

I, ^{DB} [REDACTED] of the City of Spruce Grove, in the Province of Alberta, make oath and swear that:

1. I am the trustee of ^{TW} [REDACTED] and as such have personal knowledge of the matters hereinafter deposed to, except where stated on information and belief, in which case I believe the same to be true.
2. In September of 2020, I instructed my counsel to make an application compelling the Government Defendants to produce all of their relevant materials regarding the issues of HMTQ breaching their fiduciary duty to help ^{TW} [REDACTED] with his lawsuit.
3. I am advised by my counsel that despite the Court Order requiring the Government Defendants to disclose all relevant records, that they have not disclosed all of their relevant records in their Supplementary Affidavit of Records. I am also advised that the Supplementary Affidavit of Records was not prepared by a Government employee, but rather was prepared based on information and belief from Amanda Kostek, counsel for HMTQ.
4. I am advised by Mr. Lee that HMTQ did not disclose in its Supplementary Affidavit of Records a memo dated October 20, 1986 from John Mould to Dr. Herb Sohn. The memo is attached as **Exhibit "A"** to my Affidavit.
5. I am advised by Mr. Lee that during questioning of Ms. Besler on April 9, 2021, Mr. Lee referred to a transcript in which this memo was mentioned. In the afternoon Ms. Kostek provided a copy of the memo, which was in the possession of her client. This memo states that HMTQ had a practice to not help foster children to sue for negligence and not to sue foster parents, which are the two things that HMTQ did not do for ^{TW} [REDACTED]. No explanation has been provided for the failure to disclose this memo in HMTQ's Supplementary Affidavit of Records
6. The news article referred to in the memo has not been disclosed to me.



COURT FILE NUMBER 0203 19700
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON
PLAINTIFF *DB* [REDACTED], a minor by his Trustee
TW [REDACTED] and Her Majesty the Queen in Right of Alberta.

DEFENDANTS HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA as represented by IRIS EVANS, THE MINISTER OF CHILDREN'S SERVICES, PAULA TYLER, THE DEPUTY MINISTER OF CHILDREN'S SERVICES, KERAY HENKE, THE ASSISTANT DEPUTY OF MINISTER OF CHILDREN'S SERVICES, BILL MEADE, THE CEO OF MA'MOWE CAPITAL REGION CHILD AND FAMILY SERVICES AUTHORITY, JACKIE STEWART, MANAGER OF LITIGATION SUPPORT FOR CHILDREN'S SERVICES, GAIL PERKINS, CAROL ADAGALA, WENDY MITCHELL-KUBAN, DAVID JAMES MILLER, MRS. MILLAR and JOHN DOE

DOCUMENT **AFFIDAVIT**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Allan Garber Professional Corporation
Barrister and Solicitor
11420 - 142 Street
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Lawyer: Allan A. Garber
File No.: 197 - AAG

Affidavit of [REDACTED] *DB*

Sworn on April 30, 2021

7. I am advised by Mr. Lee that the evidence from Jackie Stewart, Sharon Heron and Susan Bercov seems to indicate that HMTQ has a large number of records from 1999 to 2004 related to the issue of whether the Government knew or ought to have known that they had a duty to help ^{TL} [REDACTED] with his potential lawsuit.

8. Attached as **Exhibits "B" and "C"** are transcripts of court proceedings in the VB v. HMTQ case on Sept 28, 2004 and Oct 29, 2004 in which Susan Bercov, counsel for HMTQ, stated:

- (i) that HMTQ does not know why the Public Trustee is not willing to represent the Blood children Ex B pg 23 line 26 to pg 24 line 8.
- (ii) that the Government has the power to help foster children to sue, but is unsure if that power is with the Public Trustee or Child Welfare, (Ex C pg 2 lines 2 to 17)
- (iii) "that to date a considerable amount of work is being devoted to considering these issues" Ex C pg 3 line 2 to 13.

9. Attached as **Exhibit "D"** are excerpts of the questioning of Jackie Stewart on April 19, 2012 in *TL v. HMTQ* in which Jackie Stewart swears that:

- (i) there were meetings in the early 2000s on the topic of the representation of foster children in civil matters (pg 43 – 49)
- (ii) HMTQ claimed privilege over the records from the meetings (pg 49)

10. Attached as **Exhibit "E"** are excerpts of the questioning of Sharon Heron on July 12, 2012, in *TL v. HMTQ* in which Sharon Heron swears: (pgs 170 - 200)

- (i) from 1999 there was a big debate going on within the government as to whether the Public Trustee or Child Welfare ought to be helping foster children with potential civil actions (pg 171)
- (ii) the debate was amongst lawyers in the Government (pg 172).
- (iii) they were looking for a more arms length process (pg 173).
- (iv) there was a perception of a possible conflict of interest (pg 174).
- (v) Jackie Stewart was involved (pg 177).
- (vi) there were documents created from these meetings (pg 189).

11. HMTQ's Supplemental Affidavit of Records does not identify any records from the meetings and communications described in **Exhibit's "B", "C", "D" and "E"** in the producible list of documents or in the privileged list of documents.
12. When Jackie Stewart was Questioned in this action on July 16, 2004, she deposed that: (**Exhibit "F"**):
 - (i) "I'm not aware of any interpretive memos or anything else other than what policy that there is in place." (Pg 4 line 19 and 20).
 - (ii) that she knew that no documents existed based on "Just from my general knowledge working in that Ministry and interacting with people and knowing what is being corresponded." (Pg 16 line 13 to 15).
13. The Sharon Heron 1999 memo attached as **Exhibit "G"** refers to "options papers." These "options papers have not been disclosed in HMTQ's Affidavit of Records.
14. The Supplementary Affidavit of Records of HMTQ Schedule 2B describes an April 28, 1987 memo from R. Neil Dunne, Civil Law Section to Dr. Herb Sohn, Children's Guardian, referencing legal advice in March 23, 1987 memorandum from Camilla Witt.
15. Attached as **Exhibit "H"** are excerpts from the January 2003 Government Telephone Directory listing Neil Dunne as the Executive Director Civil Law Branch. Mr. Lee advised me and I believe that the Directory also identifies the following lawyers who worked for the Civil Law Branch who were involved in representing HMTQ in lawsuits brought by foster children alleging that HMTQ breached her duty to assist the foster children with their potential civil actions, and other individuals whose names have been mentioned in questioning as being involved in the issue of foster children with potential causes of action: Phil Goodman, Russ Pickford, Bill Wong, Jackie Stewart, Kelly Besler, Lora Lea Gaboriau, Laura Alcock, Susan Rankin, Peggy Hartman, Alan Meikle QC, Jeanette Fedorak, Rita Sumka, Susan Bercov, Neil Boyle, Kate Bridgett, David Kinloch, Doug Lewis, Shelley MacDonald, Jeff Mayan, Bill Olthuis, Brenda Feehan, Avery McNary, Reeve Parker, Jack Klinck QC, Roman Bombak and Suzanne McAfee.
16. I require the memo from Neil Dunne:
 - (i) to connect records and information that Mr. Dunne had in 1987 to individuals working for HMTQ to prove what HMTQ knew or ought to have known about HMTQ's duty to assist ██████████ with his potential cause of action.

TW

- (ii) to establish that HMTQ possessed records that HMTQ knew had to be identified in their Affidavits of Records in lawsuits by foster children alleging a failure to help them with their potential civil actions, including in ██████'s lawsuit.

17. The Supplementary Affidavit of Records includes information that in 1987 the Public Trustee had been advised that a policy decision had been made confirming that the Children's Guardian and not the Public Trustee would be the party to consider whether to pursue civil action for foster children. (letter Sept 19, 2012 from Shores Jardine to Robert Lee). Attached as **Exhibit "I"**.
18. I am advised by my counsel that in 2004, Jack Klinck testified in the *Blood* case that the Assistant Deputy Minister Civil Law was aware that the Public Trustee's position that the Public Trustee had no duty to assist foster children with potential civil actions and that the duty to assist foster children with potential civil actions belonged to the Director of Child Welfare as the guardian of the foster children, was the correct interpretation of the law (pg 60 to 71). Attached as **Exhibit "J"**.
19. My counsel has advised me that HMTQ is taking the position that some of the documents are privileged, but they have not provided any evidence substantiating that the documents were created for the purpose of being kept confidential. Attached as **Exhibit "K"** are excerpts of the testimony of Kelly Besler on April 9, 2021. Ms. Besler failed to answer questions relating to HMTQ's claim of privilege. (Pg 81 to 86). Ms. Besler later testified that HMTQ's policies about helping foster children sue were not intended to be kept secret from foster children. (pg 131 to 135)
20. Attached as **Exhibit "L"** are excerpts of the testimony of Jackie Stewart on April 1, 2021. Ms. Stewart testified that HMTQ did not have a policy to keep information about helping foster children a secret from foster children. (pg 28 to 42). Ms. Stewart swore the Supplementary Affidavit of Records, but she testified that she did not know why the 1987 records are privileged. (pgs 66 - 67) Ms. Stewart testified that she was not aware of a policy to keep secret from foster children which arm of the government was to help them with their potential civil actions (pg 150 -151).
21. Attached as Exhibit "**M**" and "**N**" are the answers to Undertakings of Jackie Stewart and Kelly Besler which were given in 2004 and 2006, respectively. HMTQ did not provide answers to these undertakings until 2021. HMTQ objected to many of the questions on the basis that they are too broad.
22. I am advised by Mr. Lee that he has not completed his questioning of Ms. Besler and that he anticipates that he requires another full day to complete his questioning of HMTQ's

Corporate Officer. Mr. Lee advised me that HMTQ's failure to provide full disclosure and late disclosure, the many incidents of conflict of interest that must be examined and the poor familiarity with important records and events are reasons why the questioning requires two full days. Mr. Lee indicated that the questioning could take more than 1 day depending on the preparation of Ms. Besler for the questioning.

23. In ^{TLW's} [REDACTED]'s Statement of Claim, it is alleged that the Government Defendants knew or they ought have known that they had a legal duty to help ^{TLW} [REDACTED] with his potential lawsuit after Mr. M^{TLW} [REDACTED] catastrophically assaulted ^{TLW} [REDACTED] and caused ^{TLW} [REDACTED] brain injury.
24. The documents that ^{TLW} [REDACTED] needs which I believe the Government has in its possession are records that show:
- (i) everyone who received the policy information that Child Welfare was the part of the Government that would help foster children to sue and that it would not be the Public Trustee (the policy records).
 - (ii) where the policy records were stored, what file folder they were kept in and which offices they were kept in.
 - (iii) how the policy was communicated to the staff after the policy was made.
 - (iv) the people who were aware of the policy.
 - (v) how the policy was reviewed from 1999 to 2004 and by whom.
 - (vi) how found the policy records were located and the paper trail that lead to the records being located and included in the TL Affidavit of Records. < >
 - (vii) which individuals were aware of the existence of the records after they were produced in the TL Affidavit of Records
 - (viii) whether anyone in the Government made the firm of Chomicki Baril Mah familiar with the policy records
 - (ix) how the policy records were eventually included in HMTQ's Supplementary Affidavit of Records in Tristan's case.
25. I am advised by Mr. Lee that the policy records between the Public Trustee, Child Welfare and Alberta Justice were included in the TL Class Action about 10 years ago, but they were not disclosed to ^{TLW} [REDACTED] in his lawsuit until 2021.
26. Attached as **Exhibit "O"** to my Affidavit is a letter dated November 12, 2020 from Amanda Kostek claiming at page 5 and 6 that the policy records were not disclosed because ^{TLW} [REDACTED] claim that the Government failed to help him with his potential civil action because that issue was subsumed by the TL Class Action. Attached as **Exhibit "P"** is the Government's original Answer to Undertakings which claims that the

policy records were not relevant because the TL Class Action subsumed the issue. Previously attached as **Exhibit "M"** is the Government's Revised Answers to Undertakings, which retracts the Government's original excuse for failing to disclose the records.

27. I am advised by Mr. Garber that HMTQ has not paid the costs in the amount of \$4,000.00 which were ordered to be paid by this Court by Order dated January 18, 2021. Attached as **Exhibit Q** is an email sent by Mr. Garber on April 10, 2021 concerning payment of the costs.
28. I am advised by Mr. Garber that HMTQ has not indicated whether HMTQ has made the inquiries of HMTQ's litigation manager or insurance risk manager to determine if there is a registry or data base regarding lawsuits filed against HMTQ for failing to sue for foster children, as required by para. 7 of the Order of this Court dated February 18, 2021. Attached as **Exhibit R** is a follow up email sent by Mr. Lee to Ms. Kostek on April 13, 2021.
29. Attached as **Exhibit S** are excerpts from the Alberta Children's Services Annual Reports for the years 2000-2001, 2001-2002, and 2016-2017.
30. I make this Affidavit in support of an application:
 - (a) compelling HMTQ to comply with the Court Order requiring HMTQ to file a Supplementary Affidavit of Records that identifies all of their relevant records, by a date to be set by this Court;
 - (b) denying HMTQ's claims of privilege;
 - (c) compelling HMTQ to provide full answers to the undertakings of Kelly Besler from 2006 and Jackie Stewart from 2004, by a date to set by this Court;
 - (d) compelling HMTQ to provide full answers to the questions that were refused or taken under advisement on April 1, 2021 and April 9, 2021, by Jackie Stewart and Kelly Besler respectively, by a date to be set by this Court;
 - (e) compelling Kelly Besler to re-attend for questioning until questioning has been completed;
 - (f) Declaring the Defendant HMTQ to be in civil contempt of court for failing to obey a court order requiring HMTQ to:
 - (i) Pay costs in the amount of \$4,000.00;
 - (ii) Serve a Supplementary Affidavit of Records containing all relevant and material documents which pertain to the pleadings;
 - (iii) Make inquiries including the Defendant's litigation manager or insurance risk manager to determine if a registry of data base has been created or

maintained regarding lawsuits filed against HMTQ for failing to sue for foster children, or negligent investigation.

SWORN BEFORE ME on
April 30, 2021 at Edmonton, Alberta.



(Commissioner for Oaths in and for the
Province of Alberta)

Allan A. Garber
Barrister and Solicitor



DB

This is Exhibit " A " referred to in the
Affidavit of [REDACTED] DB
Sworn before me this 30 day
of April A. Garber A.D. 2021
A Commissioner of Oaths in and for
the Province of Alberta

Allan A. Garber
Barrister and Solicitor

SOCIAL SERVICES
AND COMMUNITY HEALTH

FROM John Mould
Children's Guardian
Edmonton Region

OUR FILE REFERENCE

YOUR FILE REFERENCE

TO Dr. Herb Sohn
Provincial
Children's Guardian

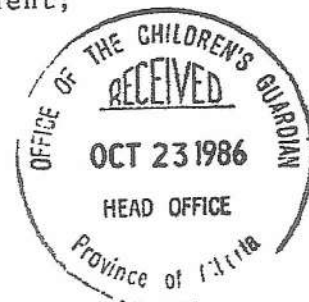
DATE October 20, 1986

TELEPHONE 422-5833

SUBJECT Civil Actions on Behalf of Children Under Guardianship

Based on the content of the attached September 19, 1986 article from the Calgary Sun, I have the following comments/concerns with regard to our current procedures vis a vis pursuit of civil action on behalf of children under guardianship:

- (1) In my experience, it has not been the practice of the department to pursue civil action on behalf of children under guardianship in instances when they have been injured through acts of omission (neglect; negligence), or through acts of commission (physical or sexual assault), at the hands of substitute caretakers (foster parents; group home staff, institutional staff);
- (2) There are no guidelines that identify the range of circumstances which, when any one occurs in respect to a child under guardianship, we should refer for assessment for possible civil action;
- (3) Given the responsibility of the Children's Guardian for children under guardianship, it seems possible that in some civil actions (particularly those when the child has been injured by a substitute caretaker), the Children's Guardian may be named as one of the respondents;
- (4) Given the possibility the Children's Guardian could be sued civilly by a child under guardianship, and given the adage, "Justice must not only be done but be seen to be done.", our current procedure for identifying/assessing/undertaking civil action on behalf of a child under guardianship may bring into question the extent to which Children's Guardian will pursue court action in those instances when he may be a respondent;



- -2

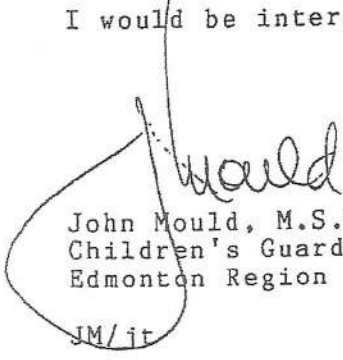
ABJ023541

ABJ023541

- (5) If we should be pursuing civil action on behalf of children under guardianship who are injured by their substitute caregivers, I am concerned about the potential implications for our alternate care resources, particularly the foster care program.

In my estimation, all it would take would be one publicized court action where a set of foster parents were successfully sued by a child they had cared for, for many foster parents to decide to withdraw their services because they feel the risk to them (in respect to being sued) is too great.

I would be interested in your thoughts regarding the above.


John Mould, M.S.W., R.S.W.
Children's Guardian
Edmonton Region

JM/it

Attachment

This is Exhibit " B " referred to in the
Affidavit of [REDACTED] DB
Sworn before me this 30 day
of April A.D., 2021.
A. Garber
A Commissioner of Oaths in and for
the Province of Alberta

Allan A. Garber
Barrister and Solicitor

1 MS. BERCOV: I can't answer that. No notice
2 was given to the public trustee of this action, and I am
3 not prepared, sir, to answer on behalf of the public
4 trustee. I think they would have to answer. If Mr. Lee
5 had brought his application, the position of the
6 Department of Children's Services would be that this is
7 not appropriate circumstances to bring and commence this
8 action.

9 THE COURT: Sorry. Say that again.

10 MS. BERCOV: If an application were brought --

11 THE COURT: Yes.

12 MS. BERCOV: -- i.e., Mr. Lee had continued and
13 not abandoned his application, our position at his
14 application would be that this is not an appropriate
15 circumstance for the Court --

16 THE COURT: Because there are no
17 merits to the case?

18 MS. BERCOV: Because there is no merits to the
19 case and because it's not in the best interest of the
20 children for the action to proceed at this time for a
21 host of reasons. So it isn't really a question or an
22 issue, and I wanted to be clear about that. This isn't
23 really a question about who is going to bring the
24 action. It's very much a question of whether this
25 action should be brought at all. And then and only
26 then, who should bring it.

27 THE COURT: But isn't the public

1 such that it should be brought, they would file a
2 Statement of Claim and they would set out in the
3 Statement of Claim why -- that an application will be
4 made for the appointment -- to the Court for the
5 appointment of a Next Friend, and why the circumstances
6 are such that that should be done, and then --

7 THE COURT: So you are saying
8 everything would be okay if only Ms. Blood had applied
9 for permission?

10 MS. BERCOV: Exactly, sir. Which is why we did
11 not -- I don't want to prevent Ms. Blood from bringing
12 an application if she believes that there is a good
13 cause of action and there are appropriate circumstances
14 where it should be brought. We disagree. But if she
15 believes that, Justice Brooker has said she is entitled
16 to bring an application to have herself or someone else
17 appointed. And so we did not apply to strike when Mr.
18 Lee indicated he would be bringing that application.
19 It's only when he abandoned the application that we
20 said, all right, now we need to apply to strike.

21 And Mr. Lee talks about no remedy. There is a
22 remedy. There is clearly a remedy. Apply for the
23 appointment, or for Court approval or authority to bring
24 the action. And Mr. Lee started that and then abandoned
25 it. And that is her remedy.

26 THE COURT: Okay. Now, why is the
27 public trustee not acting?

This is Exhibit " C " referred to in the
Affidavit of [REDACTED] DB
Sworn before me this 30 day
of April, A.D., 2021
A. Gabor
A Commissioner of Oaths in and for
the Province of Alberta

Allan A. Gabor
Barrister and Solicitor

1 MS. BERCOV: When we were last before you,
2 you raised the question under Section 34(4) of the
3 Child Welfare Act, Who has the authority to commence
4 actions on behalf of children who are under a
5 permanent guardianship order? It is the position of
6 Her Majesty that Government has the authority under
7 that section to commence actions on behalf of children
8 that are under a permanent guardianship order. It is
9 not clear whether that authority vests with the
10 Director of Children's Services or with the Public
11 Trustee.

12 Further, the question of who is in the best
13 position to determine whether an action should be
14 brought and how this should be determined raises
15 numerous difficult issues. Mr. Lee himself touches
16 upon some of these issues when he argues that
17 Government is in a conflict in acting.

18 Also, while Mr. Lee argues that children the age
19 of the children in this case should have the right to
20 retain and instruct counsel, there is an affidavit
21 that Mr. Lee filed in this action which says that
22 Mr. Lee was told directly by one of the children that
23 that child does not want an action to be brought now.
24 These are only some of the issues that need to be
25 considered in determining who is in the best position
26 to act and how the decision should be made.

