



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

WEDNESDAY, JANUARY 9, 2013

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

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

MR. W. GANGE and **MS. K. BOMBACK**, for SOR #5 and SOR #6

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1 JANUARY 9, 2013

2 PROCEEDINGS CONTINUED FROM JANUARY 8, 2013

3

4 THE COMMISSIONER: Mr. Olson.

5 MR. OLSON: Good morning.

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

7 THE COMMISSIONER: Morning, Ms. Rachlis.

8 MS. RACHLIS: My apologies, there must have been
9 some miscommunication. We had understood that we were to
10 attend at eleven o'clock this morning.

11 THE COMMISSIONER: I recall distinctly saying to
12 the witness she had to be back at 9:30, but it's not a
13 critical matter.

14 MS. RACHLIS: Thank you.

15

16 THE COMMISSIONER: It's -- those things can
17 happen and we'll make up time somewhere.

18 MR. OLSON: Thank you.

19

20 **MARY WU**, previously sworn,
21 testified as follows:

22

23 DIRECT EXAMINATION CONTINUED BY MR. OLSON:

24 Q Good morning, Ms. Wu. Yesterday we left off
25 looking at your December 2nd, 2004 note, and what I want to

1 ask you about now is a document, it's at page 36799, from
2 disclosure 1791, and it's called the Winnipeg Regional
3 Health Authority public health information -- family
4 information form. Do you recognize this form?

5 A I do.

6 Q Did you fill it out?

7 A Yes.

8 Q What is the purpose of the form?

9 A It's to identify the client's address, contact
10 information, people that may be living in the home.

11 Q You mentioned I think yesterday that you did have
12 some demographic information you would collect on the
13 family. Is this what you were referring to?

14 A Yes.

15 Q Okay. In terms of the household members you
16 record, how do you obtain that information?

17 A I can obtain them either through the source --
18 from the referral source or from the referral from the
19 hospital. I can also access them through the Manitoba
20 immunization monitoring system that we have access to.

21 Q The immunization monitoring system?

22 A Yes.

23 Q Okay. That's a record of immunizations for
24 clients?

25 A For individuals in Manitoba.

1 Q Okay. The form indicates you have Samantha
2 Kematch and you have her date of birth. Then you have Wes
3 McKay and you have written his date of birth. Do you see
4 where I'm referring to there?

5 A I do.

6 Q And then you have Phoenix Sinclair and her date
7 of birth and then two other people's names who are
8 redacted, both children.

9 Do you know when you obtained Mr. McKay's date of
10 birth?

11 A I don't recall.

12 Q The form doesn't appear, as far as I can tell, to
13 be dated. Do you know when it was -- when you prepared it
14 or filled it out?

15 A I can only say that it would have been during my
16 contact with the client.

17 Q During contact with the client?

18 A During the period that I had contact with her.

19 Q Okay. So some time before your last contact with
20 the client, which, according to your notes, would have been
21 May -- was it May 26th, 2005?

22 A That's correct.

23 Q Yeah. That would -- sorry, that would be your
24 last involvement in the file. Your last contact with
25 Samantha was December, looked like December 9th, 2004, and

1 that would be reflected on page 36814?

2 A That is not a direct contact with Samantha.

3 Q Okay. When -- so looking at your notes, do you
4 have, do you have them in front of you, page 36814?

5 A Yes.

6 Q When is your last contact? Would that be
7 December 6th, then?

8 A According to my progress note, my last phone call
9 with her was on December the 6th.

10 Q December 6th. Just, just for clarification, the
11 records after December 6th, though, for December 7th it
12 says:

13

14 "RC requested to re-schedule ..."

15

16 What's that refer to?

17 A RC stands for return call. Return call requested
18 to reschedule home visit. That was by me to the client.

19 Q To the client.

20 A On her answering machine.

21 Q On her answering machine. Okay. I understand.
22 So would that mean, then, that the birth date of Mr. McKay
23 would have been obtained some time prior to December 6,
24 2004?

25 A It's possible, yes.

1 Q And the information about Phoenix Sinclair, her
2 date of birth, would that be information you would have
3 collected as well directly from Ms. Kematch?

4 A I don't recall.

5 Q So you could have collected it through the other
6 ways you've mentioned that you obtain information?

7 A That's correct.

8 Q Okay. There is a section in this form that has
9 agency involved.

10 A Yes.

11 Q You see that?

12 A Yes.

13 Q And what is, what's the purpose of that area?

14 A It's to make a notation of any agencies that are
15 involved with the clients. It's for our information or if
16 we have to contact the agency.

17 Q And when it refers to "agency", is it, is it a
18 Child and Family Services agency in particular or could be
19 other agencies, as well?

20 A Can be other agencies, as well.

21 Q Just want to go back to your progress notes at
22 36813. We -- yesterday we finished off looking at the
23 first recording for December 2nd. What's the next
24 recording?

25 A You're talking about the, at the top of the page?

1 Q The top of the page was the first December 2nd,
2 2004 recording?

3 A Yes.

4 Q And below that there is another recording for
5 December 2nd, 2004 that looks like it says 11?

6 A Yes. That entry reads eleven o'clock, mens
7 records, MMR fact sheet given, advisory, only one dose of
8 MMR on record. Encouraged follow with the doctor. And her
9 response was that she was agreeable.

10 Q Would this have been at the meeting with Ms.
11 Kematch?

12 A That's correct.

13 Q Then on December 3rd you have another, another
14 note. Can you please read that out.

15 A Sure. On December the 3rd, at 1620 hours, I had
16 a return -- I returned a call to Shelly Wiebe, Child and
17 Family Services, at the phone number indicated. Received
18 referral from Women's Hospital due to Samantha's past
19 history with Child and Family Services. Child and Family
20 Services had not been involved with this pregnancy.
21 Requesting information on Samantha regarding any current
22 concerns. Shelly had left message on Samantha's voice mail
23 but no return call as yet.

24 My response was, I advised the writer did not
25 have concerns with family and further discussion is

1 prohibited without client's consent.

2 Shelly's response was to notify her supervisor to
3 contact the writer's supervisor regarding disclosure of
4 information.

5 Q What did you mean by advised writer did not have
6 concerns with family and prohibited from further discussion
7 without client's consent? What, what did you mean there?

8 A Meaning that I didn't have any concerns that
9 would warrant a referral to Child and Family Services.

10 Q So that would be any concerns that you observed
11 with respect to this particular family?

12 A That's correct.

13 Q Would that include concerns with respect to
14 Phoenix Sinclair?

15 A If I was aware of concerns with Phoenix Sinclair,
16 yes, I would record that.

17 Q And I think you told us yesterday, and if I'm
18 wrong about that you let me know, but I think you told us
19 that you did -- you weren't sure whether or not you had
20 actually seen Phoenix Sinclair. Is that --

21 A That's --

22 Q -- do I, do I have that right?

23 A That's correct.

24 Q And so what you're saying is as a public health
25 nurse, you're -- you told us yesterday your role isn't

1 really to assess child protection concerns, but if you
2 notice them you report them?

3 A That's correct.

4 Q Okay. And so whether or not you saw Phoenix
5 Sinclair wouldn't be something that would have been
6 essential to you as a public health nurse?

7 A My primary focus on that visit was on the mom and
8 the newborn.

9 Q Okay. And when you were advising Ms. Wiebe, who
10 we now know as Ms. Willox, when you're advising her that
11 you knew your obligations to report concerns, what were you
12 trying to convey to her?

13 A I was, in my conversation with her, that I didn't
14 have any concerns and therefore I didn't, I had not made
15 any referrals to Child and Family.

16 Q Okay. Do you recall whether or not Ms. Wiebe
17 mentioned she was -- had child protection concerns with
18 respect to the family?

19 A According to my notes, no.

20 Q Was there anything that prompted you to give the
21 response you did to Ms. Wiebe? In other words, was it
22 pursuant to a policy or protocol or information you'd
23 received?

24 A Well, again, I -- because of the, the recent
25 training that we had received regarding the Personal Health

1 Information Act, if there was no child protection concerns
2 I was not at liberty to share information without the
3 client's consent.

4 Q And I think you told us yesterday, I'm just going
5 to ask you to confirm because I'm not certain, but I think
6 you told us yesterday that the caller, CFS, would have to
7 indicate there were child protection concerns they were
8 investigation. Was that -- is that -- do I have that
9 right?

10 A For me to share --

11 Q Before you can share information?

12 A That is correct.

13 Q And so if Ms. Wiebe said to you, we're doing a
14 child protection investigation, you could share
15 information?

16 A That's correct.

17 Q And would she have to use those exact precise
18 words in order for you to share information?

19 A She would have to convey to me the, the essence
20 of what child protections concerns.

21 Q Meaning a specific allegation or concern she's
22 investigating?

23 A Well, I don't know what words she could or could
24 not use, but if she said to me that there were child
25 protection concerns or it -- that -- or something to that,

1 to that meaning, then that would allow me to share that
2 information.

3 Q Okay. Did you expect her to share actual
4 concerns she had with you?

5 A No, she just needed to let me know that her file
6 was open under the child protection issues.

7 Q Okay. So simply saying, this is a child
8 protection matter I'm investigating, then you could have
9 disclosed information to her without the client's consent?

10 A Yes.

11 Q Okay. And based on your notes, did, did she ever
12 indicate to you that it was a child protection matter or
13 child protection concern she was investigating?

14 A Based on my notes, there's no indication of that.

15 Q What was the, what was the tone of this
16 conversation? And I'm not sure if you can remember that or
17 if you can infer it from what you've written.

18 A I, I recall that she was frustrated with me that
19 I wouldn't share information with her.

20 Q And is that where the discussion with respect to
21 contacting your supervisor, Ms. Strople, came in?

22 A Yes.

23 Q Ms. Wiebe thought that perhaps, and she testified
24 to this, that perhaps you were being a bit coy or having a
25 bit of play on words in terms of not reporting that you had

1 any -- or you knew what your obligations were so you
2 weren't reporting anything. Is, is that what you were
3 doing in this case?

4 A I'm sorry, can you rephrase that?

5 Q When you said you, you had no concerns to report
6 -- or sorry, I've got that wrong. When you said that you
7 knew what your obligations were in terms of reporting but
8 you didn't actually give her any information, were you
9 trying to suggest to her that there are no concerns?

10 A I, I think that would be fair to say.

11 Q Okay. Without actually saying, coming out and
12 saying, I don't have any concerns with this family?

13 A That is correct.

14 Q Okay. And would that be correct, then, at that
15 point you did not have any child protection concerns with
16 this family?

17 A When she had called, I did not have any concerns.

18 Q Okay. And so if there is -- was any information
19 you could share with her, it would have to be the routine
20 sort of information you had collected about the family?

21 A I'm sorry, can you rephrase that?

22 Q If you, if there was information you could share
23 with her about the family, it would not be information
24 about child protection concerns, it would be just the
25 routine sort of information you'd collected from Ms.

1 Kematch and the family through your contact?

2 A I'm sorry, sir.

3 Q Let me try another way. Meeting with Ms. Kematch
4 you gathered information about her, how she was doing, how
5 the, how the baby was doing and, and that sort of thing,
6 right?

7 A That would be information I would gather in my
8 interaction with Ms. Kematch, yes.

9 Q Right. And if Ms. Wiebe asked you for
10 information without identifying a child protection concern,
11 the information that you had to share with her would just
12 be that sort of routine information?

13 A Well, I wouldn't, I wouldn't be able to share
14 that information unless she told me that there was a child
15 protection issue.

16 Q Right. I, I appreciate that. I guess all I'm
17 saying is, the only information you had on the file was
18 that sort of information, was the routine information?

19 A I'm not sure what you mean by "routine
20 information".

21 THE COMMISSIONER: Well, you're talking about the
22 information that's recorded on 36799, I take it?

23

24 BY MR. OLSON:

25 Q Right. Just the information recorded to date

1 about, about Ms. Kematch. That's the -- that's all the
2 information you had?

3 THE COMMISSIONER: Well, are you referring to the
4 information that's on 36799, which is the Winnipeg Regional
5 Health Authority Public Health Family Information Sheet?

6 MR. OLSON: No. What I'm referring to, Mr.
7 Commissioner, is the information in the progress notes
8 above this conversation with Ms. Wiebe. So just the
9 general information that the witness has collected, had --

10 THE COMMISSIONER: But what if she collect other
11 than what's on here?

12 MR. OLSON: In her, in her progress notes she had
13 collected information, she had recorded medical information
14 about Ms. Kematch.

15 THE COMMISSIONER: Yes.

16 MR. OLSON: That sort of thing. All I'm trying
17 to -- and, and I've probably confused you, but all I'm
18 trying to get at is --

19

20 BY MR. OLSON:

21 Q That's the only sort of information you had at
22 that point?

23 A That's correct.

24 Q Okay. And so were you able to share information
25 with Ms. Wiebe, forgetting for a moment about

1 confidentiality issues, that's the only thing you could
2 have told her?

3 A That's correct.

4 Q The next entry on your progress notes, page
5 36813, the December 3rd -- the second entry for December
6 3rd. Can you read that out for us, please?

7 A It's at sixteen twenty-two hundred hours I had
8 called, I made a phone call, advised Nettie Strople, team
9 manager, of the phone call with Child and Family Services,
10 and her response to me was to -- that she would clarify
11 with D. Romaniuk (phonetic), who is a team manager and the
12 PHIA contact.

13 Q The PHIA contact?

14 A For our, for our department.

15 Q And what was that, was that try to determine what
16 you were able to disclose?

17 A No. My phone call to Nettie was to let her know
18 that I had had this interaction with the Child and Family
19 Services worker and that she may be contacted, her
20 supervisor may be contacting her.

21 Q I see. Did you have any further conversation
22 with Ms. Strople about this phone call?

23 A No, I did not.

24 Q When Ms. Wiebe called you, did you have the
25 understanding that it was to do with a child protection

1 concern?

2 A No, she didn't indicate that to me in her phone
3 call.

4 Q When Child and Family Services workers would call
5 you for information -- and you said they had in the -- I
6 think you said they had in the past with respect to other
7 files?

8 A Yes.

9 Q Would they call you for reasons other than child
10 protection concerns?

11 A Yes.

12 Q And just give me an example of what, what sort of
13 other calls they would have, what sort of information they
14 would be asking for?

15 A Well, they -- in the past they may give us a call
16 and just wanted to know how the mom was doing in the home
17 or how the baby was doing, not necessarily because they --
18 it was a child protection file.

19 Q So just looking for general information?

20 A Yes.

21 Q Okay. Now, you said in your note that you would
22 require the consent of Ms. Kematch to share information?

23 A That's correct.

24 Q Did you -- well, if we look at your next note for
25 December 6, maybe you can just read that first for us.

1 A Sure. On December the 6th I made a phone call to
2 Samantha, and her response was that she was up with the
3 baby last night, wished to change the home visit to
4 tomorrow, this continue breast feeding December the 3rd,
5 felt baby not latching. No desire to re-initiate breast
6 feeding. So my plan was to, that the home visit was
7 rescheduled for December the 7th after two thirty, between
8 two thirty to three o'clock.

9 Q Okay. And then you have another note for
10 December 6 that continues.

11 A Yes. That's pertaining to the phone call that I
12 just previously read. I also advised Samantha of the phone
13 call with Shelly Wiebe, Child and Family Services, and that
14 writer had advised Child and Family Services no parenting
15 concerns. Permission granted from Samantha to discuss with
16 Child and Family Services should agency call again.

17 Q So you're indicating here that you asked for her
18 consent to share the information?

19 A That's correct.

20 Q And she indicated it would be fine for you to
21 share that information?

22 A That's correct.

23 Q Do you have any recollection of the actual phone
24 call with Ms. Kematch?

25 A I only have a vague recollection and most of it

1 is because I've re-read the notes.

2 Q Okay. I see. Are you able to tell me what her
3 reaction was when you asked for her consent?

4 A It, it seems to me my recollection is that she,
5 she didn't say very much during the phone call, and but
6 that she did eventually say that I could speak with Child
7 and Family should they call again.

8 Q Okay. Should they call again.

9 A Yes.

10 Q Were you -- did you ever call back Ms. Wiebe to
11 let her know that you had the consent and you could share
12 information with her?

13 A No, I did not.

14 Q Was there any reason why you didn't do that?

15 A There was no reason for me to call her back.

16 Q Okay. Can you just explain that a little more
17 fully when you say there was no reason to call her back?

18 A Well, I didn't have any child welfare issues so I
19 didn't have to call the agency.

20 Q So in other words, you're saying there wasn't
21 really anything for you to report of substance with respect
22 to Ms. Kematch, in terms of child protection?

23 A That's correct.

24 Q I see. And did Ms. Wiebe ever call you back?

25 A It would appear not.

1 Q Can you recall if at any time during your
2 conversations with Ms. Wiebe if there was any questions,
3 there were any questions asked about Mr. McKay?

4 A I don't recall.

5 Q And just to complete your notes, maybe you could
6 just read through the rest of the notes so they're clear on
7 the record.

8 A Sure. On December the 7th, 2004 a message was
9 left on her telephone answering system or telephone
10 machine.

11 Q That's referring to Ms. Kematch?

12 A To Ms. Kematch. I left a message requesting that
13 she, she call me back to reschedule the home visit, and
14 that was done at 1400 hours. And then again at 1430 I
15 called again, got her answering machine and I asked if
16 she'd call me back to reschedule the home visit.

17 On December the 9th, 2004, at 1525 hours, again I
18 called her, got her answering machine, and I -- returned
19 call requested from Samantha regarding infant's health,
20 weight, and family's decision regarding the Baby First
21 program. My plan was to await the client's contact.

22 On February the 25th, 2005 I sent her a letter,
23 letter to client, and my plan was to discharge the file
24 March the 31st if there was no contact.

25 On May the 26th, 2005 I had not had any contact,

1 client contact and so her file was closed.

2 Q Did it seem to you that after the last contact on
3 December 6 until the file was closed, that Ms. Kematch's
4 willingness to meet with you had changed?

5 A It would appear so.

6 Q In your experience, when -- and maybe, I'm not
7 sure if you can answer this or not, but when CFS gets
8 involved with a client of yours and you're asked to share
9 information, does that have any impact on your relationship
10 with the client, generally speaking?

11 A It may.

12 Q Has that been your experience in the past, that
13 that occurs?

14 A It sometimes occurs, yes.

15 Q Okay. I want to show you what Ms. Wiebe recorded
16 in her notes with respect to your communications and ask
17 you some questions about that. First, if you could turn to
18 page 36943, which is out of Commission disclosure 1795.
19 This is, you'll see, this document is a central intake form
20 prepared by Ms. Wiebe dated December 1, 2004. And it's a
21 record that runs on throughout her involvement. Your, the
22 recording of your interaction is recorded at page 36947.

23 What she's recorded is:

24

25 On December 3, 2004 at 1:25 p.m.

1 this worker attempted to contact
2 the public health nurse for
3 Samantha Kematch, ...

4

5 She mentions your name. She left a message
6 asking for you to return the call; she has some things
7 she'd like to discuss with respect to Samantha. And then
8 at 4:02 p.m. the same day, you return the call and she
9 writes:

10

11 "Worker questioned Mary if she had
12 been out to the family home to see
13 Samantha and the baby yet, and if
14 she has any concerns. Mary
15 advised that she has been to see
16 Samantha since her discharge from
17 hospital. Mary questioned why
18 worker was contacting public
19 health, and asked if Samantha was
20 aware that [Winnipeg Child and
21 Family Services] was contacting
22 her for [this] information.
23 Worker advised Mary that the
24 Agency has previously had
25 extensive involvement with

1 Samantha, and indicated that
2 Samantha has four children - only
3 two of which are in her care.
4 Worker reported that the Agency
5 has had some pretty serious
6 concerns in the past, and is
7 wondering if public health [has]
8 any concerns at this time."

9

10 Just to that point, is, is that an accurate
11 recollection of the conversation?

12 A I think that would be fair.

13 Q Okay. And there's no indication, at least up to
14 this point, that there's a specific child protection
15 concern but that there were serious concerns in the past.

16 A Yes.

17 Q Okay. Does that -- would that allow you to share
18 information with the worker, what she's told you up to that
19 point?

20 A No, it would not.

21 Q Mary advised -- I'm just going to continue on.
22 It says:

23

24 "Mary advised that she has been
25 recently advised at a training

1 session that she is not to share
2 information with [Child and Family
3 Services] due to PHIA."

4

5 I think you indicated that that was the case.

6 A That's right.

7 Q

8 "Worker advised Mary that the
9 Agency has attempted to contact
10 Samantha on two occasions now, and
11 notes that if Samantha is to check
12 her voice mail she will see that
13 the Agency is trying to contact
14 her. However worker advised Mary
15 that the Child and Family Act
16 supersedes PHIA, and indicated
17 that any professional is obligated
18 to contact {Winnipeg Child and
19 Family Services] to report risk to
20 a child if there are concerns."

21

22 Is that -- do you -- can you say if that's an
23 accurate recording of the call up to that point?

24 A I believe so.

25 Q Okay. And when you say that -- sorry. I'm just

1 going to go on. It says:

2

3

"Mary advised that she is aware of

4

this, but has been advised at

5

recent training not to discuss

6

cases with [Child and Family

7

Services]. Mary indicated that

8

[Child and Family Services] does

9

not share information with public

10

health due to the confidentiality

11

act. Worker indicated that all

12

the Agency is asking at this time,

13

is if Mary has been to the home

14

and if she has any concerns. Mary

15

advised that she would like to

16

contact Samantha before answering

17

this question, to advise her that

18

[Winnipeg Child and Family

19

Services] is calling her asking

20

for information. Worker again

21

advised Mary that she is obligated

22

to report any child protection

23

concerns to the Agency, and

24

therefore questioned Mary why she

25

would not simply come out and say

1 that she does not have any
2 concerns if she is not willing to
3 report a risk to the child. Mary
4 indicated that she can not say at
5 this time."

