 Child and Family Services.

5 Q Is that something you had done in the past?

6 A Yes.

7 Q And was that based on a standard policy or
8 protocol?

9 A Well, in my training, even before my employment,
10 I was aware of the Child Abuse Act, so I know that as a
11 professional that my obligation is if there is a child
12 welfare issue that I'm obligated to report it and so I do.

13 Q What sort of things would qualify as, just give
14 me a few examples of what a child protection concern might
15 be.

16 A Well, I think broadly if, if I know that a child
17 is at risk of being harmed or abused or neglected and that
18 there was harm to that, that would come to that child, that
19 my job would be to report it.

20 Q And you would report that to Child and Family
21 Services?

22 A That's correct.

23 Q Did you receive any specific training with
24 respect to identifying child welfare concerns?

25 A Do you mean like specifically what to look for

1 or?

2 Q Yeah, what to look for, basically what to look
3 for.

4 A I don't recall specifically being trained or
5 going to a course but I mean just as part of my training,
6 you know one can, you know, you're sort of aware to look
7 for, to make sure that everybody is okay and if they're not
8 and if there are signs that there are concerns, then I
9 think, I think most people would be able to tell if there
10 was something wrong.

11 Q Okay.

12 THE COMMISSIONER: But in 2004 you had 15 years
13 experience in this.

14 THE WITNESS: Yes, that's correct.

15 THE COMMISSIONER: So that surely told you
16 something about what you were seeing and when you might
17 have to take some action, I assume.

18 THE WITNESS: Yes, certainly I would have had a
19 lot more work experience at that point.

20

21 BY MR. OLSON:

22 Q And you said you had contact with CFS with
23 concerns about potential child protection concerns, abuse.
24 Is that, is that right? You had contacted?

25 A Even prior 2004 I have reported to Child and

1 Family Services if there were concerns of child protection
2 issues, yes.

3 Q Okay. Without giving any specific details, what
4 sort of concerns would you report?

5 A If I was aware that a child reports to me that
6 they've been hurt or hit, if I'm aware that an infant has
7 been not receiving the best of care, maybe had some medical
8 concerns that are not being followed up of a serious nature
9 then I would, you know, I would report that.

10 Q So, for example, if you were to attend a home and
11 you saw something in the home that was concerning, maybe
12 there were drugs or alcohol or whatever, is that the sort
13 of thing you would report to CFS?

14 A If I came to a home and there was evidence of
15 substance use which would put the child at risk, then yes,
16 I would report that.

17 Q Okay. And what did you understand your
18 obligation to be in terms of reporting?

19 A Reporting in terms of child abuse?

20 Q In terms of child protection.

21 A As I said before, if I had concerns of child
22 protection issues, then my obligation as a professional
23 would be to report it to Child and Family Services.

24 Q As of 2004, what was your understanding about
25 your ability to share information with Child and Family

1 Services generally?

2 A Around 2004 my recollection was there was new
3 regulations that had come on in terms of personal health
4 information and my recollection was that we were informed
5 that unless it was for a child protection issue, sharing of
6 information of a client nature was not permitted.

7 Q Okay.

8 THE COMMISSIONER: You say unless the child
9 protection issue?

10 THE WITNESS: If there was a child protection
11 issue I could share the information without the client's
12 consent but if there was no child protection issue, I would
13 require the client's consent to share information.

14

15 BY MR. OLSON:

16 Q Practically speaking, how would, how did that
17 function when you received an inquiry from CFS?

18 A Again, at that time we were advised that we
19 should -- if, if Child and Family phoned and told us that
20 there was a child protection concern, then that superseded
21 the PHIA and that we would be allowed to share information.

22 Q Would that include any information about the
23 client or was there a limit on what you could share?

24 A Again, my recollection is that it would have to
25 be, it would have to involve the, a child protection issue.

1 Q Would, would workers call you with, seeking
2 information other than for a child protection issue?

3 A It's -- sometimes a worker may call us and just
4 to see if we had any concerns or if the mom, how the mom
5 was doing and again at that, in 2004 we were told because
6 of PHIA unless they identified it was a child protection
7 concern we couldn't share that information.

8 Q Okay. And so when a worker calls you, asking if
9 you have any concerns, is that different than a worker
10 saying I'm calling, I have child protection concerns, what
11 can you tell me?