27 We can advise Your Lordship that Alberta is not

1 the only jurisdiction in Canada facing these issues.
2 Several other provinces are considering these issues.
3 I can also advise Your Lordship that to date a
4 considerable amount of time and work is being devoted
5 to considering these issues. We expect that by spring
6 of next year we will have completed the necessary work
7 to answer the question of who is in the best position
8 to assess whether an action should be brought and, in
9 a very practical way, how that assessment should be
10 done.

11 In the meantime, in this case, we understand that
12 the Office of the Public Trustee is prepared to act
13 and would like to address you on that matter.

14 THE COURT: Yes, Ms. McAfee.

15 *Submissions by Ms. McAfee

16 MS. MCAFEE: Sir, the Public Trustee is
17 prepared to act to consider whether any legal action
18 should be brought on behalf of these children, and to
19 address any perception of conflict, the Public Trustee
20 will retain independent counsel to review the
21 children's situations. We have approached Janice
22 Agrios with the law firm of Miller and Thomson, and
23 she has agreed to act to conduct an independent review
24 and to provide the Public Trustee with her advice as
25 to whether an action should be commenced on behalf of
26 these children. Children's Services has informed the
27 Public Trustee that they will cooperate fully with

This is Exhibit " 0 " referred to in the
Affidavit of [REDACTED] DB
Sworn before me this 30 day
of April A.D. 2021
[Signature]
A Commissioner of Oaths in and for
the Province of Alberta

Allan A. Garber
Barrister and Solicitor

1 Affidavits of Records. That's your remedy.

2 MR. LEE: My remedy is to request a further and better
3 Affidavit of Records if she gives me an answer to the
4 question. When she doesn't tell me if she's looked. If
5 she's looked, then why would I make the application. I need
6 to know if she's looked or not to determine whether I feel
7 that's adequate.

8 MR. HOLMSTROM: And those allegations have been denied in
9 the pleadings and that is not information that that's a
10 question she's not going to answer here and if you feel
11 that's something that has to be pursued you've got to bring
12 an application in that regard.

13 MR. LEE: Mr. Holmstrom, I know that you've denied
14 this section of the Statement of Claim.

15 MR. HOLMSTROM: Right.

16 MR. LEE: That's why I'm asking if she looked for the
17 documents yet. I'm assuming she didn't look for the
18 documents yet because you're denying that in the Statement of
19 Claim, that's what I want to get clarified here and if that's
20 the case, then I'm going to wait until that proceeding is
21 dealt with before I examine further on this area.

22 MR. HOLMSTROM: First of all Mr. Lee, there's no need to
23 raise your voice.

24 MR. LEE: I didn't feel I was.

25 MR. HOLMSTROM: I've spoken in a very measured tone and my
26 objections have been relevant and appropriate. You may
27 disagree with that but you have your remedy. She's already

1 been asked the question that I said she's not going to answer
2 and that's the end of it. Raising your voice against me
3 isn't going to cause me to change my mind.

4 MR. LEE: I'm not raising my voice, Mr. Holmstrom.
5 I'm simply asking for the grounds of the objection please.

6 MR. HOLMSTROM: The entire matter involving the systemic
7 negligence has been denied in the pleadings.

8 MR. LEE: I understand that.

9 MR. HOLMSTROM: That is not an appropriate matter involving
10 TW [REDACTED] What you're asking for isn't relevant in
11 respect of this matter and she's not going to answer the
12 question. It's just simply too remote.

13 (BRIEF ADJOURNMENT).

14 MR. LEE: Mr. Holmstrom, I have a copy of a decision
15 of Justice Claxton with relation to the allegations of
16 systemic negligence. Justice Claxton permits the allegations
17 and I understand that despite this decision by Justice
18 Claxton you're maintaining your objection?

19 MR. HOLMSTROM: And I've referred you to the decision of
20 Madam Justice Read which was filed judgement given March 3rd,
21 2004 paragraph 94 where she says and I quote "I am not aware
22 of a cause of action for systemic negligence." And she
23 proceeds to strike out that paragraph and I am maintaining
24 the objection I put on the record to that question and this
25 witness will not answer the question that you put to her,
26 Mr. Lee.

27 MR. LEE: If we could mark as the next exhibit the

1 decision of Justice Claxton.

2 **EXHIBIT D-3: Decision of Justice Claxton**

3 Q MR. LEE: Ms. Stewart, can you tell me what steps you
4 took to look for documents that exist within the department
5 of Child Welfare related to funding as being a contributing
6 factor to the injuries to ^{TW} [REDACTED], funding of the
7 Child Welfare system?

8 MR. HOLMSTROM: Funding of the Child Welfare or funding as
9 it relates to ^{TW} [REDACTED].

10 MR. LEE: Funding of the Child Welfare system as it
11 relates to ^{TW} [REDACTED].

12 A Can you explain your question. I don't understand it.

13 Q What steps did you take to determine if there are any records
14 that exist within Child Welfare that are relevant to the
15 allegation by the Plaintiff that inadequate funding of the
16 Child Welfare system as it relates to ^{TW} [REDACTED] caused
17 or contributed to ^{TW} [REDACTED]'s injuries?

18 A I'm not aware of any documents that specifically state that
19 ^{TW} [REDACTED]'s injuries were as a result of funding issues
20 related to the Child Welfare system.

21 Q My question was not whether you were aware of a certain
22 thing. My question was what steps did you take?

23 MR. HOLMSTROM: You haven't answered that she took any steps
24 yet.

25 MR. LEE: I don't think she did take any steps.

26 MR. HOLMSTROM: I think the proper question is asking if she
27 did take any steps not what steps. I think you've got to

1 start with the determination first if anything was done on
2 that specific point that you've asked.

3 MR. LEE: I prefer to ask this one in question and
4 when I say what steps, she can say no steps. If she took
5 steps then she can tell me the steps so my question
6 eliminates the need to ask two questions.

7 MR. HOLMSTROM: Well, I disagree with you. I don't think
8 your question is clear.

9 MR. LEE: You don't think the question of what steps
10 did you take to find documents as it relates to the
11 allegations that inadequate funding caused or contributed to
12 the injuries of ^{TW} [REDACTED] is clear?

13 MR. HOLMSTROM: I think you have to ask whether she did take
14 any steps as opposed to what steps were taken. What steps
15 were taken I would suggest to you by the wording presumes
16 that steps were taken. I think you first have to determine
17 if steps were taken.

18 Q MR. LEE: Ms. Stewart, when I ask you what steps were
19 taken you can tell me no steps, do you understand that?

20 A Yes.

21 Q So what steps did you take to determine if there are any
22 records that exist that relate to the Plaintiff's allegation
23 that inadequate funding of the Child Welfare system as it
24 relates to ^{TW} [REDACTED] caused or contributed to the
25 injuries to ^{TW} [REDACTED]?

26 A I didn't take any steps.

27 Q What steps did you take to determine if there are any records

1 that are relevant to the allegations by the Plaintiff that
2 inadequate investigations including inadequate investigations
3 of foster parents caused or contributed to the injuries of
4 ~~██████████~~^{TW}?

5 A I didn't take any steps to look for those documents.

6 Q What steps did you take to determine if there are any records
7 that exist related to the Plaintiff's allegation that
8 inadequate case management caused or contributed to the
9 injuries to ~~██████████~~^{TW}?

10 A Pardon me, inadequate what?

11 Q Case management?

12 A Any documents related to the case management that ~~██████████~~^{TW}
13 received would be apparent on ~~██████████~~^{TW}'s Child Welfare
14 records so those records are provided.

15 Q What steps did you take to look for documents that would be
16 relevant to the issue of standard of care in relation to the
17 case management by Child Welfare of ~~██████████~~^{TW}'s case?

18 MR. HOLMSTROM: Again Mr. Lee, that's a question that has
19 been asked and a question that has been answered.

20 MR. LEE: I didn't ask about case management.

21 MR. HOLMSTROM: You asked that question previously and the
22 answer has been begin and the records have been produced, I
23 believe that was the evidence of this witness.

24 MR. LEE: I don't recall ever asking her any questions
25 about standard of care in relation to case management.

26 MR. HOLMSTROM: You related to questions about standard of
27 care and you referred to the steps being taken by Child

1 Welfare and I'm saying to you she has answered the question
2 and the records have been practiced.

3 MR. LEE: Mr. Holmstrom, you don't work for Child
4 Welfare so it would be difficult for you to know whether the
5 documents have been produced or not as you did not swear the
6 Affidavit so I'm asking this witness whether she has produced
7 any documents dealing with the standard of care on case
8 management.

9 MR. HOLMSTROM: It's a different question and in any event,
10 you've asked questions about standard of care. She's given
11 you the evidence here and she's indicated in her evidence
12 that she's produced all documents so she doesn't have to keep
13 answering the same question whether you change a word or two
14 or put it in a different order. She doesn't have to.

15 MR. LEE: Mr. Holmstrom, I've conducted law less years
16 than you. You're senior to me but I've seen many times
17 during examinations of witnesses where they give a broad
18 global answer and then when you get into the details, they go
19 oh, yes, oh, I know that, because they didn't address their
20 mind to it. I would like to have this witness address her
21 mind to specific allegations in the Plaintiff's Statement of
22 Claim. Is that all right, because maybe when she says I got
23 all the records she forgot about something, is that okay?
24 Can I ask that.

25 MR. HOLMSTROM: Given the questioning that you've done here
26 today, it doesn't appear that they have forgotten anything.
27 There are some matters that are part of undertakings under

1 advisement that will be reviewed and you'll get a response.

2 Beyond that my objection is as stated and she's not going to
3 answer that question.

4 (DISCUSSION OFF THE RECORD).

5 MR. HOLMSTROM: It's only 12 o'clock. You've taken a number
6 on breaks. I'm here, my client's here. I'm occupied this
7 afternoon. You will finish the examination, Mr. Lee.

8 MR. LEE: It's 12 o'clock, Mr. Holmstrom, normal
9 courtesy between lawyers is to take a lunch break. Normal
10 courtesy to the court reporter is to take a lunch break. I
11 have no idea why you're pointing your finger to the table in
12 a very demonstrative manner and now are looking at me very
13 sternly when it is the customary practice for lawyers during
14 examination to discovery to allow the court reporter to take
15 a lunch break.

16 MR. HOLMSTROM: I haven't heard that the court reporter say
17 she requires a lunch break. I don't require a lunch break
18 right now. Ms. Stewart, do you require a lunch break right
19 now.

20 A No, I don't.

21 MR. HOLMSTROM: We are here.

22 MR. LEE: I would like to have a lunch break. Am I
23 allowed to have a lunch break, Mr. Holmstrom?

24 MR. HOLMSTROM: There's been less than two hours of
25 discovery, Mr. Lee. It's only 12:00 now. I suggest you
26 continue so we can finish.

27 MR. LEE: Mr. Holmstrom, normally I take my lunch

This is Exhibit " E " referred to in the
Affidavit of [REDACTED] DB
Sworn before me this 30 day
of April A.D., 2021.
A. Garber
A Commissioner of Oaths in and for
the Province of Alberta

Allan A. Garber
Barrister and Solicitor

1 working for Child Welfare, did Child Welfare assist
2 any child under guardianship to take legal action?

3 A. I wouldn't have that information.

4 Q. Did you believe in 1999 that a major impediment to
5 suing for children in care is that Child Welfare
6 workers are employees of the Government and the
7 Provincial Government is likely to be the major
8 target of such lawsuits?

9 MR. BRANCH: Sorry. Objection on relevance
10 there. We've talked about the fact that this
11 litigation does not include allegations involving
12 lawsuits against the Government.

13 OBJECTION TAKEN TO - Did you believe in 1999
14 that a major impediment to suing for children
15 in care is that Child Welfare workers are
16 employees of the Government and the Provincial
17 Government is likely to be the major target of
18 such lawsuits?

19 Q. MR. LEE: Did you believe in 1999 that a
20 major impediment to doing -- to helping children sue
21 was because Child Welfare workers are employees of
22 the Government and the Provincial Government would
23 likely be embarrassed by lawsuits brought by
24 children in care against foster parents?

25 MR. BRANCH: That's fair.

26 A. I didn't personally believe that.

27 Q. MR. LEE: In 1999 was the Public Trustee



1 assisting children under guardianship to sue?

2 A. No. We wished they were.

3 Q. You wished they were?

4 A. Well, there was a debate about the role of the
5 Public Trustee because the estates went there.

6 Q. So where was this debate going on?

7 MR. BRANCH: I'll just caution the witness I
8 think it's okay for her to say what she said to this
9 point, but from our review of the documents, most of
10 that debate occurred between lawyers, so it's
11 privileged.

12 OBJECTION TAKEN TO - So where was this debate
13 going on?

14 Q. MR. LEE: Where was this debate going on?

15 MR. BRANCH: I just objected on the grounds of
16 privilege.

17 Q. MR. LEE: This debate was going on between
18 lawyers for Child Welfare and lawyers for the Public
19 Trustee; is that correct?

20 A. I have been --

21 MR. BRANCH: I know that to be so, so, yes,
22 that's our objection. Whether the witness knows it
23 or not --

24 A. I do know it.

25 MR. BRANCH: -- I'm claiming privilege.

26 A. And I do know it.

27 Q. MR. LEE: Okay. So there was a debate



1 going on between --

2 A. Discussion is a better word.

3 Q. -- the lawyers -- discussion going on between
4 lawyers for Child Welfare and the Public Trustee --

5 MR. BRANCH: She already --

6 Q. MR. LEE: -- about who should sue for
7 children in care?

8 MR. BRANCH: She already answered that
9 question.

10 Q. MR. LEE: Is that right? I didn't get the
11 answer.

12 MR. BRANCH: The answer is yes.

13 Q. MR. LEE: What time period are we talking
14 about?

15 A. In the late '90s.

16 Q. Do you know if there were any documents created?
17 Were these discussions, or was there communication,
18 written communication between the lawyers?

19 MR. BRANCH: That's privileged.

20 MR. LEE: The existence of documents is not
21 privileged. The content of the documents would be
22 privileged, not the existence of documents.

23 MR. BRANCH: I'm maintaining the objection.
24 You can sort it out with the Court.

25 OBJECTION TAKEN TO - Do you know if there were
26 any documents created? Were these
27 discussions, or was there communication,



1 written communication between the lawyers?

2 Q. MR. LEE: Were there any documents created
3 while this discussion was going on between lawyers
4 for Child Welfare and lawyers for the Public
5 Trustee?

6 MR. BRANCH: We're claiming privilege.

7 OBJECTION TAKEN TO - Were there any documents
8 created while this discussion was going on
9 between lawyers for Child Welfare and lawyers
10 for the Public Trustee?

11 Q. MR. LEE: So just let me get it clear here.
12 Let me ask you -- okay. So you say that you and
13 other people wished that the Public Trustee was
14 assisting children under guardianship to sue in
15 1999; is that correct?

16 A. I don't think I said that. If I did, I most
17 certainly didn't intend to.

18 Q. Okay. My question was:

19 In 1999 was the Public Trustee assisting
20 children under guardianship to sue?

21 A. No. We wished they were.

22 A. That's probably not correct on my part. We were
23 looking for a different mechanism armed -- more
24 arm's length to manage these few situations that
25 were coming to our attention.

26 Q. Why? Why were you looking for a different
27 mechanism? Wasn't the existing mechanism working



1 well?

2 A. We believed -- I believed there was a -- there could
3 be a perception that you weren't distant enough, so
4 there might be better mechanisms in place. And
5 suing of course is only one part of any remedy and
6 perhaps, in my personal opinion, the last remedy.

7 There's lots of other things that you could
8 offer to help people when things didn't go well,
9 like counseling, helping them understand,
10 information.

11 Q. Anything else?

12 A. Well, only a case-by-case basis, but there are
13 things that you can do.

14 Q. Okay. Let's talk about this last answer you gave.
15 You say you believed there was -- there could be a
16 perception that there weren't -- that you weren't
17 distant enough.

18 You mean that the procedure of having the CEO
19 or the regional directors deciding whether to sue
20 for children in care or not was not distant enough?

21 A. It could have been an optics of it.

22 Q. Okay. So you felt that there was a concern about
23 the optics about the director -- the regional
24 director of Child Welfare deciding whether or not to
25 sue a foster parent; is that right?

26 A. Could be.

27 Q. What was the optic?



1 A. I believed that some people thought that it wasn't
2 distant enough and that that may have hampered a
3 good decision in the best interest of the child.

4 Q. Why?

5 A. Well, I personally didn't believe it.

6 Q. Why did you believe that people would think that?

7 MR. BRANCH: That's speculative to the max.

8 MR. LEE: No, this is her answer.

9 MR. BRANCH: Her belief --

10 MR. LEE: This is her belief.

11 MR. BRANCH: Her belief about other people's
12 belief.

13 A. Yes.

14 MR. BRANCH: Why other people believed it?

15 She was aware that other people believed it, but
16 why --

17 MR. LEE: Okay.

18 MR. BRANCH: -- other people believed it is
19 way beyond the realm of relevance.

20 OBJECTION TAKEN TO - Why did you believe that
21 people would think that?

22 Q. MR. LEE: Why did you believe that some
23 people didn't think it was distant enough?

24 MR. BRANCH: That's not -- that's speculative.

25 MR. LEE: It's not speculative. It's her
26 opinion. If her opinion is speculative, then that's
27 open to my cross-examination.



1 MR. BRANCH: I don't think her belief about
2 other people's beliefs is relevant to the common
3 issues.

4 MR. LEE: It certainly is, because it
5 certainly goes towards this fraud.

6 Q. So please tell me --

7 MR. BRANCH: You have my objection.

8 OBJECTION TAKEN TO - Why did you believe that
9 some people didn't think it was distant
10 enough?

11 Q. MR. LEE: What was the concern that it
12 would hamper a good decision in the best interests
13 of the child?

14 MR. BRANCH: You have my --

15 Q. MR. LEE: Why would it hamper a decision in
16 the best interest of the child?

17 MR. BRANCH: She already said that she didn't
18 believe that herself.

19 OBJECTION TAKEN TO - Why would it hamper a
20 decision in the best interest of the child?

21 Q. MR. LEE: Okay. So let me understand this.
22 You believed that some people thought it wasn't
23 distant enough that they may have hampered a good
24 decision in the best interest of the child. Did you
25 discuss your belief with anyone?

26 MR. BRANCH: Her belief about other people's
27 beliefs?



1 MR. LEE: That's right.

2 A. We had -- we -- I had a general discussion about is
3 there a better mechanism to manage these situations.

4 Q. MR. LEE: Who did you have that discussion
5 with?

6 MR. BRANCH: And if it's lawyers, you should
7 just say it was with a lawyer.

8 A. Lawyers.

9 MR. BRANCH: And you can't tell -- divulge the
10 information itself.

11 A. It was lawyers and senior officials.

12 Q. MR. LEE: Okay. Who were the senior
13 officials, and who were the lawyers?

14 MR. BRANCH: ^{ADM?} Go ahead.

15 A. Peggy Hartman was a lawyer; Jackie Stewart was one
16 of the people that we discussed it with; John
17 McDermott; and I can't recall who else.

18 Q. MR. LEE: Okay. I just want to be clear.
19 You just made -- gave an answer -- we had -- we had
20 a general discussion about is there a better
21 mechanism to manage these situations. By "these
22 situations," do you mean when a child has a possible
23 lawsuit against a foster parent?

24 A. It was much broader than that. It would be when a
25 child needed -- or may have a civil claim, so that
26 could be injury of any form.

27 Q. Okay. And this was in 1999 you were having this



- 1 general discussion?
- 2 A. Yes.
- 3 Q. Was it earlier than '99?
- 4 A. The actual discussion I believe was in '99. It
5 could have been '98.
- 6 Q. And there was a general discussion about whether
7 there was a better mechanism to manage children with
8 a possible lawsuit; is that right?
- 9 A. Yes.
- 10 Q. Okay. Now, I only want to talk about the
11 conversations that you had with Jackie Stewart and
12 John McDermott. What discussions did you have with
13 Jackie Stewart and John McDermott about the better
14 mechanism to manage making decisions for children
15 with possible lawsuits?
- 16 A. Well, I'm not going to be able to recall it in
17 detail because it was some time ago.
- 18 Q. What you can remember.
- 19 A. But what I can remember is we discussed what some
20 other jurisdictions were looking at and then other
21 possible options within our own province. For
22 example, a Court-appointed lawyer, next friend,
23 Children's Advocate, Public Trustee, a whole broad
24 range. Is there any better approach?
- 25 Q. Was there considered a problem with the current
26 approach?
- 27 A. I personally didn't think there was --

1 Q. Was there --

2 A. -- but there could have been.

3 Q. -- an expressed opinion by --

4 MR. BRANCH: You're going to have to let the
5 witness finish her answers.

6 Q. MR. LEE: Sure. Go ahead.

7 A. But I also recognized that there could have been a
8 perceived problem with the way it was done.

9 Q. Okay. I just want to go into your belief about this
10 perceived problem about how it was done. In your
11 opinion or in your belief at that time in 1999, what
12 perceived problem did you have with deciding if a
13 child in care wanted to sue a third party driver who
14 crashed into the child under guardianship?