6

7 And then she asked for the name of your
8 supervisor.

9 Now, are you able to tell us today why you were
10 not able to just come out and say, I, I've been to the
11 home, I don't have any child protection concerns?

12 A Based on my understanding from the training for
13 the, for PHIA, even if I had no concerns and there were no
14 child protection issues, I was not able to share that
15 information.

16 Q So even just saying that you had been out to the
17 home and you don't have concerns, that, in your
18 understanding of the Act, would be that would be a breach
19 of the confidentiality required?

20 A Yes.

21 Q Okay. Does the phrase that Ms. Wiebe mentioned
22 to you, that the agency had had some pretty serious
23 concerns in the past, does that suggest to you that this is
24 a child protection matter?

25 A No.

1 Q Now, there's no mention here as to whether or not
2 Ms. Wiebe asked whether or not you saw Phoenix. There's
3 nothing recorded here. But do you recall if, if that
4 question was asked?

5 A I don't recall.

6 Q And even if it had been asked, what would you be
7 able to answer, based on your understanding?

8 A It would be to the same sense, that I couldn't
9 share information.

10 Q And if Ms. Wiebe had -- and I appreciate you
11 can't say when you actually had Mr. McKay's birth date, but
12 if Ms. Wiebe had asked for the birth date, I take it you
13 couldn't have answered that question either at that point?

14 A That is correct.

15 Q Did you have -- other than what you told us about
16 your contact with Ms. Strople following this conversation,
17 did you have any other follow-up with this, this matter at
18 all? Any contact from either Ms. Faria, who was Ms.
19 Wiebe's supervisor, or anyone else?

20 A No.

21 Q Okay. Now, if -- and I apologize, I could have
22 asked you this already, but if Ms. Wiebe had said she were
23 investigating a child protection concern, could you have
24 shared with her Mr. McKay's birth date if you had it? Is
25 that information you could have shared?

1 A I -- yes.

2 Q Okay. I just have a few more questions for you
3 with respect to some of the reports.

4 Just before we get to that, I wanted to ask you
5 if there are phrases that have come up. One is a child
6 protection concern. So, agency indicates they're
7 investigating a child protection concern versus an agency
8 saying they're doing -- an agency worker saying they're
9 doing a child protection investigation. Is there any
10 difference between those, those two phrases in terms of
11 what you can disclose?

12 A No.

13 Q Are they essentially the same thing?

14 A I believe so.

15 Q So I want to take you now to, it's Commission
16 disclosure 1. This is titled "A Special Case Review in
17 Regard to the Death of Phoenix Sinclair". It's by Andrew
18 Koster and Billie Schibler, and it was submitted to the
19 Minister of Family Services and Housing.

20 Did you have -- first of all, were you ever
21 interviewed by Mr. Koster at any time?

22 A No.

23 Q Okay. And did -- were you made aware of this
24 report prior to your involvement in the inquiry?

25 A No.

1 Q At page 44 -- sorry, 45, and it's the number on
2 the, big number -- the large number on the right-hand side
3 of the page we're looking at. The bottom, December 3,
4 2004. There's a summary of Ms. Wiebe's contact with you.
5 I understand you've read this, this portion prior to today?

6 A That's correct.

7 Q Do you, do you have any comments with respect to
8 what is written here? And it goes right to page 46.

9 A Sorry, your question was?

10 Q Do you have any comments or, or anything you
11 would like to say with respect to what Mr. Koster has
12 written as it pertains to your involvement?

13 A No.

14 Q If you could turn to page 48, finding 37, at the
15 bottom of the page. In bold it says:

16

17 "The unwillingness of the public
18 health nurse to provide
19 information was regretful and made
20 the possibility of obtaining a
21 birth date for [her] father more
22 difficult."

23

24 It goes on to say that:

25

1 "It is true that the worker
2 herself could have gone out of the
3 case to obtain that data and this
4 would have been advisable in
5 hindsight. However, the request
6 came at the very beginning when
7 justification was being required
8 to immediately transfer a case
9 before a young baby went home.
10 Finding a cross reference match
11 with the name 'Wes McKay' in
12 itself would have given the CRU
13 worker an extra factor to warrant
14 the intake opening. This would be
15 true even if specific ...
16 protection behaviours [child
17 protection behaviours] (abuse or
18 domestic violence) were not
19 immediately found in one of the
20 specific case files to which he
21 was connected. At this time
22 domestic violence that had
23 occurred 6-8 years ago may not
24 itself provided reasons to open
25 the case since some staff had

1 indicated that there was ... still
2 ... not a clear policy in the
3 agency as to whether or not to re-
4 open when there is a past history
5 of domestic violence."

6

7 The comments there with respect to your not
8 sharing information, do you have any, anything to say about
9 that?

10 A Only that my unwillingness is because of what I
11 was informed of the Personal Health Information Act.

12 MR. OLSON: Those are my questions for you. Some
13 other counsel may have questions as well. Thank you.

14 THE COMMISSIONER: Well, now, it's eleven o'clock
15 when you a video witness. What do you, what do you
16 propose?

17 MR. OLSON: Believe she's been rescheduled to
18 start at 11:30 now.

19 THE COMMISSIONER: Oh.

20 MR. OLSON: So it probably would be best if we
21 could finish this witness.

22 THE COMMISSIONER: All right. That's fine. Who,
23 who wants to cross-examine first? Mr., Mr. Ray, Mr.
24 Gindin?

25

1 CROSS-EXAMINATION BY MR. GINDIN:

2 Q Good morning. My name is Jeff Gindin. I appear
3 for Kim Edwards and Steve Sinclair. Just have a few
4 questions for you.

5 If we can bring up page -- could you hear me
6 (inaudible)? Now it's on. Sorry. I'll repeat that.

7 My name is Jeff Gindin. I appear for Kim Edwards
8 and Steve Sinclair. Good morning. I have some questions
9 for you. Thank you.

10 Can we bring up page 36808, please. Can we just
11 scroll that up just a little bit, please. Okay.

12 Now, this form that you're looking at, are you
13 able to tell us when approximately that would have been
14 prepared? Is there a date on that that tells us?

15 A At the bottom of the form it indicates that I
16 completed the form on August the 6.

17 Q On August the 6th, 2004. Okay. Now, if we just
18 look at the issues that are raised in the form that require
19 either a yes or no, are those things that you would be
20 asking Samantha about, all of the list of things that are
21 listed there?

22 A Those are questions that I would try to get
23 information from.

24 Q I see. So if you look at number 18, for example,
25 it says, depression, right? Now, we've heard some evidence

1 in this courtroom some time ago that there were some
2 depression issues with respect to Samantha and we heard
3 from a psychiatrist. Is that something that -- and I
4 notice there's nothing marked yes or no there. Is that
5 something that you would have actually asked about and not
6 received an answer or not asked about?

7 A Because I didn't check off yes or no, I can only
8 say that it's likely I did not ask those questions.

9 Q Okay. Is there some reason you would leave that
10 one out?

11 A No. I, I think I had mentioned yesterday that
12 during my visit with Samantha I had gathered some
13 information sufficient to complete this form and, and I
14 think that's what I did.

15 Q Okay. Did you have other information about her
16 possibly suffering from depression?

17 A I had no knowledge of that.

18 Q Okay. If you look at number 26 going down a
19 little bit further, that says:

20

21 "Antisocial behaviour"

22

23 And there's no check mark there besides yes or
24 no. And again, we've heard some evidence about that area.
25 Does this indicate to us that you didn't ask that question

1 of her?

2 A It would appear I did not ask those questions.

3 Q So are you saying that the only questions you
4 asked is where, where there was a yes or a no ticked off?

5 A Or that I had information that I didn't need to
6 ask her for them.

7 Q Okay. Did you have any information about
8 antisocial behaviour in the past, that you know of?

9 A No.

10 Q If you look at number 28, for example:

11

12 "Current substance abuse by mother
13 or father"

14

15 And again, there's nothing checked off there. Do
16 I take it that you didn't ask that?

17 A It indicates that I didn't, I didn't check it
18 off.

19 Q Okay. And if you had other information about
20 that subject, would you record that somewhere?

21 A Yes.

22 Q And do you know whether that's recorded anywhere?

23 A Well, I recall reading the parent survey
24 yesterday, that there was some notation about past use but
25 not a current use.

1 Q Okay. So if you had information about past use,
2 would that not lead you to ask some questions about current
3 use?

4 A And I think that that's indicated in the parent
5 survey.

6 Q Pardon me?

7 A I, I believe that it's noted in the parent
8 survey.

9 Q Okay. Well, perhaps we'll get down to that.

10 Okay. Take a look at number 39 on that list, on
11 that list. Says:

12

13 "Current or history of involvement
14 in criminal activity by mother or
15 parenting partner."

16

17 So it looks like you did ask that question.

18 A I had information that I was able to answer that
19 question.

20 Q And so the answer that you had down there is no,
21 no current or history of involvement in criminal activity
22 by mother or parenting father. Right?

23 A Yes.

24 Q By parenting father, you would mean Wes McKay,
25 according to all the notes, right?

1 A Well, the sentence is "mother or parenting
2 partner".

3 Q Okay. And by "parenting partner", we know from
4 the evidence that we're talking about Wes McKay?

5 A It could be about him, yes.

6 Q He was the putative father of this particular
7 child that was --

8 A Yes.

9 Q -- just born. Right? You knew that to be the
10 case?

11 A No. I, I believe that I would have answered that
12 question based on my information on Samantha.

13 Q Okay. On?

14 A On the mother.

15 Q On the mother. Okay. So when it says "by mother
16 or parenting partner", you take that question to mean just
17 by the mother?

18 A No. I had information about the mother.

19 Q Um-hum.

20 A And so I answered the question because it's a
21 mother or a parenting partner.

22 Q I see. And the answer you obviously got is that
23 she had no history of involvement with criminal activity,
24 right?

25 A Right.

1 Q Now, is that something that you would simply
2 accept or do you do any checks to see if that's accurate?

3 A I do not do criminal checks on my clients.

4 Q Now, earlier we had seen a form, I believe it's
5 page 36799. If we can get that up. This is the form that
6 you were discussing just a while ago where it was pointed
7 out that Wes McKay's birth date is on that page, correct?

8 A Yes.

9 Q Recall those questions? Now, I'm a little
10 unclear. You were being asked when you might have marked
11 that in or when you would have known the birth date. Can
12 you help us a little more specifically as to when that
13 likely would have been? Would this form be filled out at a
14 particular time that you can tell us about?

15 A Again, that form, information on that form can be
16 added at any time while the file is open or while I have
17 information, so ...

18 Q What would be your usual practice, would you fill
19 out that form towards your first meeting with the client?

20 A The usual practice is we would, we would have the
21 mother's information and anything after that, anything in
22 addition to the mother could be obtained at any time.

23 Q At the very latest, you would have had that
24 information about Wes McKay's birthday in early December,
25 as I understand it, of '04, correct?

1 A His exact birthday, I could not say when I had
2 the exact birth date.

3 Q You have any notes at all about -- there is --
4 there doesn't seem to be much dealings with you and the
5 family after early December, although you made some efforts
6 to contact them?

7 A Right.

8 Q So can we safely say that you would have known
9 this birth date, at the latest, by early December of '04 in
10 all likelihood?

11 A I couldn't say that.

12 THE COMMISSIONER: When, then, could you have got
13 the information if you didn't have it by then?

14 THE WITNESS: Well, could have been after that.

15 THE COMMISSIONER: From whom?

16 THE WITNESS: Either through our information,
17 like our, our immunization monitoring system, could be
18 maybe somebody else shared that with me. I don't recall
19 actually when I wrote that information.

20

21 BY MR. GINDIN:

22 Q You'd have to ask, I suppose, Wes McKay for his
23 birth date, would you not?

24 A He could have given me that or someone else could
25 have.

1 Q There's no notes, no -- there's no notes after
2 December 6th or 7th where you have actually any contact
3 with Samantha or Wes that I can see. Am I right?

4 A That's right.

5 Q Okay. So you'd agree with me that in all
6 likelihood you likely got the birth date before that? I'm
7 not saying beyond all possibility, I'm saying in all
8 likelihood.

9 A Well, it's possible, but again, I don't recall
10 when I got that date.

11 Q Okay. Do you have any notes of anything you did
12 on this file after December the 6th in terms of actual
13 contact with Samantha or Wesley?

14 A It doesn't appear that on my chart.

15 Q Okay. And if you had, it would appear somewhere,
16 would it not?

17 A I believe so.

18 Q Okay. Now, just with respect to your
19 conversations with Ms. Wiebe, for you to give her
20 information about any concern you might have, what would
21 she have to say?

22 A She would have to let me know that she had an
23 open file of a child protection nature.

24 Q The notes of hers that were just read to you
25 indicate that there was an extensive history with their

1 agency and that there were some serious concerns in the
2 past. Would that be enough for you to tell her whether you
3 had some concerns?

4 A No.

5 Q No. So a child welfare worker phoning you to
6 tell you that they have an extensive history with Samantha
7 and they have pretty serious concerns in the past doesn't
8 give you the impression that they want to know whether
9 there's any child protection concerns. You wouldn't take
10 that from a conversation like that?

11 A Unless she indicated that to me, I don't, I
12 wouldn't do that.

13 Q So you have to, you have to hear those words,
14 "child protection concerns", before you would respond? Is
15 that --

16 A She would have to indicate to me in some manner
17 that there was a child protection concern.

18 Q So what you're saying is that we have an
19 extensive history with this person and I've had pretty
20 serious concerns in the past is not, to you, an expression
21 that we have child protection concerns?

22 A It would not indicate to me that there are
23 current child protection concerns.

24 Q You wouldn't take it from the fact that there
25 were problems in the past and we're now calling you, that

1 that might indicate there might be some present concerns
2 we're wondering about?

3 A Not necessarily.

4 Q No? Okay. And would they have to say to you,
5 would they have to ask you a direct question such as, we're
6 concerned about possible substance abuse, what can you tell
7 us? If she had said that, for example, what would your
8 response have been?

9 A I think at the time, based on the training, the
10 recent training, I, I may have still asked her if the file
11 was open under a child protection issue.

12 Q The fact that she was calling you didn't tell you
13 that the file was -- that they had an open file? No?

14 A Well, files can be open. My understanding is,
15 files can be open with Child and Family Services but not
16 necessarily of a child protection concern.

17 Q Okay. So had the question been there's been drug
18 abuse issues in the past, can you tell me anything about
19 that topic or that issue, what would your response have
20 been?

21 A It would be the same answer. I would need to
22 know that there was a current child protection concern
23 before I'm allowed to pass on information.

24 Q And that was your understanding of the
25 confidentially rules you were bound by?

1 A That's correct.

2 Q It was clear that Ms. Wiebe was frustrated with
3 the conversation, correct?

4 A Yes.

5 Q And you, even after getting permission from
6 Samantha to be able to give information on her behalf, it
7 didn't occur to you personally to contact Ms. Wiebe again
8 to talk to her further?

9 A No.

10 Q Even though you knew she was somewhat frustrated
11 and tried to make it clear that she was frustrated with
12 you, right?

13 A Well, if she wanted information, it was -- she
14 needed to contact me.

15 Q So she never did contact you?

16 A No.

17 Q And you never did contact her?

18 A No.

19 Q For you to have said to Ms. Wiebe, in your
20 opinion, I have no concerns, you're saying that that
21 comment by itself breaches Samantha Kematch's right to
22 confidentiality? I think, I think --

23 A Based on my training at the time, yes.

24 Q So anything along that line like, I have no
25 problem, we have no concerns, to you and your training,

1 that breaches her confidentiality, right?

2 A Yes.

3 Q And what private information have you given when
4 you say that?

5 A Just in generally how she's managing.

6 Q Okay. Let's look at the opposite. Suppose you
7 now say, I have concerns, does that breach her
8 confidentiality as well?

9 A I -- yes.

10 Q So it wouldn't matter what you had to say, you
11 couldn't say anything?

12 A That's correct.

13 Q If she had said, I have some concerns, are you
14 saying you would have given her Wesley's birth date?

15 A Again, if she tells me she has concerns, she also
16 has to let me know that there are child protection
17 concerns.

18 Q So she would have to say, we have child
19 protection concerns, and any other phrase pretty much
20 wouldn't do, right?

21 A I would need to know that the file was open
22 because of a child protection concern.

23 Q So she'd have to say, we have an open file, we
24 have child protection concerns, we would like Wesley
25 McKay's birth date?

1 A And if I had it at the time, I would have given
2 it to her.

3 Q So you would have given her the birth date if she
4 used phraseology similar to what I just said?

5 A That would be, yes.

6 Q And would that be without having to go further
7 and check with Samantha?

8 A Yes.

9 Q And did you ever discuss all of this with your
10 supervisor?

11 A Can you define "all of this"?

12 Q I mean the conversation that you had with Ms.
13 Wiebe, the fact that she had asked for your supervisor's
14 name. Did you then discuss that conversation and this
15 confidentiality issue with your supervisor?

16 A My notes indicate that I, I let Nettie know that
17 there was a concern raised, or I shouldn't say that, but
18 that there was a phone call from the worker from Child and
19 Family Services who may be contacting her.

20 Q And that's all your notes say about that?

21 A That's what I have documented, yes.

22 Q No, no further discussions?

23 A Not that I recall.

24 Q And do you know whether you discussed that with
25 anyone else, as well? I mean, the phone call and the

1 issue?

2 A No.

3 MR. GINDIN: No. Those are my questions. Thank
4 you.

5 THE COMMISSIONER: Thank you, Mr. Gindin.

6 UNIDENTIFIED PERSON: No questions.

7 THE COMMISSIONER: Mr. Ray.

8 MR. RAY: Morning, Mr. Commissioner.

9

10 CROSS-EXAMINATION BY MR. RAY:

11 Q Thank you, Ms. Wu. My name is Trevor Ray. I
12 represent a number of social workers, including Ms. Wiebe,
13 who you dealt with at the time of your involvement with Ms.
14 Kematch's file.

15 I just have a couple quick questions for you. Is
16 it fair to say, given the description of Ms. Wiebe's
17 interaction between the two of you as, as was put to you by
18 Mr. Olson, that the two of you, including yourself, were
19 experiencing a considerable amount of frustration with the
20 restrictions you felt you had in terms of your ability to
21 provide information, given your training?

22 A Yes.

23 Q That'd be a fair characterization of how you
24 perceived that discussion?

25 A Yes.

1 Q I just want to ask you. You, you stated that Ms.
2 Wiebe correctly recorded -- or, or appeared to have
3 accurately recorded your conversation when Mr. Olson put
4 what was said between the two of you, okay. Let me just
5 put it to you, if I understand the evidence, Ms. Wiebe
6 calls you and she's raising -- I don't want to say child
7 protection concerns because your view is she didn't raise
8 child protection concerns -- she's raising issues with you
9 and you are saying to her, I can't really give you any
10 information because I need to get consent from Ms. Kematch
11 before I can give you any of the information. That's,
12 that's what you were saying to Ms. Wiebe at that time,
13 correct?

14 A Correct.

15 Q And then you've admitted that Ms. Wiebe appeared
16 to be somewhat frustrated with you?

17 A Yes.

18 Q And Ms. Wiebe -- after your conversation with Ms.
19 Wiebe, you then went and got that consent from Ms. Kematch,
20 correct?

21 A Yes.

22 Q And at the time of your conversation with Ms.
23 Wiebe, you knew that she was asking you for information,
24 correct?

25 A Yes.

1 Q And you also were not giving it to her, and you
2 said you couldn't give her anything until you got consent
3 from Ms. Kematch, correct?

4 A Yes.

5 Q Ms. Wiebe testified, is it fair to say that the
6 expectation, then, a fair impression on behalf of Ms.
7 Wiebe, is that she expected you to call her back once you
8 got consent?

9 A That is not my understanding.

10 Q I'm asking you, you said you didn't want to give
11 her information, which you confirmed. You said you needed
12 consent, which you confirmed. Then you got consent, and
13 you indicated that you also knew that Ms. Wiebe wanted to
14 speak to you and wanted information from you but you didn't
15 want to do that until you, until you got consent, correct?

16 A Right.

17 Q Is it not fair to say that the expectation --
18 it's fair for Ms. Wiebe to expect you to be calling her
19 back now that you got consent and that -- because Ms. Wiebe
20 wouldn't know that you got consent unless you told her;
21 isn't that right?

22 A That's right.

23 Q So is it not fair for Ms. Wiebe to expect you to
24 call her back if you did, in fact, get consent?

25 A No, I don't believe so.

1 Q How --

2 A I don't, I don't know that it's my job to call
3 her.

4 Q Well, she was seeking information from you,
5 right?

6 A Yes.

7 Q And you said you weren't going to give it until
8 you got consent?

9 A Yes.

10 Q Okay. And then you did get consent?

11 A Correct.

12 Q Right. So isn't it fair, on behalf of Ms. Wiebe,
13 that once you got that consent, because she doesn't know
14 when -- if and when you get consent, isn't it fair for Ms.
15 Wiebe to expect you to call her back once you got consent?

16 A No. Not in --

17 Q You would --

18 A -- not in my understanding of the Personal Health
19 Information Act.

20 Q No, I -- to indicate to her that you now had
21 consent. You never called Ms. Wiebe back to indicate you
22 got -- you now had consent, did you?