12 A That's correct.

13 Q Has, has your understanding as to what you can
14 disclose changed since 2004?

15 A No, my understanding is still the same.

16 Q How, how is it you would satisfy yourself that
17 the call was legitimately about a child protection concern?

18 A Well again, if the, if the worker says that
19 they're calling because there's a child protection concern
20 or I could ask them are you calling because there's a child
21 protection concern.

22 Q That's, is that sufficient to share information?

23 A That would be sufficient to allow me to share
24 information without the client's consent.

25 Q Okay. I want to talk to you now about your

1 specific involvement in this file. You provided services
2 to Samantha Kematch from 2004 to 2005. Do you have any
3 independent recollection of, of providing those services?

4 A I have limited recollection of my interaction
5 with her other than what was reconstructed when I reviewed
6 the chart.

7 Q So when you say other than what was reconstructed
8 from --

9 A In my, in my mind --

10 Q In your mind, okay.

11 A -- from reading the chart.

12 Q Okay. Do you recall how it was that Ms. Kematch
13 was referred to you?

14 A I recall she was referred to me prenatally by a
15 social worker at the hospital.

16 Q Okay. And you said that's how the referral
17 sometimes would come in --

18 A That's correct.

19 Q -- I think you said that earlier.

20 A That's correct.

21 Q So that wasn't unusual to have that sort of
22 referral?

23 A No.

24 Q Okay. And that was -- so that was while
25 Ms. Kematch was pregnant?

1 A That's correct.

2 Q If you'd turn to your progress notes which begin
3 at page 36810 from commission disclosure 1791. Now these
4 are your progress notes; is that right?

5 A That's correct.

6 Q Okay. And can you just tell, tell us for the
7 record exactly what, what these are, what the purpose of
8 them is?

9 A The purpose of the progress note is --

10 Q Just one minute. Okay, your counsel has just
11 brought to me, brought to my attention that on the document
12 you have in front of you --

13 A Yes.

14 Q -- the name of the source of referral has not
15 been redacted. You'll see on the screen where it has been.

16 A That's correct.

17 Q So I just want to remind you not to refer to that
18 person by name.

19 A Okay.

20 Q So sorry, you were explaining what, what these
21 progress notes are?

22 A Right. The progress note is our way of
23 documenting any interaction that we had involving the
24 client.

25 Q So the first note here is dated June 29th, 2004

1 and it looks like there are some initials following each
2 note. I take it those are your initials?

3 A That's correct.

4 Q Can you just, rather than me trying to decipher
5 what you wrote, can you just read it for me and again don't
6 mention the name of the source of referral.

7 A Okay. So the first entry is dated June the 29th,
8 2004 at 1150 hours. Return call to the person. Social
9 worker not available. And then my action was voice mail
10 left for return call and then my initials.

11 Q Okay. And then you have a return call --

12 A Return call from the source of referral, gravida
13 four, para 3, which stands for how many times the woman has
14 been pregnant and given live birth. Twenty-two-year-old
15 female in a new relationship since around January 2004 with
16 Wes McKay, father of the baby. Expected date of
17 confinement is possibly November 18th, 2004, booked for
18 ultrasound for dates, monthly follow up with
19 Dr. Menticoglou. Receptive to public health follow up for
20 support with parenting access to medical care. Female born
21 2001, died at two and a half months of age, related to
22 complication of pneumonia. Query SIDs, that doesn't show
23 up on your screen. Was in care with biological dad at that
24 time. Doesn't like to talk about loss. Oldest child,
25 older child remains with biological dad, four years old,

1 returned to his care, or returned to her care from dad for
2 several months. Child and Family Services to follow
3 regarding arrangements, unclear regarding the reasons
4 children were not in her care. Mom has no significant
5 medical -- I think that says prenatal history. Part of the
6 -- I apologize but part of the sheet is cut off.

7 Q It looks like it's been cut off.

8 A No substance abuse issue. Some family and friend
9 support. Current partner is long distance truck driver.
10 Then my plan was to attempt follow up and again my
11 initials.

12 Q Is this, this information that you've recorded,
13 is that all information you received from the source of
14 referral?