15 MR. BRANCH: She didn't -- your question
16 embeds an assumption that she had a perceived
17 problem. She didn't say that.

18 MR. LEE: Okay. Let me ask it again.

19 Q. Did you perceive that there would be a problem --
20 sorry. Did you believe that there could be a
21 perception of a problem with a child in care -- let
22 me rephrase it. Did you perceive that there would
23 be a problem -- let me try again.

24 Did you believe that there could be a
25 perception of a problem with the regional director
26 of Child Welfare making a decision to sue a driver
27 who crashed into a child under guardianship?



1 MR. BRANCH: It's relevance. Belief of a
2 perception is too far removed from actual facts.
3 We're here to deal with facts.

4 MR. LEE: Well, I'm discussing her
5 perception of a problem.

6 MR. BRANCH: No, you were discussing her
7 belief about a perception of a problem.

8 MR. LEE: So let me ask it this way --

9 MR. BRANCH: You're two steps removed from the
10 facts.

11 OBJECTION TAKEN TO - Did you believe that
12 there could be a perception of a problem with
13 the regional director of Child Welfare making
14 a decision to sue a driver who crashed into a
15 child under guardianship?

16 Q. MR. LEE: So let me ask it this way: You
17 say that you had a -- you believed there could be a
18 perceived problem with the way it was done. Okay.
19 Let's first deal with the way it was done.

20 What do you mean by the way it was done?

21 MR. BRANCH: And that's what we've been doing
22 for the last four hours, so that's asked and
23 answered.

24 OBJECTION TAKEN TO - What do you mean by the
25 way it was done?

26 Q. MR. LEE: Please tell me what you mean by
27 the way it was done. Are you talking about certain



1 types of lawsuits or all lawsuits?

2 A. We're talking about -- we're talking about
3 situations that come to a director's attention, and
4 then they would individually examine all the cases
5 and make a determination whether in fact they needed
6 their lawyer based on the best interests of the
7 child and all the facts on a particular case.

8 Q. Okay. So my question to you is, Why did you believe
9 that there could be a perception of a problem in
10 that? Doesn't Child Welfare make decisions for
11 children in their best interests every day?

12 MR. BRANCH: That's too far removed from the
13 facts. Belief about perceptions is too far removed
14 from the facts. Sorry. You can ask what she
15 thought, but I'm not going to let --

16 MR. LEE: That is what I'm doing. She says
17 this is her belief.

18 MR. BRANCH: Belief about a perception of
19 others, that's too far removed.

20 MR. LEE: That's her belief. It's her
21 belief. How is it not related to the facts?

22 MR. BRANCH: It's not relevant. She could --
23 I could believe that you think the sky is green, but
24 that doesn't make the sky green. It's too far
25 removed from the facts.

26 OBJECTION TAKEN TO - Why did you believe that
27 there could be a perception of a problem in



1 that? Doesn't Child Welfare make decisions
2 for children in their best interests every
3 day?

4 Q. MR. LEE: Did you believe that members of
5 the public thought that the director of Child
6 Welfare was in a conflict of interest?

7 MR. BRANCH: Objection. Relevance.

8 OBJECTION TAKEN TO - Did you believe that
9 members of the public thought that the
10 director of Child Welfare was in a conflict of
11 interest?

12 Q. MR. LEE: Did you believe that the public
13 and children in care would believe that Child
14 Welfare was not initiating lawsuits to protect the
15 Government?

16 MR. BRANCH: Objection. Relevance, generally
17 and specifically in that the lawsuit does not
18 include an evaluation of Government lawsuits against
19 Government.

20 MR. LEE: I didn't say against Government.
21 I'll ask again then.

22 MR. BRANCH: You said to protect the
23 Government.

24 OBJECTION TAKEN TO - Did you believe that the
25 public and children in care would believe that
26 Child Welfare was not initiating lawsuits to
27 protect the Government?



1 Q. MR. LEE: Did you believe that the public
2 and children in care would believe that Child
3 Welfare would not initiate lawsuits based on
4 appropriate criteria?

5 MR. BRANCH: Objection. Relevance. Nowhere
6 in the Cooper test does it talk about the
7 belief about the belief of the public being relevant
8 to an assessment of the duty.

9 MR. LEE: I doubt if anywhere in Cooper do
10 we see the level of malice that we see exhibited in
11 this case, so it wouldn't come up.

12 MR. BRANCH: I know Cooper. Cooper was a
13 friend of mine. There was lots of malice alleged
14 there too.

15 OBJECTION TAKEN TO - Did you believe that the
16 public and children in care would believe that
17 Child Welfare would not initiate lawsuits
18 based on appropriate criteria?

19 Q. MR. LEE: Let's look at this here. Let's
20 talk about the existence and absence of the content
21 of the policies of Child Welfare in 1999. So that's
22 what I'm -- that's the common issue I'm dealing with
23 now.

24 So in 1999, you had some policies in place
25 about helping children with possible lawsuits?

26 MR. BRANCH: Asked and answered.

27 OBJECTION TAKEN TO - So in 1999, you had some



1 policies in place about helping children with
2 possible lawsuits?

3 Q. MR. LEE: So did you believe that there was
4 some problems with the existing policies in place in
5 1999?

6 A. I believed that it was an opportunity to see whether
7 there was a different and perhaps better mechanism
8 than we had in place. I didn't know whether there
9 was or wasn't. That's why we looked at what other
10 jurisdictions were doing and explored. At the end
11 of the day, there may have been nothing better than
12 what we were already doing.

13 Q. Okay. So let's look at what you knew and what you
14 did and what your concerns were about the existing
15 policy in 1999.

16 So tell me, in 1999 what were the concerns that
17 you had, that Jackie Stewart communicated, and that
18 John McDermott communicated about the problems --
19 or, sorry, about the negative aspects about the
20 policies and practices that were in place in 1999?

21 MR. BRANCH: Your assumption -- your question
22 embeds an assumption that there were concerns.

23 A. And that they were negative.

24 Q. MR. LEE: No. You could say zero. You
25 could say that there were zero.

26 A. And that they were negative.

27 OBJECTION TAKEN TO - So tell me, in 1999 what



1 were the concerns that you had, that Jackie
2 Stewart communicated, and that John McDermott
3 communicated about the problems -- or, sorry,
4 about the negative aspects about the policies
5 and practices that were in place in 1999?

6 Q. MR. LEE: Well, you already told me that
7 you had a concern that there was perception by the
8 public, so I already know there was at least one
9 negative concern. So I want to hear all of them.

10 A. And I won't know all of them. But what I do recall
11 is we were looking at is there a different or better
12 mechanism? And maybe there wasn't than the way we
13 were approaching them, the way the organization was
14 approaching them.

15 Q. Okay.

16 A. I --

17 Q. Go ahead.

18 A. So that's what we were looking at.

19 Q. Okay.

20 A. We were exploring, as we do on many policies. We
21 explore options and then make a determination.

22 Q. Okay. When you explore options, do you analyze?

23 A. Yes.

24 Q. Okay. When you analyze, do you consider good points
25 and bad points --

26 A. Yes.

27 Q. -- as part of your analysis?



1 A. Yes.

2 Q. Okay. In this process that you went through, did
3 you analyze the current system that you had in place
4 in 1999 for helping children to sue?

5 A. We didn't finish the work when I was under -- I left
6 then.

7 Q. I just want to know what you did. Don't tell me if
8 you finished. Just what did you do? Did you do
9 some analysis?

10 A. No.

11 Q. No analysis?

12 A. It wasn't at that level.

13 Q. Okay. So tell me what you did then.

14 A. We were exploring options, so one of the options
15 could be remaining with the current practice, and we
16 were exploring other options.

17 Q. Okay. So you told me some of these other things
18 that you could do --

19 A. And there could have been others.

20 Q. -- that you considered. What --

21 A. And there may have been others.

22 Q. So you're deciding -- you were deciding in 1999
23 whether the current practice was better or worse
24 than these other possible practices; is that right?
25 Is that what you were doing?

26 A. Yes.

27 Q. Okay. So let me understand how you do things. If



1 you're comparing a current -- one practice to
2 another practice, I would understand that you would
3 have to analyze each practice and come up with
4 analysis of the benefits and cons of each practice
5 to put them up side by side.

6 Is that how you do analysis?

7 A. That's how I do an analysis.

8 Q. Okay. So you were going to analyze the difference
9 between the current practice and -- and I just need
10 to find the other options you gave.

11 A. And there could have been other options.

12 Q. Of course there could be other options, but all I'm
13 doing is looking at what you considered at that
14 time. I'm not looking at something hypothetical.
15 I'm just looking at what you did at that time.

16 A. Mr. Lee, it was a start-up of a process.

17 Q. And let's see. So you were saying you were looking
18 at Court-appointed lawyers, next friend, Children's
19 Advocate, Public Trustee.

20 A. Private guardianships.

21 Q. Private guardianships?

22 A. And there could be others that I don't remember.

23 Q. Okay. Did you guys take notes?

24 A. I didn't.

25 Q. Do you know if Jackie took notes?

26 A. I wouldn't know.

27 Q. Well, you were there, weren't you?



1 A. I don't remember.

2 Q. Okay. So I'm just trying to understand how you
3 operated when you would have meetings then. Is it
4 correct that you would meet with Jackie Stewart and
5 John McDermott, or you talked to them on the phone,
6 and you would say, Some of the possible things that
7 we could do other than the way we're doing it now is
8 Court-appointed lawyer, next friend, Children's
9 Advocate, Public Trustee, private guardianship.
10 Don't write that down. Try to memorize it.

11 Is that how you guys worked?

12 MR. BRANCH: Just before you answer the
13 question, you haven't established that she met
14 without lawyers. She told you who was conducting
15 this evaluation. We know there were lawyers
16 involved. You peeled the lawyers out.

17 But you haven't confirmed whether they had
18 meetings with just people who weren't lawyers and
19 discussed things that aren't privileged, so you need
20 to set that up.

21 Q. MR. LEE: Okay. Let's just deal with what
22 you did before I deal with what the other people
23 did. Did you just memorize all of the different
24 options?

25 MR. BRANCH: If you're getting into the
26 content of meetings, you have to establish that the
27 meeting isn't a privileged communication.



- 1 Q. MR. LEE: You told me that there was these
2 other options you considered. Did you just memorize
3 them, or did you write them down somewhere?
- 4 MR. BRANCH: I'm going to object on the basis
5 of privilege because you refuse to clarify the
6 question, so you have my objection.
- 7 MR. LEE: Your objection is that maybe
8 lawyers were involved?
- 9 MR. BRANCH: To the best of my knowledge.
- 10 MR. LEE: You have to prove the objection.
- 11 MR. BRANCH: Right.
- 12 MR. LEE: I don't have to disprove your
13 objection.
- 14 MR. BRANCH: The documents I have reviewed
15 suggest that this is all -- the meetings were all
16 privileged.
- 17 There may have been meetings that aren't
18 privileged. I haven't reviewed this area with the
19 witness to know, so I'm inviting you to ask her if
20 there were meetings which were unprivileged.
- 21 **OBJECTION TAKEN TO - Did you just memorize**
22 **them, or did you write them down somewhere?**
- 23 MR. LEE: Okay. Maybe you can help me with
24 this, then, Mr. Ward.
- 25 MR. BRANCH: Branch.
- 26 MR. LEE: Mr. Branch.
- 27 Q. There are documents that you -- there are documents,



1 it sounds like -- let me ask you this. Let me ask
2 you this, Ms. Heron: Do you know if Child Welfare
3 has been sued over this issue of failing to sue?

4 MR. BRANCH: That's not relevant to this
5 issue.

6 OBJECTION TAKEN TO - Do you know if Child
7 Welfare has been sued over this issue of
8 failing to sue?

9 Q. MR. LEE: Do you know if the Government has
10 failed to disclose the existence of these documents
11 of these meetings with lawyers -- you, Peggy
12 Hautman (verbatim), Jackie Stewart, John
13 McDermott -- and failed to list them in your list of
14 documents that are privileged?

15 A. I don't know that.

16 Q. Okay. Would you undertake to find that out?

17 MR. BRANCH: No.

18 UNDERTAKING - 6 - (REFUSED) TO ADVISE WHETHER
19 THE GOVERNMENT HAS FAILED TO DISCLOSE THE
20 EXISTENCE OF THE DOCUMENTS OF THE MEETINGS
21 WITH LAWYERS AND FAILED TO LIST THEM IN THE
22 LIST OF PRIVILEGED DOCUMENTS, AS REFERRED TO
23 ABOVE.

24 Q. MR. LEE: Okay. So you had discussions
25 with Peggy Hautman, Jackie Stewart, and John
26 McDermott; is that correct?

27 MR. BRANCH: You haven't established whether



1 there are lawyers in the room for this conversation.

2 MR. LEE: Peggy Hautman is a lawyer.

3 MR. MEIKLE: Hartman.

4 MR. LEE: Hartman.

5 MR. BRANCH: Okay. Well, then it's

6 privileged, so why are you asking the question?

7 MR. LEE: I'm just asking whether they had
8 had discussions.

9 MR. BRANCH: You know the law on
10 solicitor-client privilege.

11 MR. LEE: Yes. And I know I can ask if
12 there were discussions. I can't ask about the
13 content. I can ask about everything around it. I
14 can ask about date, who is there. I can't ask about
15 the content. I know that.

16 MR. BRANCH: But you already have the answer
17 that there were meetings.

18 MR. LEE: Well, no. You're telling me that
19 I haven't proven that there were meetings or not, so
20 I'm trying to get to that. And then I'm going to
21 ask if there is documents.

22 You keep telling me to get to the underlying
23 facts. That's what I'm trying to get at.

24 **OBJECTION TAKEN TO -** So you had discussions
25 with Peggy Hautman, Jackie Stewart, and John
26 McDermott; is that correct?

27 Q. MR. LEE: So were there discussions?



1 MR. BARBER: Sorry, Mr. Lee. Can we just have
2 one second?

3 MR. LEE: Sure.

4 MR. BRANCH: Right. So your question is
5 relating to the subject matter of the discussion.
6 That subject matter is privileged.

7 MR. LEE: Okay. So let's deal with it this
8 way.

9 Q. Did you have a discussion with Peggy Hartman and
10 Jackie Stewart and John McDermott about better ways
11 to sue or better ways to help children in care sue?

12 MR. BRANCH: Privileged.

13 OBJECTION TAKEN TO - Did you have a discussion
14 with Peggy Hartman and Jackie Stewart and John
15 McDermott about better ways to sue or better
16 ways to help children in care sue?

17 Q. MR. LEE: Okay. So there were discussions.
18 Were there any documents created during the
19 interactions that you had with Peggy Hartman, Jackie
20 Stewart, and John McDermott regarding improving the
21 method of suing for children in care?

22 MR. BRANCH: Relevance and privilege.

23 OBJECTION TAKEN TO - So there were
24 discussions. Were there any documents created
25 during the interactions that you had with
26 Peggy Hartman, Jackie Stewart, and John
27 McDermott regarding improving the method of



1 suing for children in care?

2 MR. LEE: Okay. So I'm not going to go
3 into all my individual questions on this topic.
4 We'll just leave it that all my questions with
5 regard to anything related to these people you're
6 going to object to.

7 MR. BRANCH: I have no idea whether your
8 questions are proper or improper.

9 MR. LEE: Okay. So then let's go through
10 them all then.

11 Q. Okay. So --

12 MR. BRANCH: Anything involving meetings with
13 lawyers I'm going to object to on the basis of
14 privilege, yes.

15 MR. LEE: Right. So I don't need to ask
16 all of my questions about the conversations at these
17 meetings with the lawyers?

18 MR. BRANCH: With lawyers, correct.

19 MR. LEE: Okay.

20 Q. Did you have any meetings or discussions with Jackie
21 Stewart outside the presence of a lawyer about the
22 issue of the process of suing -- helping children in
23 care sue?

24 A. Yes.

25 MR. BRANCH: Just one second.

26 Q. MR. LEE: Tell me everything about those
27 conversations?



1 MR. BRANCH: Before you answer the question,
2 you shouldn't divulge any information that you
3 obtained from lawyers and passed on or Jackie
4 obtained from lawyers and passed on.

5 A. Thank you.

6 MR. BRANCH: So with that qualification, if
7 there is anything left, you can tell Mr. Lee.

8 A. The conversations were informal and very
9 exploratory. To my knowledge, no notes were taken.

10 Q. MR. LEE: What did you discuss with Jackie?

11 A. We -- initially we started by saying what are other
12 jurisdictions doing.

13 Q. And what were other jurisdictions doing?

14 A. B.C. -- and I can't remember the details. B.C. had
15 an interesting option that we were -- that -- and so
16 she was looking into that to see how well it was
17 working.

18 Q. What was it? Tell me about it.

19 A. But I can't remember the details. It was a separate
20 arm. As I recall to the best of my ability, it was
21 kind of like a Crimes Compensation mechanism. But,
22 again, it was some time ago, and I don't recall the
23 details of it. So, you know -- and she was, I
24 think, canvassing other jurisdictions, or John
25 McDermott was as well.

26 Q. Sorry. What do you mean they were canvassing other
27 jurisdictions?



1 A. Contacting, contacting other jurisdictions.

2 Q. So Jackie Stewart was contacting --

3 A. Jackie or John, either one of them.

4 Q. Were contacting different jurisdictions to see what
5 they were doing?

6 A. M-hm.

7 Q. And did you receive -- did Jackie or John receive
8 responses from these other jurisdictions?

9 A. The only one that I remember is the one in British
10 Columbia, and we were aware of that from a little
11 bit before. The details of it, I can't begin to
12 comment on.

13 MR. LEE: Off the record.

14 (DISCUSSION OFF THE RECORD)

15 Q. MR. LEE: Ms. Heron, if you could either
16 undertake to provide any documents that were
17 received from B.C. or notes from any conversations
18 from the B.C. people or identify in your production
19 any documents that were received from B.C.

20 MR. BRANCH: We'll take that under advisement.

21 MR. BARBER: Yeah. I mean, I don't think
22 Ms. Heron, who has been retired for 12 years and is
23 here as a witness, can provide undertakings. But we
24 will certainly look and identify in the documents
25 that are produced.

26 MR. LEE: I wouldn't expect Ms. Heron to be
27 the one looking for them. I know you would be the



1 one having to look at them.

2 MR. BRANCH: It's just a technical point.

3 MR. BARBER: It's not proper for her to be
4 providing undertakings.

5 **UNDERTAKING - 7 - (UNDER ADVISEMENT) TO**
6 **PROVIDE ANY DOCUMENTS THAT WERE RECEIVED FROM**
7 **B.C. OR NOTES FROM ANY CONVERSATIONS FROM THE**
8 **B.C. PEOPLE OR IDENTIFY IN THE PRODUCTION ANY**
9 **DOCUMENTS THAT WERE RECEIVED FROM B.C., AS**
10 **REFERRED TO ABOVE.**

11 Q. MR. LEE: Is it correct that in 1999, the
12 Public Trustee was declining to assist children in
13 care under PGO with possible lawsuits?

14 MR. BRANCH: That's privileged from everything
15 I've seen.

16 **OBJECTION TAKEN TO - Is it correct that in**
17 **1999, the Public Trustee was declining to**
18 **assist children in care under PGO with**
19 **possible lawsuits?**

20 Q. MR. LEE: Okay. So let me understand
21 something. Obviously you were the executive
22 director of Child Welfare in 1999. The Public
23 Trustee has various different officers -- sorry,
24 various different employees.

25 Did you personally have any communication with
26 anybody at the Public Trustee's office about whether
27 or not they were willing to sue for children under



1 PGO?

2 A. No.

3 Q. Why not?

4 A. Because other people were doing it on my behalf.

5 Q. Who were these other people? The lawyers?

6 MR. BRANCH: Yeah, so it's lawyers. It's
7 privileged.

8 OBJECTION TAKEN TO - Who were these other
9 people? The lawyers?

10 Q. MR. LEE: So the lawyers were on your
11 behalf contacting the Public Trustee to determine if
12 the Public Trustee would assist children in care to
13 sue?

14 MR. BRANCH: Technically I know the witness
15 has done what she's done, but technically the
16 content of any legal advice sought or given is
17 privileged.

18 MR. LEE: Okay.

19 OBJECTION TAKEN TO - So the lawyers were on
20 your behalf contacting the Public Trustee to
21 determine if the Public Trustee would assist
22 children in care to sue?