23 A No, I did not.

24 Q And if you had called her back to indicate, I now
25 have consent, what would you like to discuss, then Ms.

1 Wiebe could have asked you the questions she wanted to ask
2 you, right?

3 A She could have.

4 Q But she doesn't know that until you call her back
5 and advise her she has -- you now have consent, right?

6 A Yes, but she could have called me.

7 Q Why would she keep calling you when you've
8 already told her you're not going to give her information?

9 A That's, that's not for me to say.

10 Q She'd have to keep calling you back, essentially,
11 every day asking you if you got consent.

12 A She --

13 Q Until you could confirm for her that you did have
14 consent?

15 A She could call me. And if I had had consent,
16 then I would have been able to discuss the case with her.

17 Q At the time you completed your involvement with
18 Ms. Kematch and the newborn baby, what was your impression
19 as to how Ms. Kematch and the baby were doing, just from a
20 general public health nurse perspective, in terms of -- I
21 assume that, I assume that there was no real concerns for
22 you in terms of their health or their ongoing, you know,
23 her, her ongoing care of the baby and that sort of thing?

24 A That would be a fair statement.

25 Q Okay. And the reason I ask is, so there was

1 nothing for you to do unless the client is indicating they
2 want further assistance from you as a public health nurse,
3 there's really nothing further to you -- for you to do
4 approximately at the time you had your last contact with
5 Ms. Kematch; is that correct?

6 A That's correct.

7 Q Okay. And Mr. Olson put to you a question.

8 A I'm sorry, could you just remind me who Mr. Olson
9 is?

10 Q Mr. Olson is the gentleman to the right --

11 A Oh, sorry.

12 Q -- who, who asked you questions. I'm sorry.

13 Mr. Olson put to you a question: Did Ms.
14 Kematch's willingness to meet with you change, and you
15 indicated, it appears so. Okay. But you're, you're really
16 speculating, right?

17 A I'm speculating because she didn't return my
18 phone calls.

19 Q And she -- it's possible she didn't return your
20 phone calls because, as you've just indicated, there was
21 really no need for you to have any further involvement with
22 her from a public health nurse perspective?

23 A Yes.

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

25 THE COMMISSIONER: Thank you, Mr. Ray.

1 Anybody else before counsel for the witness? It
2 would appear not, so Ms. Rachlis, any questions?

3 MS. RACHLIS: Thank you, Mr. Commissioner.

4

5 RE-EXAMINATION BY MS. RACHLIS:

6 Q Ms. Wu, my understanding is that you've been a
7 public health nurse for many years, correct?

8 A Correct.

9 Q And I believe you first started practising as a
10 public health nurse in 1988?

11 A That's correct.

12 Q And so at the time these events occurred, quickly
13 do the math, you'd been practising as a public health nurse
14 for 16 years? (Inaudible) that right?

15 A Approximately.

16 Q All right. My further understanding is that the
17 majority, if not all of your career as a public health
18 nurse has been spent practising public health nursing in
19 the inner city of Winnipeg, correct?

20 A That's correct.

21 Q Right. You were asked questions by at least two
22 of the lawyers as to this concept of Ms. Willox's reference
23 to past child protection concerns. You remember that,
24 those questions generally. In your career from 1988 until
25 2004 practising public health nursing in the inner city of

1 Winnipeg, do you know whether other clients other than Ms.
2 Kematch had had past child protection involvement or past
3 involvement with the child protection system?

4 A I do.

5 Q All right.

6 A I have had clients.

7 Q All right. And in situations where you -- it
8 comes to your attention that your clients have had past
9 involvement with the child protection system, apart from
10 this case, is that fact alone sufficient for you to notify
11 Child and Family Services that there is a current child
12 protection concern with respect to the family?

13 A Sorry, can you just ...

14 Q In situations other than this one, where it comes
15 to your attention that a client has had past involvement
16 with the Child and Family Services system, does that then
17 ripen up for you as being a reason why you should notify
18 Child and Family Services of information relating to your
19 nursing with the family?

20 A No.

21 Q And why is that?

22 A If I don't have any current child protection
23 concerns I would not have a need to contact Child and
24 Family Services.

25 Q Thank you. Now, I just want to go back.

1 MS. RACHLIS: And Mr. Commissioner, I'm, I'm
2 noting the time. It's 11:29 and I don't want to wreak
3 havoc with the inquiry's schedule again this morning. You
4 have a witness coming at -- I'm receiving a gesture from
5 Commission counsel to, to continue and I will do so.

6

7 BY MS. RACHLIS:

8 Q You were asked a question by Mr. Ray, who
9 represents the CFS social worker that you had the
10 conversation with. You're asked a series of questions by
11 him with respect to the sequence of events in your
12 discussions with, with Ms. Willox. You had the
13 conversation with her. You then secured consent from Ms.
14 Kematch to speak to Child and Family Services should they
15 speak again, and you were asked a series of questions as to
16 -- you were asked, essentially, why you didn't then call
17 Ms. Willox back, Ms. Wiebe as she was at the time, and
18 advise her that you had permission.

19 I'd like to take you back to your progress notes
20 which deal with that conversation. That's page 36813, Mr.
21 Commissioner, of Commission disclosure 1791. And I see
22 that that's on the, on the monitor as well. We can maybe
23 scroll down a little bit more, closer to the bottom of that
24 page. Thank you.

25 Back to the sequence of events with respect to

1 this, this conversation, first of all, I'm seeing, after
2 you note the information that's requested, I see that you
3 have a note there:

4

5 "Advised writer did not have
6 concerns ..."

7

8 By the way, Ms. Wu, I'm going to just back up a
9 bit. You kindly interpreted your notes or read your notes,
10 which are sometimes a little bit difficult to read. You
11 have referred to the, to the letters in -- which are
12 circled in the, in the left-hand margin before you get to
13 that note. Can you just explain what those letters are?

14 A Yes. That's our method of documentation. It,
15 it, it's an acronym for DARP, which is "D" for data, "A"
16 for action, "R" for response and "P" for plan.

17 Q All right. And did you generally -- is this a,
18 is this a way of charting that nurses follow?

19 A Yes.

20 Q All right. And with respect to the, the time in
21 the margin, or sorry, in the second column, Ms. Wu, can you
22 tell the Commissioner what the reference to the time means?

23 A The reference to the time is the time that the
24 interaction occurred. So it could be -- you know, when I
25 first pick up the phone and the time that I noted on the

1 clock or maybe at, you know, at the end of the interaction,
2 and then I go to chart and I, and I notice the time, then.
3 I'm -- it's usually -- it's the time of the interaction.

4 Q All right. And I notice, Ms. Wu, that the, the
5 time that you've noted regarding the interaction with Ms.
6 Wiebe is 1620 and then there's a little squiggle to the
7 right of 1620. What's that squiggle?

8 A That's "H" for hours.

9 Q Okay. Thank you.

10 A That's 24-hour system.

11 Q All right. And just, I'm going to come back to
12 this, this conversation, but below, in the next entry, it
13 would appear to be, have been recorded at 1622 hours. What
14 does this tell you about the length of that conversation
15 with Ms. Wiebe, if anything?

16 A It was a short conversation.

17 Q All right. And it would, it would seem, based on
18 the timing of your conversation with Ms. Strople, that,
19 that that conversation was, was by way of a phone call D/PC
20 and it immediately followed the conversation with Ms.
21 Wiebe, correct?

22 A Yes.

23 Q All right. And just while we're on charting
24 methods, you've referred to a couple of things that you
25 refer to as late entry, when you were testifying earlier.

1 Can you just briefly tell the Commissioner what a late
2 entry is or what a late entry is in your manner of
3 charting?

4 A At that time, my -- when I put a late entry, it
5 could be that after I finished charting and I put my
6 initial or signature to the, to the interaction, I recalled
7 something else that had occurred that I felt should be
8 documented. So then my, my practice at the time was to put
9 in late entry, and then included that information.

10 Q All right. Is, is it fair to say that based on
11 this, the, the, the hours of the 24-hour clock that we see
12 here, that you chart in real time?

13 A No, not always.

14 Q All right. Can you recall what you did in this
15 case?

16 A I recall having the conversation with Ms. Wiebe
17 on the phone and then after the conversation I likely
18 charted the conversation and then I, I phoned -- I may have
19 called Nettie or it could be that they were done, one right
20 after the other, and then I charted. I don't recall.

21 Q All right. Can you recall when you normally left
22 for the day during that period?

23 A I usually leave work some time between 4:30 and
24 5:00.

25 Q All right. And if there's no late entry marking

1 on your charting, what if anything does that tell of when
2 this was recorded relative to the end of the working day?

3 A That it was done that day.

4 Q All right.

5 A Pretty close to the time that it, that it was
6 documented.

7 Q Okay. Now, getting back to the actual discussion
8 with Ms. Wiebe under the -- you've, you've indicated that
9 you follow the DARP method, D-A-R-P. Under the "R", which
10 is response -- is that correct?

11 A That's right.

12 Q All right. Could you -- can you explain to the
13 Commissioner what you meant, what this tells you about what
14 you advised Ms. Wiebe when it says, advised writer did not
15 have concerns with family?

16 A That was my way of indicating that, that in my
17 conversation with her that I essentially told her that
18 there was no concerns.

19 Q All right. And in fact, you've indicated to this
20 inquiry, Ms. Wu, that based on your interactions with the
21 family, you did not have child protection concerns; is that
22 correct?

23 A That's correct.

24 Q All right. With respect to the, to the follow-
25 up, you were asked questions by Mr. Ray with respect to

1 the, what follow-up, if any, occurred. If you can then
2 actually just go down to the next entry, Shelley Wiebe to
3 notify her supervisor, et cetera. What did you consider to
4 be the upshot of that conversation with Ms. Wiebe?

5 A What do you mean by "upshot"?

6 Q What the further action would be, if anything?

7 THE COMMISSIONER: I think that's pretty clear.
8 I'll let you ask the question but she's been through that a
9 number of times, but I don't know why we need it again but
10 if -- I'll let you ask it.

11 MS. RACHLIS: Well, Mr. Commissioner, the MGU
12 counsel suggested to her that there was some, somehow
13 something missing in her lack of follow-up with Ms. Wiebe
14 and I wanted to give the witness an opportunity to address
15 that.

16 THE WITNESS: My documentation, the follow-up to
17 the conversation was that Ms. Wiebe was to contact her
18 supervisor who would then contact my supervisor regarding
19 any disclosure of information.

20

21 BY MS. RACHLIS:

22 Q Thank you. Ms. Wu, you were asked some
23 questions, hypothetical questions by Mr. Gindin with
24 respect to what events would have been if you had had child
25 protection concerns. You've indicated in your evidence

1 that you did not have child protection concerns. You were
2 then asked a series of questions, hypothetical questions,
3 by Mr. Gindin, as to what your actions would have been if
4 you did have child protection concerns. And specifically,
5 one of the hypothetical questions that was put to you is
6 what would you have said to the CFS worker if she had
7 indicated that she was concerned about possible substance
8 abuse. You recall being asked that question?

9 A Yes.

10 Q Did you have any concerns about possible
11 substance abuse at that time?

12 A No.

13 Q All right. You were also asked some questions by
14 Mr. Gindin with respect to page 36808, and you also
15 testified with respect to this screening form yesterday.
16 And in particular, Mr. Gindin asked you some questions,
17 asked you why some of these questions under, in section "C"
18 were blank. And, and you provided some information with
19 response to his questions.

20 Yesterday, you gave some testimony with respect
21 to the connection between this form and what I believe you
22 referred to as being the, the family -- will you help me
23 out, the family survey?

24 A The parent survey.

25 Q Or the parent survey?

1 A Yes.

2 Q Is there -- you indicated yesterday that this
3 screening form at 36808 is a, precedes the preparation of
4 the full survey. Can you explain further why, given the
5 relationship between those two documents, you might not
6 have asked every question in this 36808?

7 A The, the reason why the survey was done, like
8 before I completed this form, was in my training I'm aware
9 of some of the questions that are on the screen as well as
10 what's required in the survey, and so in my interactions
11 with my families, if I gather enough, sufficient
12 information that I believe would, would score them a three
13 yeses or more, I know during my interaction that if I can
14 gather more information for the survey then I could proceed
15 to do that.

16 Q All right. So is it fair to say that the
17 screening, the one-page screening form is a foot in the
18 door to get you to the full survey?

19 A It can be.

20 Q All right. In, in those circumstances, what, if
21 any, necessity was there, would there have been for you to
22 ask every question on the, on the, on the one-page survey
23 document?

24 A Do you mean if I just went in with the survey
25 before the summary?

1 Q Yes.

2 A If I went in with the idea of just doing a
3 screen, then I would try to get as much information as I
4 could. But a lot of the information that I would get from
5 the screen would provide the automatic information for the
6 survey.

7 Q Ms. Wu, you were asked some questions yesterday
8 in connection with the -- and today with respect to your,
9 the way things ended in your provision of service to, to
10 the family that we're speaking of. With respect to public
11 health nursing, can you explain to the commissioner whether
12 this service is a mandatory service or a voluntary service
13 and can you please expand on that in connection with the
14 work you do?

15 A Sure. Our services is not mandated and so it is
16 a voluntary service, meaning that if the family is
17 receptive to our service and would like support and our
18 involvement, then our -- we are happy to provide that
19 service at their request.

20 THE COMMISSIONER: Think that's what you told us
21 yesterday, isn't it?

22 THE WITNESS: I think so.

23 MS. RACHLIS: Those are my questions. Thank you,
24 Mr. Commissioner.

25 THE COMMISSIONER: Thank you, counsel.

1 MS. RACHLIS: Thank you, witness.

2 THE COMMISSIONER: Mr. Olson.

3 MR. OLSON: Just have a couple more questions.

4

5 RE-EXAMINATION BY MR. OLSON:

6 Q Just wanted to clarify one thing, hopefully. On
7 your progress notes, page 36813, near the bottom of the
8 page, the note from December 3rd, you have the "A" I think
9 you said stood for action, have that right? Circle with
10 "A"?

11 A Yes. Yes.

12 Q And it says, advised writer did not have concerns
13 with family. I can't recall what the rest says.

14 THE COMMISSIONER: Just where are you at? In the
15 middle of the page?

16 MR. OLSON: It's towards the bottom. It's in the
17 last one-third of the page where it says -- you see the
18 note for December 3rd, Mr. Commissioner?

19 THE COMMISSIONER: Yes.

20 MR. OLSON: The first -- there's a circle with a
21 "D" around it.

22 THE COMMISSIONER: The "E"?

23 MR. OLSON: There's a circle with a "D". If you
24 go down --

25 THE COMMISSIONER: Yes.

1 MR. OLSON: -- there's another circle with a "D".

2 THE COMMISSIONER: Advised.

3 MR. OLSON: That note right there.

4 THE COMMISSIONER: All right. What about it?

5

6 BY MR. OLSON:

7 Q Who is doing the advising here? Is that you
8 advising Ms. Wiebe or Ms. Wiebe advising you?

9 A That would be me.

10 Q So you're advising Ms. Wiebe that you did not
11 have concerns?

12 A That was the essence of the conversation, yes.

13 Q Okay. I think -- just want to be clear, because
14 I think you said earlier you couldn't even share that with
15 her at that point, whether or not you had concerns.

16 A That's right. So in my roundabout way --

17 Q Okay.

18 A -- I, I, I had said to her if I had concerns I
19 would have reported to Child and Family Services but I did
20 not call Child and Family Services.

21 Q Sort of a read between the lines, suggesting to
22 her -- or implying to her that there are no concerns
23 because I'm not telling you anything, is that ...

24 A That would be fair.

25 Q Okay. I just wanted to make it clear that I

1 think there's, there are two different concepts we've been
2 dealing with. One is when you have a duty to report as a
3 public health nurse, right?

4 A Yes.

5 Q And you have that duty when you actually have
6 concern, when you go out, you see something that's
7 concerning to you with respect to child protection?

8 A Yes.

9 Q The other concept is when you have a duty to
10 share information, right?

11 A Yes.

12 Q And you have that duty when Child and Family
13 Services identifies to you that they're either
14 investigating a child protection concern or they have child
15 protection concerns?

16 A Yes.

17 Q Okay. So those are two different distinct
18 things. I think you said earlier, for you there's no
19 difference between a child protection concern versus a
20 child protection investigation. In either case, you could
21 share information with CFS?

22 A Yes.

23 Q Okay. Based on the questions that Ms. Wiebe was
24 asking you when she called in on December 3rd, questions
25 about having concerns in the past and wanting to know if

1 you could share anything with her. Were you left with the
2 impression -- I know she didn't use, necessarily use the
3 words, but were you operating on the understanding she was
4 investigating a child protection issue based on those
5 questions?

6 A No.

7 Q Okay. So when, when she said they had concerns
8 in the past and wanted to know if you had any concerns,
9 whether you'd seen the baby, to you that did not suggest
10 that she was doing an investigation with respect to a child
11 protection concern?

12 A That's right.

13 Q Okay. When you asked her, you wrote in your
14 note, which is on page 36947, so this is your note from
15 December -- or, sorry, I've got the wrong -- that's Shelly
16 Wiebe's note. But Shelly Wiebe is recording in her note,
17 she writes:

18

19 "Mary questioned why worker was
20 contacting public health, and
21 asked if Samantha was aware that
22 WCFS was contacting her for
23 information."

24

25 So suggest to you that's a question you put to

1 Ms. Wiebe, you know, why, why, why is it that you're
2 contacting me.

3 A Yes.

4 Q And I think you said that was an accurate
5 reflection of the conversation?

6 A Reasonably accurate, yes.

7 Q And then the response you got was that, we had
8 extensive involvement with Samantha in the past,
9 essentially?

10 A Yes.

11 Q And so what you're saying is if she would have
12 said to you, we're investigating, we're having -- we're
13 doing an investigation with respect to child protection
14 concerns based on the history, or something to that effect,
15 that would have opened the door for you to share the
16 information you had?

17 A Sorry, re -- can you -- you're saying that she's
18 -- sorry, can you just rephrase that question?

19 Q When you asked the question why CFS was
20 contacting you --

21 A Yes.

22 Q -- if you'd received the answer that they were
23 doing an investigation, then you would have been free to
24 share whatever you needed to share with -- whatever she
25 wanted to know that you knew?

1 THE COMMISSIONER: An investigation with respect
2 to what?

3 MR. OLSON: A child protection issue.

4 THE WITNESS: Yes.

5

6 BY MR. OLSON:

7 Q Wouldn't -- she wouldn't have to be specific
8 about it either; she would just have to indicate it's a
9 child protection issue?

10 A Yes.

11 MR. OLSON: Okay. Those are my only questions.
12 Thank you very much.

13 THE COMMISSIONER: All right, Witness. Thank
14 you. You've completed your time on the stand. You may
15 leave now. Thank you.

16 THE WITNESS: Thank you.

17

18 (WITNESS EXCUSED)

19

20 MR. OLSON: The next witness will be testifying
21 by video so we'll need a few minutes to set it up, so it
22 might be a good time to take a short break and ...

23 THE COMMISSIONER: Yes. What do you want, 10
24 minutes?

25 MR. OLSON: Ten minutes.

1 THE COMMISSIONER: All right. We'll adjourn for
2 10 minutes.

3

4 (BRIEF RECESS)

5

6 MS. WALSH: Thank you, Mr. Commissioner, our next
7 witness is a source of referral so we will ask everyone to
8 leave when the -- while the witness is being sworn in.

9 THE COMMISSIONER: All right. That's our usual
10 practice. It's not going to take very long. We'll get
11 that done. And Commission counsel remain as well as
12 counsel for the, for the witness.

13 MS. WALSH: Correct.

14 THE COMMISSIONER: Mr. Gange.

15 MR. GANGE: Thank you, Mr. Commissioner, and also
16 with me is lawyer from my office who's been assisting me,
17 Kalyn Bomback.

18 THE COMMISSIONER: Pardon? What was that?

19 MR. GANGE: Kalyn Bomback is with me.

20 THE COMMISSIONER: Oh, this is her name, is it?

21 MR. GANGE: My associate lawyer, yes.

22 THE COMMISSIONER: Oh, oh.

23 MR. GANGE: Yes.

24 THE COMMISSIONER: Pleased to have you here.

25 THE CLERK: Spelling, Mr. Gange?

1 THE COMMISSIONER: It's on the record now.

2 MR. GANGE: B-O-M-B-A-C-K.

3 THE CLERK: And her first name?

4 MR. GANGE: Kalyn, K-A-L-Y-N.

5 THE COMMISSIONER: All right. Ms. Walsh.

6 MS. WALSH: Witness, can you hear me?

7 THE WITNESS: Yes.

8 MS. WALSH: Okay. We're going to -- we've
9 cleared the room. No one -- can you see me?

10 THE WITNESS: Yes.

11 MS. WALSH: Okay. So I cannot see you, and I'll,
12 and the only person who can see you is the Commissioner,
13 who has a small screen on his desk. We're now going to
14 swear you in and then we'll call everyone else back in the
15 room. The only other people in the room right now are your
16 lawyers and the Commission counsel. So we are the only
17 people who will actually, along with the Commissioner, who
18 will hear your actual name while you are sworn in. So, I'm
19 going to let the clerk do that. And we're going to go off
20 the record while your name is being given so that the
21 transcript does not have your name either, okay.

22

23 (PROCEEDINGS OFF THE RECORD)

24

25 THE COMMISSIONER: All right. The door is closed

1 and we can proceed.

2 MS. WALSH: I want to put on the record, Mr.
3 Commissioner, that the witness was duly affirmed. I also
4 want to remind members of the public and the media that our
5 protocol for sources of referral applies to the testimony
6 of this witness and that in discussing or reporting on this
7 testimony they should be careful not to identify the
8 witness in any way.