15 A That is correct.

16 Q Okay. So this is an information that came from
17 Ms. Kematch herself, is it?

18 A No, it's from the source of referral.

19 Q What significance, if any, is there to the
20 recordings about other siblings, to you as a public health
21 nurse?

22 A The significance would be to let me know that she
23 also has other obligations and responsibilities and
24 children to care for.

25 Q And so when you would visit her eventually, would

1 you ask her about those other children?

2 A It's possible that I could do that.

3 Q What about the CFS involvement? You've recorded,
4 you've recorded some of the background involvement here.
5 What was the purpose of that?

6 A Well it's always nice to know as much as we can
7 about a client when we see them and so the source of
8 referral advised me that Child and Family would follow and
9 assess the client, I guess.

10 Q After receiving this referral what did you do?

11 A Well, the next entry is I wrote that there is no
12 cardex on the client at 490 Hargrave. 490 Hargrave was the
13 office where I used to work at at the time of this
14 referral.

15 Q Okay. So --

16 A And it's just simply an index card system that we
17 use in house to see if we had an existing file on her.

18 Q Would that tell you that Ms. Kematch had not
19 previously been seen by a public health nurse?

20 A Only insofar as that we didn't have an archived
21 file on her at our office.

22 Q Okay.

23 A It's possible she may have a file elsewhere but
24 it wouldn't show up in our in house index card.

25 Q Okay. And the entry for, is it the 7th?

1 A July the 7th, 2004?

2 Q Yes.

3 A I wrote that I called Samantha at a number. The
4 phone was temporary disconnected. Do you want me to
5 continue?

6 Q Yes, if you could just go on.

7 A Okay. So on July the 8th at 10:30 in the
8 morning, I went to the home, found that it was a apartment
9 block, a locked apartment block. No intercom. Spoke with
10 the caretaker, his name is Dave, through the back window.
11 He advised that Samantha had moved out a long time ago,
12 exact date unknown, no forwarding number or address.

13 Q So when you first tried to call her you couldn't
14 get in touch with her so you actually went out to her
15 residence to try to meet with her?

16 A That's right.

17 Q Was that the typical approach to meeting with
18 clients?

19 A It's my typical approach when I can't get a hold
20 of a client by phone.

21 Q You go out and try to meet the client?

22 A Right, because people's phones get disconnected
23 all the time.

24 Q Okay. And then if you can continue on with the
25 next note.

1 A July the 8th I called source of referral and
2 advised regarding my findings above. The response was the
3 individual was to follow up and advise of new address once
4 returned for follow up care around the end of July.

5 Q And I've just noticed that there is a name here
6 that should be redacted so I'll just alert everyone to that
7 so that no one refers to that name that's on this document
8 and we'll have that redacted before it gets disclosed.

9 THE COMMISSIONER: That's down at the bottom of
10 page 1.

11 MR. OLSON: That's right.

12 THE COMMISSIONER: Yes.

13

14 BY MR. OLSON:

15 Q Sorry, if you could just continue on, please.

16 A The next page is dated August the 4th. This
17 person's not redacted on your form. I had called the
18 source of referral and Samantha attended a prenatal
19 appointment last month, new phone number, possibly new
20 address and she was to retrieve the file and update the
21 writer which would be me.

22 Q Sorry, I missed, I missed the last.

23 A The source of referral was going to retrieve the
24 file and update the writer which would be me, when she,
25 when she finds that new information.

1 Q Okay. And then what's the next entry you have?

2 A The next entry on the same day, on August the 4th
3 was a return call from the source of referral and was
4 provided with the current address on McGee.

5 Q And just please continue on.

6 A Okay. So that afternoon I made a phone call to
7 Samantha at 1550 hours. The address was confirmed. The
8 information was that it was the first window on the right
9 when I was facing the back of the building and that she
10 feels fine prenatally, no specific concerns or questions.
11 She was receptive to home visit. I provided her with my
12 name and number and the plan was to see her the following
13 day at one o'clock.

14 Q So you, you were able to contact her by phone and
15 arrange an appointment to actually visit her?

16 A For the following day, yes.

17 Q Okay. It says that she was receptive to that?

18 A Yes.

19 Q Now the next note records your first visit with
20 her.

21 A That is correct.

22 Q And could you just read that out for us, please?

23 A Okay. So on August the 5th at 1:20 in the
24 afternoon I met with Samantha in the living room, sparsely
25 furnished, neat and tidy, feels good prenatally, nausea

1 without treatment first trimester, no diabetes, myelitis,
2 no hypertension. Family history of diabetes, myelitis,
3 oral medications. No arrangements made as yet when she
4 goes into labour. Needs to get supplies, dislikes crib due
5 to crib death. Plans to co-sleep with baby.