23 Q. MR. LEE: What I want to understand is
24 this, Ms. Heron: Did you ask lawyers to contact the
25 Public Trustee to find out if the Public Trustee was
26 willing to assist children in care under PGO to sue?

27 MR. BRANCH: The content of any request of



1 counsel is privileged.

2 MR. LEE: Well, that's not legal advice.

3 MR. BRANCH: Yeah.

4 MR. LEE: So tell me how it falls within
5 the privilege.

6 MR. BRANCH: If someone is consulting you
7 about sexual abuse, you can't and shouldn't tell me,
8 so it's privileged.

9 MR. LEE: If somebody calls me up and says,
10 Can you phone the Government and find out if I can
11 apply and get a driver's licence, I'm not giving
12 legal advice, and I have to disclose that
13 information. It wouldn't fall within
14 solicitor-client privilege.

15 Q. So tell me, Ms. Heron --

16 MR. BRANCH: You can make that argument to the
17 Court.

18 MR. LEE: I am going to, so let me set the
19 foundation of that argument.

20 MR. BRANCH: You don't have to ask the
21 question again. You can ask a different question.

22 **OBJECTION TAKEN TO - Did you ask lawyers to**
23 **contact the Public Trustee to find out if the**
24 **Public Trustee was willing to assist children**
25 **in care under PGO to sue?**

26 Q. MR. LEE: Let me set up the foundation of
27 that question. In what way -- or was there any way



1 that you were asking -- asking for legal advice from
2 the lawyer when you asked them to contact the Public
3 Trustee?

4 MR. BRANCH: Privileged. That question
5 doesn't make sense, and it's privileged.

6 OBJECTION TAKEN TO - In what way -- or was
7 there any way that you were asking -- asking
8 for legal advice from the lawyer when you
9 asked them to contact the Public Trustee?

10 Q. MR. LEE: Did you use your lawyer to
11 contact the Public Trustee's lawyer so everything
12 would be secret?

13 MR. BRANCH: Privileged.

14 MR. LEE: I guess so.

15 OBJECTION TAKEN TO - Did you use your lawyer
16 to contact the Public Trustee's lawyer so
17 everything would be secret?

18 Q. MR. LEE: Let me ask it this way: Do you
19 know if the Public Trustee in the 1999 time period
20 was publicly taking the position that it wouldn't
21 sue for children in care?

22 A. I wouldn't know that.

23 Q. So what discussions did you have with the Children's
24 Advocate about suing for children in care?

25 A. None.

26 Q. Was that one of the options that you were looking
27 at?



- 1 A. It was in the very late just before I was leaving,
2 and we were just starting the process. I don't know
3 what happened after I left.
- 4 Q. And who was involved in that process then?
- 5 A. While I was still working?
- 6 Q. Yeah. Jackie Stewart?
- 7 A. My discussions were primarily with Jackie Stewart,
8 and there weren't a lot of them by the way. It was
9 just very preliminary. And John McDermott.
- 10 Q. And, sorry, John McDermott was Jackie Stewart's
11 boss, did you say?
- 12 A. Yes.
- 13 Q. Okay. And he was between you and Jackie Stewart in
14 the chain of command?
- 15 A. Yes.
- 16 Q. And their branch was something about post-adoption
17 guardianship and litigation support, correct?
- 18 A. Well, John was my assistant.
- 19 Q. And that was the department you were in charge of?
- 20 A. Well, that was a piece of what I was in charge of.
- 21 Q. A piece?
- 22 A. Yeah.
- 23 Q. You weren't involved because you told me there was
24 nothing central about suing for kids -- suing for
25 kids?
- 26 A. That's correct.
- 27 Q. Right. Okay. So Jackie Stewart --

This is Exhibit " F " referred to in the
Affidavit of DB
Sworn before me this 30 day
of April A.D. 2021
A. Garber
A Commissioner of Oaths in and for
the Province of Alberta

Allan A. Garber
Barrister and Solicitor

1 records exist with regard to the contents of paragraph 14 of
2 the amended amended Statement of Defence?

3 A As I read paragraph number 14, it talks about policy manual
4 and as I indicated already I've provided the policy manuals
5 so I'm not sure what you're asking.

6 Q Did you ask anybody if there are any documents that exist
7 that interpret the policy manual?

8 A Yes.

9 Q Who did you talk to?

10 A I've talked to Darrel Burch in the past.

11 Q Yes?

12 A Through just general discussions I also am also aware of
13 documents or let me go back and rephrase that. In terms of
14 who I've talked to sorry can you restate the question.

15 Q All I'm trying to find out is generally what steps did you
16 take to obtain documents that might be relevant to the issues
17 in paragraph 14.

18 A Well as I understand it, there is I've obviously provided the
19 policy manual. I'm not aware of any interpretive memos or
20 anything else other than what policy that there is in place.

21 Q Who did you talk to to determine that there are no
22 interpretive documents?

23 A Well as I indicated I've talked to Darrel Burch about this in
24 the past. I've talked to Susan Rankin about this.

25 Q Who is Susan Rankin?

26 A She's our director of legal services.

27 Q Yes?

1 outside the scope of this particular lawsuit.

2 MR. LEE: That's fine. We'll deal with Justice
3 Macklin on that for his interpretation.

4 Q MR. LEE: What steps did you take to determine if
5 there were any documents that existed relevant to the issue
6 that Child Welfare and Iris Evans and Paula Tyler and Bill
7 Meade and yourself knew or ought to have known that Children
8 Services has a duty to commence civil actions and
9 compensation proceedings on behalf of ^{Tw} [REDACTED]?

10 A I didn't take any steps because I don't believe there are any
11 documents that exist.

12 Q If you took no steps how do you know if any documents exist?

13 A Just from my general knowledge working in that ministry and
14 interacting with people and knowing what is being
15 corresponded.

16 Q Well Ms. Stewart, you know that several children have made
17 requests for legal services or payments of legal fees when
18 they believe they have a potential lawsuit. Therefore is it
19 not correct that there would be some documents created and
20 memos written in responding to these children's requests that
21 would help to interpret or explain what the Child Welfare
22 policy is for assisting children in care who have a potential
23 lawsuit?

24 A As you've already asked me, I'm not aware of any interpretive
25 memos.

26 Q I didn't just ask about interpretive memos. Clearly if a
27 child has asked for legal assistance in pursuing a civil

This is Exhibit " G " referred to in the
Affidavit of [REDACTED] DB

Sworn before me this 30 day
of April A.D. 2021

A. Commissioner of Oaths in and for
the Province of Alberta

Allan A. Garber
Barrister and Solicitor



Memorandum

FROM: Sharon Heron
Executive Director
Child Welfare

OUR FILE REFERENCE:

YOUR FILE REFERENCE:

TO: CEOs
Child and Family Services Authorities

DATE: October 7, 1999

TELEPHONE:

FAX: 427-3297

SUBJECT: Civil Action Commenced on Behalf of a Child Under Guardianship

For those CEOs who have been involved in an orientation session on the role of Director of Child Welfare, you will recall the discussions on the possible need to initiate civil litigation in your capacity as a guardian against the Department. Since this is very contentious, we had asked Justice to explore options which are attached for your benefit. Another option to a next friend is to use the joint guardianship provision of the CWA with the joint guardian providing direction on the legal matter.

I'm not sure what instructions you have provided to your staff in terms of your involvement in these types of decisions. Because they are sensitive situations and don't (or shouldn't) happen that often, you may want to be involved in the decision making process. In that way you have a handle on the volume of cases, can watch for frivolous actions and can also take into account other strategies to achieve what is required rather than a next friend appointment.

For your information.


Sharon Heron

This is Exhibit "H" referred to in the
Affidavit of [REDACTED] DB

Given before me this 30 day
of April A.D. 2021

A. Garber
A Commissioner of Oaths in and for
the Province of Alberta

Allan A. Garber
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This is Exhibit " I " referred to in the
Affidavit of [REDACTED] D.B.
Sworn before me this 30 day
of April A.D. 2021.
A Commissioner of Oaths in and for
the Province of Alberta

Allan A. Gault
Barister and Solicitor

6



September 19, 2012

PRIVILEGED AND CONFIDENTIAL

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Old Strathcona Law Offices
7904 103 Street
Edmonton, AB T6E 6C3

Attention: Mr. Robert Lee

Dear Sir:

Re: Labonte v. Her Majesty the Queen et al
Court File No.: 0403 12898
Our file: 6757 DNJ

put in order
ann 1987

In your letter to me of May 25, 2012 you indicate that the Response of the Public Trustee to the Notice to Admit Facts Filed on April 16, 2012 made reference to "an April 1987 agreement from Child Welfare." You then request that I provide a copy of "the agreement/letter."

In the Reply to Requested Admission #2 the Response of the Public Trustee stated that

In April 1987 the Office of the Public Trustee was advised that a policy decision had been made confirming that the Children's Guardian and not the Public Trustee would be the party to consider whether to pursue legal action on behalf of children in care of the Children's Guardian who might have a civil action.

X

The Response did not suggest that there was "an agreement from Child Welfare" and no such "agreement" can be provided.

The Office of the Public Trustee was advised of the policy that is referred to in the Reply to Requested Admission #2 in the following documents sent by lawyers in the Civil Law Section, Attorney General that were copied to the General Counsel of the Public Trustee:

250
103 Avenue
Edmonton, Alberta
T5J 0H6

tel 780.448.9275
fax 780.423.0163
shoresjardine.com

This is Exhibit " J " referred to in the
Affidavit of [REDACTED] DB
Subscribed before me this 30 day
of April A.D. 2021
A. Garber
A Commissioner of Oaths in and for
the Province of Alberta

Allan A. Garber
Barrister and Solicitor

1 COURT FILE NUMBER: 0403-12898
 2 COURT: COURT OF QUEEN'S BENCH OF ALBERTA
 3
 4 JUDICIAL CENTRE: EDMONTON
 5 PLAINTIFF: T [REDACTED] L [REDACTED]
 6
 7 DEFENDANT: HER MAJESTY THE QUEEN IN RIGHT OF
 8 ALBERTA as represented by THE
 9 DIRECTOR OF CHILD WELFARE

9 -----

10
 11 Questioning for Discovery of JACK KLINCK,
 12 taken before Jeffrey Weigl, CSR(A), RMR, CRR, Examiner,
 13 pursuant to Rules 203, 728, 204(1) of the Court of
 14 Queen's Bench of Alberta, at the offices of
 15 Shores Jardine LLP, Edmonton, Alberta,
 16 on the 26th and 28th days of September, A.D. 2012.

17
18 -----

19
 20 Appearances:
 21 R.P. Lee, Esq. For the Plaintiff
 22 P.G. Barber, Esq. For the Defendant
 23 Ms. S.A. Bowes For the Defendant
 24 D.N. Jardine, Esq. For the Public Trustee
 25 R.A. Bombak, Esq. For the Public Trustee
 26 J. Weigl, CSR(A), RMR, CRR Official Court Reporter

27 -----



1 under permanent guardianship order?

2 A. As I indicated, I don't recall the background. I do
3 know that at this time at least, that's my thought
4 on it, that it was something new in the legislation,
5 and that's why I was being requested to give an
6 opinion or provision or position of our office.

7 And we treated it as being no different than
8 any other child that required a lawsuit to be
9 brought on behalf of them.

10 Q. And you obviously in August of 1985 were a lawyer?

11 A. Yes, I was.

12 Q. Have you kept up your membership with the Law
13 Society from the time that you were called to the
14 Bar until 2007?

15 A. Yes, I was a member of the Bar throughout that
16 period.

17 Q. Okay. And is it fair to say that your legal
18 training and legal knowledge formed part of the
19 basis upon which you made decisions in your position
20 as acting Public Trustee?

21 A. Definitely.

22 Q. And in August of 1985, you treated -- is it correct
23 that in 1985, August, you treated the Public
24 Trustee's role towards children under permanent
25 guardianship as being no different than any other
26 child that required a lawsuit to be brought on
27 behalf of them?



1 A. That's correct. Basically it's part of trust law,
2 and private trustees are not obligated to fund
3 actions out of their own pocket to advance the claim
4 of a minor.

5 The next friend is responsible for
6 solicitor-client costs in respect of conducting
7 litigation on behalf of a minor and is also
8 potentially liable for costs on a party-and-party
9 basis if they're unsuccessful. And the Public
10 Trustee is in no different position than any other
11 trustee in law.

12 Q. And did you do legal research on this matter prior
13 to August 19, 1985?

14 A. I wasn't doing legal research myself. I was relying
15 on trust lawyers in our office.

16 Q. Okay. So prior to sending this memo dated August
17 1985, did you obtain advice from trust lawyers in
18 your office?

19 A. I would have.

20 Q. When you use the word "would," is that because you
21 can't recall?

22 A. Well, I can't recall specifically, but that is
23 exactly what I would have done in all probability.

24 Q. So you believe you did?

25 A. I wasn't a trust lawyer with expertise in this area
26 when I came into the Office of the Public Trustee.
27 And this position that I'm relating to you is one



1 that would have been given to me as a historical
2 position that the office has always taken, and they
3 saw nothing that had changed with respect to the
4 terminology that they found in the Child Welfare
5 Act.

6 Q. And they knew about the reference to the Public
7 Trustee being the trustee --

8 A. Absolutely.

9 Q. -- of children under permanent guardianship?

10 A. Yes.

11 Q. And I just want to clarify. You stated in an
12 earlier answer:

13 I wasn't doing legal research myself. I was
14 relying on trust lawyers in our office.

15 So I just want to clarify. You relied on the legal
16 advice that you received from the trust lawyers in
17 the Public Trustee's Office?

18 A. That is correct.

19 Q. And these were trust lawyers that worked for the
20 Public Trustee?

21 A. That is correct.

22 Q. And these were trust lawyers that were paid by the
23 Government?

24 A. Yes.

25 Q. And you might not be able to answer this. Your
26 lawyer might be able to answer this. Is it correct,
27 Mr. Klinck, that all legal opinions from lawyers,

1 the Public Trustee has claimed a privilege over
2 those legal opinions in this lawsuit?

3 MR. JARDINE: Mr. Klinck clearly can't answer
4 that. I can. The opinions that may be referred to
5 on these issues, privilege has been claimed on them
6 as advice given to the Public Trustee by lawyers in
7 that office.

8 Q. MR. LEE: Okay. So in regard to paragraph
9 2 of that memo on the second page, I see that it
10 states in the second line:

11 This role is typically taken by the parents of
12 the child, and where you are providing a
13 guardianship role to a child, I would submit
14 that it would be more properly your
15 responsibility to retain counsel on behalf of
16 the child and to assume this responsibility as
17 a program cost.

18 Was that your opinion in August 19th of 1985?

19 A. That's correct.

20 Q. And you formed that opinion based on the legal
21 advice you received from your lawyers?

22 A. That is correct.

23 Q. And so is it correct that in August of 1985, you
24 believe that it was -- let me rephrase the question.
25 In August of 1985, you understood that there were
26 two types of roles in relation to a child in care,
27 or any child for that matter, those being



1 guardianship powers and trusteeship powers?

2 A. That's correct.

3 Q. And is it fair to say that in August of 1985, based
4 on legal advice and reliance on legal advice, you
5 believed that it was the guardian's role to act as
6 next friend for a child rather than the trustee's
7 role to act as the next friend of a child who wished
8 to initiate a civil action?

9 A. That is correct.

10 Q. Were you still working for the Public Trustee -- or
11 were you still the Public Trustee when the Blood
12 decision was released by Justice Slatter?

13 A. I was.

14 Q. So I take it, then, that you believe that Justice
15 Slatter's -- you believed at the time that Justice
16 Slatter's decision was wrong?

17 A. I think it could have been appealed, yes.

18 Q. Did you consider appealing Justice Slatter's
19 decision?

20 A. No, and that is because the decision was really a
21 catalyst for change in Government. And the issue
22 was who was going to bring these actions on behalf
23 of children in care. The responsibility had been
24 left with the department responsible for the
25 children in care and looking after guardianship, and
26 at that point, it was really the catalyst for
27 change.



1 We started looking at the possibility of having
2 the Public Trustee take that role in the future.
3 Ultimately documents were given to Cabinet, and
4 Cabinet concluded in June of the following year in
5 2005 that it should be the Public Trustee that
6 should assume this role.

7 Q. In what way did Cabinet have authority over the
8 Public Trustee's Office?

9 A. It's --

10 MR. JARDINE: That's a pretty broad -- I think
11 you better direct that as to the witness's
12 understanding. That covers a whole area of
13 executive law, and it's very -- that's very much a
14 question of law.

15 OBJECTION TAKEN TO - In what way did Cabinet
16 have authority over the Public Trustee's
17 Office?

18 Q. MR. LEE: In your understanding, in what
19 way did Cabinet have authority over the Public
20 Trustee's Office?

21 A. We are part of -- the Office of the Public Trustee
22 was part of Government, and Cabinet was the ultimate
23 decisionmaker. If they chose to have us assume this
24 responsibility, then with funding in place, we would
25 do so.

26 Q. All right. And you were the -- were you the Public
27 Trustee at the time that Cabinet made this decision?



1 A. I was. And if I -- sorry.

2 Q. What were you going to say?

3 A. Well, if I had gone against that decision, I would
4 no longer have been the Public Trustee.

5 Q. What do you mean?

6 A. Well, when Cabinet gives a directive that our office
7 and the Public Trustee is to bring these actions,
8 then that's exactly what you are responsible for
9 doing. They determine the policy.

10 Q. So if you didn't, you would be fired? Is that
11 what --

12 A. I would expect that that would be the case. When I
13 start going against a Cabinet decision, that would
14 be the ultimate avenue for me.

15 Q. Okay. And you believed that when that Cabinet
16 decision was made?

17 A. I believed that that was my obligation to look after
18 that area, yes.

19 Q. And was that your belief from 1984 till 2006, that
20 if the Public Trustee went against Cabinet, that the
21 Public Trustee would be fired?

22 A. If there was a policy directive that directed the
23 Public Trustee in a course of action and he failed
24 to do so, that would quite likely be a result.

25 Q. And so after Justice Slatter's decision in Blood, in
26 your own mind, you believed that in law, the
27 decision was wrong; is that correct?



1 A. What the law is is the law states that there is no
2 obligation upon a trustee to fund lawsuits
3 themselves on behalf of a minor beneficiary. It
4 doesn't mean that the trustee couldn't do so, but he
5 would be doing so for no legal reason. There was no
6 reason legally for him to fund litigation on behalf
7 of a minor.

8 A trustee is entitled to be remunerated for his
9 efforts, and with respect to any expenses and cost
10 properly made on behalf of the beneficiaries, he's
11 entitled to be reimbursed. So without either assets
12 or an indemnity to reimburse them from somebody,
13 there was no legal obligation upon the trustee to do
14 these things.

15 Q. Okay. Is there any specific case --

16 A. It isn't really that it's against the law, in
17 quotation marks. It's the position that the trustee
18 holds in law.

19 Q. Okay. Is there any specific case that you're
20 referring to or textbook that cites this legal
21 principle?

22 A. I'm sure Donovan Waters, if you look at The Law of
23 Trusts in Canada, would have something in this area.

24 Q. Now, I don't recall, but in the Blood case, did the
25 Public Trustee have counsel that had the opportunity
26 to make submissions prior to Justice Slatter's
27 decision?



1 A. Did we -- we didn't give a formal brief that I'm
2 aware of in that decision before that decision was
3 made.

4 Q. Was there a reason for that?

5 A. We were there, I think, as really a friend of the
6 Court. If they wished to have us take an obligation
7 in that case, then we would look at it. And so what
8 we did was to obtain a legal opinion to see whether
9 or not any one of the three minors had a reasonable
10 likelihood of success of an action and whether or
11 not it would be in their best interest to bring an
12 action.

13 Q. But within the Blood case, prior to the Slatter
14 decision, I do recall -- I think Suzanne McAfee was
15 present during that case.

16 Was there a reason why the Public Trustee did
17 not provide a legal brief to Justice Slatter
18 advising Justice Slatter of the Public Trustee's
19 position on the law of the duty or responsibility of
20 a trustee to sue for a child that had a trustee?

21 A. As I understand what happened in the case, the issue
22 was with respect to who should be the next friend in
23 respect of this minor, and we were brought in to
24 assist the Court in this regard. So it wasn't --
25 there are always going to be some exceptions, I
26 guess, to general policies.

27 Q. Okay. So you understood -- you were -- you were



1 aware of the Blood case and the Blood application;
2 is that correct, Mr. Klinck?

3 A. Yes. Suzanne McAfee did attend, and I believe you
4 were there as well, so you would know what her
5 submissions were better than I.