9 I might also point out that it is possible that
10 this witness will talk about other witnesses who will be
11 testifying later in the inquiry who are also known as
12 sources of referral, and it may be that inadvertently their
13 identity is disclosed, and I would caution the media, if
14 they're tweeting, to be careful not to identify individuals
15 in the event that I indicate that an individual is not to
16 be identified.

17 THE COMMISSIONER: You'll have to indicate that
18 when that arises, if it does.

19 MS. WALSH: Yes.

20 THE COMMISSIONER: Because it's unknown to me who
21 they would be.

22 MS. WALSH: I understand. And I know that the
23 witness is going to do her best not to identify other
24 individuals but it's not a guarantee.

25 THE COMMISSIONER: All right. And in -- what is

1 said here can be reported but the identity of the witness
2 is not to be revealed in the public forum.

3 MS. WALSH: Thank you.

4

5 **SOR #5**, affirmed off the record,
6 testified as follows

7

8 DIRECT EXAMINATION BY MS. WALSH:

9 Q So, Witness, you are referred to and known in
10 these proceedings as SOR or source of referral number 5,
11 okay?

12 A Okay.

13 Q Now, can you see me?

14 A Yes.

15 Q I cannot see you but I can hear you. No one in
16 the room can see you but we can all hear you, with the
17 exception, as I said, of the Commissioner who can see you.

18 You can hear me all right?

19 A Yes.

20 Q Okay. I thank you for your patience this
21 morning. I know that we changed your time of testimony
22 several times, so I thank you for your patience.

23 You are 28 years old; is that right?

24 A Yes.

25 Q Were you born in 1984?

1 A Yes.

2 Q You have a birthday coming up?

3 A Yes.

4 Q I understand that you have lived in Winnipeg for
5 most of your life?

6 A Yes.

7 Q You've also had some experience being a child in
8 care of Child and Family Services; is that right?

9 A Yes.

10 Q Can you just tell us a little bit about how it
11 was that you came into care?

12 A My mother was a solvent abuser and I had put me
13 and my younger brother in care.

14 Q I'm sorry, can you, can you just say that again?
15 I had trouble hearing that.

16 A I put myself and my brother in foster care
17 (inaudible) with her addiction.

18 Q And how old were you when you did that?

19 A The first time I was like nine or ten.

20 Q Did you put yourself into foster care more than
21 once?

22 A Yes.

23 Q How old were you when you did it the next time?

24 A I was about 11 or 12, and I did it again when I
25 was 14.

1 Q And each time, did you live with the same family?

2 A No.

3 Q Different families each time?

4 A I stayed with a foster family, a girls group
5 home, another family in a town out of town and then in a
6 girls home for pregnant teens and then a group home for
7 pregnant teens, then a foster home for pregnant teens. And
8 then I was in independent living like, yeah.

9 Q Okay. Did you go to school while you were in
10 care?

11 A Yes.

12 Q Did you have to change schools from time to time?

13 A Just when I was out of town.

14 Q Did you graduate from high school?

15 A No.

16 Q How far did you get in high school?

17 A Last grade I was in was grade 12.

18 Q Have you taken any other kind of schooling or
19 courses? When was the last time you went to school?

20 A The last time I went to school was like 2007, I
21 went to R.B. Russell.

22 Q What did you study?

23 A I did my grade 12 in cosmetology.

24 Q Cosmetology? But you didn't finish?

25 A Yes.

1 Q Okay. Now, you knew Samantha Kematch?

2 A Yes.

3 Q Where did you meet her?

4 A I met her at the Oshki-Ikwe home in
5 Waywayseecappo.

6 Q I'm just going to spell Oshki-Ikwe, as I
7 understand it. O-S-H-K-I hyphen I-K-W-E. That's just for
8 the record.

9 A Yes.

10 Q Thank you. So Oshki-Ikwe was what exactly?

11 A It's kind of like Villa Rosa. It's for pregnant
12 teenage moms. You went there and they gave you your
13 apartment and (inaudible) they helped you with your baby.

14 Q When were you there?

15 A The day I got there was October 26 of '97 -- or
16 '98.

17 Q Okay. And how long did you stay there?

18 A Until October 20th, '99.

19 Q So how old were you when you were there?

20 A I was 14. I had my fifteenth birthday there.

21 Q And you had a baby while you were there?

22 A Yeah, I had ...

23 Q Was Ms. Kematch there with a baby, too?

24 A Yeah.

25 Q And you became friends with her?

1 A Yes. Samantha and SOR number 6 were the first to
2 talk to me when I got there.

3 Q Okay. So you, you and the person that we will
4 know in this Commission as SOR 6, you said became friends
5 with you when you got there?

6 A Yeah. They're the first girls to talk to me.

7 Q They were the first girls to talk to you when you
8 got to Oshki-Ikwe?

9 A Yeah.

10 Q Were they a little older than you?

11 A Yeah, but not by much. Couple of years.

12 Q Do you ever remember Samantha talking to you
13 about her own childhood or her mother?

14 A Just that she didn't like them, like her mom.

15 Q I'm sorry, I didn't, I didn't catch that.

16 A Just that she didn't like her mom, she didn't
17 like ...

18 Q Did she say why?

19 A Not that I can remember. She didn't have a very
20 good upbringing.

21 Q Was Samantha there the whole time that you were
22 at Oshki-Ikwe?

23 A From what I can remember, yes.

24 Q And SOR 6 as well?

25 A Yes.

1 Q SOR 6 had a baby there, too?

2 A Yes.

3 Q Okay. I want to talk about the time after you
4 left Oshki-Ikwe. You said you left in 1999; is that right?

5 A Yes.

6 Q Did you stay in touch with Samantha in 1999 after
7 you left?

8 A Somewhat, yes.

9 Q Somewhat?

10 A Yeah. We bumped into each other a lot --

11 Q Okay.

12 A -- in the community.

13 Q Okay. Was that in Winnipeg?

14 A Yes.

15 Q Did you know that Samantha gave birth to a
16 daughter named Phoenix?

17 A Yes.

18 Q Did you meet Phoenix when she was a baby?

19 A Not that I can remember.

20 Q Okay. Did you know that Samantha gave birth to
21 another daughter a year later, in 2001?

22 A Would that be Echo?

23 Q Yes.

24 A Yes.

25 Q Did you ever meet Echo?

1 A No.

2 Q Now, do you recall, did you stay in touch
3 continuously with Samantha after Phoenix and Echo were
4 born? That would be 2000/2001.

5 A Can you say that again?

6 Q How much contact did you have with -- I'm just
7 asking it a different way -- how much contact did you have
8 with Samantha after Phoenix and Echo were born in
9 2000/2001?

10 A Not a lot.

11 Q What about 2002, 2003?

12 A Again, not that much. I had my own children
13 (inaudible) in my own, I couldn't be going to visit friends
14 and everything.

15 Q You said you couldn't be going to visit friends?

16 A Yeah.

17 Q Okay. I understand that at some point you
18 reconnected more with Samantha? Do you remember that?

19 A Yes, at the Healthy Baby program.

20 Q Right. Do you remember when that was?

21 A It would have been before, like 2004.

22 Q Was --

23 A Beginning of 2004.

24 Q Beginning of 2004? Like, March or ...

25 A Around, yeah.

1 Q Okay. What's the Healthy Baby program?

2 A It's a (inaudible) community program. It's bi-
3 weekly. You go and talk about pre-natal and post-natal and
4 they give you coupons for milk and juice and you have like
5 a healthy lunch, and you have like resources and other
6 things that you can get referred to.

7 Q Did you like the program?

8 A Yes.

9 Q So you reconnected with Samantha. You were both
10 attending this program?

11 A Yes.

12 Q Was Samantha pregnant at the time, do you
13 remember?

14 A Pretty sure she was, yes.

15 Q So we're, we're around March of '04. How much --
16 how often did you see Samantha around this time?

17 A Quite a bit. She went to the program.

18 Q Did you ever see --

19 A (Inaudible).

20 Q -- Phoenix with her at this point?

21 A No.

22 Q Did you ask Samantha where Phoenix was?

23 A Yes, and she said that she was either with
24 family, I can't recall who, or else on the road with her
25 boyfriend.

1 Q Did she tell you her boyfriend's name?

2 A Wes.

3 Q Did you know him?

4 A Not personally.

5 Q Did you know that he was the father of, of the
6 baby she was expecting?

7 A Yes.

8 Q Do you know when the two of them started dating?

9 A No.

10 Q So now I'm moving in to the summer of 2004. Did
11 you stay in contact with Samantha?

12 A Yes.

13 Q Did she ever come to your house?

14 A Yes.

15 Q Do you remember when? I'm talk --

16 A I recall a day that she came but I don't remember
17 exact dates.

18 Q An approximate month?

19 A No.

20 Q Was it in the summer, though, of '04?

21 A Yes. The weather was nice.

22 Q The weather was nice. Okay.

23 Was Phoenix with Samantha when she came to your
24 house that time?

25 A Yes.

1 Q Can you describe for us what Phoenix looked like?

2 A You know, like a little girl. She was wearing a
3 white outfit, and, yeah, she had a hat on, pretty sure.

4 Q Do you remember whether you saw her hair?

5 A No, I can't.

6 Q Do you, do you remember how she behaved?

7 A She was quiet and polite and ...

8 Q Can you tell us how Ms. Kematch, how Samantha
9 behaved with Phoenix on that visit?

10 A I don't know. She seemed like kind of irritable.
11 Phoenix got dirty and then Samantha decided that it was
12 time for them to go because she got dirty and, yeah.

13 Q Because Phoenix got dirty?

14 A Yeah. She was playing outside in the yard. In
15 the yard I have a patch so there's no grass, it's like
16 dirt. I guess that's where she got dirty from.

17 Q And so then Samantha said it was time for her to
18 go?

19 A Yeah, because Phoenix wasn't listening, she'd
20 gotten dirty and ...

21 Q Did you meet Wes on that occasion?

22 A I know he came to pick them up on that occasion
23 but that's not the day that I met him.

24 Q When did you meet him?

25 A I can't remember exactly when but it was a time

1 he came to pick up Sam. Sam was by herself.

2 Q Sam was by herself without Phoenix?

3 A Yes.

4 Q Okay. So now I'm, I'm talking about the summer
5 of 2004 and into 2005. Were there times that you saw
6 Samantha without Phoenix being present?

7 A I always seen Samantha without Phoenix except for
8 two occasions.

9 Q Except for what, sorry?

10 A Except for two occasions.

11 Q Two occasions. Okay. So we've already talked
12 about one of those occasions when you saw Phoenix, right?

13 A Yes.

14 Q And we'll talk about the other one in a minute.
15 So you said you always saw Samantha without Phoenix except
16 for two occasions; is that right?

17 A Yes.

18 Q And did you ask Samantha where Phoenix was? Now
19 I'm into the summer of '04 and going into '05. Did you ask
20 Samantha where Phoenix was?

21 A Every time I asked Samantha where Phoenix was,
22 she was either with family or with Wes.

23 Q What did you think about that answer?

24 A I was personally a little concerned about Phoenix
25 being with her boyfriend so much considering that wasn't

1 his child, but ...

2 Q Okay. Did you ever -- we'll come back to that.

3 Did you ever see Samantha physically abuse Phoenix?

4 A No, other than like kind of pulling her to leave
5 the first day. That was it.

6 Q The day she got dirty?

7 A Yeah.

8 Q Did you ever observe Samantha verbally abusing
9 Phoenix?

10 A On the second occasion, like I guess, yeah kind
11 of. She called her -- like she got mad at her for being
12 dirty and, yeah.

13 Q What did she call her? You can say the words.

14 A Well, she got mad at Phoenix and she said, oh --
15 I don't know if it was like more at her or just directly to
16 her but she's like, I don't know, she got mad at her for
17 her getting dirty and she's like ...

18 Q So the second time that you saw Phoenix with
19 Samantha, tell us about that occasion?

20 A It had to have been more like towards the fall, I
21 guess. It was cooler out.

22 Q The fall of two thousand -- sorry, I'm just going
23 to interrupt you. The fall of 2004?

24 A Yes.

25 Q Okay. Sorry, go on.

1 A It was cooler out. I remember walking to the bus
2 stop on Dufferin and McGregor and I can't remember who was
3 with us, but we were walking and Sam was getting Phoenix to
4 say things like, to mimic her when she'd be like say, I'm a
5 fucking bitch, and then Phoenix would say it.

6 Q What did you think about that?

7 A I don't know. I didn't like it personally.

8 Q You didn't like it? Is that what you said?
9 Sorry.

10 A Yes.

11 Q Did you ever see Samantha hold Phoenix's hand
12 when they were walking?

13 A Not that I can remember.

14 Q So now you've told us the only two times that you
15 saw Phoenix, right?

16 A Yes.

17 Q And now we're into the fall of 2004. Did you
18 continue to have contact with Samantha?

19 A Yes.

20 Q Did you visit with her in person?

21 A I went to her house once, yes, or apartment.

22 Q Her apartment? Okay. Before we talk about that,
23 did you ever talk with Samantha about her relationship with
24 Wes McKay?

25 A A couple of times she mentioned that she didn't

1 want to stay with him, and she was like ... Another time
2 she came to my house and said that she had gone out and Wes
3 had left her money to go and buy groceries and she never
4 bought them, and she was scared to go home because she
5 didn't get the groceries. So, yeah, I gave her some
6 groceries to take home so nothing would happen.

7 Q Did you know what she did with the money that he
8 gave her?

9 A Said that she used it to smoke crack.

10 Q Did you know her to be doing drugs?

11 A Like, yeah, but I don't know her consistency,
12 what -- or how hard she was into it.

13 Q How about when? Do you know when she was doing
14 drugs?

15 A As far as I know, she never stopped.

16 Q Okay. Going back to Samantha's relationship with
17 Wes, did she ever give you any details of their
18 relationship?

19 A Not that I can remember.

20 Q Did she ever tell you about their sex life?

21 A No. Just that there wasn't really much, like I
22 don't -- not as much as there was in the beginning, from
23 what I understand, or what I was told.

24 Q Did she talk to you about Phoenix at all?

25 A Yeah, she used to talk about Phoenix all the

1 time.

2 Q Okay. So what did she say about Phoenix?

3 A She talked about how Phoenix was bad all the time
4 and she wasn't listening, (inaudible) about how she's, she
5 would touch herself and she didn't smell right, she'd pee
6 the bed.

7 Q She would touch herself and she would pee in bed?

8 A Yeah.

9 Q When did Samantha tell you these things about
10 Phoenix?

11 A Would have been like, I guess the spring and fall
12 of 2004 -- or summer and fall.

13 Q Of 2004?

14 A Yes.

15 Q What, if anything, did you think about that
16 information?

17 A I was concerned, personally. I was concerned for
18 Sam as my friend, and for Phoenix as same.

19 Q What were you concerned about?

20 A I thought maybe Wes was abusing Sam and Phoenix.

21 Q Why did you think that?

22 A Because Samantha was scared of him, or she seemed
23 scared of him. And the fact that Phoenix was touching
24 herself and going to the bathroom, it just didn't seem
25 right.

1 Q Now, did you discuss your concerns with any of
2 your friends?

3 A Yeah. SOR 6 and I had talked about it without
4 Sam around.

5 Q Did you ever express your concern to Samantha?

6 A I told her that she should leave him, that she
7 could stay with me. And I even told her that I would take
8 Phoenix for a little while in case maybe she was just
9 stressed out or, you know, something.

10 Q What was Samantha's response, do you remember?

11 A In regards to what?

12 Q When you, when you told her you were concerned
13 about her or about Phoenix?

14 A Well, she said that Phoenix was too bad and that
15 I wouldn't be able to handle her. In regards to herself,
16 she said she was going to leave Wes.

17 Q Was that still in 2004?

18 A Yeah. That was like, more like fall/winter.

19 Q Okay. So let's talk about Christmastime 2004. I
20 understand that you had some contact with Samantha around
21 Christmas in 2004?

22 A Yes.

23 Q What can you -- tell us about that contact, about
24 that occasion?

25 A She came over one time with Christmas presents,

1 I'm not sure --

2 Q Now, when you say "she" --

3 A -- from who.

4 Q Sorry, sorry, I'm sorry I'm interrupting you.
5 When you say "she" you mean Samantha?

6 A Yes.

7 Q Okay. Sorry. So, carry on. Samantha came over
8 with Christmas presents?

9 A I can't remember who she said they were from but
10 she said that they were for Phoenix. And we were sitting
11 in the kitchen having tea, and then she was curious as to
12 what she got for Christmas so she opened them. And she had
13 gotten a Barbie, like a fashion thing with the pieces of
14 cloth and you like make dresses and stuff on the Barbie,
15 like pants and things. And then can't remember what else
16 she got.

17 Q So Samantha opened up --

18 A And then, when she was leaving --

19 Q Sorry.

20 A When she was leaving, when she was leaving she,
21 she had left the toys. She said that my kids could have
22 them. And I told her I didn't want them, and she said,
23 yeah.

24 Q So she -- did she take the toys back for Phoenix?

25 A No.

1 Q Did she say why?

2 A She said Phoenix was too bad and that she didn't
3 deserve them.

4 Q Did Samantha ever stay overnight at your
5 apartment?

6 A Yes.

7 Q Do you remember when that was?

8 A Not exactly but it was, it was around, it was
9 like between my -- December, January and February, because
10 it was around Christmas and my birthday.

11 Q So between end 2004, beginning of 2005?

12 A Yes.

13 Q Was Phoenix with her?

14 A No.

15 Q Do you remember anything else about that
16 overnight visit?

17 A She spent the night there with my friend and she
18 was supposed to have left Wes like the next day. She asked
19 if she could come and stay with me, I said yes. Then she
20 ended up going home the next morning, and, yeah.

21 Q Did you stay in touch with Samantha after that?

22 A Yeah, somewhat .

23 Q I want to talk to you about an occasion when you
24 and SOR 6 were at Samantha's apartment on McGee Street.

25 A Okay.

1 Q Let me ask you something first. Were you ever at
2 Samantha's apartment or house when she lived with Steve
3 Sinclair?

4 A Yes, I went to her house on Magnus and Arlington.
5 It was a beige side-by-side (inaudible).

6 Q And you were also at her apartment on McGee
7 Street?

8 A Yes.

9 Q What kind of a housekeeper was Samantha?

10 A She was a good housekeeper.

11 Q Was her house clean?

12 A Yes.

13 Q Is that something you thought she liked to do?

14 A From what I can remember, she was a pretty tidy
15 person, yes.

16 Q What about her children, did she keep them tidy?

17 A Yes.

18 Q You said you only saw Phoenix twice. Did you
19 ever see the baby that Samantha had with Wes?

20 A Yes.

21 Q How often did you see that baby? We know that
22 baby was born at the end of November 2004.

23 A She had her baby quite a few times when she came.

24 Q So you saw the baby more often than you saw
25 Phoenix?

1 A Yes.

2 Q Now, I want to ask you about an occasion when you
3 and SOR 6 visited Samantha on McGee Street. Understand
4 that was in the winter of '04 or the winter of '05?

5 A Yes.

6 Q What can you tell us about that visit?

7 A We went there to go drink tea. I remember we --
8 there, there wasn't much to do there so we got ready to go
9 to Portage Place and then, yeah.

10 Q Who was there?

11 A Me, Samantha, SOR number 6 and her baby,
12 Samantha's baby.

13 Q Did you see Phoenix?

14 A No.

15 Q So you said you and SOR 6 were at Samantha's
16 apartment, and then you decided to go to Portage Place?

17 A Yes.

18 Q Do you remember anything about what happened
19 before you went to Portage Place?

20 A We had tea. Me and number six went to the
21 bathroom and did our makeup. Samantha washed the cups out
22 and put them on the drain. Then she went into the bedroom.
23 We came out of the bathroom, Samantha came out of the
24 bedroom. I remember her locking the door and we got, we
25 all moved the stroller out of the apartment and we went up

1 to the bus stop on Salter and -- or Balmoral and Isabel.

2 Q Okay. So you said Samantha rinsed out the
3 teacups, you and SOR 6 went into the bathroom; is that
4 right?

5 A Yes.

6 Q Samantha went into the bedroom?

7 A Yes.

8 Q And then you said when Samantha came out of the
9 bedroom she locked the door?

10 A Yes.

11 Q Can you describe for us what you saw when you saw
12 her lock the door?

13 A I just remember her reaching up to lock the door.
14 I don't recall what kind of lock it was.

15 Q Said you recall her reaching up to lock the door?

16 A Yes.

17 Q So this was a lock that was not on the door knob
18 itself?

19 A No.

20 Q And then you went to Portage Place?

21 A Yes.

22 Q So you -- I want to know who went to Portage
23 Place. You and who else?

24 A Samantha, her baby and SOR 6.

25 Q And then what happened?

1 A I don't know. We weren't there very long and
2 then Sam said that she had something to do; she left.

3 Q Sam left Portage Place before you and SOR 6 did?

4 A She left right after we got there. Like we
5 weren't there very long and then she just said that she had
6 something to do and then she went home, said she was going
7 home.