6 My response was I explained my role of public
7 health nurse was discussed. Baby First in depth done, Baby
8 First -- or Baby First visitor offered. Encouraged plan in
9 place for labour and delivery. Prenatal package per office
10 given. Discussed and information given on family community
11 centre, Healthy Start, emergency clothing, housing, school,
12 depression and community mailbox. I also discuss the child
13 related income supplement plan, the shelter allowance for
14 family renters, Healthy Baby. I encouraged her to call as
15 necessary, advised that the writer was off for the next two
16 weeks. Her response was that she was receptive and
17 pleasant and she was going to discuss Baby First with the
18 father of the baby. My plan was to follow up at the end of
19 August.

20 Q Can you just explain what Baby First is?

21 A Baby First is a program funded and offered
22 through Healthy Child Manitoba. It's now called Family
23 First program. It used to be called the Baby First program
24 and it's a support program offered to our families to give
25 them information about growth and development, how to bond

1 and play and stimulate their infants, to create attachment
2 and bonding.

3 Q And as a public health nurse, is the attachment
4 and bonding with a child something that you try to
5 encourage?

6 A Yes.

7 Q Did anything from this first visit cause you
8 concern with respect to Ms. Kematch or her functioning?

9 A There's nothing indicated in the progress note.

10 Q If you had observed something that caused you
11 concern would you make a note of it?

12 A Yes. I'm wondering if I could go to the in-depth
13 that I, that was written on the progress notes just to see
14 if I wrote anything in there.

15 Q Absolutely, if that helps you.

16 MR. OLSON: Maybe we could pull up Exhibit 21.

17

18 BY MR. OLSON:

19 Q On the screen there's a document. Is this the
20 document you're referring to?

21 A No. On the bottom of my document you have a
22 reference number 36835.

23 Q That's the parent survey summary worksheet?

24 A That's correct.

25 Q Does that help you answer the question?

1 A Well according to the parent survey there were
2 some past concerns that she had identified which are
3 recorded in the, in the survey.

4 Q And can you, can you just explain what this
5 survey is.

6 THE COMMISSIONER: Now is that the document on
7 the screen now?

8 MR. OLSON: Yes, that's the document on the
9 screen.

10 THE COMMISSIONER: Do I have that?

11 MR. OLSON: You should have that, yes.

12 THE COMMISSIONER: Is there a page number for it?

13 MR. OLSON: 363 -- sorry, 36835.

14 THE COMMISSIONER: Yes, I have it. And what did
15 you say this document is, witness?

16 THE WITNESS: This is the survey that, that we --
17 it's an in-depth survey that we do with a family based on
18 an initial screening form that we have put out through
19 Healthy Child Manitoba as, to see if the family would
20 qualify for the Baby First program called at the time and
21 so it's a tool that we use to gather more information.

22

23 BY MR. OLSON:

24 Q So do you sit down then with the client and fill
25 it out and ask questions, is that how you get the

1 information?

2 A No. In 2004 it was, through training we were
3 told to try to get the information for this document
4 without letting the client know that we were doing an
5 assessment.

6 Q So when you're meeting with a client, you have
7 certain things in mind, certain information in mind that
8 you want to acquire so you can do this assessment?

9 A That's correct.

10 Q And your questions to the client are geared
11 toward answering these, the questions for the assessment;
12 is that how it works?

13 A Yes.

14 Q Okay.

15 THE COMMISSIONER: So this is filled out by you
16 following your visit with the mom?

17 THE WITNESS: That's right, not, not at the home
18 visit.

19

20 BY MR. OLSON:

21 Q Now this is dated, you can see on page 36835
22 there's a date stamp on it of August 5th, 2004?

23 A Yes, that's the day of the -- that's the date
24 that the summary was taken or done.

25 Q Is that the day that this, this summary was

1 prepared then?