6 Q. Okay. And she was reporting to you?

7 A. She would.

8 Q. Okay. So you knew about the case going on?

9 A. Yes.

10 Q. And were you reporting to the ADM on the case?

11 A. Well, the ADM was responsible for the defence of the
12 action, so she would know from what was happening by
13 the lawyers that were reporting to her in Civil
14 Law -- from Civil Law.

15 Q. Okay. Did you provide any advice or opinion to the
16 ADM that the Public Trustee in law had no legal
17 responsibility to sue as a trustee?

18 A. The ADM Civil would have been well aware of our
19 office's position in respect of that issue.

20 Q. And --

21 A. Because it really dates back to '84, '85 when I
22 first wrote to Herb Sohn explaining the position of
23 our department or our office and the fact that the
24 Public Trustee was not under an obligation to bring
25 actions, even though he was designated as the sole
26 trustee in respect of children under permanent
27 guardianship orders.



1 After that point in time, there was
2 correspondence that went back and forth between our
3 office and the lawyers in Civil Law who ultimately
4 accepted the position of the Office of the Public
5 Trustee.

6 Q. Okay. So you're saying that back in 1984 -- is this
7 after this 1985 memo?

8 A. Yes, it would be.

9 Q. Okay.

10 A. I was, as you are aware, appointed as the ADM
11 shortly after that period. But the correspondence
12 between lawyers and the Public Trustee's Office and
13 Civil Law continued, and ultimately the lawyers in
14 Civil Law agreed with the position that our office
15 took.

16 Q. And so from 1985 to 1991 as the Assistant Deputy
17 Minister, the lawyers for the Public Trustee were
18 under your responsibility; is that right?

19 A. That is correct.

20 Q. Were the lawyers for Alberta Justice or Civil Law,
21 were they also under your responsibility?

22 A. No, no.

23 Q. Okay.

24 A. They reported to the ADM Civil.

25 Q. Okay. And who was your Deputy Minister? What was
26 the title?

27 A. Of the Deputy Minister at that time?



1 Q. Yeah.

2 A. Or --

3 Q. That's right. I'm just trying to find out where
4 there's going to be a connection here between the
5 Public Trustees and Alberta Justice Civil.

6 A. The connection comes at the ADM Civil, because I
7 report to the ADM Civil as does Civil Law. And
8 Civil Law is responsible for legal services to the
9 director of Child Welfare.

10 Q. Okay. So is this when you're the ADM?

11 A. When I was the ADM --

12 Q. From '85 to --

13 A. -- for Property Services, the discussion took place
14 between lawyers and the Office of the Public
15 Trustee. I wasn't a party to these, but they
16 continued to --

17 MR. BARBER: I'm sorry. Mr. Klinck, I'm going
18 to intervene for a minute here because I'm getting
19 concerned about my client's solicitor-client
20 privilege on this issue, and I'd like to speak to
21 Mr. Jardine.

22 MR. JARDINE: No. And so I can be clear,
23 Mr. Lee, the witness has told you -- and I don't
24 have a problem with the witness telling you -- that
25 there was, in fact, a position expressed, which he's
26 given you.

27 I don't have a problem with the fact that there



This is Exhibit "K" referred to in the
Affidavit of

~~_____~~ ~~_____~~ DB

Sworn before me this 30 day

of April A.D. 2021

A. Garbar
A Commissioner of Oaths in and for
the Province of Alberta

Allan A. Garbar
Barrister and Solicitor

KELLY GAIL BESLER
Questioned remotely by Mr. Lee

1 **COURT FILE NUMBER:** 1203 19700

2

3 **COURT:** COURT OF QUEEN'S BENCH OF ALBERTA

4 **JUDICIAL CENTRE:** EDMONTON

5

6 **PLAINTIFFS:** T.W., by his Trustee ^{DB} [REDACTED]

7 and HER MAJESTY

8 THE QUEEN IN RIGHT OF ALBERTA

9

10 **DEFENDANTS:** HER MAJESTY THE QUEEN IN RIGHT OF

11 ALBERTA as represented by IRIS

12 EVANS, THE MINISTER OF CHILDREN'S

13 SERVICES, PAULA TYLER, THE DEPUTY

14 MINISTER OF CHILDREN'S SERVICES,

15 KERAY HENKE, THE ASSISTANT DEPUTY

16 MINISTER OF CHILDREN'S SERVICES,

17 BILL MEADE, THE CEO OF MA'MOWE

18 CAPITAL REGION CHILD AND FAMILY

19 SERVICES AUTHORITY, JACKIE

20 STEWART, MANAGER OF LITIGATION

21 SUPPORT FOR CHILDREN'S SERVICES,

22 GAIL PERKINS, CAROL ADAGALA,

23 WENDY MITCHELL-KUBAN, DAVID JAMES

24 MILLAR, MRS. MILLAR and JOHN DOE

25 -----

26 Questioning for Discovery of KELLY GAIL BESLER,

27 held remotely via Zoom videoconference,

28 on the 9th day of April 2021 C.E.

29 -----

30 **Appearances [via Zoom]:**

31 R. P. Lee, Esq. For the Plaintiffs

32 [from Edmonton, Alberta]

33

34 Ms. A. F. Kostek, Esq. For the Defendant Her

35 [from Edmonton, Alberta] Majesty the Queen and

36 Representatives

37 Ms. K. McLeod, CSR(A), RMR Official Court Reporter

38 [from Edmonton, Alberta]

39 -----



KELLY GAIL BESLER

Questioned remotely by Mr. Lee

1 Affidavit of Records. Let me just pull it up and
2 I'll show you.

3 Our Affidavit of Records, the Supplemental,
4 Schedule 2B identifies that the March 23rd --

5 MR. LEE: What page? Page 14?

6 MS. KOSTEK: Page 14, yes. It identifies the
7 names of everybody. I'll make this bigger.

8 MR. LEE: Can you clarify what's the claim
9 of privilege -- oh, solicitor-client privilege.

10 MS. KOSTEK: Solicitor-client. Yeah.

11 Q. MR. LEE: With regard to the March 23rd,
12 1987, memorandum, can you tell me who requested the
13 information in that memorandum?

14 MS. KOSTEK: This witness has not seen the
15 memorandum. The memorandum was provided to
16 Justice Feth, though, and he's going to rule on the
17 producibility of it.

18 MR. LEE: Yes, I understand that.

19 Q. Ms. Besler, can you tell me who requested the advice
20 in that memorandum?

21 A. No. I have not seen that.

22 Q. Can you tell me if it was intended that the advice
23 be used for the benefit of foster children?

24 MS. KOSTEK: She can't answer that.

25 Q. MR. LEE: Would you undertake to advise me
26 if the purpose of that -- of requesting that legal
27 advice was for the benefit of foster children?



KELLY GAIL BESLER

Questioned remotely by Mr. Lee

1 MS. KOSTEK: We'll take that under advisement.
2 UNDERTAKING - 25 - [UNDER ADVISEMENT]
3 TO ADVISE IF THE PURPOSE OF
4 REQUESTING THE LEGAL ADVICE IN THE
5 MARCH 23, 1987, MEMORANDUM WAS FOR
6 THE BENEFIT OF FOSTER CHILDREN, AS
7 REFERRED TO ABOVE.

11:24

8 Q. MR. LEE: Would you advise me if that legal
9 advice was obtained with the intention that it would
10 be kept secret from foster children?

11 MS. KOSTEK: We'll take that under advisement.

12 MR. LEE: Or to be kept confidential from
13 foster children.

14 MS. KOSTEK: We'll take that under advisement.

11:24

15 UNDERTAKING - 26 - [UNDER ADVISEMENT]
16 TO ADVISE IF THE LEGAL ADVICE IN THE
17 MARCH 23, 1987, MEMORANDUM WAS
18 OBTAINED WITH THE INTENTION THAT IT
19 WOULD BE KEPT SECRET FROM FOSTER
20 CHILDREN OR TO BE KEPT CONFIDENTIAL
21 FROM FOSTER CHILDREN, AS REFERRED TO
22 ABOVE.

23 Q. MR. LEE: Could you tell me if the
24 information in that March 23rd, 1987, memorandum
25 puts the public trustee's office and the department
26 responsible for administering the *Child Welfare Act*
27 to be adverse in interest?



KELLY GAIL BESLER

Questioned remotely by Mr. Lee

1 MS. KOSTEK: No, we won't answer that.

2 OBJECTION - 4 - Could you tell me if
3 the information in that March 23rd,
4 1987, memorandum puts the public
5 trustee's office and the department
6 responsible for administering the
7 *Child Welfare Act* to be adverse in
8 interest?

11:25

9 Q. MR. LEE: I understand that part of the
10 claim of privilege is a common-interest privilege.
11 It appears to me that the information -- without
12 knowing what's in there, it would appear to me that
13 the information in that legal advice would put the
14 department of Child Welfare, as I'll refer to it
15 generically, and the public trustee's office, as
16 I'll refer to it generally, in a conflict of
17 interest, in that that document could be used by one
18 or the other to deny an allegation by a foster child
19 that either the Child Welfare department or the
20 public trustee's office had a responsibility to
21 assist the foster child with potential civil
22 actions.

11:25

23 So would you tell me if the content of that
24 advice puts the public trustee's office and the
25 Child Welfare department in a conflict of interest
26 or being adverse in interest?

27 MS. KOSTEK: No.



KELLY GAIL BESLER
Questioned remotely by Mr. Lee

1 **OBJECTION - 5 - So would you tell me**
2 **if the content of that advice puts**
3 **the public trustee's office and the**
4 **Child Welfare department in a**
5 **conflict of interest or being adverse**
6 **in interest?**

11:26

7 Q. MR. LEE: And would there be any privilege
8 by the public trustee's office or the director of --
9 or the children's -- Child Welfare department to use
10 that memorandum against the other?

11 MS. KOSTEK: Well, we won't answer that
12 question.

13 MR. LEE: And on what basis?

14 MS. KOSTEK: It's solicitor-client privilege.
15 We're not going to go into what somebody can do or
16 use with documentation that's covered by
17 solicitor-client privilege. It's already before
18 Justice Feth. He'll rule on it.

11:27

19 MR. LEE: Ms. Kostek, you understand that
20 you have to establish that it is solicitor-client
21 privilege?

22 MS. KOSTEK: I think we have.

23 **OBJECTION - 6 - And would there be**
24 **any privilege by the public trustee's**
25 **office or the director of -- or the**
26 **children's -- Child Welfare**
27 **department to use that memorandum**



KELLY GAIL BESLER
Questioned remotely by Mr. Lee

1 **against the other?**

2 Q. MR. LEE: And with regard to the
3 April 28th, 1987, memo from Neil Dunne, civil law,
4 to Herb Sohn, children's guardian, referencing the
5 legal advice of March 23rd, 1987, a memorandum to
6 Camilla Witt, what was -- was the intention of that
7 memo to be kept secret from foster children?

8 MS. KOSTEK: We'll take that under advisement.

9 **UNDERTAKING - 27 - [UNDER ADVISEMENT]**
10 **TO ADVISE IF THE INTENTION OF THE**
11 **APRIL 28, 1987, MEMO FROM NEIL DUNNE**
12 **TO HERB SOHN REFERENCING THE LEGAL**
13 **ADVICE OF MARCH 23, 1987, WAS TO KEEP**
14 **IT A SECRET FROM FOSTER CHILDREN, AS**
15 **REFERRED TO ABOVE.**

16 Q. MR. LEE: Was the intention of that memo to
17 be used for the benefit of foster children?

18 MS. KOSTEK: We'll take that under advisement.

19 **UNDERTAKING - 28 - [UNDER ADVISEMENT]**
20 **TO ADVISE IF THE INTENTION OF THE**
21 **APRIL 28, 1987, MEMO FROM NEIL DUNNE**
22 **TO HERB SOHN REFERENCING THE LEGAL**
23 **ADVICE OF MARCH 23, 1987, WAS TO BE**
24 **USED FOR THE BENEFIT OF FOSTER**
25 **CHILDREN, AS REFERRED TO ABOVE.**

26 Q. MR. LEE: Was the intention of that memo to
27 assist the children's -- the Child Welfare



KELLY GAIL BESLER

Questioned remotely by Mr. Lee

1 department to understand its role in helping foster
2 children who had potential causes of action?

3 MS. KOSTEK: We'll take that under advisement.

4 **UNDERTAKING - 29 - [UNDER ADVISEMENT]**
5 **TO ADVISE IF THE INTENTION OF THE**
6 **APRIL 28, 1987, MEMO FROM NEIL DUNNE**
7 **TO HERB SOHN REFERENCING THE LEGAL**
8 **ADVICE OF MARCH 23, 1987, WAS TO**
9 **ASSIST THE CHILD WELFARE DEPARTMENT**
10 **TO UNDERSTAND ITS ROLE IN HELPING**
11 **FOSTER CHILDREN WHO HAD POTENTIAL**
12 **CAUSES OF ACTION, AS REFERRED TO**
13 **ABOVE.**

11:28

14 Q. MR. LEE: What position did Neil Dunne hold
15 in April of 1987?

16 A. I don't know.

17 Q. Is this the same Neil Dunne that made a Law Society
18 complaint against Robert Lee in 2003 regarding the
19 letter written by Robert Lee to Mike Kinash that was
20 earlier referred to?

11:29

21 A. I don't know.

22 Q. Would you undertake to find that out?

23 MS. KOSTEK: I'm not sure that's relevant and
24 material. Can you explain how that's relevant?

25 MR. LEE: It would appear that Neil Dunne
26 was aware of these documents -- he was aware of the
27 obligation of Her Majesty the Queen to produce



KELLY GAIL BESLER

Questioned remotely by Mr. Lee

1 advocate?

2 A. No.

3 Q. From 1988 onwards, was there a policy or practice
4 within Her Majesty the Queen to keep it a secret
5 from foster children the things that the children's
6 advocate could do and would not do for foster
7 children that might need a lawyer?

8 A. No.

01:22

9 Q. From 1988 onwards, was there a policy or practice
10 within Her Majesty the Queen to inform foster
11 children of the things that the children's advocate
12 could and would not do for foster children that
13 might need a lawyer, if it was suitable to the
14 child's age and mental ability?

15 A. I don't know that.

01:23

16 Q. From 1980s onward, was there a policy or practice
17 within Her Majesty the Queen to keep it a secret
18 from foster children that there was a director of
19 child welfare that was the guardian of the foster
20 children?

21 A. No.

22 Q. From 1980 onward, was there a policy or practice
23 within Her Majesty the Queen to keep it a secret
24 from foster children the things that the director of
25 Child Welfare could do and would not do for foster
26 children that might need a lawyer?

27 A. No.



KELLY GAIL BESLER

Questioned remotely by Mr. Lee

01:23

1 Q. From 1980 onwards, was there a policy or practice
2 within Her Majesty the Queen to inform foster
3 children of the things that the director of
4 Child Welfare could do and would not do for foster
5 children that might need a lawyer when suitable to
6 the child's age and mental ability?

7 A. Sorry. Can -- you've changed the time frame on the
8 last couple of them, not that that would matter
9 greatly, but you started with 1988, and then it was
10 1980. Can you repeat the question, please?

11 Q. Yes. There wasn't a children's advocate until 1988.
12 That's why I used the date 1988 when referring to
13 the children's advocate. There was a director of
14 Child Welfare from 1980, which is why I'm using that
15 date.

01:24

16 So from 1980s onward, was there a policy or
17 practice within Her Majesty the Queen to inform
18 foster children of the things that the director of
19 Child Welfare could do and would not do for foster
20 children that might need a lawyer when suitable to
21 the child's age and mental ability?

22 A. I don't know.

23 Q. From 1980s onward, was there a policy or practice
24 within Her Majesty the Queen to keep it a secret
25 from foster children that there was a public trustee
26 that was the trustee of the estates of foster
27 children under PGO?



KELLY GAIL BESLER

Questioned remotely by Mr. Lee

1 A. No.

2 Q. From 1980s onward, was there a policy or practice
3 within Her Majesty the Queen to keep it a secret
4 from foster children the things that the public
5 trustee could do and would not do for foster
6 children that might need a lawyer?

7 A. No.

8 Q. From 1980s onward, was there a policy or practice
9 within Her Majesty the Queen to inform foster
01:25 10 children of the things that the public trustee could
11 do and would not do for foster children that might
12 need a lawyer when suitable to the child's age and
13 mental ability?

14 A. I don't know.

15 Q. From 1984 to 1988, was there a policy or practice
16 within Her Majesty the Queen to keep it a secret
17 from foster children that there was a children's
18 guardian that was the guardian of the foster
19 children under PGO?

01:25 20 A. No.

21 Q. From 1984 to 1988, was there a policy or practice
22 within Her Majesty the Queen to keep it a secret
23 from foster children the things that the children's
24 guardian could do and would not do for foster
25 children that might need a lawyer?

26 A. No.

27 Q. From 1984 to 1988, was there a policy or practice



KELLY GAIL BESLER

Questioned remotely by Mr. Lee

1 within Her Majesty the Queen to inform foster
2 children of the things that the children's guardian
3 could do and would not do for foster children that
4 might need a lawyer when suitable to the child's age
5 and mental ability?

6 A. I don't know.

01:26

7 Q. From 2000 to 2003, was it the policy or practice to
8 keep it a secret from T [REDACTED] and other foster
9 children that foster children under TGO and PGO
10 might have the right to have some part of the
11 government to assist them with civil claims against
12 the department of Child Welfare?

13 A. No.

01:26

14 Q. From 2000 to 2003, was it the policy or practice of
15 Child Welfare or the government to keep it a secret
16 from T [REDACTED] and other foster children that foster
17 children under TGO and PGO might have the right to
18 have the district manager assist the director of
19 Child Welfare to assist the foster children with
20 civil claims against the department of
21 Child Welfare?

22 A. No.

23 Q. From 2000 to 2003, was it the policy or practice of
24 Her Majesty the Queen to keep it a secret from
25 [REDACTED] and other foster children to know what kind
26 of medical, psychological, and dental treatment that
27 they were entitled to receive?



KELLY GAIL BESLER

Questioned remotely by Mr. Lee

1 A. No.

2 Q. Was it the policy from 1985 to present to act in the
3 best interests of foster children, even if the
4 interests of foster children were in conflict with
5 the interests of Child Welfare or the government?

6 A. Well, I'm not sure if -- I need a -- an
7 interpretation of "conflict." Is there a way --

8 Q. Where --

9 A. -- that you can rephrase that?

01:27

10 Q. Yeah. So what I'm referring to is where what the
11 child -- the foster child might want is not what
12 Child Welfare or the government might want. And the
13 prime example here is a foster child might want to
14 sue the government, and the government might not
15 want to be sued.

16 A. Right. And so you've used the time frame of 1985 to
17 present.

18 Q. Yes.

01:28

19 A. And can you repeat the question again? Are you
20 asking if there was a policy to conceal?

21 Q. Was it the policy from 1985 to present to act in the
22 best interests of foster children, even if the
23 interests of foster children were in conflict with
24 the interests of Her Majesty the Queen?

25 MS. KOSTEK: I don't know that you've
26 established that they were in conflict. Are you
27 asking a hypothetical? Like, if they were?



This is EXHIBIT " L " referred to in the
Affidavit of
~~_____~~ ~~_____~~ DB

Sworn before me this 30 _____ day
of April _____ A.D. 2021.

A. Garber

A Commissioner of Oaths in and for
the Province of Alberta

Allan A. Garber
Barrister and Solicitor

JACQUELINE ARLENE STEWART
Questioned remotely by Mr. Lee

1	COURT FILE NUMBER:	1203 19700
2		
3	COURT:	COURT OF QUEEN'S BENCH OF ALBERTA
4	JUDICIAL CENTRE:	EDMONTON
5		
6	PLAINTIFFS:	T.W., by his Trustee ^{DB} _____ and HER MAJESTY
7		THE QUEEN IN RIGHT OF ALBERTA
8	DEFENDANTS:	HER MAJESTY THE QUEEN IN RIGHT OF
9		ALBERTA as represented by IRIS
10		EVANS, THE MINISTER OF CHILDREN'S
11		SERVICES, PAULA TYLER, THE DEPUTY
12		MINISTER OF CHILDREN'S SERVICES,
13		KERAY HENKE, THE ASSISTANT DEPUTY
14		MINISTER OF CHILDREN'S SERVICES,
15		BILL MEADE, THE CEO OF MA'MOWE
16		CAPITAL REGION CHILD AND FAMILY
17		SERVICES AUTHORITY, JACKIE
18		STEWART, MANAGER OF LITIGATION
19		SUPPORT FOR CHILDREN'S SERVICES,
20		GAIL PERKINS, CAROL ADAGALA,
21		WENDY MITCHELL-KUBAN, DAVID JAMES
22		MILLAR, MRS. MILLAR and JOHN DOE
23	-----	
24	Questioning for Discovery of <u>JACQUELINE ARLENE STEWART</u> ,	
25	held remotely via Zoom videoconference,	
26	on the 1st day of April 2021 C.E.	
27	-----	
28	Appearances [via Zoom]:	
29	R. P. Lee, Esq.	For the Plaintiffs
30	[from Edmonton, Alberta]	
31	Ms. A. F. Kostek, Esq.	For the Defendant Her
32	[from Edmonton, Alberta]	Majesty the Queen and
33		Representatives
34	Ms. K. McLeod, CSR(A), RMR	Official Court Reporter
35	[from Edmonton, Alberta]	



JACQUELINE ARLENE STEWART
-Questioned remotely by Mr. Lee

1 MS. KOSTEK: Okay. Thank you for your
2 comments. You have our answer. We will get back to
3 you. We're not saying no, but we will get back to
4 you.