8 Q What, if anything, did you think about that?

9 A At the time it didn't make me think anything.

10 Q Okay. And you told us that you had some concerns
11 about Phoenix?

12 A Yes.

13 Q Just remind us what they were?

14 A My concerns were that Phoenix was acting out and
15 touching herself inappropriately, yeah.

16 Q I think you said she was peeing in the bed, too?

17 A Yes.

18 Q And did you ever do anything about those
19 concerns?

20 A I told my social worker about it and I called CFS
21 after-hours.

22 Q Okay. So let's talk -- do you remember which one
23 you did first?

24 A I told my social worker and my social worker
25 advised me to call after-hours.

1 Q You told your social worker and your social
2 worker advised you to call after-hours?

3 A Yes.

4 Q What was your social worker's name?

5 A Della Fines.

6 Q Della Fines?

7 A Yeah.

8 Q What was your relationship with Ms. Fines like?

9 A I'd say it was good.

10 Q Now, when, when did you tell Ms. Fines about your
11 concerns?

12 A I'm pretty sure it was like the winter of '04/05?

13 Q Was it after Christmas?

14 A I can't remember.

15 Q Around that time, how often would you see Ms.
16 Fines?

17 A I don't know, she would pop in every once in a
18 while. Like I said, she was my social worker.

19 Q Do you remember what you told her?

20 A I remember telling her that I had concerns about
21 Phoenix. And she told me to call intake.

22 Q Do you remember whether you were more specific in
23 talking to Ms. Fines about your concerns or did you just
24 say you had concerns about Phoenix?

25 A I'm pretty sure I told her that I was concerned

1 about Phoenix being around Wes so much, more concerned that
2 Wes not being her dad.

3 Q And Ms. Fines told you to call CFS intake?

4 A Yeah.

5 Q We're going to come back to your discussion with
6 Ms. Fines in a minute. Did you call intake?

7 A Yes.

8 Q Do you remember what number you called?

9 A 944-4050.

10 Q And how did you know what number to call?

11 A Because that's the number I called when I put
12 myself in care.

13 Q Do you remember what time of year you made the
14 call?

15 A In the winter. I remember it being like .. don't
16 remember when, though. Pretty sure it was winter.

17 Q Do you remember what time of day you made the
18 call?

19 A It was in the evening.

20 Q Do you remember what phone you used?

21 A No. I'm pretty sure I used a cell phone, though.

22 Q Do you remember who the cell phone was registered
23 to?

24 A It would have been my ex-husband.

25 Q Are you certain that you used a cell phone?

1 A I'm pretty sure I used a cell phone. I don't --
2 I never really had a house phone because I had a cell
3 phone.

4 Q Was anyone with you when you made this call?

5 A I can't remember.

6 Q Can't remember whether you were alone or whether
7 you had anyone with you when you made the call?

8 A I'm, I'm pretty sure SOR 6 was with me when I
9 made the call.

10 Q Now, do you remember what information you gave
11 intake when you made the call?

12 A I told intake I was concerned about Phoenix and
13 that I was, I thought that somebody should go and, like,
14 check on them. And the intake worker asked me what my name
15 was, and I told her I didn't want to tell her, I would like
16 to remain anonymous. And she said that unless I gave her
17 my name she couldn't take my complaint seriously.

18 Q Do you remember you said, when I asked you what
19 you told the person -- was this, was this a call made to
20 the after-hours line?

21 A Yes.

22 Q You said you mentioned Phoenix's name. Did you
23 mention Samantha's name?

24 A Yes.

25 Q Did you mention -- do you recall whether you

1 mentioned both her first and last names?

2 A Yes.

3 Q What about Wes, did you mention his name?

4 A I'm pretty sure I did, yes.

5 Q Did you tell CFS where they lived?

6 A I explained the building. I can't remember if I
7 had the exact address.

8 Q How did you describe the building?

9 A The first apartment building off of the parking
10 lot on McGee going off of Notre Dame going towards
11 Wellington, and it's the first apartment on the main, on
12 the basement floor, in the same direction.

13 Q And what were the concerns that you conveyed?

14 A I was concerned that somebody needed to go and
15 check on, on Phoenix to make sure everything was okay.

16 Q Did you say why you were concerned about Phoenix?

17 A Yeah. Yeah, I explained to the woman on the
18 phone that Samantha was one of my closest friends, that's
19 why I couldn't give her my name.

20 Q Did you explain why you wondered whether Phoenix
21 was okay?

22 A Yes.

23 Q What did she say?

24 A (Inaudible) I said I was concerned because she
25 was always on the road with Wes and him not being her

1 father and her, having concerns of being touched and ...

2 Q Sorry, what was that last comment?

3 A I'm concerned about her being touched.

4 Q Touched. Okay.

5 A Like, my personal concerns was Phoenix was being
6 bothered by Wes.

7 Q What do you mean "bothered"? You mean in a
8 sexual way?

9 A Yes.

10 Q So you said the person who answered the phone
11 asked for your name?

12 A Yes.

13 Q And why didn't you give it to them?

14 A Because Sam was a close friend and I didn't want
15 her to know that I was the one who called CFS.

16 Q Did you explain that to CFS?

17 A Yes.

18 Q What did they say to you in response?

19 A They said they couldn't take it seriously unless
20 I wanted to give them -- unless I gave them my name.

21 Q Were you nervous about making this call?

22 A Yes.

23 Q You said SOR 6 was with you. Was she nervous as
24 well?

25 A Yes.

1 Q But you still made the call?

2 A Yes.

3 Q Can you tell us why you decided to call when you
4 did, CFS?

5 A Because I was worried about Phoenix and I thought
6 maybe Wes was doing something to Sam and Sam didn't want to
7 stand up.

8 Q Now, did both you and SOR 6 have concerns, do you
9 know?

10 A Yes.

11 Q Do you know if SOR 6 ever did anything else about
12 her concerns?

13 A I know she told SOR 7.

14 Q SOR 7? And we can say that's her foster mother;
15 is that who you understood SOR 7 in our proceedings --

16 A Yes.

17 Q -- to be?

18 A Yes.

19 Q And do you know why she called her?

20 A Because they didn't take me seriously when I
21 called intake.

22 Q Now, you said that before you called CFS you --
23 to tell them your concerns, you told your social worker,
24 Ms. Fines, about your concerns, right?

25 A Yes.

1 Q And she told you to call CFS?

2 A Yes.

3 Q Did she say anything else to you?

4 A Not that I can remember.

5 Q We expect to hear evidence from Ms. Fines when
6 she testifies that you would often talk to her about other
7 families in a general way to deflect from your own
8 situation. Would you agree with that?

9 A What does "deflect" mean?

10 Q To distract away from your own situation?

11 A Yes, I told her about other people, but I don't
12 feel that it was to be just, to cause a distraction from
13 myself.

14 Q We also expect that Ms. Fines will testify that
15 you never told her anything about Samantha Kematch, Wes
16 McKay or Phoenix Sinclair. Would you agree that you, in
17 fact, did not tell Ms. Fines about Samantha Kematch, Wes
18 McKay or Phoenix Sinclair?

19 A No, I told her.

20 Q Now, do you know if Child and Family Services
21 ever contacted Samantha as a result of your efforts?

22 A I don't know if it was my efforts but I know that
23 they went and seen her.

24 Q Was that after you had made your call?

25 A Yeah.

1 Q How did you know that CFS had been out to see
2 Samantha?

3 A Because she called complaining that CFS came and
4 they looked at her house and everything, but they said that
5 everything was fine so they went away.

6 Q Did she say to you whether she knew how it was
7 that CFS came out to see her?

8 A She blamed the lady down the hall who would
9 babysit for her. Can't remember why, but she said that
10 she's having problems with her, and she said that she knew
11 that that was who called because she was hating on her.

12 Q Because why, sorry?

13 A Because they had some kind of difference not too
14 long before the visit from CFS.

15 Q Okay. Did you say a hate on?

16 A Hating.

17 Q Ah, hating. Did Samantha tell you she was going
18 to do anything because of the contact from CFS? Sorry?

19 A She said that she was going to go so then CFS
20 couldn't bother her.

21 Q She was going to go? Sorry, can you just --

22 A She wanted to go some place where she could be,
23 she wanted to go some place where she could be -- so CFS
24 wouldn't bother her again.

25 Q Did she, did she tell you where she was going to

1 go?

2 A Talking about going to a reserve.

3 Q Did you know which reserve?

4 A Fisher Branch.

5 Q And did you know that she, in fact, did leave
6 Winnipeg?

7 A From what I understood, yeah, she left.

8 Q Do you know who went with her?

9 A Her kids and her boyfriend.

10 Q The boyfriend being Wes?

11 A Yes.

12 Q Did you have any contact with Samantha after she
13 moved out of Winnipeg?

14 A Not a lot, but yes.

15 Q What kind of contact did you have?

16 A She came in a couple of times to say hi, and that
17 was it.

18 Q Do you remember when that was?

19 A No, not specifically.

20 Q And when she came in to say hi, did you speak to
21 her on the phone or did you see her in person?

22 A I talked to her on the phone once and I seen her
23 like once or twice after she had gone.

24 Q Did you ever ask her anything about Phoenix?

25 A I asked how her kids were; she said they were

1 fine.

2 Q I'm almost finished asking my questions. I want
3 to ask you about whether you remember being interviewed
4 after you found out about Phoenix's death, by a man named
5 Andrew Koster? Let me back up --

6 A No, not specifically.

7 Q Not specifically? Let me back up one. Do you
8 remember how you found out about Phoenix's death?

9 A Me and SOR 6 were walking down the street in the
10 North End and my brother had gone up to me and asked me if
11 I heard about it, the news, and I said, no. And he talked
12 about Sam. And I didn't understand what he was saying
13 until he mentioned Phoenix and what had happened.

14 Q What did you think, do you remember?

15 A Didn't know what to think.

16 Q Did you talk to anybody after you found out about
17 Samantha's -- about Phoenix's death?

18 A I remember the RCMP -- or going to the RCMP
19 building and giving them a statement.

20 Q Did you do that voluntarily? Like whose --

21 A Yeah, I'm pretty sure. They had called and asked
22 for us to do it, I think.

23 Q Okay. What about, were you contacted by anybody
24 from Child and Family Services?

25 A I can't remember.

1 Q So I'm going to ask to pull up page 59. We have
2 screens here. You have someone with you who's got
3 documents that they can put in front of you.

4 A Yes.

5 Q If you can put page 59 in front of you. Have you
6 got that?

7 A Yes.

8 Q Now, this is a page from CD number 1, that's
9 Commission disclosure number 1. That Commission disclosure
10 number 1 is a report that was prepared through the office
11 of the Children's Advocate. Was written by Andrew Koster
12 and Billie Schibler. And it's a report investigating the
13 services that, the child welfare services that were
14 delivered to Phoenix and her family. And in the course of
15 preparing this report, Mr. Koster interviewed a number of
16 people. That's why I asked you whether you remembered
17 being interviewed by him. I think you said, not
18 specifically.

19 A I can't recall him.

20 Q Okay. So I'm going to read to you from the, a
21 portion of his report. I'm at page 59, Mr. Commissioner.
22 Then I'll ask you a question. He entitles this:

23

24 "Interview with Second Client

25 This client indicated to me that

1 she told her worker that she was
2 concerned about Phoenix the
3 daughter of her friend. She had
4 given the address and the building
5 to the agency emergency number.
6 Apparently the worker on emergency
7 asked for exact address but didn't
8 know. She indicated that the
9 number that she called was the
10 after-hours 944-4050 and she
11 talked to a female. She said also
12 that she was told that if she
13 didn't give her name they were not
14 going to do anything. The client
15 then went on to say that she had
16 concerns about Samantha and there
17 is something wrong. Next she said
18 that she was asked if she had
19 witnessed anything. The client
20 then said that there was the one
21 thing she got mad at her for
22 getting her new outfit dirty. She
23 had just been playing outside.
24 Samantha got really mad and left.
25 After-hours was told this."

1 So you say you don't specifically remember being
2 interviewed by Mr. Koster. Does, does this help to jar
3 your memory?

4 A In regards to remembering him?

5 Q Or whether, remembering whether you were
6 interviewed by him?

7 A I don't remember if I was interviewed by him.

8 Q Does what I just read to you sound like something
9 you would have said?

10 A Yes.

11 Q Then he went on to write:

12

13 "A telephone call to the worker
14 who has since left the agency ...
15 indicated that she has no
16 remembrance of any such
17 conversation with her client. She
18 does remember that the client on a
19 number of situations would deflect
20 her own situation by eluding that
21 others around her needed to be
22 investigated. On those occasions
23 she had told her to call intake at
24 the number that she provided."

25

1 Do you have any comments about that?

2 A Like, I don't know, I still think that those
3 people should be seen.

4 Q All right. And I think we're going to hear that
5 the worker who is being referred to is Della Fines and that
6 she's going to say, as I said to you, that she has no
7 remembrance of having talked about Phoenix or Samantha or
8 Wes with you. Have any comments on that?

9 A Not really.

10 Q Okay. Is there anything else that I haven't
11 asked you about your contact with Samantha or Phoenix or
12 Wes that you want to tell us?

13 A No, I don't think so.

14 MS. WALSH: Okay. Thank you. Those are all the
15 questions that I have of you. Now, as I'm sure your lawyer
16 told you, there will be other lawyers who are going to ask
17 you questions and your own lawyer may have some questions
18 as well.

19 Mr. Commissioner, did you want to take a break?

20 THE COMMISSIONER: I think maybe you should just
21 confer with the other counsel as to what their -- they
22 would suggest we do.

23 MS. WALSH: Okay.

24 THE COMMISSIONER: And if you can reach a
25 consensus that will be satisfactory with me, whether we

1 continue, whether we adjourn and when we adjourn to. If
2 you would just gather your counsel around and reach a
3 consensus, whatever you decide we'll go with.

4 MS. WALSH: Okay. Thank you.

5 So witness, we're just going to take a minute.

6 Mr. Commissioner, counsel has indicated that they
7 would like to take a break, that they think it's required,
8 and if we could take an hour.

9 THE COMMISSIONER: Yes. All right. It's now
10 1:12. Do you want to adjourn till 1:15 or 1:30?

11 MS. WALSH: Two fifteen.

12 THE COMMISSIONER: Two -- yes, yes. Thank you,
13 Mr. Paul.

14 MS. WALSH: Mr. Gange, does that work for you?

15 THE COMMISSIONER: I can, I can get your message.
16 Two fifteen?

17 MS. WALSH: Two fifteen. So, witness, we're
18 going to take a lunch break and then we're going to have
19 you come back for some more questions. Probably you'll be
20 about half an hour or so when you come back. All right?

21 THE WITNESS: Yes.

22 MS. WALSH: Okay. Thank you.

23 THE COMMISSIONER: All right. We'll adjourn till
24 2:15.

25 MS. WALSH: Thank you.

1 (LUNCHEON RECESS)

2

3 THE COMMISSIONER: Mr. Gindin, you're going
4 first?

5 MR. GINDIN: Yes. Thank you, Mr. Commissioner.
6 I don't know if the witness is ready or ...

7 THE COMMISSIONER: Can you hear us, Witness?

8 THE WITNESS: Yes.

9 THE COMMISSIONER: Thank you. Mr. Gindin will
10 question -- he'll introduce himself and then have some
11 questions for you.

12

13 CROSS-EXAMINATION BY MR. GINDIN:

14 Q My name is Jeff Gindin. I represent Kim Edwards
15 and Steve Sinclair. Can you hear me okay?

16 A Yes.

17 Q All right. I have a few questions for you. You
18 told us that Samantha was pretty much your best friend; is
19 that so?

20 A Yes.

21 Q Right. And I take it that it would be a
22 difficult thing for you to make the kind of call that you
23 ended up making in the winter of '05, right?

24 A Yes.

25 Q One of the reasons it was difficult is because

1 she was a friend of yours and you didn't want her to know
2 that --

3 A Yes.

4 Q -- you didn't want her to know that you were
5 making the call, right?

6 A Yeah.

7 Q Now, you've described some things to us that
8 started to occur in around the summer of 2004 and went on
9 until you made the call in the winter of '05, so that's a
10 period of time of perhaps six or seven months. Did you
11 think about making this call some time before you actually
12 did? Do you know what I mean by --

13 A No.

14 Q -- the question? Pardon?

15 A Not really.

16 Q Okay.

17 A Can, can you explain what you mean?

18 Q Well, we know that you made the call, I think
19 around the wintertime 2005. Did you think about making a
20 call to CFS some time prior to that or did it just occur to
21 you the very day that you made the call?

22 A No. We -- me and SOR discussed it whether or not
23 we should do something like that.

24 Q Okay. And do you remember when you had that
25 discussion in relation to when the call was actually made?

1 A It was, I don't know, before the call. I don't
2 recall when.

3 Q And did you have one discussion with your friend,
4 number 6, or several, about whether to make a call or not?

5 A I'm pretty sure there was like a few
6 conversations about it.

7 Q Okay.

8 A I know that there just couldn't have been one
9 conversation.

10 Q Um-hum. And number 6 was also a friend of
11 Samantha, right?

12 A Yes.

13 Q And the difficulty in whether to make a call, did
14 that relate pretty much to the fact that you were all
15 friends with her?

16 A Yes.

17 Q Now, we've heard some evidence that, according to
18 Della Fines, who was your social worker, that she may be
19 testifying that you, at times, would make complaints about
20 other people, and I think you said that, yes, there were
21 times when you did that; is that right?

22 A Yes.

23 Q With respect to those other times that you
24 complained to Della, did any of those situations result in
25 a call to CFS by yourself?

1 A No.

2 Q So even though you sometimes told Della that you
3 saw some things about other families that bothered you,
4 this was the only time that you actually made the call to
5 CFS, right?

6 A Yes.

7 Q Okay. And just to review some of the things that
8 caused you to eventually make the call, you've told us
9 about a situation or a time when Phoenix got dirty and
10 Samantha's reaction was to say that she was bad for getting
11 dirty, something along that line, right?

12 A Yes.

13 Q Okay. And that was something that you noticed
14 and, and bothered you, correct?

15 A Yes.

16 Q You told us about another time that Samantha was
17 teaching Phoenix how to say, I'm a fucking bitch, right?

18 A Yes.

19 Q And that was also very disturbing to you, right?

20 A Yes.

21 Q And I think you also said she was teaching her to
22 swear but you didn't really tell us in specifics. Can you
23 give us a little more information about that?

24 A That was the specifics.

25 Q Oh, so that --

1 A The I'm a fucking bitch part.

2 Q Okay. Were there other examples or just that
3 one?

4 A That's the only one that I can actually remember.

5 Q I understand you were also concerned that, that
6 Phoenix was not with Samantha on many occasions when you
7 saw Samantha, right?

8 A Yes.

9 Q And another concern was that you were told that
10 Phoenix was actually on the road with Wes McKay and you
11 were told that --

12 A Yes.

13 Q - you were told that happened quite a bit, right?

14 A Yes.

15 Q And that concerned you because Wes McKay wasn't
16 Phoenix's father and you were concerned that she seemed to
17 be spending so much time with him, right?

18 A Yes.

19 Q And as a result of what you observed and were
20 witness to, the impression that you had was that you
21 thought Wes might be being violent towards Samantha; is
22 that right?

23 A Yes.

24 Q And you were also concerned about being told that
25 Phoenix was touching herself inappropriately, correct?

1 A Yes.

2 Q And you were also concerned that perhaps there
3 was some sexual abuse going on by Wes, who was with her
4 away on the road, right?

5 A Yes.

6 Q Okay. Also, you had mentioned the incident about
7 Samantha not wanting Phoenix to keep her birthday presents
8 because she was being bad --

9 UNIDENTIFIED PERSON: Christmas presents.

10

11 BY MR. GINDIN:

12 Q Christmas presents, pardon me, because she was
13 being bad, right?

14 A Yes.

15 Q Did you see her, that is, Phoenix's behaviour?
16 Do you know what --

17 A Did I see it in her behaviour?

18 Q Yes. That is, what, what ---

19 A I don't believe Phoenix --

20 Q Pardon?

21 A When I --

22 Q What I was asking was --

23 A When I seen Phoenix --

24 Q No, no, what -- let me rephrase the question for
25 you. When Samantha decided that Phoenix was bad and didn't

1 deserve these Christmas presents, did you see anything that
2 Phoenix was doing that could be described as bad at that
3 time?

4 A No, but Phoenix wasn't with her.

5 Q So Phoenix wasn't there. I see. So she was, she
6 was just talking about the fact that she didn't deserve
7 these presents, right?

8 A Yes.

9 Q Another concern was that, was it to do with potty
10 training or not being potty trained?

11 A No, it was that she would go to the bathroom not
12 in the bathroom, like in --

13 Q She's --

14 A -- when she's like laying down, sleeping, you
15 know, like --

16 Q She was peeing her bed?

17 A -- (inaudible).

18 Q Yeah. She was --

19 A (Inaudible).

20 Q -- peeing her bed; is that right?

21 A Yes.

22 Q Okay. And was another concern of yours that
23 Samantha was a drug user and you indicated that you didn't
24 think she was stopping around that time at all?

25 A I didn't have concerns about her drug use.

1 Q Um-hum.

2 A I knew about the drug use.

3 Q That wasn't one of your concerns?

4 A No.

5 Q Okay. And you also told us about an incident
6 where, as you were -- as Samantha was leaving her
7 apartment, she seemed to lock the bedroom door from, from
8 outside the bedroom by reaching up her hand. Remember
9 that?

10 A Yes.

11 Q That was obviously something that, that bothered
12 you, right?

13 A It didn't seem, I don't know -- it caught my
14 attention.

15 Q Yeah. It didn't seem right to you?

16 A Right.

17 Q So as a result of these various things you
18 observed, you went to your social worker, Della, and told
19 her some of this stuff, right?

20 A Yes.

21 Q Okay. You're not able to say exactly what you
22 told her but you tried to give her the idea that you had
23 some concerns, right?

24 A Yes.

25 Q And she told you that you should call intake,

1 correct?

2 A Yes.

3 Q And is it possible that she gave you the number,
4 as well, or is that something you just knew?

5 A It's possible she gave -- I knew the number
6 already.

7 Q You knew the number already. Now, when you
8 called CFS finally, I can't recall if you said that you
9 were with number 6. Do you recall being with SOR number 6
10 when you made that call?