2 A Yes, and also the date that the visit occurred.

3 Q Okay. So would you have prepared the summary
4 shortly after your visit?

5 A Generally that would be my practice.

6 Q Okay. Just before I ask you some more questions
7 about that form but before we get there, I wanted to ask
8 you about this screening form which is on page 36808.

9 MR. OLSON: You should have that as well,
10 Mr. Commissioner.

11 THE COMMISSIONER: Yes, I do.

12

13 BY MR. OLSON:

14 Q Does this -- can you just explain what this form
15 is?

16 A This is the initial Baby First screening form
17 that, that we have and again, it's a screening tool and so
18 if, at the time if a client had a number of yeses that
19 would be our cue to go on to proceed to doing the in-depth
20 survey, by the Baby First summary that we just looked at.

21 Q We were just looking at?

22 A That's right, the parent survey summary.

23 Q Okay. So the screening form comes before the
24 parent survey summary; is that --

25 A Generally yes.

1 Q In this case at the bottom of page 36808, it
2 looks like there's a date there of August 6th, 2004?

3 A That's correct.

4 Q Now that is after the date of the survey. Can
5 you explain why that is?

6 A When I said to you that generally the screen
7 precedes the survey, sometimes if I'm in a home and I meet
8 the parent for the first time just in conversation and
9 talking to them, I can -- I'm aware where they may have
10 already scored on to the screening form and so then on that
11 visit I would just proceed with the survey.

12 Q So based on your experience, you knew that
13 Ms. Kematch would qualify for the program even before
14 filling out the form?

15 A No, that's not correct.

16 Q Okay.

17 A I, I would know that she qualified based on the
18 screening form which then would require me to attempt to
19 complete the parent survey.

20 Q Okay. So you knew you would be filling out the
21 parent survey after that initial meeting, you knew that was
22 something you would have to do based on your conversation
23 with her?

24 A Right. So likely what happened is I went on my
25 first visit with her, gathered the information, came back

1 to the office, did my survey and then filled out the
2 screening form. And the date that it was completed simply
3 means that's the day that I filled out the form and faxed
4 it back to Healthy Child Manitoba.

5 Q I see. The -- on the form there are a number of
6 check boxes where you answer yes or no. Can you just
7 explain some of these to me, what they're for?

8 A You're talking about section B and C or?

9 Q Yeah, let's go with section C, family risk
10 factors.

11 A Well, number 13 you score -- if the mom's age was
12 less than 18 when she had her first child that would give,
13 that would be a yes. So and if she didn't complete grade
14 12 then it would give her a yes and on the screen she
15 scored a yes on that one. The other two items that I
16 scored her a yes on is an existing file with local child
17 protection services, item 36 and item 37, mother's own
18 history of child abuse and neglect. So based on a score of
19 three, that's the minimum for us to initiate the survey.

20 Q Okay. So if there are three yeses, then you
21 complete the survey; is that, is that right?

22 A Yes.

23 Q And I noticed there are a number of questions
24 that don't have yes or a no. Why is that?

25 A This, the questions are on the screen form to

1 guide us to get as much information as we can on a visit.
2 But again, on the visit, because I had a sense that she may
3 qualify, it isn't necessary that I fill out and answer all
4 of the questions on the screening form so some of the
5 information I didn't have on that visit.

6 Q Okay. Is the information you used to fill out
7 the screening form, do you actually ask the clients
8 specifically these questions?

9 A Again, at the time in 2004 we were told not to
10 take this form out on our home visits, so generally I just
11 asked her based on memory.

12 Q So your general questions allowed, that you asked
13 her allowed you to answer these, the questions on this
14 form?

15 A Yes.

16 Q Okay. And information she shared with you, for
17 example, 37 is mother's own history of child abuse and
18 neglect. Is that information that Ms. Kematch would have
19 shared with you freely?

20 A Well, I'll refer you to the parent survey that we
21 were just looking at previously and during my visit with
22 her, she did share some information about her childhood
23 history, which based on that information I scored her a
24 yes.

25 Q Can you tell me which information it was in the

1 survey?

2 A So your reference number would be 36835 at the
3 bottom, so under section 2, parent survey information, the
4 first item, number one, parent's childhood experience, I
5 had wrote that the mother of baby is the youngest of three
6 children, there were two boys in the house, in her family,
7 raised under Child and Family Services care, under
8 quotations "most of my life until 18 years of age". Her
9 dad deceased when mother of the baby was a child. Mom
10 abused alcohol and drugs, meaning Samantha's mom.