5 UNDERTAKING - 1 - [UNDER ADVISEMENT]
6 TO ADVISE WHETHER THE AFFIDAVIT OF
7 RECORDS PROVIDED BY HER MAJESTY
8 THE QUEEN DISCLOSES A DELEGATION
9 RECORD OF A DIRECTOR FOR [REDACTED] TW
10 BETWEEN 2000 TO 2003, AS REFERRED TO
11 ABOVE.

12 Q. MR. LEE: Ms. Stewart, from 1985 to 1988,
13 was there a policy or practice in the government to
14 keep it a secret from foster children that there was
15 a children's guardian?

16 A. Was there a policy?

17 Q. Or a practice.

18 A. Not that I'm aware of.

19 Q. From 1985 to 1988, was there a policy or practice to
20 keep it a secret from foster children that things
21 that the children's guardian could do and would not
22 do for foster children that might need a lawyer?

23 A. Not that I'm aware of.

24 Q. From 1985 to 1988, was there a policy or practice to
25 inform foster children of the things that the
26 children's guardian could do and would not do for
27 foster children that might need a lawyer?

10:41



JACQUELINE ARLENE STEWART
-Questioned remotely by Mr. Lee

1 A. I don't recall.

2 Q. From 1988 to present, was there a policy or practice
3 to keep it a secret from foster children that there
4 was a children's advocate?

5 A. No.

6 Q. From 1988 to present, was there a policy or practice
7 to keep it a secret from foster children the things
8 that the children's advocate could do and would not
9 do for foster children that might need a lawyer?

10:42 10 A. Say that again. Sorry.

11 Q. From 1988 to present, was there a policy or practice
12 to keep it a secret from foster children the things
13 that the children's advocate could do and would not
14 do for foster children that might not need -- that
15 might need a lawyer.

16 A. I'm not aware of that.

17 Q. From 1988 to present, was there a policy or practice
18 to inform foster children of the things that the
19 children's advocate could do and would not do for
20 foster children that might need a lawyer -- I think
21 that's the same question. So let's strike that --
22 oh, sorry.

10:42

23 The difference was in the '88 to present time
24 period, was there a policy or practice to inform the
25 foster children of the things that the children's
26 advocate could do and would not do for foster
27 children who might need a lawyer?



JACQUELINE ARLENE STEWART
Questioned remotely by Mr. Lee

1 A. It wasn't that specific. I can't imagine a policy
2 that would state things they would not do, for
3 example.

4 Q. Well, this is -- well, for example, the children's
5 advocate won't help foster children to sue for civil
6 actions; correct? Is that is something that
7 Child Welfare keeps a secret from foster children?

8 A. Not that I'm aware of.

10:44

9 Q. Okay. From 1985 to present, was there a policy or
10 practice to keep it a secret from foster children
11 that there was a director of Child Welfare who was
12 the guardian of the foster children?

13 A. Not that I'm aware of.

14 Q. From 1985 to present, was there a policy or practice
15 to keep it a secret from foster children the things
16 that the director of Child Welfare could do and
17 would not do for foster children that might need a
18 lawyer?

19 A. Not that I'm aware of.

10:44

20 Q. From 1985 to present, was there a policy or practice
21 to inform foster children of the things that the
22 director of Child Welfare could do and would not do
23 for foster children that might need a lawyer?

24 A. I don't know.

25 Q. Well, you're the person responsible for the records.
26 This lawsuit is about whether or not the director
27 told ^{TW} [REDACTED] -- informed him of his rights. How can

JACQUELINE ARLENE STEWART
Questioned remotely by Mr. Lee

1 you say you don't know?

2 **A. Because I don't recall.**

3 Q. And you might have recalled in 19 -- in 2004?

4 **A. I don't know.**

10:45

5 Q. So it is possible, then -- because you don't know,
6 it is possible that there was a practice or policy
7 from 1985 to present that Child Welfare workers
8 would not tell foster children what the director of
9 Child Welfare could do or would not do when the
10 foster child needed a lawyer?

11 **A. I am not aware of a policy or a practice related to**
12 **that.**

13 Q. So it's possible that there was such a policy?

14 **A. No.**

15 Q. It's not possible?

16 **A. I don't -- I've already answered that question. I**
17 **said I'm not aware.**

10:46

18 Q. Right. Well, if you're not aware, then I would
19 assume the follow-up answer to "is it possible" is
20 that it is possible?

21 **A. No, that's not the follow-up.**

22 Q. Well, that was my follow-up question. So if you
23 say -- if you say it wasn't possible, then that
24 means that you know there was no policy. But since
25 you say that you don't remember, it should be
26 possible. That's what I'm trying to understand. Is
27 it possible? Is it not possible?



JACQUELINE ARLENE STEWART
Questioned remotely by Mr. Lee

10:47

- 1 A. I don't -- the answer I gave was I'm not aware.
- 2 Q. And you don't know if it's possible or not that
- 3 there was such a policy?
- 4 A. I'm not --
- 5 Q. If you're testifying -- you swore to tell the truth.
- 6 So do you know if it was or was not possible for
- 7 there to be a policy or a practice to not inform
- 8 foster children of the things that the director of
- 9 Child Welfare could do and would not do for foster
- 10 children who might need a lawyer?
- 11 A. I'm not --
- 12 MS. KOSTEK: So she can't speak to what she
- 13 doesn't know, right. And she can't even go so far
- 14 as to say it's possible, because she doesn't know.
- 15 She's already given you her answer.
- 16 OBJECTION - 2 - If you're
- 17 testifying -- you swore to tell the
- 18 truth. So do you know if it was or
- 19 was not possible for there to be a
- 20 policy or a practice to not inform
- 21 foster children of the things that
- 22 the director of Child Welfare could
- 23 do and would not do for foster
- 24 children who might need a lawyer?
- 25 MR. LEE: Well, that defies logic,
- 26 Ms. Kostek, but I'll go on.
- 27 Q. From 1985 to present, was there a policy or practice



JACQUELINE ARLENE STEWART
Questioned remotely by Mr. Lee

1 to keep it secret from foster children that there
2 was a public trustee and that the public trustee was
3 the trustee of the estates of foster children under
4 PGO?

5 **A. I'm not aware of any.**

6 **Q.** From 1985 to present, was there a policy or practice
7 to keep it a secret from foster children the things
8 that the public trustee could do and would not do
9 for foster children that might need a lawyer?

10:48 10 **A. I'm not aware of that.**

11 **Q.** From 1985 to present, was there a policy or practice
12 to inform foster children of the things that the
13 public trustee could do and would not do for foster
14 children that might need a lawyer?

15 **A. I don't recall.**

16 **Q.** Okay. Well, let's limit it from 1985 to 2003, the
17 date of your Affidavit of Records, the first one.

18 Was there any policy or practice that the
19 public trustee could do anything for foster children
20 who might have a civil action?

10:48

21 **A. I don't recall.**

22 **Q.** Didn't you collect all the records with regard to
23 that issue?

24 **A. I don't recall what records I collected in 2003.**

25 **Q.** What have you done to prepare for today's
26 Questioning? Did you look at the

27 Affidavit of Records that you swore in 2003, and did



JACQUELINE ARLENE STEWART
Questioned remotely by Mr. Lee

1 you look at those documents --

2 A. No.

3 Q. -- in preparation for your Questioning?

4 A. No.

5 Q. Did you look at the Supplemental Affidavit of Records
6 that you swore and look at the documents that were
7 included?

8 A. I didn't look at the records, no.

9 Q. So let me understand. You filed a Supplemental
10 Affidavit of Records; correct?

10:50

11 A. Correct.

12 Q. You swore it; correct?

13 A. Correct.

14 Q. The Affidavit of Records would have listed the
15 titles of documents; correct?

16 A. Yes.

17 Q. A description of the documents?

18 A. That, I don't know.

19 Q. But you didn't look at the documents to determine if
20 those documents had had any relevancy to this
21 lawsuit?

10:50

22 MS. KOSTEK: So her affidavit -- her
23 supplemental was sworn on information and belief,
24 and it was prepared by me as her counsel.

25 MR. LEE: Yes.

26 Q. So you didn't look at those documents yourself,
27 Ms. Stewart?



JACQUELINE ARLENE STEWART
Questioned remotely by Mr. Lee

1 A. No. I no longer have access to the documents
2 because I no longer work for the government.

3 Q. So are you telling me, Ms. Stewart, that as a
4 defendant, you're not allowed to look at those
5 documents?

6 MS. KOSTEK: She's only allowed to look at her
7 documents. She doesn't have access to HMQ's
8 documents.

9 Q. MR. LEE: Ms. Stewart, can you tell me why
10 you don't have access to Her Majesty the Queen's
11 documents.

12 A. I don't --

13 Q. Do you know why?

14 A. Pardon me?

15 Q. Do you know why you don't have access to Her Majesty
16 the Queen's documents?

17 A. Well, I'm no longer an employee, so I don't have
18 access to government documents any longer.

19 Q. Okay. And so you don't -- you didn't have -- you
20 don't have access to Mr. Meade's records either?

21 A. No.

22 Q. Or to any of the codefendants?

23 A. Correct.

24 MR. LEE: Can we just take a short break?

25 MS. KOSTEK: Sure.

26 [ADJOURNMENT]

27 Q. MR. LEE: Ms. Stewart, you confirm that

10:51

10:51



JACQUELINE ARLENE STEWART
Questioned remotely by Mr. Lee

- 1 you're still under oath?
- 2 **A. Yes.**
- 3 **Q. All right. So I just want to show you a document,**
4 **Ms. Stewart.**
- 5 **MR. LEE:** It's the Sharon Heron memo,
6 Ms. Kostek.
- 7 **MS. KOSTEK:** Just one moment, please.
- 8 **MR. LEE:** This is a memo dated October 7,
9 1999.
- 10 **MS. KOSTEK:** Let me just make it bigger.
- 11 **Q. MR. LEE:** Ms. Stewart, you didn't see this
12 document before filing your Supplemental
13 Affidavit of Records?
- 14 **A. I --**
- 15 **MS. KOSTEK:** I have shown this document and
16 specific other documents to Ms. Stewart.
- 17 **Q. MR. LEE:** Okay. I'm -- I'm just seeking
18 clarification, Ms. Stewart. I take it this document
19 is not in your personal possession?
- 20 **A. Correct.**
- 21 **Q. Okay. So, Ms. Stewart, you -- either you or**
22 **Ms. Kostek made a statement that you're not allowed**
23 **to access the government records because you're no**
24 **longer a government employee; is that correct?**
- 25 **A. That's correct.**
- 26 **Q. Okay. So I'm just trying to understand, if you're**
27 **not able to access the government records, how or**

10:58



JACQUELINE ARLENE STEWART
Questioned remotely by Mr. Lee

1 why were you allowed to access this Sharon Heron
2 memo? In what context?

3 MS. KOSTEK: So there were specific documents
4 I shared with her in the course of preparing for
5 today that she was allowed to access, and I can't go
6 into more detail without starting to talk about
7 things covered by solicitor-client privilege.
8 That's all I can say.

10:59

9 MR. LEE: Okay. So I just want to clarify
10 this, and perhaps you can answer this, Ms. Kostek.
11 So Ms. Stewart is not allowed to access all of the
12 government records, only the government records that
13 Her Majesty the Queen allows her to access?

14 MS. KOSTEK: That's my understanding.

15 MR. LEE: Okay. And would that include all
16 of the documents that are in the government
17 Supplemental Affidavit of Records?

11:00

18 MS. KOSTEK: The medical records, no, but I --
19 the records listed in C, I have shared with this
20 witness. So just a second.

21 MR. LEE: All I'm trying to understand is,
22 is she entitled to see all of the records, or is it
23 at the discretion of Her Majesty the Queen?

24 MS. KOSTEK: That's correct.

25 MR. LEE: You're nodding?

26 MS. KOSTEK: Yes.

27 MR. LEE: And that's in regard to all of



JACQUELINE ARLENE STEWART
Questioned remotely by Mr. Lee

- 1 the documents in Her Majesty the Queen's affidavit
2 of -- Supplemental Affidavit of Records; is that
3 correct?
- 4 MS. KOSTEK: That's my understanding. So,
5 like, the medical records --
- 6 MR. LEE: Okay. So what I'm confused
7 about, Ms. Kostek, is as Ms. Stewart is an
8 independent codefendant, why wouldn't she have
9 access to the Supplemental Affidavit of Records or
10 Affidavit of Records of any litigant? I'm a
11 little -- I'm a little confused here.
- 12 MS. KOSTEK: Yeah, I can't really get into
13 that. I can discuss that with you separately.
- 14 MR. LEE: Okay.
- 15 Q. So you have seen this document recently,
16 Ms. Stewart? This Sharon Heron 1999 memo?
- 17 A. Yes.
- 18 Q. Okay. Can you just tell me the date that you saw
19 this memo. Recently?
- 20 A. Within the last month.
- 21 Q. Okay. And prior to that, when was the last time you
22 saw this memo?
- 23 A. I don't remember.
- 24 Q. Would it have been more than five years ago?
- 25 A. Yes.
- 26 Q. More than ten years ago?
- 27 A. That -- I don't know after that.



JACQUELINE ARLENE STEWART
Questioned remotely by Mr. Lee

1 Q. Okay. When did you start working for the
2 children's advocate?

3 A. In 2006.

4 Q. Have you seen this document after 2006?

5 A. I don't know.

6 Q. Was it a policy from 1985 to present to ensure that
7 foster children --

8 A. Sorry. When you asked the question, did I see this
9 document after 2006, I did about a month ago.

10 Q. Yeah, other than that.

11 A. Okay. No, I haven't seen it since 2006.

12 Q. I might have questioned you on it maybe in 2012.

13 A. That, I don't recall.

14 Q. Okay.

15 A. Maybe. Maybe. I don't remember.

16 Q. Was it the policy from 1985 to present to ensure
17 that foster children knew what their rights were?

18 A. There is a --

19 Q. Age -- age appropriate.

20 A. Yes. I don't re -- I don't know the specifics of
21 the policy. There is some policy in place related
22 to children being made aware of rights.

23 Q. Yes. There is no policy to keep things a secret
24 from foster children, what their rights are; is that
25 correct?

26 A. I'm not aware of any policy.

27 Q. All right. So, for example, if a child -- if a



JACQUELINE ARLENE STEWART
Questioned remotely by Mr. Lee

1 foster child was -- and I don't know. I'm just
2 using this hypothetically to explain my question.

3 Hypothetically, if a foster child was entitled
4 to \$10,000 for braces or dental work, there was no
5 policy to keep that a secret from the child to save
6 the \$10,000 in dental costs; is that correct?

7 A. I'm not aware of any policy like that.

8 Q. In fact, that would be contrary to the principles of
9 the *Child Welfare Act* to act in the best interests
10 of the child; is that correct?

11:04

11 A. Yes.

12 Q. Was it a practice and policy of Child Welfare from
13 1985 to present to make all decisions in the best
14 interests of the foster child?

15 A. It's -- it has been a principle or practice to act
16 in the best interests of the child.

17 Q. Okay. After 1999, was it the policy of
18 Child Welfare to keep it a secret from ^{TW} [REDACTED] and
19 other foster children that foster children under
20 temporary guardianship order and permanent
21 guardianship order might have the right to have some
22 part of the government to assist them with civil
23 claims against the Department of Child Welfare?

11:04

24 A. I'm not aware of a policy or practice like that.

25 Q. After 1999, was there a policy or practice in
26 Child Welfare to keep it a secret from ^{TW} [REDACTED] and
27 other foster children that foster children under TGO



JACQUELINE ARLENE STEWART
Questioned remotely by Mr. Lee

1 and PGO might have the right to have the director of
2 Child Welfare to assist them with civil claims
3 against the Department of Child Welfare?

4 A. I'm not a -- I'm not aware of a policy or practice
5 in that area.

6 Q. Was there -- after 1999, was there -- was it the
7 policy and practice in Child Welfare to keep it a
8 secret from ^{TW} [REDACTED] and other foster children that
9 foster children under TGO and PGO might have the
10 right to have the district manager assist the
11 director of Child Welfare to assist the foster
12 children with civil claims against the department of
13 Child Welfare?

11:06

14 A. I'm not aware of a policy or practice like that.

15 Q. Was it the policy or practice after 1999 in
16 Child Welfare to keep it a secret from ^{TW} [REDACTED] and
17 other foster children to know what kind of medical,
18 psychological, and dental treatment that they were
19 entitled to receive?

11:06

20 A. I'm not aware of a policy or practice like that.

21 Q. After 1999, was it the policy or practice in
22 Child Welfare to keep it a secret from ^{TW} [REDACTED] and
23 other foster children to know the details of the
24 assistance that they might be entitled to when they
25 had had a potential civil claim?

26 A. I'm not aware of a policy or practice like that.

27 Q. After 1999, was it the policy or practice in



JACQUELINE ARLENE STEWART

Questioned remotely by Mr. Lee

11:07

11:08

1 Child Welfare to keep it a secret from ^{TW} [REDACTED] and
2 other foster children to know the details of the
3 assistance that they might be entitled to when they
4 had a potential civil claim against the
5 Alberta Government?

6 **A. I'm not aware of a policy or practice in that area.**

7 **Q.** After 1999, was it the policy or practice in
8 Child Welfare to keep it a secret from ^{TW} [REDACTED] and
9 other foster children to know the process for
10 requesting to have their legal fees paid to
11 prosecute a civil claim?

12 **A. I'm not aware of a policy or practice in that area.**

13 **Q.** After 1999, was it the policy or practice in
14 Child Welfare to keep it a secret from ^{TW} [REDACTED] and
15 other foster children to know the process of
16 requesting to have their legal fees paid to
17 prosecute a civil claim against the government?

18 **A. I'm not aware of a policy or practice in that area.**

19 **Q.** After 1999, was there a difference in the policy or
20 practice regarding the manner in which Child Welfare
21 was to help foster children with potential civil
22 actions against third parties, as compared to the
23 manner that Child Welfare would assist foster
24 children with potential civil actions against the
25 Alberta Government?

26 **A. I'm not aware.**

27 **Q.** After 1999, was there any difference in the policy



JACQUELINE ARLENE STEWART
Questioned remotely by Mr. Lee

1 the government had a duty to help the
2 foster children to sue.

3 Q. MR. LEE: Ms. Stewart, you're responsible
4 for the records and knowing whether documents are
5 privileged or not privileged.

6 MS. KOSTEK: Well, no. That's counsel that's
7 responsible for whether it's privileged or not
8 privileged.

9 MR. LEE: She's signs the affidavit. You
10 don't sign the affidavit, Ms. Kostek. She might
11 have a claim against her counsel, but she's the one
12 that signs the affidavit.

13 Q. So there were communications happening in the
14 mid-1980s between the public trustee, Child Welfare,
15 and Alberta Justice about who should be suing for
16 foster children. Were you aware of this? And when
17 I say "were you aware of this," before 2005.

18 Were you aware that in the mid-1980s, these
19 conversations had been taking place between the
20 public trustee, Child Welfare, and Alberta Justice?

21 A. I don't recall.

22 Q. Who was involved in the communications? Do you know
23 the names of the people that were involved in the
24 communications? The departments that were involved
25 in the communications?

26 A. I don't know.

27 Q. And who initiated the communications?



JACQUELINE ARLENE STEWART
Questioned remotely by Mr. Lee

1 A. I don't know.

2 Q. So you don't know if they're privileged, do you?

3 A. I think privilege is a legal concept, and I am not a
4 lawyer to make that assessment.

5 Q. Do you know what was the purpose of the
6 communications?

7 A. I don't know.

8 Q. Do you know why the communications might be
9 privileged?

11:52 10 A. I don't know.

11 Q. Do you know what the privilege is?

12 A. No.

13 Q. Was the purpose to determine the proper
14 interpretation of the legislation so that the proper
15 part of the government carried out the duties of the
16 guardian of foster children and the proper part of
17 the government carried out the duties of the trustee
18 of foster children? Was that the purpose of these
19 communications?

11:52 20 A. I don't know.