11 A Yes.

12 Q And you recall it being done on a cell phone,
13 right?

14 A I'm pretty sure it was, yes.

15 Q And you told us about your conversation. Was
16 number 6 involved in that call other than just being there?

17 A Not as far as I know.

18 Q Now, you told them, whoever answered the phone,
19 it was a female, correct?

20 A Yes.

21 Q You said that you were concerned about Phoenix
22 Sinclair, right?

23 A Yes.

24 Q You gave the name Phoenix Sinclair, correct?

25 A Yes.

1 Q And basically, you told them you thought someone
2 should go check it out, right?

3 A Yes.

4 Q They wanted your name and that's where the
5 problem came in because you didn't want to give your name
6 because you were a good friend of Samantha, right?

7 A Yes.

8 Q You were told that they couldn't take it
9 seriously unless you gave that name, right?

10 A Yes.

11 Q Were you asked any questions at all about what it
12 was your concerns were?

13 A I can't remember any specific questions but they
14 do kind of have like the same kind of questions they ask
15 for every call, what the name is and what your concern is
16 and if you know the address, and like anything specific.

17 Q So whatever they asked, you gave them the
18 specific information, correct, except your name, that is?

19 A As best I could, yes.

20 Q But obviously when they asked your name, that's
21 when, that's when things took a different course, right?

22 A Yes.

23 Q And believe you said you recall giving the name
24 Wes McKay as well, or you're not sure?

25 A I'm not sure.

1 Q Okay. But you did give them a pretty detailed
2 description of where Samantha lived, right?

3 A Yes.

4 Q You told them that you had concerns about the
5 fact that Phoenix was always away on the road with Wes, I
6 believe. That correct?

7 A Yes.

8 Q And I think you said you told them about your
9 concerns about possible sexual abuse by Wes against
10 Phoenix? You may have put it --

11 A Yes.

12 Q -- as being touched improperly, or something like
13 that. Do you recall how you might have said it?

14 A No, I don't.

15 Q But you did refer to it in some fashion, though,
16 right?

17 A Yes.

18 Q And so they didn't seem to take your concerns
19 seriously because of the fact that you didn't give the
20 name, correct? And --

21 A Yes.

22 Q I understand that you then discussed it further
23 with SOR number, number 6, correct?

24 A Yes.

25 Q And was it number 6's idea that you go over to

1 her foster mother and see if she'll call? Or, or yours?

2 A Hers.

3 Q Okay.

4 A She went, not me.

5 Q I see. But you knew what she was going to do,
6 right?

7 A Yes.

8 Q Was there some discussion about perhaps they
9 would take it more seriously if a foster parent that they
10 were connected with made the call? Was there any sort of
11 discussion like that?

12 A Yes.

13 Q You remember that discussion, right? Do you
14 remember who was saying it? Was it number 6 saying it or
15 number -- or yourself?

16 A No, I don't remember who.

17 Q But you do recall some discussion about, well,
18 maybe they'll listen to number 7, she's a foster mother,
19 she obviously has some connection with CFS, right?

20 A Yeah.

21 Q And eventually, you were interviewed by the RCMP,
22 I think you said, correct?

23 A Yeah.

24 Q And you told them the same thing essentially that
25 you've told us here, right?

1 A Yes.

2 Q And you appreciate, of course, that you're under
3 oath here, right?

4 A Yes.

5 Q And you're telling us the truth about making that
6 call, right?

7 A Yes.

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

9 THE COMMISSIONER: All right. There'll be some
10 more questions from some others coming, Witness, and Mr.
11 McKinnon will introduce himself.

12 MR. MCKINNON: Thank you, Mr. Commissioner.

13

14 CROSS-EXAMINATION BY MR. MCKINNON:

15 Q Witness, my name is Gordon McKinnon. I'm the
16 lawyer for the department, which includes Winnipeg CFS.
17 I've got a few questions for you as well.

18 I understand from your evidence this morning and
19 from everything else I've read about what you've told
20 people, that you only saw Phoenix on two occasions. That's
21 correct?

22 A Yes.

23 Q And one of those occasions was the incident you
24 described earlier when Samantha came over to your home in
25 the summer of 2004, and you didn't say summer, but you said

1 it was nice out. Do you recall that?

2 A Yes.

3 Q And, and Phoenix came to your home and, as I
4 understand it, she played on the play structure and there
5 was an area in your backyard where there was no grass and
6 she, she got muddy, she got dirty?

7 A Yes.

8 Q And you had an opportunity to see her for about
9 an hour or so on that occasion, that is, see Phoenix?

10 A Yes.

11 Q And observe her? And would it be fair for me to
12 suggest to you that what you observed looked like a regular
13 four-year-old girl?

14 A Yes.

15 Q Didn't look like there was anything wrong?

16 A Not that I could tell.

17 Q Okay. And the second occasion when you saw
18 Phoenix was in the fall, same year, 2004? Correct?

19 A Yes.

20 Q That's right? And did Phoenix come to your home
21 again on that occasion?

22 A Yes.

23 Q And I understand that you, on that occasion,
24 Phoenix was just watching TV?

25 A Yes.

1 Q And she sat there quietly?

2 A Yes.

3 Q And then you went with Samantha and presumably
4 Phoenix to, to the bus stop?

5 A Yes.

6 Q And this visit was also for approximately one
7 hour?

8 A I don't know the proximity (inaudible).

9 Q It was enough time for you to get a, an
10 opportunity to observe Phoenix play and interact with your
11 child?

12 A I guess, yes.

13 Q And she again seemed like a regular kid to you?

14 A Yes.

15 Q She played with your kids?

16 A Yes.

17 Q She asked for stuff? She, she said thank you --

18 A I don't remember her asking.

19 Q Do you remember her saying thank you? Do you
20 remember her smile?

21 A Yes.

22 Q Okay. So on the two occasions when you actually
23 saw Phoenix, you didn't see anything that was approaching
24 signs of abuse or even neglect?

25 A Yes.

1 Q Now, I want to get to your call to CFS. Firstly,
2 as I understood your evidence this morning, you're
3 reasonably confident that phone call was made by you on a
4 cell phone?

5 A I'm pretty sure, yes.

6 Q And as I understand what you've told Ms. Walsh,
7 is it was not a cell phone that you owned but a cell phone
8 of your then husband or partner?

9 A Yes.

10 Q And I'm not going to ask you his name and I'm not
11 going to ask you to volunteer his name, so I want you to
12 maintain his confidentiality as well, too. But we
13 anticipate hearing evidence at this inquiry from an
14 investigator who was given a, a cell phone number by SOR
15 number 5. That's you. Was the --

16 A Okay.

17 Q -- cell phone number you gave to the investigator
18 the cell phone number of your partner that you believe you
19 made a telephone call to Winnipeg CFS on? Was that the
20 telephone number you gave to the investigator?

21 A I don't remember the phone number.

22 Q Okay. Well, we'll have to ask Ms. Walsh to
23 clarify that, because we're advised that the investigator
24 was given a cell, a cell phone number.

25 A If I gave him a cell number, I don't remember the

1 number now.

2 Q Okay. This would have been within the last year
3 or so. Do you recall meeting with an investigator from the
4 Commission with in the last year or so?

5 A At the beginning of last year?

6 Q Do you recall giving Ms. Walsh a number of a cell
7 phone to give to an investigator in the last year or so?

8 A I don't understand.

9 Q We're trying to determine -- let, let me lead
10 with the conclusion so you see where I'm going. This
11 investigator made some inquiries of Rogers Communication on
12 a cellular, on a cell phone number that you provided to
13 him, and he was unable to find any phone calls recorded on
14 that cell phone to a Winnipeg CFS phone number during the
15 period January 2005 to April 2005. So what I'm trying to
16 determine from you is the number that this would --
17 investigator was given by Ms. Walsh which, in turn, she got
18 from you. I'm trying to determine if that's the same phone
19 that you said today was the phone you likely used to call
20 Winnipeg CFS.

21 THE COMMISSIONER: Well, I think --

22 MR. MCKINNON: I know that's a long question.

23 THE COMMISSIONER: -- I think, I think we better
24 start to see whether she recalls giving a number to Ms.
25 Walsh.

1 BY MR. MCKINNON:

2 Q Do you recall giving a phone number to Ms. Walsh?

3 A I recall. Yes.

4 Q And when you gave her that phone number was it
5 for the purpose of allowing the investigator to make that
6 check? In other words, were you giving her the phone
7 number of the phone that was allegedly used to call
8 Winnipeg CFS in 2005, which is the matter you testified to
9 this morning? Was that the phone number you gave to Ms.
10 Walsh?

11 A I know I gave her a number of the cell phone that
12 I may have had. Like, I don't remember the cell phone that
13 I had in that time and since then I've had several cell
14 phones, so I can't recall any specific numbers.

15 Q Okay. Well, we'll have to leave it at that,
16 then. But what you're saying is you now don't recall
17 whether the number you gave to Ms. Walsh is the same phone
18 number you would have used to call Winnipeg CFS in 2005; is
19 that what your evidence is?

20 A I just --

21 Q You don't recall?

22 A I don't remember the number I gave her.

23 THE COMMISSIONER: Do you know, do you know why
24 you gave Ms. Walsh a number?

25 THE WITNESS: I remember them asking me if I knew

1 a phone number of the phone that I had.

2

3 BY MR. MCKINNON:

4 Q And when you say the phone that you had, was it
5 the phone that you had in 2005?

6 A It should have been the phone I had in 2005.

7 Q And was that the phone you used in 2005 to call
8 Winnipeg CFS?

9 A That would have been the phone, yes, because it
10 was the only cell phone that I had in that period of time.

11 Q Okay. So if this inquiry subsequently hears
12 evidence that there was no phone call made from that cell
13 phone to Winnipeg CFS, you would have no explanation for
14 why that doesn't show up. Is that fair?

15 THE COMMISSIONER: I think maybe, Mr. McKinnon,
16 you should repeat your question and then just give her time
17 to answer.

18 MR. MCKINNON: Okay.

19

20 BY MR. MCKINNON:

21 Q If this inquiry --

22 A Can you repeat it?

23 Q Yes. If we subsequently hear evidence from the
24 investigator that there's no record of a phone call being
25 made from that cell phone to Winnipeg CFS, assuming that

1 that's the evidence we hear from another witness, I'm, I'm
2 asking you if you would have any explanation for why there
3 is no cell phone record from that phone to Winnipeg CFS
4 during this period in question?

5 A Okay. So you're asking if I would know what cell
6 phone was used?

7 Q No, just if you have any explanation as to why
8 there would be no record. Could there have been?

9 A Oh, do I know why?

10 Q Yes.

11 A I ... No, I wouldn't know why.

12 Q And in terms of what you told CFS or allegedly
13 told CFS, you were asked about that by the RCMP when you
14 gave your statement to the RCMP. Do you recall telling the
15 RCMP about the conversation you had with, or allegedly had
16 with Winnipeg CFS?

17 A I remember telling them I had a conversation,
18 yes.

19 Q Well, do you recall giving a statement to the
20 RCMP?

21 A Yes.

22 Q And I want to perhaps take you to that document.
23 Do you have in front of you document number CD0105? Do you
24 have a piece of paper there or a monitor?

25 THE COMMISSIONER: She has some assistance there.

1 MR. MCKINNON: She's got some --

2 THE WITNESS: Yeah.

3 MR. MCKINNON: -- assistance there? Okay.

4

5 BY MR. MCKINNON:

6 Q And have you had a chance to look at that
7 document in preparing for today?

8 A CD (inaudible). What page was it on?

9 Q I'll take you to the page in a minute. Start at
10 4964.

11 THE CLERK: Mr. McKinnon, when I get a dotted
12 line like this I have to reboot the computer.

13 THE COMMISSIONER: All right. We'll just be a
14 minute, witness, till the next question. You can have a
15 look at that page, if you like.

16 MR. MCKINNON: 4964.

17 THE COMMISSIONER: All right. We have the -- it
18 on the screen now, Witness, so Mr. McKinnon is going to ask
19 you a question.

20

21 BY MR. MCKINNON:

22 Q And if we could look at the bottom half of the
23 page. Witness, I understand this is an interview that you
24 gave to the RCMP back in 2006, shortly after you learned of
25 the tragic death of Phoenix Sinclair. And you testified

1 earlier that you were -- you didn't recall whether they
2 called you or you called them, but you, you did recall
3 giving this statement, correct?

4 A Yes.

5 Q And is it fair for me to conclude that in talking
6 to the RCMP you were attempting to be as detailed and
7 accurate as possible? Is that fair? Were you trying to be
8 accurate when you --

9 A Can you ask it again?

10 Q Were you trying to be accurate when you gave this
11 interview to the RCMP?

12 A Was I trying to be?

13 Q Yes. Were you intending to give accurate
14 information?

15 THE COMMISSIONER: That is, Witness --

16 THE WITNESS: Yes.

17 THE COMMISSIONER: -- were you trying to tell the
18 RCMP the story as you knew it in a correct and honest and
19 proper way?

20 THE WITNESS: Yes.

21

22 BY MR. MCKINNON:

23 Q Thank you. And this statement would have been
24 given in 2006, in March, which was just a little bit over a
25 year after the, after the events in question occurred.

1 This call to Winnipeg CFS was in early 2005. We're now in
2 March of 2006, so a little bit more than one year later
3 you're being brought in to the RCMP office and you are
4 giving them a statement. I'm suggesting, one -- I'm
5 suggesting to you that your, your memory would have been
6 better in 2006 than it is today, in 2013. That fair?

7 A Yes.

8 Q And if we look at the bottom half of this page,
9 you'll see the RCMP officer's name, looks like Rouire, and
10 there's a long transcript of your answer. And the second
11 paragraph, at the bottom of the page, it's, it's evident
12 that they're talking about, you're talking about this call
13 to CFS. You said:

14

15 "... called CFS at the beginning
16 of 2005 in the winter, it was
17 after New Years. ... I told CFS,
18 you know, 'We have concerns.'

19

20 et cetera. So that's -- I'm just identify. It's, it's
21 about the same incident here that you testified to this
22 morning, which is your call to CFS, correct?

23 A Say that again?

24 Q You're describing --

25 A (Inaudible) --

1 Q There was only one time that you called Winnipeg
2 CFS after-hours and this was that one time, correct?

3 A Yes.

4 Q Yes?

5 THE COMMISSIONER: What you're being asked --

6 THE WITNESS: Yes.

7 THE COMMISSIONER: All right.

8

9 BY MR. MCKINNON:

10 Q And if you see about halfway down that page --
11 sorry, halfway through that paragraph, they said, and it's
12 in quotes:

13

14 "Well then how come you're
15 calling us?"

16

17 And you said:

18

19 "I was ... 'Because there's
20 something wrong with the little
21 girl.' And I said, 'It doesn't
22 take, you know, rocket science to
23 figure something out. Like her
24 little girl can't use the bathroom
25 properly."

1 So the first thing you, you told the RCMP that
2 you reported to Winnipeg CFS was that the little girl can't
3 use the bathroom properly. That's the first thing you said
4 when you called Winnipeg CFS, was the bathroom issue?

5 A I don't recall it being the first thing I said.

6 Q And then you said the little -- sorry, you said:

7

8 "[She] barely talks to anybody."

9

10 And then you said:

11

12 "She does whatever her mom says.'"

13

14 And then you go on to say --

15 A Okay.

16 Q You go, on the next page you say:

17

18 "You know like, she was so
19 obedient. I thought maybe Sam was
20 ... like ... really kick-ass mom
21 because, you know, when Phoenix
22 came to ... like I only seen
23 Phoenix [on these] two times."

24

25 And then you go on to another topic.

1 My suggestion to you, Witness, was that when you
2 were asked about this call to Winnipeg CFS in March of
3 2006, what you reported was that the little girl can't use
4 the bathroom properly, she barely talks to anyone and she's
5 obedient. That's what you told Winnipeg CFS when you say
6 they wouldn't take your complaint seriously. Do you have a
7 response to that?

8 A Okay. No.

9 Q Do you agree or disagree with my suggestion?

10 THE COMMISSIONER: Do you understand what the,
11 what you're being asked, Witness?

12 THE WITNESS: Not really.

13 THE COMMISSIONER: All right. I'll ask Mr.
14 McKinnon to just put it to you slowly.

15

16 BY MR. MCKINNON:

17 Q My suggestion to you is that rather than
18 recording suspicions of sexual abuse, what you reported was
19 she can't use the bathroom properly, she barely talks to
20 anyone and she is obedient. That's what you told Winnipeg
21 CFS and nothing else.

22 A Okay.

23 Q And do you agree or disagree with my suggestion
24 to you?

25 THE COMMISSIONER: Just, just let her -- she's,

1 she's taking time.

2 MR. MCKINNON: Okay. I --

3 THE COMMISSIONER: When I hold my finger up --

4 THE WITNESS: Just, just a second.

5 THE COMMISSIONER: -- just, just wait for your
6 next question because I, I see her and I, I know when
7 there's an answer coming, or I think I do.

8 MR. MCKINNON: Okay, thank you, because I have
9 difficulty not seeing her.

10 THE COMMISSIONER: Yes, of course. All right.

11 Do we now know what the last question was, after
12 that exchange?

13

14 BY MR. MCKINNON:

15 Q The question was, do you agree or disagree that
16 that's all you told Winnipeg CFS in this phone call?

17 THE COMMISSIONER: See, see, Witness, what those
18 three things that Mr. McKinnon has just outlined are things
19 that are recorded as having been said by you to the RCMP
20 when they interviewed you in 2006 or thereabouts, and the
21 question is whether you agree that those are the things
22 that you told the CFS when you made your call about
23 Phoenix.

24 THE WITNESS: I will agree.

25

1 BY MR. MCKINNON:

2 Q Thank you. In terms of your report, again I'm
3 going to refer to it as your alleged report, but your
4 report to your social worker that you've spoken of, am I
5 correct in understanding that occurred on one occasion and
6 one occasion only, where you had a discussion with Della
7 Fines and you reported something to her?

8 THE COMMISSIONER: About the Phoenix case.

9

10 BY MR. MCKINNON:

11 Q About Phoenix Sinclair?

12 A Yeah.

13 Q That was, that was one time only?

14 A From my memory, yeah.

15 Q Thank you. And if I can ask, then, just to get
16 the sequence right, if you can't recall, tell me you can't
17 recall, but in terms of the sequence, it was your
18 discussion with Della Fines, she told you to call intake,
19 you called intake, and then you called your foster mom or
20 SOR 6 called her foster mom and that was the sequence of
21 those three events?

22 THE COMMISSIONER: That is --

23 THE WITNESS: Yes.

24 THE COMMISSIONER: -- is that the order that they
25 occurred?

1 THE WITNESS: Yes.

2

3 BY MR. MCKINNON:

4 Q And then there was the phone call you received
5 from Samantha Kematch telling you that CFS had attended her
6 apartment. That's the fourth event?

7 A Yes.

8 Q Okay. And Samantha thought it was her neighbour
9 down the hall that had called?

10 A Yes.

11 Q So she never knew it was you?

12 A No.

13 Q And that's when she told you words to the effect
14 that she was going to take off and go to Fisher River,
15 correct?

16 A Yeah.

17 Q And this is my conclusion and I want to make sure
18 that it's a fair and reasonable conclusion, but my
19 conclusion is that this visit, the fact that CFS had come
20 to visit Samantha Kematch in March of 2005, that's what
21 caused her to move. She was moving to Fisher River to
22 avoid further scrutiny from CFS. That's what I'm drawing
23 as an inference from your comments. Is that a fair
24 conclusion for me to reach? Is that what you understood?

25 A That's how I seen it.

1 Q Yeah. So she thought CFS was, might be coming
2 again and she wanted to move to get away from CFS?

3 A Yeah.

4 MR. MCKINNON: Those are my questions, Mr.
5 Commissioner.

6 THE COMMISSIONER: Thank you, Mr. McKinnon.

7 Mr. Saxberg, are you next?

8 MR. MCKINNON: Thank you, Witness.

9 THE COMMISSIONER: All right, Mr. Saxberg, if
10 you'd introduce yourself to the witness, please.

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

12

13 CROSS-EXAMINATION BY MR. SAXBERG:

14 Q Witness, it's Kris Saxberg, and I act for ANCR,
15 the child welfare agency in Winnipeg, and three child
16 welfare authorities, and I also act for Della Fines. I
17 only have a few questions for you.

18 And for the first question, if we could call up
19 page 4990 of the RCMP statement. And for you, witness,
20 it's page 38 on the top right side of the page.

21 A Okay.

22 Q Now, Mr. McKinnon had just, just walked you
23 through the sequence of events that he confirmed again, and
24 would you agree with me that the discussion with Della
25 Fines, the call to CFS, all happened in very close period

1 of time, that they were right after another?

2 A What do you mean?

3 Q That your conversation with Della and then the
4 subsequent call to CFS, those two events happened in close
5 proximity, they happened -- one happened soon right after
6 the next?

7 A I believe they did, yes.

8 Q Yeah. And was it a day or two, that close?

9 A I think so.

10 Q Okay. And now the page that I've referred you
11 to, in your discussion with the RCMP you'd indicated that
12 your conversation with CFS had happened around your
13 birthday. And that's at the bottom of the page we're
14 looking at. Mater of fact --

15 A Okay.

16 Q -- it's your last response at the bottom of the
17 page.

18 A Okay.

19 Q And is that accurate, that that's still your,
20 your position, that these, the discussion with CFS happened
21 around your birthday in 2005?

22 A Yeah.

23 Q Yes?

24 A Yes.

25 Q Okay. Thank you for that. And I won't give you

1 a specific birth day, but it's very late in February; is
2 that the case?

3 A Yes.

4 Q And just one final area. Would you agree with me
5 -- well, firstly, you didn't want your name disclosed to
6 CFS and that was because you didn't want Samantha to find
7 out that you were the source of referral, correct?