11 Q Samantha's mother?

12 A Samantha's mother.

13 Q And this is information that Samantha freely
14 shared with you when you visited her?

15 A This is information that I had obtained during my
16 conversations with her.

17 Q Did she, did she remain receptive to your
18 assistance or your visits?

19 A During that visit on August the 5th?

20 Q August 5th she was receptive.

21 A Yes.

22 Q And did she always remain receptive to your
23 involvement?

24 A Well based on the progress note there were times,
25 there were times that she wouldn't return my phone call and

1 then near the end of my contact with her she didn't respond
2 to my contacts.

3 Q Okay. Was any of the information you collected
4 from Ms. Kematch concerning to you in terms of something
5 you would need to report to Winnipeg Child and Family
6 Services?

7 THE COMMISSIONER: On this visit or during her
8 whole association?

9 MR. OLSON: Sorry.

10

11 BY MR. OLSON:

12 Q On this visit in particular.

13 A On this visit?

14 Q The, the information you collected on this visit
15 is what is recorded in the parent survey summary worksheet,
16 is that, do I have that right?

17 A Yes, this is information that I collected during
18 my first visit.

19 Q And was any of that information of a nature that
20 would have prompted you to contact Child and Family
21 Services?

22 A If you'd just give me a minute I'm going to look
23 at my survey.

24 Based on what I've written in the survey I would
25 say that there was no current issue that warrant my

1 referral to Child and Family Services.

2 Q She made you aware of some of her past
3 involvement but there was nothing current that caused you
4 concern?

5 A That's correct.

6 Q On the screening form, and we're looking at page
7 36808, there's a section where it says "father" near the
8 top of the page.

9 A Yes.

10 Q And the only thing that appears to be filled out
11 there is the age of the father being 42. Is there any
12 reason why there's no other information?

13 A It would appear that I didn't ask those questions
14 or that information didn't come to me during my visit.

15 Q Would you normally try to get information about
16 the father when you visited?

17 A I normally don't ask questions about all family
18 members when I go on a visit unless it comes up in the
19 natural course of conversation.

20 Q The Healthy Baby program, is it a mandatory
21 program?

22 A No, it is not.

23 Q So if, if the screening form and the survey
24 indicate that the client would qualify for it, they have
25 the option of whether or not to participate in it?

1 A That's correct, it's a voluntary program.

2 Q Okay. And if the mother decides she doesn't want
3 to be involved in it, then do you do anything with that as
4 a public health nurse?

5 A Well, if she declined the program then my job is
6 still to support her and so my job would be to see if
7 there's any resources and other supports that she was
8 receptive to and then refer her to them.

9 Q Okay. If at any time the mother says I don't, I
10 don't want you involved any more, what, what do you do? Do
11 you have a mandate to stay involved or?

12 A No, we're a voluntary service.

13 Q After filling out the form and the survey, do you
14 know if this family qualified for that program?

15 A Yes, she qualified and I did offer her the
16 program.

17 Q Okay. And what, what became of that?

18 A According to my progress notes she said that she
19 would think about it and discuss it with the father of the
20 baby.

21 THE COMMISSIONER: What, what does the program
22 offer? What would it provide to her if she had accepted it
23 and followed through?

24 THE WITNESS: Okay. It's -- the program offers
25 up Baby First home visitor, now they're called Family First

1 home visitor. It's essentially a lay person who's been
2 given extra training in growth and development. There's a
3 curriculum that they follow that they provide information
4 to the parents based on the age of the infant or the child
5 specific to their age and it gives them activities, ideas
6 on how to play and stimulate that infant, how to bond,
7 create relationships, attachment to that infant. So it's
8 really a great program. It provides lots of information to
9 the client. And they go to the home to see them on a
10 fairly regular basis to provide that information.

11 THE COMMISSIONER: But nothing came of it here,
12 is that what you're saying?

13 THE WITNESS: She did not accept the program.

14

15 BY MR. OLSON:

16 Q On the visit of August the 5th, was Wes McKay
17 present?

18 A I'll have to refer to my progress notes. On my
19 progress note dated August the 5th, I didn't make any
20 notations of the father of the baby being present so I can
21 only assume that he was not present.