21 Q. Was the purpose so that the government would know
22 what their duties were and they could keep it secret
23 from foster children?

24 A. I don't know.

25 Q. So that's possible?

26 A. No, I didn't say that's possible. I said I didn't
27 know.



JACQUELINE ARLENE STEWART
Questioned remotely by Mr. Lee

1 MS. KOSTEK: There was no hiding.
2 MR. LEE: Let's just take a short break. I
3 find your comments to be quite infuriating when your
4 client concealed the most important records, the
5 most relevant, the most inculpatory records related
6 to ^{TW} [REDACTED]'s allegations of failure to sue and
7 breach of fiduciary duty; and then you want to try
8 to use that concealment to prevent further and
9 complete questioning.

03:07

10 MS. KOSTEK: That is inaccurate.

11 A. How long is our break?

12 MS. KOSTEK: Let's take ten minutes.

13 [ADJOURNMENT]

14 Q. MR. LEE: Ms. Stewart, you
15 acknowledge you're still under oath?

16 A. Yes.

17 Q. After ^{TW} [REDACTED] was assaulted by Mr. Millar, ^{TW} [REDACTED]
18 wanted to know if he was entitled to have his legal
19 fees paid by the government.

03:18

20 Was there a policy or practice from 2000 to
21 2004 to keep it a secret from foster children which
22 part of the government would facilitate foster
23 children's potential lawsuits?

24 A. I'm not aware of that.

25 Q. Was there a policy or practice in place in
26 Child Welfare from 2000 to 2004 to keep it a secret
27 from foster children who they should apply to in the



JACQUELINE ARLENE STEWART
Questioned remotely by Mr. Lee

1 government to have their legal fees paid?

2 A. I'm not aware of that.

3 Q. Was there a policy or practice in place from 2000 to
4 2004 in Child Welfare to treat children with
5 potential lawsuits against the government

6 differently from foster children with potential

7 lawsuits against nongovernment-related defendants?

8 A. I'm not aware of that.

9 Q. And this is, in particular, in relation to their
10 request for legal fees to be paid?

03:19

11 A. Again, I'm -- no, I'm not aware of that.

12 Q. Do you know if policy or practice -- when a child
13 wanted to have their legal fees paid, was that an
14 internal administrative decision that would be made
15 by the district manager?

16 A. It -- I guess it depended if there was an active
17 lawsuit or not.

18 Q. Oh. And how did that change things?

19 A. Well, I think, as you've asked me previously and I
20 noted in the transcript, that when there was an
21 active lawsuit on -- I believe it was ~~was~~^{TW}, that
22 Doug Lewis responded back, because the matter was
23 already an active lawsuit.

03:20

24 Q. So -- so is -- sorry. So the practice was that if a
25 foster child had a potential lawsuit against the
26 department but the lawsuit had not been started yet,
27 then Child Welfare would consider paying for the



This is Exhibit " M " referred to in the Affidavit of [REDACTED] DB

Given before me this 30 day of April A.D. 2021

A. Garber

A Commissioner of Oaths in and for the Province of Alberta

Allan A. Garber
Barrister and Solicitor



1201 TD Tower, 10088-102 Ave NW, Edmonton, AB, CANADA T5J 4K2
☎ 780.423.3441 ☎ 780.420.1763 www.cbmlp.com

Amanda F. Kostek
Email: akostek@cbmlp.com
Direct Line (780) 702-2308
Legal Assistant: Marija Grasa

Our file: 27146-329

March 11, 2021

Via email: allan@garberlaw.ca

Allan Garber
108, 17707 – 105th Avenue NW
Edmonton, AB T5S 1T1

Attention: Allan Garber

Re: ^{TW} [REDACTED] v. Her Majesty the Queen et al
Action No. 0203 09700

I am writing to address Jackie Stewart's prior undertakings. Attached are the Amended Answers. Since Jackie Stewart is no longer with the Government, she is no longer in a position to search for records. As a result, we have consulted with our client directly in terms of getting clarification with respect to your questions and any outstanding undertakings.

In terms of the clarifications in your February 26, 2021 letter in relation to Undertakings 4 and 7, I will address them in this letter.

Undertaking 4

On February 26, 2021 you advised that you were seeking any records related to the following with respect to Undertaking 4. The short answer is that my client has not identified any producible records in relation to your specific questions.

For ease of reference I have listed each, and our answers are below.

(a) Whether Child Welfare considered the merits of ^{TW} [REDACTED]'s action;

^{TW} [REDACTED]'s action was commenced before this was considered. After HMQ was sued, HMQ became adverse in interest, and any consideration of this was cloaked in Solicitor Client Privilege.

(b) Whether Child Welfare considered if ^{TW} [REDACTED]'s action might be successful;

See answer to item (a) above.

(c) Whether Child Welfare considered the amount of compensation ^{TW} [REDACTED] could receive;

See answer to item (a) above.

(d) Whether Child Welfare considered [REDACTED]'s ability to retain counsel on an hourly basis or on a contingency basis; TW

TW
[REDACTED]'s action was commenced before this was considered. Once the claim was commenced, HMQ's counsel, Ken Holmstrom, asked Mr. Lee to have this addressed in Case Management in his correspondence of February 13, 2004.

Any other documents related to discussions between HMQ and its counsel are covered by solicitor client privilege.

(e) Whether there are records related to the lawyers with the most experience suing;

Tristan's action was commenced before this was considered. Once the action was commenced HMQ became adverse in interest, so this was not considered.

(f) Considering the payment of legal fees and disbursements;

See answer to item (d) above.

(g) Considering how to avoid a breach of fiduciary duty;

There are no records to produce.

(h) Considering how to avoid a conflict of interest with [REDACTED]; TW

There are no records to produce.

(i) Considering the assistance [REDACTED] would need from Child Welfare to prosecute a potential law suit or actual law suit once filed; TW

This was considered, and all relevant and producible records have been produced. Specifically, we refer to our producible document C-20.

(j) Identifying the suitable next/friend;

This was addressed, and Dean Duckett was retained in this respect. See also our producible document C-20.

Peter Duckett advises that his file was shredded as it was closed in the early 2000s.

- (k) Identifying suitable lawyers for [REDACTED];

[REDACTED]'s action was commenced before this was considered. Once it was commenced, HMQ was adverse in interest, and HMQ did not consider seeking alternative counsel.

- (l) Paying legal counsel for making an application for crimes compensation;

[REDACTED] commended the application before this was considered. The Public Trustee then addressed the appeal of the award.

- (m) Paying legal counsel to assist [REDACTED] to appoint the most suitable next friend;

Dean Duckett was retained for this purpose. Peter Duckett advises that his file was shredded as it was closed in the early 2000s. No further records are available due to the passage of time.

- (n) Paying legal counsel and disbursements for [REDACTED] to sue the Millers and Child Welfare;

See answer to item (d) above.

- (o) Referral to the District Manager for consideration of suing;

[REDACTED]'s action was commenced before this was considered.

- (p) Consulting to determine if it was in [REDACTED]'s best interest to commence a law suit;

[REDACTED]'s action was commenced before this was considered.

- (q) Collecting Evidence for [REDACTED]'s case with the dominant purpose of litigation;

Evidence was collected, and produced throughout this litigation. Further, court appointed experts were obtained in order to preserve evidence.

- (r) Considering whether Tomlinson or Lee should be next Friends and Virginia May as legal counsel;

This was not considered. Mr. Lee was already counsel, and ultimately Gerald Robertson became the Next Friend.

- (s) Considering whether [REDACTED] was part of the Tomlinson case;

Too much time has passed to determine if this was considered. No records have been identified.

(t) Applying to dismiss the Tomlinson case and allowing ^{tw} ████████ to prosecute the claim himself after he turns 18; and

See item (s) above.

(u) Opposing payment of any legal fees in relation to ^{tw} ████████'s part of the Tomlinson law suit.

See item (s) above.

Undertaking 7

In terms of Undertaking 7, that related to documents produced in the original Affidavit of Records. On February 26, 2021 you advised that you were seeking to know whether the list of people you provided have any documents related to exhibits you provided in 2021. This could not have been the undertaking originally asked, and appears to be a new request for information.

The list is extensive, and at least some of the individuals are no longer with the Government, and at least one person has died. My client is making best efforts to determine if anyone on the list is still with the government, and to the extent they are, will follow up. However, we are treating this as a new request for information given the foregoing.

Yours truly,

CHOMICKI BARIL MAH LLP

Per:



AMANDA F. KOSTEK

CC: Damian Shepherd

Via email: dshepherd@cbmlp.com

AMENDED Answers to Undertakings Requested of Jackie Stewart

1. To ask Doug Lewis for any document relevant to be provided in an Affidavit of Records as they relate to Paragraph 24 of the Statement of Claim. (Under Advisement)

Answer: Refused. This was dealt with and resolved as part of the Class Action in T.L. v. Alberta (Director of Child Welfare). Our understanding is that Tristan was a class member.

Doug Lewis is a lawyer at Alberta Justice. He does not have any records in his personal possession related to paragraph 24 of the Statement of Claim.

2. To inquire of Child Welfare for any documents related to ^{TW} [REDACTED]'s request for legal fees to be paid. (Under Advisement.)

Answer: Refused. We do not see how this is relevant to the remaining issues in this action. The Class Action was resolved in 2015.

Please find enclosed letters exchanged concerning legal fees.

3. Provide all documents in relation to Child Welfares actions that it took in requesting a next friend.

Answer: Refused on the Record on the basis that they are already public record, or covered by Litigation Privilege.

4. Produce internal records that relate to Child Welfare's role as guardian. (Under Advisement.)

Answer: Refused. This undertaking is too broad. If you have a specific record you are looking for, please advise.

On February 26, 2021 you advised that you were seeking any records related to specific questions you identified with respect to Undertaking 4. No producible records have been located with respect to your specific questions.

5. Number Documents (Under advisement)

Answer: The records are already numbered.

6. Advise if file provided includes working notes of member of special case review.

Answer: The complete file was produced in the original Affidavit of Records, and the documents speak for themselves. This is Her Majesty the Queen in Right of Alberta's complete file, and Her Majesty the Queen in Right of Alberta has not located any other notes, whether working notes or otherwise.

7. Ask people CC'd if they have documents in their own file relevant to the lawsuit (Under Advisement.)

Answer: This is simply too broad. You need to specific exactly what records you want us to ask about and what specific individuals you want us to follow up with.

On February 26, 2021 you advised that you were seeking to know whether the list of people you provided have any documents related to exhibits you provided in 2021. This could not have been the undertaking originally asked, and appears to be a new request for information, which is being followed up on.

8. To produce document indicating who CEO was of Ma'Mowe Region from date of ^{rw} [REDACTED]'s birth until date Statement of Claim was issued. (Under Advisement)

Answer: On October 4, 2004 Ken Holmstrom advised that Steve Brown was the CEO.

We view this undertaking to be complete.

Undertaking 2- Jackie Stewart's examination

P 30
24/10/03

CHOMICKI BARIL MAH LLP
BARRISTERS AND SOLICITORS
ALBERTA JUSTICE

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www.cbmlp.com

E-mail: kholmstrom@cbmlp.com
Direct telephone #: 702-2313

June 4, 2003

Our file: 27,146-329/KAH
Your file: 8962

"Via Fax #436-7771"

ROBERT P. LEE
Barrister and Solicitor
7904 - 103rd Street
EDMONTON, AB T6E 6C3

Dear Sir: *tw*

Re: ~~XXXXXXXXXX~~ HER MAJESTY THE QUEEN et al.

I refer to your letter of May 28th, 2003.

I am instructed to advise you that Mr. Lewis is not the person who is to respond to your requests. My review of the government policies does not provide any obligation on the part of the Crown to pay the legal fees in the manner you have requested them. It seems to me this is a matter that requires an appropriate court application, with appropriate documentary evidence and appropriate compliance with the Rules of Court, if you feel this is something your client should pursue. Maybe it is something you will raise at the Case Management meeting so some timelines can be set, with the appropriate indication of notice that is going to be required to the appropriate governmental department.

Yours truly,

CHOMICKI BARIL MAH LLP

Per: **KENNETH A. HOLMSTROM**
(signed in the writer's absence to avoid delay)
KAH/st

ROBERT P. LEE†, B.A., LL.B.
Barrister & Solicitor

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T6E 6C3

Phone: (780) 438-4972

Fax: (780) 436-7771

Our File: 8962

Your File: 27,146-329/KAH

January 26, 2004

Attention: Ken Holmstrom

Chomicki Baril

2101 Scotia 2

10060 Jasper Ave.

Edmonton, AB T5J 4K2

Fax: 420-1763

Dear Sir:

Re: ^{tw} [redacted] v. Evans & HMTQ

Please be advised that Gerald Robertson has retained me to represent ^{tw} [redacted] in this law suit. I am now acting on his instructions.

At the last Court appearance, I brought up the issue of the Crimes Compensation application that must be conducted on ^{tw} [redacted]'s behalf.

Could you please ask ^{tw} [redacted]'s Guardian if he/she would consent to allowing Gerald Robertson to be the Litigation Guardian for ^{tw} [redacted] in the Crimes Compensation application. This would include the power to appoint counsel to make the application and to use the materials that he receives in the law suit for the purpose of the Crimes Compensation application. It may also require the need to retain medical experts to provide medical opinions to the Crimes Compensation Board.

Could you also ask ^{tw} [redacted]'s Guardian if he/she is willing to pay for ^{tw} [redacted]'s legal fees and disbursements in this law suit. It is my client's position that as the legal guardian, that Child Welfare has an obligation to pay ^{tw} [redacted]'s legal fees and disbursements.

I would be prepared to discuss these issues with ^{tw} [redacted]'s Guardian or counsel for ^{tw} [redacted]'s Guardian. If ^{tw} [redacted]'s Guardian and my client cannot come to a mutual agreement on these issues, I have instructions to make the necessary Court applications.

ROBERT P. LEE†, B.A., LL.B.
Barrister & Solicitor

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Phone: (780) 438-4972

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Our File: 8962

Your File: 27,146-329/KAH

Feb 1, 2004

Attention: Ken Holmstrom

Chomicki Baril

2101 Scotia 2

10060 Jasper Ave.

Edmonton, AB, T5J 4K2

Fax: 420-1763

Dear Sir:

Re: ~~██████████~~ v. Evans & HMTQ

Please advise me if you have spoken with your client about payment of ~~██████████~~'s legal fees and disbursements. This is an important and preliminary matter that must be dealt with by Professor Robertson on behalf of ~~██████████~~.

I also need your client's position on the Crimes Compensation application.

I will have my secretary contact your secretary for the examination of Jackie Stewart on her Affidavit of Records.

Yours Sincerely,

ROBERT P. LEE
Barrister & Solicitor

10:30 P.M.

ROBERT P. LEE†, B.A., LL.B.
Barrister & Solicitor

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7904 103 Street
Edmonton, Alberta
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Phone: (780) 438-4972
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Our File: 8962
Your File:

February 10, 2004

Doug Lewis
Alberta Justice
Civil Law Branch
9th Floor, 10011 - 109 Street
Edmonton, AB T5J 3S8
Fax: 427-1230

URGENT

Dear Sir:

Re: ~~_____~~

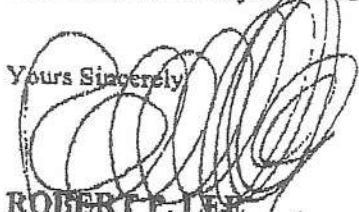
PAYMENT OF LEGAL FEES AND DISBURSEMENTS.

Further to my previous correspondence, I believe that I still have not received your decision regarding the payment of _____'s legal fees and disbursements for his law suit against the Millers and Child Welfare et al. I believe that my client initially applied on March 11, 2003 for these fees to be paid and I have sent numerous follow up letters. Almost 1 year has passed and I my client has still not received a reply to his application.

Could I please have a reply or an indication of when a reply will be given by Friday February 13, 2004.

If I do not hear from you I will seek instructions to apply for mandamus for a decision to be made.

Yours Sincerely


ROBERT P. LEE
Barrister & Solicitor

cc. Gerald Robertson Fax: 492-4924

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E-mail: kholmstrom@cbmlp.com
Direct telephone #: 702-2313

February 13th, 2004

Our file: 27,146-329/KAH
Your file: 8962

"Via Fax # 436-7771"

ROBERT P. LEE
Barrister and Solicitor
7904 - 103rd Street
EDMONTON, AB T6E 6C3

Dear Sir:

Re: ██████████ v. HER MAJESTY THE QUEEN et al.

I am responding to your letter of January 26th, 2004, as well as your letter of February 10th, 2004 to Doug Lewis.

First, in respect of the January 26th letter, if I understand what Justice Macklin said, you have to bring a separate application if you want Gerald Robertson to be the Litigation Guardian in respect of any action in respect of the Crimes Compensation Board. I suggest to you it is inappropriate to come back to me and ask me to have someone at Family and Social Services deal with this matter, as well as dealing with payment of the legal fees. That all has to be dealt with through the court process, and since Professor Robertson is not even the Litigation Guardian of ██████████ in the crimes compensation matter, I take the view that your inquiry is premature. TW

Secondly, in respect of the comments I have made in court regarding efforts to try to find a solution, our Statement of Defence remains as indicated. In terms of any efforts that are going to be made on a "without prejudice" basis to move this matter along to an early conclusion, that is something that is always on my mind as defence counsel, and I am entitled to make those representations to the court. If I am reading Justice Macklin correctly, I think he is encouraging both you and I to come to that point with respect to ██████████'s claim. My goal is to address the application of Rule 218 very shortly, and then to move the matter to further Case Management in that regard.

Third, in respect of scheduling Examinations for Discovery of Jackie Stewart, you have given me some days that do not work. I have some time in May, and I think we can work towards that aspect. Hopefully we can have Case Management in advance of that date and see if we can address some of the issues that will otherwise bring this matter to a conclusion.

ROBERT P. LEE
Barrister and Solicitor

Now, I turn to the letter of February 10th, 2004 directed to Doug Lewis. I have been asked to respond to you. I attach at this time my letter of June 4th, 2003, as well as a copy of your draft letter to Justice Macklin dated June 4th, 2003. Funding was an issue was raised in those letters, to be dealt with in our litigation. It seems to me that any applications you may wish to bring regarding this matter have to be brought in this action before Justice Macklin, at the next Case Management meeting. What you are alleging back as against Mr. Lewis regarding "mandamus" is not appropriate, and you are not in a position to proceed in that regard. As you know, Gerald Robertson as Litigation Guardian, is accountable to the court in this matter, for the best interests of [REDACTED]. Perhaps when we have our next Case Management meeting you can address the legal fees at that point, while we are also addressing the expert reports and where we go from here in terms of trying to find a solution for this claim.

Yours truly,

CHOMICKI BARIL MAH LLP

Per: KENNETH A. HOLMSTROM
(signed in the writer's absence to avoid delay)
KAH/st Enclosures

ROBERT P. LEE†, B.A., LL.B.
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Phone: (780) 438-4972

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Our File: 8962

Your File: 27,146-329/KAH

April 1, 2004

Attention: Ken Holmstrom

Chomicki Baril

2101 Scotia 2

10060 Jasper Ave.

Edmonton, AB T5J 4K2

Fax: 420-1763

Dear Sir:

Re: ~~Tw~~ v. Evans & HMTQ

An article in today's newspaper quotes Lorelei Fiset-Cassidy, spokesperson for Child Welfare as saying that "we (child welfare) has a process in place for taking action on behalf of children in our care".

Please provide me with details of this process for taking action on behalf of children in the care of Child Welfare as part of your affidavit of records.

Could I also please have a reply to my client's request to have his legal fees paid. Mr. Robertson has given me instructions to seek payment of the legal fees for the law suit.

I would also like to know if it is part of the process that Ms. Fiset-Cassidy refers to, that Child Welfare refuses to provide any information and any answers to the request for payment of legal fees? Please provide me with disclosure on this issue as well.

I look forward to your prompt reply.

Yours Sincerely,

ROBERT P. LEE

Barrister & Solicitor

cc. Gerald Robertson Fax: 492-4924

ROBERT P. LEE†, B.A., LL.B.
Barrister & Solicitor

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Robert Kassian

Ronald A. Morin

7904 - 103 Street

Edmonton, Alberta

T6E 6C3

Phone: (780) 438-4972

Fax: (780) 436-7771

Our File: 8962

Your File: 27,146-329/KAH

April 7, 2004

Attention: Ken Holmstrom

Chornicki Baril

2101 Scotia 2

10060 Jasper Ave.

Edmonton, AB T5J 4K2

Fax: 420-1763

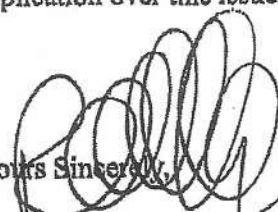
Dear Sir:

Re: ^{TW} ~~_____~~ v. Evans & HMTQ

Could we please have a reply to our request for ^{TW} ~~_____~~'s legal fees and disbursements to be paid by his guardian, Child Welfare. I would appreciate a response by the end of the week.