8 A Yes.

9 Q And if we could turn to page, it's -- for you,
10 witness, it's page 13, and for us at the Commission here
11 it's page 4965.

12 A (Inaudible).

13 Q And I'm reading, I'm going to refer you to the
14 very last paragraph on this page. If you could scroll
15 down.

16 A What page is this again?

17 Q It's page 13 on the top right corner of your
18 page. And then I'm looking at the very last paragraph that
19 begins with, "And then it wasn't until".

20 A I don't see it. What's the page number on the
21 bottom?

22 Q Oh, the page on the bottom of 4965.

23 THE COMMISSIONER: I think she'll have it in a
24 minute.

25 THE WITNESS: Okay, I got it.

1 BY MR. SAXBERG:

2 Q And in this last paragraph you say, and I'm
3 quoting from your second sentence, quote:

4

5 "Like we didn't want our names to
6 get back to Sam and then have Sam
7 hate us and us be wrong about
8 anything be happening, like
9 everything happening."

10

11 And so my question is, was it also, was one of
12 the reasons why you didn't want your name to be given was
13 because of the possibility that the concerns were invalid
14 and that Sam would find out and then hate you?

15 A What do you mean?

16 Q I'll try to be a bit blunter.

17 THE COMMISSIONER: Just let her finish. Did you
18 want to say something, Witness, or do you understand the
19 question?

20 THE WITNESS: Well, I'm not sure if I have to say
21 something.

22 MR. SAXBERG: Okay. I think she asked me what I
23 mean so I can explain.

24 THE COMMISSIONER: Oh, fine.

25

1 BY MR. SAXBERG:

2 Q What I mean is, you weren't sure that your
3 concerns, whether that they were -- that the concerns you
4 had were actually happening. You just suspected that these
5 concerns were happening, you suspected that there may be
6 something wrong with Phoenix, as you've expressed here.
7 That's what you suspected, correct?

8 A Yes.

9 Q And you had in your mind the possibility that you
10 could be wrong and you were giving your friend the benefit
11 of the doubt; is that fair?

12 A Yeah.

13 Q And, and so you wouldn't want your name to be
14 given because if you gave your name and then it turned out
15 your concerns were wrong, then Sam -- you were worried Sam
16 would hate you; is that fair?

17 A Yeah.

18 MR. SAXBERG: Okay. Thank you very much for
19 that. Those are my questions.

20 THE COMMISSIONER: Thank you, Mr. Saxberg.

21 We'll just be a minute, Witness, and we'll see
22 who else is going to ask any questions.

23 MR. RAY: I've no questions.

24 THE COMMISSIONER: Oh, all right. Anybody else,
25 then? All right. I guess, Mr. Gange, you're on.

1 MR. GANGE: Thank you, Mr. Commissioner.

2

3 RE-EXAMINATION BY MR. GANGE:

4 Q It's a little odd for me to call you witness, but
5 I, under the protocol, I will.

6 One of the questions that has been asked today of
7 you is with respect to the cell phone number, and Mr.
8 McKinnon asked you a number of questions about the cell
9 phone number and I think that you advised -- Mr. McKinnon
10 had suggested to you that you probably gave to Ms. Walsh,
11 or Sherri, as you have known her, the possible cell phone
12 number that you had at the time. You recall giving that
13 evidence?

14 A Yes.

15 Q And I was with you on the day when you met with
16 Ms. Walsh; do you recall that?

17 A Yes.

18 Q When Ms. Walsh asked you if you could provide a
19 cell phone, did you advise Ms. Walsh that you had had a
20 number of cell phones during that time period?

21 A I don't remember.

22 Q Did you do your best to -- well, let me ask you
23 this way: In the past eight years, approximately how many
24 different cell phones have you had?

25 A A lot.

1 Q And --

2 A I can't give you an approximate number.

3 Q Sure. And, and you've had a number of different
4 phone numbers; is that correct?

5 A Yes.

6 Q So that the cell phones, when you changed cell
7 phones, oftentimes you have changed cell phone numbers; is
8 that fair?

9 A Yes.

10 Q Do you recall today, or did you recall a year
11 ago, all of the cell phone numbers that you have had over
12 the previous 10 years?

13 A No.

14 Q Okay. Thank you. Mr. McKinnon also asked you a
15 number of questions with respect to your interview with
16 the, with the RCMP, and I'm going to ask if you would turn
17 to page 44, which is page 4996 of the Commission
18 disclosure.

19 A Okay.

20 Q Okay. And halfway through, there's a discussion
21 -- this is a discussion about you having a conversation
22 with Della Fines. And ...

23 MR. MCKINNON: I rise because I, I was -- hope I
24 was clear when I was asking this witness about her, her
25 evidence, what she told CFS. I didn't ask about Della

1 Fines.

2 MR. GANGE: Oh, no, and I, I'm going to put that
3 into context, Mr. McKinnon. I'm going to put that into the
4 proper context eventually because it comes out in this
5 statement.

6

7 BY MR. GANGE:

8 Q The -- if you see, about just over halfway down,
9 Constable Rouire says:

10

11 "... how many times did you tell
12 her?"

13

14 And you responded:

15

16 "I told her the one time."

17

18 Do you see that?

19 A Yeah.

20 Q Okay. And then Constable Rouire said:

21

22 "Just once?"

23

24 You said:

25

1 "Yeah."

2

3 And then Constable Rouire said:

4

5 "And what exactly did you tell
6 her?"

7

8 And then you said:

9

10 "The same thing I told the other
11 one,"

12

13 Now, when you said "the same thing I told
14 the other one", who is the other one to whom you are
15 referring?

16 A I don't remember.

17 Q Okay. I'm going to try to help you, because up
18 in the, the top of the page it says:

19

20 "Around the same time I was
21 calling CFS,"

22

23 Do you see that in the, in the third line of the
24 page, on page 44?

25 A Um-hum.

1 Q So "the same thing I told the other one", is that
2 in reference to CFS?

3 A I guess so, yes.

4 Q And, and your -- it's your recollection that what
5 you told CFS is consistent with what was said at page
6 44?

7 THE COMMISSIONER: Now, just, just don't --

8 MR. GANGE: Hold on a second --

9 THE COMMISSIONER: -- answer that for a minute.

10 MR. GANGE: -- Mr. McKinnon has a question.

11 MR. MCKINNON: I am now rising to object because
12 we are now leading the witness quite directly to say
13 something that the witness doesn't seem to have any
14 recollection of at all.

15 MR. GANGE: Well --

16 MR. MCKINNON: And can't even recall who the
17 other one was.

18 THE COMMISSIONER: I think, Mr. Gange, you should
19 try a little, a little more groundwork for your question.

20 MR. GANGE: Yes, although, although in fairness,
21 Mr. Commissioner, this is something that took place -- this
22 interview took place in 2006.

23 THE COMMISSIONER: I understand that.

24 MR. GANGE: And we're now in 2013, and that the
25 witness needs a little bit of, of direction is not a

1 surprise to me, and I don't think should be a surprise to
2 anybody in this room. But, but I, I hear your direction,
3 sir, and I will attempt to follow it.

4 THE COMMISSIONER: Yeah. Just lay a little more
5 groundwork for her.

6 MR. GANGE: Yes.

7

8 BY MR. GANGE:

9 Q Mr. McKinnon led through a number of things that,
10 that were in the RCMP statement. Do you recall that,
11 Witness? In his questioning of you, he, he showed you some
12 things that you said to the RCMP?

13 A Who?

14 Q Mr. McKinnon, the lawyer for, for child and
15 welfare department.

16 THE COMMISSIONER: About half an hour --

17 THE WITNESS: (Inaudible).

18 THE COMMISSIONER: -- about half an hour ago.

19 THE WITNESS: Okay.

20

21 BY MR. GANGE:

22 Q Okay. And so the -- well, let me put it this
23 way, at page 44, when you read that, that comment, and what
24 exactly did you tell her, if you could just read that,
25 that answer and read it for the record:

1 A

2 "The same thing I told the other
3 one, about how she was using the
4 bathroom and she wasn't potty
5 training. ... I was concerned
6 because she kept going with Wes
7 and that Wes was not her father.
8 And about how we were concerned
9 that maybe Sam was locking her
10 up."

11

12 Q Is there -- do you have any doubt that that, that
13 those are comments that you made to the RCMP on that day?

14 A I don't have any doubts.

15 Q Okay. Thank you. Witness, I don't have anything
16 else to, to ask of you, and unless there's something else
17 that you want to say, I'll end my questioning. Is that
18 fine?

19 A Yeah.

20 MR. GANGE: Thank you.

21 THE COMMISSIONER: We're just about finished,
22 Witness. There'll just be one or two more questions
23 perhaps.

24 MS. WALSH: Thank you. I have just a few
25 questions, yes.

1 RE-EXAMINATION BY MS. WALSH:

2 Q I do want to confirm that you did give my office
3 a cell phone number and a land line number in response to
4 my asking you did you remember which phone number you
5 called from when you called CFS. Do you remember giving me
6 both a land line number and a cell phone number?

7 A I remember giving you a cell phone number but I
8 don't know what the number was.

9 Q Okay. Do you also remember giving me a land line
10 number because you weren't sure which phone you called
11 from?

12 A No, I don't remember.

13 Q The fact is, you did give me a land line number.

14 A Oh.

15 THE COMMISSIONER: She says she --

16 THE WITNESS: (Inaudible).

17 THE COMMISSIONER: -- doesn't recall.

18 THE WITNESS: (Inaudible) yeah.

19 MS. WALSH: She doesn't recall. But the fact is
20 that she did give me a land line number, so I'm just
21 telling her that.

22 THE COMMISSIONER: Well, you're --

23 MS. WALSH: Because that will come out in other
24 evidence.

25 THE COMMISSIONER: Only thing is, you're not

1 giving evidence.

2 MS. WALSH: We will hear evidence, Mr.
3 Commissioner, from an investigator who investigated the
4 phone numbers that were given to us by this witness.

5 THE COMMISSIONER: Well, ask her whether she
6 recalls giving you more than one phone number.

7

8 BY MS. WALSH:

9 Q So do you recall giving me more than just a cell
10 phone number?

11 A Yes.

12 Q And do you recall telling me that you had access
13 to or may have had access to a land line number around the
14 time you phoned CFS?

15 A Yes.

16 Q I didn't see anything in your -- well, we'll
17 leave that.

18 Do you know whether CFS kept a record of your
19 call?

20 A I don't know.

21 Q Did you assume that they did?

22 A I would think they would.

23 Q Can we pull up Exhibit 14, please. Exhibit 14,
24 page 7.

25 THE COMMISSIONER: Just a minute. I don't think

1 I have that but I don't think that -- perhaps I, I can
2 follow this on the screen. You'll tell us --

3 MS. WALSH: Yes.

4 THE COMMISSIONER: -- what this is.

5 MS. WALSH: Yes.

6

7 BY MS. WALSH:

8 Q Exhibit 14 is entitled an Admission as to Facts
9 of the Department of Family Services and Labour. What this
10 document contains is a number of statements that the
11 Department of Family Services says are true. And I'm
12 looking at paragraph 22 and paragraph 23. Do you have that
13 in front of you?

14 A Yes.

15 Q Paragraph 22 says:

16

17 "The After-Hours unit ... is a
18 unit of Winnipeg CFS, which
19 receives referrals of children in
20 need of protection after close of
21 normal business hours.

22 AHU was operational in 2004 and
23 2005. At that time, the AHU did
24 not maintain a log of telephone
25 calls that it received."

1 You told me you assumed that they would have?

2 A Yes.

3 Q So this is news to you?

4 A Yes.

5 Q Mr. McKinnon asked you about what you told the
6 RCMP with respect to the concerns you identified to CFS
7 when you called CFS. Do you remember those questions a few
8 minutes ago?

9 A Yes.

10 Q And out of fairness to you, I want to point you
11 to two portions in your RCMP statement. We pull up page
12 4964. This is the page that Mr. McKinnon referred you to.
13 Scroll up a bit, please.

14 You have that page?

15 A Yes.

16 Q I believe, and Mr. McKinnon can correct me if I'm
17 wrong, I believe that you were referred to the bottom,
18 towards the bottom of the page where it says:

19

20 "'Because there's something wrong
21 with the little girl.' And I
22 said, 'It doesn't take ...'"

23

24 A (Inaudible).

25 Q

1 "'... you know, rocket science to
2 figure something out."

3

4 Remember discussing that with Mr. McKinnon a few
5 minutes ago?

6 A Yeah.

7 Q And I just want to point out that that paragraph
8 starts earlier than that, where you say:

9

10 "We called CFS at the beginning of
11 2005 in the winter, it was after
12 New Years. And I told CFS, you
13 know, 'We have concerns. This
14 little girl, like you know,
15 there's problems.' I was like,
16 you know, 'Okay, well can you give
17 us your name? And can you give us
18 your ... number so we can call you
19 and whatever, if we have any
20 further ...' I was like, 'I don't
21 want to.' ... 'This girl is my
22 best friend - Okay? - like you
23 know, can you not understand? ...
24 I don't want to have anything to
25 do with it.' And ... they're

1 like, 'Well ... how come you're
2 calling us?' I was like, 'Because
3 there's something wrong with the
4 little girl.'"

5

6 The other portion of your statement where you
7 talked about what you told CFS, and I'm just putting this
8 into the record, Mr. Commissioner, out of fairness to the
9 witness, is at page 4991. Do you have that page?

10 A Yes.

11 Q And at, towards the top of the page, the RCMP
12 officer asks:

13

14 "What exactly did you tell them?"

15

16 Let's, so that we're sure that --

17 A (Inaudible).

18 Q Let's go to the page before so we're sure that,
19 that you're -- that this is in the context of your talking
20 to CFS. So at the bottom of the page -- you have page 4990
21 in front of you?

22 A Yeah.

23 Q At the bottom of the page, the constable says:

24

25 "[Hang] on here. Let me just ...

1 take this here. Okay, so you told
2 CFS."

3

4 And he says:

5

6 "When was this?"

7

8 And you said:

9

10 "Again, ... around my birthday."

11

12 So then the next page, the constable says:

13

14 "What exactly did you tell them?

15 I told them about her not using
16 the bathroom properly and how
17 she's always with Wes, and the,
18 [and it's blacked out] concerns
19 about getting locked up."

20

21 So those are other things that the RCMP statement
22 contained as to items that you told CFS.

23 One other area that I want to confirm with you,
24 you said that you told Ms. Fines about your concerns about
25 Phoenix, right?

1 A Yes.

2 Q And that that was some time shortly before you
3 phoned CFS; is that right?

4 A Can you say that again?

5 Q When did you tell Della Fines about your concerns
6 about Phoenix? Was it just before you phoned CFS with your
7 concerns?

8 A I don't remember.

9 Q Was it around the same time?

10 A Yes.

11 Q And we know that you phoned CFS around the time
12 of your birthday?

13 A Yes.

14 Q Which was at the end of February?

15 A Yes.

16 Q Now, do you remember how often you saw Ms. Fines
17 around the end of February 2005?

18 A No, I don't.

19 Q Did you have a general pattern as to how often
20 you saw her?

21 A From what I remember, yeah.

22 Q And what was that? How often would you see Ms.
23 Fines?

24 A I'm not exactly too sure, but between home visits
25 and phone calls, we stayed connected quite a bit.

1 Q And do you remember whether you told Ms. Fines
2 your concerns about Phoenix in a phone call or whether it
3 was in a home visit?

4 A I'm pretty sure was a home visit.

5 Q And when Ms. Fines made home visits, were they
6 always the same length of time?

7 A No.

8 Q Some were shorter than others?

9 A Yes.

10 Q Sometimes she might just come by to drop
11 something off for you?

12 A Yes.

13 Q Do you remember having a visit with Ms. Fines
14 some time around the end of February, between the end of
15 February and the beginning of March of 2005?

16 A I don't remember a specific visit.

17 Q During that timeframe, say February and March of
18 2005, how many times do you think you saw Ms. Fines?

19 A In two months?

20 Q Yes.

21 A (Inaudible)? Say like once or twice maybe.

22 Q And was it during one of those visits that
23 you recall telling Ms. Fines about your concerns about
24 Phoenix?

25 A I believe so. I don't recall.

1 Q Well, I think I did raise this with you. I
2 expect that Ms. Fines will testify that she did not have a
3 meeting with you during that timeframe.

4 A See, well, not to be rude, but I'm sure it's more
5 Mrs. Fines' agenda to know when we had our visits. I've
6 never kept track of when CFS came to visit me.

7 Q Was there ever a month that Ms. Fines did not
8 visit you for a whole month?

9 A I don't know.

10 Q In other words, would a whole month go by without
11 your seeing Ms. Fines?

12 A May have.

13 Q What about two months? I'm talking in 2005?

14 A I'm not sure. I don't think so.

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

16 THE COMMISSIONER: Thank you, counsel.

17 All right, Witness. Thank you very much for the
18 time you've given and appearing here today to give your
19 evidence, and all the lawyers have now completed their
20 questioning and you're free to return to your daily life.
21 So, thank you very much.

22 THE WITNESS: Thank you.

23

24 (WITNESS EXCUSED)

25

1 MS. WALSH: Mr. Commissioner, if we might take a
2 15-minute break.

3 THE COMMISSIONER: Yes.

4 MS. WALSH: While we get set up for the next SOR.

5 THE COMMISSIONER: All right.

6 MS. WALSH: Thank you.

7 THE COMMISSIONER: We'll rise for 15 minutes.

8

9 (BRIEF RECESS)

10

11 MS. WALSH: Mr. Commissioner, our next witness is
12 also a source of referral so we're going to have to ask
13 everyone to leave while we have the witness sworn in, and
14 then we'll put on the record that the witness has been duly
15 sworn.

16 THE COMMISSIONER: I think they know the routine
17 by now.

18 MS. WALSH: They do. They do. So witness, we'll
19 just take a minute before we start.

20

21 (PROCEEDINGS OFF THE RECORD)

22

23 MS. WALSH: Are we off the record right now?

24 THE CLERK: I was just going to ask if
25 (inaudible) time.

1 MS. WALSH: Yes. We're off the record? No.

2

3 (PROCEEDINGS OFF THE RECORD)

4

5 THE COMMISSIONER: Will they stay a little later
6 today, do you think? Will they stay a little later or ...

7 MS. WALSH: Yes. I would appreciate if we could
8 stay later and finish this witness.

9 THE COMMISSIONER: At least your evidence.

10 MS. WALSH: Yes. At our end the lights have all
11 gone out.

12 UNIDENTIFIED PERSON: The light's on.

13 MS. WALSH: They're back on.

14 THE COMMISSIONER: Partially.

15 MS. WALSH: Someone must have hit the switch.

16 THE COMMISSIONER: All right, Ms. Walsh, I think
17 you're on.

18 MS. WALSH: Thank you. So for the record, the
19 witness has been duly affirmed and from now on the witness
20 will be known as SOR 6.

21 Witness, you understand that that's how we know
22 you?

23 THE WITNESS: Yes.

24 MS. WALSH: And again, for the sake of the media
25 and the public, Mr. Commissioner, I confirm that the

1 Commission's SOR protocol applies to the evidence of this
2 witness.

3 THE COMMISSIONER: In other words, what is heard
4 here can be reported but not who the speaker is.

5 MS. WALSH: That's right. No reporting that
6 would lead --

7 THE COMMISSIONER: Identify.

8 MS. WALSH: -- to the identification of this
9 witness or of any other witnesses who we know are SORs.

10 THE COMMISSIONER: Yes.

11 UNIDENTIFIED PERSON: Right.

12 MS. WALSH: Thank you.

13

14 **SOR #6**, affirmed off the record,

15 testified as follows

16

17 DIRECT EXAMINATION BY MS. WALSH:

18 Q All right, let's start with something simple.

19 How old are you?

20 A Thirty-one.

21 Q Where were you born?

22 A Winnipeg.

23 Q I understand your mother was a residential school
24 survivor?

25 A Yes.

1 Q And you are one of eight children?

2 A Yes.

3 Q Were you ever involved with Child and Family
4 Services when you were a child?

5 A I don't remember.

6 Q Do you have a high school degree?

7 A A diploma, yes.

8 Q Pardon me?

9 THE COMMISSIONER: Diploma.

10 THE WITNESS: (Inaudible).

11

12 BY MS. WALSH:

13 Q A diploma. So you finished grade 12?

14 A Yes.

15 Q Have you taken any other training since grade 12?

16 A Some college.

17 Q In what field? What subject?

18 A Health.

19 Q And you're currently employed?

20 A Yes.

21 Q And you're married?

22 A Yes.

23 Q And you were a friend of Samantha Kematch's; is
24 that right?

25 A Yes.

1 Q Where did you meet Ms. Kematch?

2 A I met her at, it was a girls home for parenting,
3 for young mothers.

4 Q When was that?

5 A I believe it was in 1998.

6 Q Is that home the Oshki-Ikwe home?

7 A Yes.

8 Q Why were you there?

9 A I was there because I was an under-age mother.

10 Q What was Oshki-Ikwe like?

11 A It was, it was a good place to learn how to
12 parent.

13 Q How long did you stay there?

14 A A few months.

15 Q And was Samantha Kematch there with a baby of her
16 own?

17 A Yes.

18 Q You became friendly with her?

19 A I did, yes.

20 Q I understand that you also had, the two of you
21 had another friend there in common?

22 A Yes.

23 Q And you understand that that person is known to
24 the Commission as SOR 5?

25 A Yes.

1 Q After you left Oshki-Ikwe, where did you go?

2 A They sent me back to Winnipeg.

3 Q Back to Winnipeg?

4 A Yes.

5 Q With your baby?

6 A Yes.

7 Q Did you live with a foster mother?

8 A I did, yes.

9 Q And you understand that that foster mother is
10 known to this Commission as SOR 7?

11 A Yes.

12 Q After you left Oshki-Ikwe and moved to Winnipeg,
13 did you stay in touch with Samantha?

14 A Yes.

15 Q So that would have been in 1999?

16 A Yes.

17 Q Do you remember how often you saw her around that
18 time?

19 A I don't know how often I saw her but I did see
20 her that year.

21 Q Did you know Steve Sinclair?

22 A Yes.

23 Q Did you see Samantha and Steve together?

24 A Yes.

25 Q Where were they living?

1 A They were living on Magnus, I believe.

2 Q And do you remember --

3 A It was a suite.

4 Q Sorry. On Magnus?

5 A Yes.

6 Q And do you remember what Samantha was like at
7 this time, 1999?

8 A I just know that we had a few, I guess they had a
9 few parties and drank a bit at that time I remember.

10 Q You left Oshki-Ikwe with your baby, right?

11 A Yes.

12 Q Do you remember whether Ms. Kematch left with her
13 baby?

14 A She didn't, no.

15 Q She did not?

16 A No.

17 Q So that was 1999. Did you stay in touch with her
18 through 2000?

19 A I, I seen her once, I believe, at -- 2000. I
20 don't think I did, no.

21 Q Did you know that she had a daughter named
22 Phoenix in 2000?

23 A Yes.

24 Q When did you find out about Phoenix's birth? Do
25 you remember approximately? Would it have been in 2000?

1 A I'm not ... The last time -- I mean the time
2 that I seen her was, there was one time at the Women's
3 Hospital and I myself was pregnant at the time and she also
4 looked like she was pregnant, too.