22 Q If he was present was your practice be to note
23 his presence?

24 A It is possible that I may have documented that.

25 Q There's no reference, as far as I can tell in

1 this note, about any other children being present?

2 A Again, I didn't make any reference to meeting
3 anybody else other than Samantha.

4 Q And does that mean there wouldn't be anybody else
5 present at the meeting?

6 A It's possible that there was no other people, no
7 one else in the apartment when I visited, but it is also
8 possible that someone was there and I just simply didn't
9 record that individual.

10 Q At this point you knew that Samantha had a child
11 Phoenix?

12 A Yes, that -- I knew that she had a child.

13 Q A child, not necessarily her name but you knew --

14 A Right.

15 Q -- a child?

16 A Right.

17 Q Did you ask -- can you tell me if you asked
18 anything about the other child?

19 A I don't have anything documented that I, in
20 reference to the child.

21 Q If we go back to your progress notes, page 36811,
22 after your meeting on the 5th, what was your next
23 involvement?

24 A Well there's an indirect involvement in that I
25 had mailed to her the application form for Healthy Baby

1 child related income supplement plan and the shelter
2 allowance. Following that, on August the 6th, I had
3 accessed our computer system, called the Manitoba
4 Immunization and Monitoring system which is through
5 Manitoba Health to get the PHIN and MHSC number and had
6 noted that Samantha was behind in her immunizations and
7 needed her second dose of measles, mumps and rubella and my
8 plan was to let her know at the next home visit.

9 Q To let her know of the next home visit?

10 A At the, the next time that I saw her --

11 Q You were going to let her know that she was
12 behind.

13 A -- to let her know that she was behind her
14 immunizations.

15 Q Now following that, go to page 36812, which is
16 the next page, it looks like you made a -- if you go to the
17 recording for the 25th of August. It says old file not
18 available.

19 A Yes, that's correct.

20 Q What's that in reference to?

21 A It's reference to the line just preceding that on
22 August the 6th. I wrote late entry, phone call to the
23 Point Douglas office on August the 5th for the old file.
24 And so then by August the 25th I was, I was made aware that
25 the old file was not available.

1 Q Why, why was it you were looking for an old file?

2 A Typically in my practice, if I know someone has
3 had other children, if they've received service in the
4 city, my personal preference is to attempt to recall the
5 old file just to give me a more comprehensive picture of
6 that family.

7 Q And you were told that you, you, that the file
8 was not available?

9 A That's correct.

10 Q Does that -- were you concerned at all? I mean
11 was, was it typical for you to look for an old file for a
12 client?

13 A It's typical in my practice, in my personal
14 practice to look for old files if they were available.

15 Q And was it unusual that the file wasn't
16 available?

17 A It's not an uncommon occurrence for, because we
18 don't have a centralized database, so it's not something
19 that's easy to find out if there was an existing file
20 somewhere.

21 Q So these are not necessarily computerized
22 records?

23 A We don't have computerized records.

24 Q Okay. The next note you have in your progress
25 notes is dated September 23rd, 2004?

1 A Yes.

2 Q Can you read that, please?

3 A Yes. I wrote that there was an opening with the
4 Baby First visitor. Her name was Sandy and we had reserved
5 her a spot and needed to confirm, meaning that I needed to
6 confirm if the mom was interested. So I called Samantha
7 and found that she was at school, she'd be home later
8 today. Spoke with Wes and he was going to have Samantha
9 return the call.

10 Q So this is a conversation you had with Wes McKay?

11 A I assume, yes.

12 Q And do you have any recollection of this
13 conversation or just what's written here?

14 A Just what's in the notes.

15 Q Mr. McKay told you that Samantha was at school.
16 Were you aware she was attending school?

17 A Prior to this interaction?

18 Q Right.

19 A I, I don't recall and so far from reviewing the
20 progress note there's no indication that -- I didn't
21 document that.

22 Q The next note you have is October 21st. So I
23 take it Samantha did not call you back between September
24 23rd and October 21st?

25 A That's correct.

1 Q Can you read the October 21st entry?

2 A October 21st I wrote that there was no contact by
3 the client, is attend school, and so my plan was to wait
4 for the notice of birth.

5 Q And just, maybe you can explain what the notice
6 of birth is.

7 A Notice of birth is also what we call the
8 postpartum referral that's generated through the hospital
9 to let us know that the mom had her baby and has been
10 discharged home.

11 Q Is that an automatic referral?

12 A Again, the hospital has to ask for permission
13 from the parent and if they are in agreement then they
14 would send us a referral.

15 Q Was it concerning to you at all that Ms. Kematch
16 didn't return your call or hadn't returned your call by
17 this date?

18 A No. It's her choice to call me back if she
19 wanted service.

20 Q Okay. And then the next note you have written
21 here is December 2nd, 2004.

22 A Yes. So I -- on that day we had received the
23 postpartum referral and I had called and spoke with
24 Samantha at 10:30 in the morning. She was complaining of
25 sore nipples and she had continuous with feeds -- or her

1 sore nipples were because of continuous -- was present
2 during her feeds with the baby and the baby cluster fed
3 last night, denies headache, blurred vision at which point
4 I gave, I reviewed the proper latching position in
5 reference to breastfeeding, discussed cluster feeding and
6 she was receptive to a home visit and my plan was to see
7 her around eleven o'clock that day.

8 Q See her around one o'clock that day?

9 A No, eleven o'clock. So the phone call was made
10 at 10:30 and my plan was to see her shortly after.

11 Q And then did you manage to see her shortly after
12 as planned?

13 A Yes. So the next entry is December the 2nd at
14 eleven o'clock. I did a direct home visit at which point I
15 charted that Wes was off for a few weeks and then having
16 surgery to remove cyst on his pancreas. Six weeks post-op
17 recovery period expected. Extended family lives in the
18 same apartment block, able to support Wes and Samantha as
19 necessary. I wrote that Wes was receptive to the home
20 visit.

21 And then the next entry is in reference to
22 Samantha and her physical findings. So she had pinched
23 nipples, horizontal line across the nipples, transitional
24 colostrum in milk. Latched infant with cradle hold,
25 complained of after pain. And what I did with her was I

1 helped her with cross-cradle and football hold with
2 breastfeeding, encouraged to breastfeed in different
3 positions, Lansinoh sample given and used. Encouraged to
4 apply expressed breast milk to nipples also. I discussed
5 options of offering expressed breast milk or formula for
6 today and to rest the nipples. Stressed the importance to
7 empty the breast every three hours to maintain milk supply.

8 On the following page I said, I also talked to
9 her about using breathing techniques and analgesia for
10 after pains. Her response was that her nipples are very,
11 very sore. She's considering offering bottles today and
12 aware of need to regularly empty the breast and to restart
13 breastfeeding tonight or tomorrow.

14 The next entry is in reference to the infant.

15 THE COMMISSIONER: Now just before we go on, I
16 mindful of the time and you're obviously not going to get
17 finished today with this witness. Is that a fair statement
18 or do you think you are?

19 MR. OLSON: Yeah, I think that's a fair
20 statement. I won't finish today.

21 THE COMMISSIONER: Well then when there is an
22 appropriate time do you think we should adjourn then? We
23 will do that in light of the fact that you can't finish
24 today.

25 MR. OLSON: We'll just maybe finish this one area

1 here and --

2 THE COMMISSIONER: That's fine.

3

4 BY MR. OLSON:

5 Q Where you wrote Wes receptive to home visit --

6 A Yes.

7 Q -- does that mean Wes was actually present in the
8 home?

9 A That is correct.

10 Q There is nothing, no recording with respect to
11 any other child in the home. Does that mean that Phoenix
12 was not present?

13 A Again, as I told you previously, just because I
14 didn't write somebody was present it doesn't necessarily
15 mean that they were not present or that they were present.

16 Q But by not writing anything about Phoenix, I take
17 it if she was present she wasn't the focus of your visit?

18 A That would be correct.

19 Q Okay. Do you have any recollection of asking
20 about Phoenix?

21 A I do not.

22 MR. OLSON: I think this is probably a good time
23 to break.

24 THE COMMISSIONER: All right. Witness, you'll
25 have to return tomorrow morning at 9:30.

1 THE WITNESS: 9:30?

2 THE COMMISSIONER: We will rise till that time.

3

4 (PROCEEDINGS ADJOURNED TO JANUARY 9, 2013)