5 Q Was that in 2000?

6 A I don't know for sure. I just know it was winter
7 out.

8 Q Okay. You say you knew that she had a baby named
9 Phoenix. Did you know that she had a second daughter in
10 2001?

11 A Yes, but I didn't find out, I didn't, I didn't
12 know when they were born because we lost contact for a few
13 years.

14 Q Okay. So 2000/2001 you didn't have much contact
15 with Samantha?

16 A No. No.

17 Q What about 2002/2003?

18 A Hard to -- it's hard to remember the exact years
19 but shortly after she had her second, well I guess that
20 would be her third child, I guess it would be after her
21 third child died that she came looking for me and we got
22 back into contact.

23 Q Do you remember when you first met Phoenix, what
24 year?

25 A I think it was two thousand and, 2004.

1 Q Where did you meet her? What do you remember?

2 A When I first met her -- well, the first time that
3 I actually remember her, I'd have to say, is when I went to
4 give Sam cigarettes.

5 Q And what do you remember about that occasion?
6 That was in 2004?

7 A Yes, I believe it was 2004.

8 Q Do you remember what time of year it was?

9 A It was, I think it might have been summer or
10 fall. We were in tee shirts so it was nice weather.

11 Q And you said that you went to give Samantha
12 cigarettes. Why was that?

13 A She asked if she could get some cigarettes off
14 me.

15 Q So she just called you up?

16 A Yeah.

17 Q And you took --

18 A (Inaudible).

19 Q -- and you took cigarettes to her?

20 A I did, yes.

21 Q Was anyone with you?

22 A My son.

23 Q And how old was he?

24 A He must have been four.

25 Q And was Phoenix with Samantha on this occasion?

1 A Yes.

2 Q Do you remember what Phoenix was like?

3 A On that occasion she, she seemed happy and she
4 didn't seem worried or -- she seemed like a happy carefree
5 child, like she was running with my son and, and smiling
6 and they played at the park together that same day.

7 Q Did you know whether Samantha was dating or
8 living with anyone at that point?

9 A I heard that she had a boyfriend and I believe it
10 was Wes McKay.

11 Q Did you ever meet him?

12 A No, I never met him.

13 Q So did you stay in contact with Samantha through
14 2004 and 2005?

15 A Yes, but it wasn't very frequent.

16 Q How often?

17 A Think I only seen her roughly three or four
18 times.

19 Q Was Phoenix --

20 A Wait.

21 Q Sorry, go ahead.

22 A Mostly we would just talk on the phone.

23 Q How often would you talk on the phone with her?

24 A About -- it wasn't very frequent, but I mean I
25 did talk to her a few times on the phone.

1 Q Did you visit Samantha at her apartment in 2004
2 or 2005?

3 A Yes, I think in 2005.

4 Q Where, where was that apartment?

5 A At the time all I knew, all I knew was it was
6 behind the Maryland Hotel. But it, it was on McGee Street.

7 Q On McGee?

8 A Yes.

9 Q You said that you first met Phoenix in 2004, the
10 weather was nice. How many times did you see her after
11 that, Phoenix?

12 A I only saw her one other time.

13 Q And we'll come to that eventually.

14 Going back to occasions when you visited Samantha
15 at her apartment, there are two particular visits with
16 Samantha that I'd like to ask you about. Do you recall
17 going to her apartment around December or January of 2005
18 with SOR 5?

19 A Yes.

20 Q What do you remember about that visit?

21 A When we walked through the door, I remember
22 seeing some blue, I think they were blue, looked like kid's
23 boots, toddler boots. Kid's boots. They still had a tag
24 on it and the string was attached to it to keep the boots
25 together.

1 Q So --

2 A How, how you purchase them in a store.

3 Q They still had the string that attached the boots
4 together?

5 A Yes. Yes.

6 Q So did the boots look like they had ever been
7 worn?

8 A No.

9 Q These were blue boots?

10 A Yes.

11 Q Toddler's boots?

12 A Yeah, they were like for, it looked like they
13 could be for a three or four-year-old.

14 Q All right. What else do you remember about that
15 visit?

16 A Well, when we left to go downtown to hang out at
17 Portage Place, just to walk around together, Samantha
18 locked her bedroom door and then locked the front door.

19 Q So Samantha locked the bedroom door before
20 leaving the apartment; is that what you mean?

21 A Yes.

22 Q And then she locked the apartment door?

23 A Yes.

24 Q Do you remember what the lock, what kind of a
25 lock was on the bedroom door?

1 A I don't remember, no.

2 Q Do you remember whether it was separate from the
3 handle?

4 A I think it was separate from the handle.

5 Q Did you see Phoenix that day?

6 A No, I didn't.

7 Q You said when we left. Who, who were you
8 referring to? Who was the "we"?

9 A Samantha and I think it was Sam's baby that she
10 had in the stroller and, and SOR 5 and another, I think it
11 was another person with us, I just, I can't remember.

12 Q You went to Portage Place?

13 A Yes.

14 Q What happens next? What else do you remember,
15 anything?

16 A No, I, I don't remember anything else.

17 Q Do you remember how long you stayed at Portage
18 Place?

19 A Probably about an hour or two.

20 Q And then do you remember what you did after
21 Portage Place?

22 A No, I don't.

23 Q Do you recall being at Samantha's apartment on
24 another occasion in 2005?

25 A Yes.

1 Q What can you remember about that occasion?

2 A Could you ...

3 Q What happened, what happened on that day at her
4 apartment?

5 A Are you meaning the store?

6 Q Yes.

7 A Oh. Well, I went to visit her on another
8 occasion. I don't remember exact dates but it was in the
9 winter of 2005. We went to the corner store and baby
10 [redacted] was the, Sam's baby, was already born, she was
11 already with Sam, and --

12 Q So Sam's baby was already born and she was with
13 Sam, you said?

14 A Yes.

15 Q Okay.

16 A And so she just bundled up, Sam bundled up her
17 baby and we went for the walk to the corner store and just,
18 she just carried her baby. And, and we came back and I was
19 waiting, I called the bus (inaudible) and I was waiting,
20 and, well ...

21 Q What happened while you were waiting for the bus?

22 A I heard someone crying it sounded like, or like a
23 sick child, like coming from the bedroom. And there was
24 only one bedroom there. And, or like moaning or if, if I
25 could describe it. Was, it was like a child who is sick,

1 like with the flu or ... maybe.

2 Q Okay. And then what happened?

3 A I was, I was kind of surprised because she didn't
4 say that, that Phoenix was there.

5 Q Did you see Phoenix that day?

6 A No. no.

7 Q So did Ms. Kematch do anything when you heard the
8 whimpering or the moaning, as you described it?

9 A Well, she just looked at me and proceeded to the
10 bedroom.

11 Q Sorry, she, she proceeded to the bedroom?

12 A Yes. And then -- well, she went to the bedroom
13 and, and then she came out a few seconds later. And I
14 didn't hear anymore moaning or anything.

15 Q You said you didn't see Phoenix. Did you see
16 Samantha's baby?

17 A Yes.

18 Q So was the moaning coming from Samantha's baby?

19 A No, because the baby was in the living room with
20 us.

21 Q Did you notice whether the bedroom door was ever
22 locked that day?

23 A Yeah. When we went to the store.

24 Q When you went to the store? What did you see?

25 A The same thing, like, when we went to Portage

1 Place, just her at the outside of the bedroom door --

2 THE COMMISSIONER: The day --

3 THE WITNESS: -- locking ...

4 THE COMMISSIONER: Witness, the day you went to
5 Portage Place, was there anybody left in the bedroom when,
6 as far as you know, when she locked the door?

7 THE WITNESS: No, not that I knew of.

8

9 BY MS. WALSH:

10 Q But did you know whether anyone was in the
11 bedroom?

12 A No, I didn't.

13 Q You didn't go into the bedroom on any occasion?
14 On these two --

15 A No.

16 Q -- on these two occasions?

17 A No. No.

18 THE COMMISSIONER: But only the second occasion
19 you heard the moaning coming from the bedroom?

20 THE WITNESS: Yes.

21

22 BY MS. WALSH:

23 Q So I think you were saying that on the second
24 occasion before you went to the store, you saw Samantha do
25 something with the bedroom door?

1 A Yeah. I, I think she locked it and then locked
2 the outside door.

3 Q The same as she had done when you went to Portage
4 Place?

5 A Yeah.

6 Q Did you ask Samantha about Phoenix that day,
7 where she was?

8 A I believe I, I believe I did. Every time I --
9 like when I did ask her, from what I remember is she would
10 tell me that she was at Steve's sister's, I believe, or
11 someone else was babysitting or watching her, but I, I
12 remember Steve's sister is what she said.

13 Q So you said you saw Phoenix twice, on two
14 occasions?

15 A So far, yes.

16 Q Okay. We haven't talked about the second
17 occasion yet. Did you ever see Samantha physically abuse
18 Phoenix?

19 A No.

20 Q Did you ever see any bruises on Phoenix?

21 A No.

22 Q Did you ever see Samantha verbally abuse Phoenix?

23 A I don't think so, no.

24 Q Did you ever see Phoenix misbehave?

25 A No.

1 Q Did you ever hear Samantha talk to Phoenix in a
2 way that concerned you?

3 A Yes.

4 Q Can you tell us about that occasion?

5 A I don't remember the exact dates. It was just a
6 phone call, like when we were talking on the phone, and I
7 just heard her remark to, think say to Phoenix that -- she
8 was giving her a bath, is what I heard on the phone. She's
9 giving her a bath and, and she said something like
10 degrading.

11 Q What did -- Samantha said something degrading to
12 Phoenix?

13 A Yeah. Just, she said, if you wouldn't play with
14 yourself you wouldn't stink so much.

15 Q What did you think when you heard Samantha say
16 that to Phoenix?

17 A I just, I just couldn't believe it. Like I just
18 couldn't believe that someone just, that she was saying
19 that.

20 Q So that caused you concern for Phoenix?

21 A Yeah. Yeah, it did.

22 Q Did anything else cause you concern for Phoenix
23 around this time --

24 A Um-hum.

25 Q -- say winter of 2005?

1 A Well, well, just how she was, like how she would
2 say Phoenix is at -- what I remember, I distinctly remember
3 her saying, she's at Steve's sister's. I don't know when
4 she said that but ... And then, you know, the boots being
5 in the closet and it's winter, I thought that was kind of
6 odd.

7 Q Why was that?

8 A Because it's winter and I just was wondering,
9 like how can she, how can she go out without winter boots.

10 Q Because the boots hadn't been worn?

11 A Yes.

12 Q Now, did you talk with anyone about your concerns
13 for Phoenix?

14 A Yeah. I, I talked to SOR 5 and SOR 7.

15 Q Did you talk to them at the same time or did you
16 talk to one before the other?

17 A I talked to one before the other.

18 Q Who did you talk to first?

19 A SOR 5.

20 Q Did she tell you she also had concerns about
21 Phoenix?

22 A She did, yes.

23 Q Do you recall what her concerns were?

24 A I recall she told me that Sam was getting her to,
25 believe it was swear words and she was borrowing, I think,

1 food off of her and, and giving her Phoenix's Christmas
2 presents.

3 Q So did you and SOR 5 do anything about your
4 concerns?

5 A Yes.

6 Q What did you do?

7 A We tried to notify CFS.

8 Q Do you remember when that was, what month?

9 A I don't remember.

10 Q Remember what time of year it was?

11 A It was winter.

12 Q This is 2005?

13 A I believe so, yes.

14 Q You said you tried to notify CFS. How did you do
15 that?

16 A We used [redacted] cell phone, I mean SOR 5's
17 cell phone.

18 Q Where did you make the call from?

19 A We made it from SOR 5's kitchen in her, her
20 place.

21 Q Who made the call?

22 A [Redacted} -- I mean --

23 Q It's okay. SOR 5?

24 A SOR 5 did, yes.

25 Q And were you with SOR 5 in the room when she made

1 the call?

2 A Yes.

3 Q Could you hear what SOR 5 said to the person she
4 was calling? Could you, could you hear SOR 5's end of the
5 conversation?

6 A I don't remember the whole extent of that
7 conversation. I just know that they -- she said that they
8 need our names.

9 Q Go on.

10 A Or, and, and we didn't feel comfortable giving
11 our names.

12 Q Why was that?

13 A Because Sam was a friend at the time and, I mean,
14 we were just, think we were just concerned and we just
15 wanted someone to, to, to check and see, because of our
16 concerns.

17 Q About Phoenix?

18 A Yes.

19 Q Were you a little afraid of Samantha?

20 A Yes.

21 Q Were you nervous about making this call with SOR
22 5?

23 A Yes.

24 Q But you did it anyway. Why is that?

25 A Because I was concerned. I mean, we were both

1 concerned and we weren't sure but we, we were concerned and
2 cared enough to try.

3 Q Do you remember what time of day you made this
4 call to CFS?

5 A It was dark out.

6 Q Okay.

7 A So I think it was the evening.

8 Q Do you recall whether SOR 5 mentioned Phoenix's
9 name to CFS?

10 A I don't know. I don't recall.

11 Q What about Samantha's name or Wes' name; do you
12 remember whether she mentioned either of those names?

13 A I know she mentioned Sam's name.

14 Q What about an address? Do you know whether she
15 gave CFS an address where Samantha lived?

16 A I'm sorry, I don't recall. I think she just --
17 I'm not sure.

18 Q Okay. After the two of you made that call, did
19 you think that CFS was going to do anything?

20 A We weren't sure. I don't think -- we were, we
21 weren't really thinking they would.

22 Q You weren't thinking they would?

23 A Yeah. I -- because we wouldn't give our names so
24 we didn't think that they were going to do anything.

25 Q Okay. So did you do anything else with your

1 concerns?

2 A Yeah. I, I know I, I ended up calling SOR 7.

3 Q Your foster mother?

4 A Yes.

5 Q And what --

6 A Because ...

7 Q -- did you say to her?

8 A I just told her I had some concerns and that we,
9 me and SOR 5, that, we didn't feel that they were going to
10 -- that CFS wasn't going to do anything because we didn't
11 want to give our names to them. And I just thought that --
12 I told SOR 7 that I thought she would be able to get
13 through to them because she works with them and works for
14 them.

15 Q Do you remember if you were specific about what
16 concerns you had when you talked to your foster mother?

17 A I, I honestly can't remember what I -- word for
18 word. But I know I told her I was concerned, and I just
19 wanted someone to check.

20 Q Do you know if SOR 7 did make a call to CFS?

21 A Yes.

22 Q How did you find that out?

23 A Because one of, on one of the occasions when I
24 spoke to Sam after that, after SOR 5 and SOR 7 phoned CFS,
25 that I remember Sam phoned me and she was pretty upset and

1 angry, and she said that CFS came to her door twice.

2 Q Twice?

3 A And (inaudible) --

4 Q Did you say twice? Yeah?

5 A Yes.

6 Q Okay.

7 A And she said she thought it was the lady down the
8 hall in her apartment that they're living at. I don't --

9 Q She didn't, she didn't suspect it was because of
10 anything you did?

11 A No, I don't think she suspected it was anything
12 that me or SOR 5 did.

13 Q And how did --

14 A Or SOR 7.

15 Q How did you feel knowing that CFS had made
16 contact with Samantha?

17 A Sorry, could you repeat that question?

18 Q When you found out that CFS had contacted
19 Samantha, how did you feel about that?

20 A I felt like, I felt kind of relieved that at
21 least they were involved and, and if, if anything was going
22 on that they'd find it out and do something.

23 Q Now, you've been telling us that you saw Phoenix
24 on two occasions. We talked about the first occasion.
25 Let's talk about the second occasion. Okay?

1 THE COMMISSIONER: Now, Ms. Walsh --

2 THE WITNESS: Okay.

3 THE COMMISSIONER: -- what about, are we going to
4 continue? I'm quite content, but you've got your
5 colleagues and the witness. What -- how long will you be?

6 MS. WALSH: I'll be about another 15 minutes, but
7 of course we're going to have to, I suspect that there will
8 be some cross-examination so I'm happy to stop today.
9 We're going to have to carry on tomorrow in any event.

10 THE COMMISSIONER: Well, I assume we will.

11 UNIDENTIFIED PERSON: If you could finish your
12 direct it might shorten cross.

13 MS. WALSH: Okay. So there's some suggestion
14 that if --

15 THE COMMISSIONER: I don't mind sitting till
16 you're finished. But if --

17 MS. WALSH: Okay.

18 THE COMMISSIONER: I don't think we would get
19 into cross today.

20 MS. WALSH: That's right.

21 THE COMMISSIONER: So --

22 MS. WALSH: Mr. Gange, you have any ...

23 MR. GANGE: Well ...

24 THE COMMISSIONER: Yeah, what's your situation,
25 Mr. Gange?

1 MR. GANGE: Well, I'm scheduled to be here
2 tomorrow, in any event.

3 THE COMMISSIONER: Oh, yes.

4 MR. GANGE: However, I think that SOR 6 is
5 missing a day of work today and, and I don't -- it would be
6 nice if we could get it done today so that she doesn't have
7 to miss another day of work.

8 THE COMMISSIONER: Well, I'd like to accommodate
9 her if -- has anyone got a personal problem with -- is it
10 impossible? Hearing none, I think we'll try to accommodate
11 the witness if we can. If it becomes impossible or someone
12 feels we've gone long enough, I'll, I'll hear them.

13 MS. WALSH: Witness, are you all right to carry
14 on or do you need a break?

15 THE WITNESS: I, I can't. I have, I have to take
16 my son to his program in the evening.

17 MR. GANGE: I'm sorry, I wasn't aware of that,
18 Mr. Commissioner. And if, if the --

19 MS. WALSH: Okay.

20 MR. GANGE: -- if the witness needs to stop
21 because of, because of family commitments, I apologize that
22 I jumped in --

23 THE COMMISSIONER: Well, no --

24 MR. GANGE: -- the way that I did.

25 THE COMMISSIONER: -- no, you wouldn't know that.

1 But Witness, we'll certainly stop right now, but
2 you'd have to come back tomorrow morning. Is that going to
3 be possible?

4 THE WITNESS: Yes.

5 THE COMMISSIONER: All right.

6 THE WITNESS: I can just notify work.

7 THE COMMISSIONER: You'll notify your work.
8 Well, you'll certainly be through before noon.

9 MS. WALSH: Oh, yes.

10 THE COMMISSIONER: You know, if you, if you can
11 tell your employer you'll certainly be back to work by
12 noon, I can assure you that.

13 THE WITNESS: Okay.

14 THE COMMISSIONER: So I think if she's got a
15 family commitment we should adjourn, so we'll do that till
16 9:30 tomorrow.

17 Mr. McKinnon?

18 MR. MCKINNON: I was just going to make a
19 suggestion and I don't know what, what the timing of the
20 family commitment is, but I found this morning, with SOR 5,
21 having the break, the lunch break, having an hour to
22 organize myself, the cross was much shorter than I planned,
23 so I'm -- if the witness could stay till 5:00 and Ms. Walsh
24 could finish her direct, it might shorten the cross.

25 MS. WALSH: I don't think we should do that. I'm

1 sorry. I think if the witness needs to, to get somewhere
2 for her son that we should --

3 THE COMMISSIONER: Is your --

4 MS. WALSH: I don't want to rush through my -- I
5 can't commit that I will be finished by 5:00 and so I don't
6 want to rush through my examination.

7 THE COMMISSIONER: Well, look, Mr. McKinnon, I
8 think we'll adjourn and if we -- when the cross is -- when
9 the chief is finished, if you need more than 15 minutes,
10 need half an hour, I think we'll have that in the morning
11 and still get her through by noon based, based upon the
12 last witness.

13 MR. MCKINNON: Thanks very much, Mr.
14 Commissioner.

15 THE COMMISSIONER: All right. We'll adjourn now
16 till 9:30.

17 MS. WALSH: Thank you, Witness, we'll see you
18 tomorrow morning.

19

20 (PROCEEDINGS ADJOURNED TO JANUARY 10, 2013)