Could you also ask your client to reconsider it's position to consent to Professor Robertson to be the Litigation Guardian for the Crimes Compensation application. I see no need to be forced to make an application over this issue.

Yours Sincerely,



ROBERT P. LEE

Barrister & Solicitor

cc. Gerald Robertson Fax: 492-4924

ROBERT P. LEE†, B.A., LL.B.
Barrister & Solicitor

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Phone: (780) 438-4972

Fax: (780) 436-7771

Our File: 8962

Your File: 27,146-329/KAH

April 15, 2004

Attention: Ken Holmstrom

Chomicki Baril

2101 Scotia 2

10060 Jasper Ave.

Edmonton, AB T5J 4K2

Fax: 420-1763

With Prejudice

URGENT

Dear Sir:

Re: VIOLATION OF T.W.'s LEGAL RIGHTS

Further to my numerous letters. Could we please have a reply to our request for T.W.'s legal fees and disbursements to be paid by his guardian, Child Welfare. I asked for a response by April 12, and did not receive one. I would appreciate a response by noon on April 19.

Your client has been telling the media that Child Welfare pays for a child's lawyer when it is appropriate. It would seem to be completely appropriate for T.W.'s legal fees to be paid. T.W. was brain injured by his foster father. Child Welfare does not deny the brain injury by the foster father in it's statement of defence. It would seem to be appropriate for T.W.'s legal fees to be paid by his guardian, Child Welfare.

If your client's public comments are true, I do not understand why T.W.'s legal fees are not being paid and I do not understand why it is taking so long to receive an answer to this simple request.

Could you also ask your client to reconsider it's position to consent to expand the role of the litigation guardian to include applying under the Victims of Crime Act. I see no need to be forced to make an application over this issue. It is clearly in ~~the~~'s best interests. It is also a waste of Court resources and the tax payers money to force me to make a Court application over this simple issue. Please respond by noon on April 19.

T.W.'s legal interests are being violated by the delay in your client responding to simple requests.

Yours Sincerely



ROBERT P. LEE
Barrister & Solicitor

cc. litigation guardian

CHOMICKI BARIL MAH LLP
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2101 Scotia 2
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E-mail: kholmstrom@cbmlp.com
Direct telephone #: 702-2313

April 19, 2004

Our file: 27,146-329/KAH
Your file: 8962

ROBERT P. LEE
Barrister and Solicitor
7904 - 103rd Street
EDMONTON, AB T6E 6C3

Dear Sir:

tw

Re: ~~_____~~ HER MAJESTY THE QUEEN et al.

My letter of February 13, 2004 deals with your recent various letters as to legal fees and being litigation guardian in the Victim of Crime Act. There is nothing more to add to that letter.

Yours truly,

CHOMICKI BARIL MAH LLP

Per: 
KENNETH A. HOLMSTROM

FAX MESSAGE

ATTENTION: Robert Lee
FAX #: 780-436-7771

This message is intended ONLY for the use of the addressee and may contain information that is privileged and confidential. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you receive this communication in error, please notify us immediately by telephone.

EIGHT pages are being forwarded. Please call Donna at 423-3441, if you do not receive it in its entirety. Originals: RETAINED ON FILE

This is Exhibit " N " referred to in the Affidavit of

~~_____~~ DB

Sworn before me this 30 day

of April A.D. 2021

A. A. Garber

A Commissioner of Oaths in and for the Province of Alberta

Allan A. Garber
Barrister and Solicitor



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Our file: 27146-329

March 11, 2021

Via email: allan@garberlaw.ca

Allan Garber
108, 17707 – 105th Avenue NW
Edmonton, AB T5S 1T1

Attention: Allan Garber

Re: ^{tw} ~~_____~~ v. Her Majesty the Queen et al
Action No. 0203 09700

Please find attached the Answers to Undertakings of Ms. Kelly Besler.

Yours truly,

CHOMICKI BARIL MAH LLP
Per:


AMANDA F. KOSTEK

CC: Damian Shepherd

Via email: dshepherd@cbmlp.com

Answers to Undertakings of Kelly Besler

1. To advise and provide all the facts about why the government has provided additional documents that are relevant to the topic of failing to sue or failing to protect legal rights of children under permanent guardianship orders in other lawsuits and have not provided them in this lawsuit, which the officer knows or must properly inform herself of. (Refused)

Answer: Refused on the record.

2. To advise when Lorraine Mytikiuk was Florence Chung's supervisor

Answer: Lorraine Mytikiuk was her supervisor at the time of her Questioning, and remained so from April 1, 2003 to December 1, 2005.

3. To provide the name of the person or persons who are responsible for:

- a. Making decisions with regard to the defence of this lawsuit (Refused)

Answer: Refused.

- b. Making decisions with regard to assisting ^{TW} [REDACTED] in prosecuting this lawsuit (Under Advisement)

Answer: Gerald Robertson, Litigation Guardian, pursuant to Justice Macklin's Order, January 14, 2004. Gerald Robertson was ultimately replaced by a subsequent Litigation Guardian.

- c. Assisting ^{TW} [REDACTED] in protecting his legal rights (Under Advisement)

Answer: Gerald Robertson Litigation Guardian, pursuant to Justice Macklin's Order, January 14, 2004. Gerald Robertson was ultimately replaced by a subsequent Litigation Guardian.

- d. Deciding whether or not to make a Crimes Compensation Board application on behalf of ^{TW KW} [REDACTED] (Under Advisement)

Answer: [REDACTED], according to her March 6, 2003 Affidavit, deposed that she applied for the Victims of Crime compensation. The Public Trustee applied for a review of the decision.

On December 12, 2005 ^{TW} ██████████ was awarded \$36,500 under the *Victims of Crime Act*. This was appealed by the Public Trustee on behalf of ██████████, and on June 19, 2007 the award was increased to \$83,500. ^{TW}

4. To provide all of the facts with regard to that new policy and all of the underlying documents as well that went into the creation of that policy (Refused) – Agreed to provide policy from August 2005 only.

Answer: The policy with respect to suing from children in care as it existed from 2005 to 2011 has already been produced.

5. To advise and provide all of the facts about the policies that Child Welfare has had after the Blood decision of Justice Slatter from that point to the present time with regard to what is to be done when a child who is under a permanent guardianship has a potential civil claim (Under Advisement)

Answer: This question is too broad. The Policy was revised in 2005. Revisions to Section 8.2 Legal Representation for a Child in a Civil Claim were made October 1, 2011 and January 13, 2020.

6. To find out if Susan Rankin has a function to sue Child Welfare (Refused)

Answer: Refused on the record.

7. (a) To find out was ^{TW} ██████████'s case referred to Susan Rankin for consideration as to protection of his legal rights for a Crimes Compensation Board Application

Answer: Too much time has passed to determine if this referral was made.

- (b) And, if not, advise why it was not referred to Susan Rankin (Under Advisement)

Answer: See answer to 7(a).

8. To advise why it was the policy of Child Welfare to assist children in prosecuting cases against Child Welfare to refer it to Susan Rankin whose job description was to defend lawsuits, not to prosecute them (Refused).

Answer: Refused on the record.

9. To ask Mr. Bertsch if the policy was that ^{TW} [REDACTED]'s case was supposed to be referred to Susan Rankin (Under Advisement)

Answer: Darryl Bertsch no longer works with the Government of Alberta, and has no recollection of the policy in place at the time, and has no recollection of [REDACTED] or his claim.

TW

10. To advise if in the course of this examination it is later determined that an answer given was not correct.

Answer: Should something be identified that was answered in error, we will advise.

11. To advise and provide all of the facts about what happens when it is determined after a special case review that a worker has made mistakes (Under Advisement)

Answer: This question is too broad. To the extent that you are seeking information on the process and results from a Special Case Review, please refer to the Memorandum, dated October 26, 2000, located at our document 210141, which outlines the process of Special Case Reviews.

12. (a) To advise whether in general the Public Trustee is notified of a special case review (Under Advisement)

Answer: Given the passage of time we are unable to determine whether the Public Trustee was notified of a special case review for [REDACTED] at the time.

TW

- (b) To advise whether in general the Public Trustee is notified if negligence or wrongdoing has been found as a result of a special case review (Under Advisement)

Answer: This is too broad. To the extent that this relates to [REDACTED], please see answer to undertaking 12(a).

TW

- (c) To advise whether in general the Public Trustee is notified if negligence is found outside of a special case review (Refused)

Answer: Refused on the record.

13. To advise and provide all the facts with regard to whether child welfare workers are advised that special case reviews are confidential and will not be disclosed to third parties, which the officer knows or must properly inform herself of (Under Advisement)

Answer: This is too broad. To the extent that this question relates to ^{Tw} [REDACTED], yes, child welfare workers involved in ^{Tw} [REDACTED]'s Case Review were advised that Special Case reviews were for Internal Use only. The report was marked "For Internal Use Only Do not copy-do not circulate"

14. To advise whether the workers involved in ^{Tw} [REDACTED]'s case were told that the special case review would be confidential and not disclosed (Under Advisement)

Answer: Please refer to the answer to Undertaking #13.

15. To advise whether child welfare workers are less likely to be honest and to tell the truth when they know that a special case review may become public (Refused)

Answer: Refused on the record.

16. To advise if counsel for Child Welfare has ever made submissions to the Court advising the Court that if special case reviews are made public that child welfare workers will not be as honest and forthcoming in giving answers during special case review (Refused).

Answer: Refused.

17. To advise if Bob Rechner was a review board member or if he had any participation in the ^{Tw} [REDACTED] case.

Answer: Bob Rechner was part of the Chair Review Board. Bob Rechner participated as the Children's Advocate.

18. To advise if in general when policies are created that there are underlying documents, memos, reports that are created before the policy is instituted (Refused)

Answer: Refused on the record.

19. To advise if the government knew that [redacted] could sue Mr. Millar after October 22nd of 2000, and when did they know. TW

Answer: The Government knew that [redacted] could sue Mr. Millar after October 22, 2000. The government knew [redacted] could sue Mr. Millar once it was determined that Mr. Millar had assaulted [redacted], and that [redacted] had suffered injuries as a result. TW TW

20. To advise if the government knew that [redacted] could apply to the Crimes Compensation Board for the assault by Mr. Millar, and when did they know. TW

Answer: See answer to undertaking 19.

21. To advise and provide all the facts if on the dates that the government knew that [redacted] could sue Mr. Millar whether the government frontline worker, child welfare worker, Ms. Chung, or her manager at the time, or the regional manager, or anyone else in the government considered whether it was in the best interests of [redacted] to commence a lawsuit against Mr. Millar on that day or at any time after that day, which the officer knows or must properly inform herself of (Under Advisement) TW

Answer: This question is too broad.

Ms. Chung was examined and her evidence on this issue is available at page 18 of her Examination transcript onward. She testified that this was not within her area of responsibility. She took over as [redacted]'s worker in June, 2001. All her notes are in the Children's services file, which has been produced. TW

22. To advise if on the date that the government knew that [redacted] could sue Mr. Millar, whether the government frontline worker, child welfare worker, Ms. Chung, or her manager at the time, or the regional manager, or anyone else in the government considered whether it was in the best interests of [redacted] to commence a lawsuit against Child Welfare for negligence or vicarious liability on that day or at any time after that day, which the officer knows or must inform herself of (Under Advisement) TW

Answer: This question is too broad, and largely a duplicate of undertaking 21.

23. To investigate and provide all of the facts regarding the Blood decision of Justice Slatter and the government advising the Court that Child Welfare or the Public Trustee's Office would communicate with each other to determine who would undertake the responsibility to commence legal proceedings for children in care, which the officer knows or must inform herself of (Refused)

Answer: Refused on the record.

24. To advise if after November 3rd, 2004 Child Welfare considered providing payment to [REDACTED] TW
[REDACTED]'s lawyer for prosecuting [REDACTED]'s lawsuit against Mr. Murphy and against Child Welfare (Under Advisement). TW

Answer: Refused. Any discussions are covered by solicitor client privilege.

25. To advise if after November 3rd, 2004 Child Welfare considered their responsibilities to [REDACTED] TW
[REDACTED] to apply to the Crimes Compensation Board on behalf of [REDACTED] (Under TW
Advisement)

Answer: KW [REDACTED] had already applied for Victims of Crime compensation by this date, so to the extent that you are asking if Child Welfare considered a duplicative application, no, no duplicative application was submitted, because an application had already been made, which was subsequently appealed by the Public Trustee.

26. To advise if after November 3rd, 2004 Child Welfare considered their obligation to notify the Public Trustee of [REDACTED] TW
[REDACTED]'s potential lawsuit and ability to apply to the Crimes Compensation Board (Under Advisement)

Answer: By this date the Public Trustee was already aware of this matter, and [REDACTED] TW
already had an active lawsuit and an active application for compensation under the Victims of Crime legislation.

The Public Trustee's file confirms that Kelly [REDACTED] Bestor sent a referral memo to the Public Trustee August 16, 2005, and Suzanne McAfee responded September 16, 2005 declining the referral because the action was already in progress and Gerald Robertson was the Litigation Representative.

27. To advise if after November 3rd, 2004 Child Welfare had conversations or discussions or exchanged correspondence with the Public Trustee in relation to the issue of which part of the government, whether it be the Child Welfare Department or the Public Trustee's Department that would have the duty or responsibility to assist children under permanent guardianship orders to commence lawsuits and to apply for Crimes compensation Board benefits.

Answer: To the extent that the question relates to [REDACTED] TW, [REDACTED] TW already had an active lawsuit and an active application for compensation under the Victims of Crime legislation, and therefore, there were no discussions around

commencing duplicative actions, or making duplicative applications under the Victims of Crime legislation.

Please note that the Public Trustee is a corporation sole created under statute, and is a separate and distinct entity from the Government Defendants listed in this action.

28. To advise if after November 3rd, 2004 Child Welfare had any discussions or exchanged any correspondence with the Public Trustee's Office in relation to whether a child, being [REDACTED] TW, who was under a permanent guardianship order, and who apparently had a possible cause of action and a possible claim to the Crimes compensation Board, as to who would assist TW [REDACTED] with those applications, whether it would be the Public Trustee's Office or Child Welfare (Under Advisement)

Answer: We are unable to answer on behalf of the Public Trustee.

Due to the passage of time it is not possible to determine if any verbal discussions took place that are not documented in writing.

In terms of written communications, other than what is already contained in the Public Trustee's file, Child Welfare is unable to locate any correspondence between the Public Trustee's Office concerning discussing which of them would assist TW [REDACTED] with initiating an action, or commencing Victims of Crime compensation after November 3rd, 2004.

29. To provide all of the facts about the issue of the discussions, conversations, exchanges of memorandum or correspondence between the Public Trustee and Child Welfare and the Children's Advocate's Office, if they were involved, with regard to whether the Public Trustee's Office or Child Welfare had the responsibility to assist children under permanent guardianship orders such as TW [REDACTED] to apply for Crimes Compensation or advance civil lawsuits, which the officer knows or must properly inform herself of (Under Advisement)

Answer: This duplicates undertaking 28. See answer to undertaking 28.

In addition, the Children's Advocate's file was produced at our document A-8.

30. To advise and provide all the facts regarding from October of 2000 when TW [REDACTED] was injured whether Child Welfare also had discussions with the Children's Advocate's Office with regard to the duty that Child Welfare had to protect the legal interests of children under permanent guardianship orders such as TW [REDACTED], which the officer knows or must properly inform herself of (Under Advisement)

Answer: In October, 2000 when TW [REDACTED] was injured in care Her Majesty the Queen in Right of Alberta was investigating what happened. At that point there were no

discussions with the Children's Advocate's Office as the investigation was ongoing.

The Children's Advocate's file was produced at our document A-8.

31. To advise whether Child Welfare was aware that ^{TW} [REDACTED] was one of four hundred and thirty-nine children who were injured in care in the year 2001-2002 (Refused)

Answer: Refused on the record.

32. To advise and provide all of the facts regarding whether Child Welfare was aware that ^{TW} [REDACTED] was one of four hundred and thirty-nine children being referred to in Bob Rechner's Children's Advocate's 2000-2001 Annual Report, which the officer knows or must properly inform herself of (Under Advisement)

Answer: Child Welfare has no knowledge over whether ^{TW} [REDACTED] was one of the 439 children referred to in Bob Rechner's Children's Advocate's 2000-2001 Annual Report.

33. To advise whether the government was aware that a lawsuit was commenced by Ray Tomlinson on behalf of four hundred and thirty-nine maltreated children referred to in the Children's Advocate Annual Report 2000-2001 of Bob Rechner (Refused)

Answer: Refused on the record.

34. To advise whether the government was aware that ^{TW} [REDACTED] was one of these four hundred and thirty-nine named John Doe plaintiffs that Mr. Tomlinson commenced his lawsuit regarding (Refused)

Answer: Refused on the record.

35. To advise whether the government opposed the action brought by former Dean Tomlinson (Refused)

Answer: Refused on the record.

36. To advise whether Child Welfare obtained any independent legal advice for ~~Tomlinson~~ ^{TW} or considered whether ~~Tomlinson~~ ^{TW} wanted to participate in the lawsuit brought by former Dean Tomlinson on behalf of the four hundred and thirty-nine children (Refused)

Answer: Refused on the record.

37. To advise what steps, if any, the government took to consider whether or not it was beneficial for ~~Tomlinson~~ ^{TW} to be a participant in the action brought by Ray Tomlinson (Refused)

Answer: Refused on the record.

38. To advise what was the motivation for the government to not consider or make inquiries with regard to ~~Tomlinson~~ ^{TW}'s potential participation in the Ray Tomlinson lawsuit (Refused)

Answer: Refused on the record.

39. To advise whether the government, the two departments, being the Public Trustee's Department and Child Welfare had communications with regard to the Tomlinson legal procedures (Refused)

Answer: Refused on the record.

40. To advise and provide all the facts with regard to whether the October of 2000 to the present date Her Majesty the Queen in Right of Alberta has trained its employees to understand that the Director of Child Welfare is responsible for being the trustee of the estate of children in care, which the officer knows or must properly inform herself of (Under Advisement)

Answer: This question is too broad. All documentation with respect to training and policies has been produced. There is no specific policy or training with respect to training employees "to understand that the Director of Child Welfare is responsible for being the trustee of the estate of children in care."

41. To advise and provide all the facts with regard to whether from October of 2000 to the present date the government, Her Majesty the Queen in Right of Alberta, has trained the workers in the Child Welfare Department or its employees that it is the Public Trustee that is the trustee of the estate of children under a permanent guardianship order, which the officer knows or must properly inform herself of (Under Advisement)

Answer: This question is too broad. All documentation with respect to training and policies has been produced. There is no specific policy or training with respect to training employees that "it is the Public Trustee that is the trustee of the estate of children under a permanent guardianship order".

42. To advise regarding date of oral directive regarding referrals to Public Trustee.

Answer: The date of the oral directive is not available.

43. To advise and provide all the facts with regard to from October of 2000 to the present time who was responsible in her Majesty the Queen in Right of Alberta to develop the policies with regard to protecting the legal interests of children under permanent guardianship orders, which the officer knows or must properly inform herself of (Under Advisement)

Answer: This is too broad. Policy drafting is not up to one specific person or department. We have produced the policies in place from the time of injury. We have also provided the updates and amendments with respect to protecting legal interests of children in care.

44. To advise and provide all the facts with regard to during the period of October 2000 until sometime in the spring of 2005 when an oral directive was made whether the persons in charge of creating the policy manual for Child Welfare with regard to protecting the legal interests of children knew that under the Child Welfare Act that the Public Trustee was the trustee of the estate of children under a permanent guardianship order, which the officer knows or must properly inform herself of (Under Advisement)

Answer: Refused. This is irrelevant.

45. To advise and provide all the facts with regard to what was the motivation of the people who were in charge of creating the policy manual with regard to the protection of legal rights of children under permanent guardianship orders for failing to include in the policy manual that child welfare workers and managers or the Director of Child Welfare or their delegates should advise the Public Trustee when a child under a permanent guardianship order may have a cause of action or application under the Crimes Compensation Board, which the officer knows or must properly inform herself of (Under Advisement)

Answer: Refused. This undertaking is too broad, and is not answerable due to the passage of time.

46. To advise and provide all the facts with regard to whether Ms. Chung was the sole person responsible for making decisions whether to consider if [redacted] had a potential lawsuit that he might want to pursue or that he had a possible Crimes Compensation Board that he might want to pursue, which the officer knows or must properly inform herself of (Under Advisement)

Answer: At Ms. Chung's Questioning she advised that she was responsible for making decisions in the area of [redacted]s' education, and his social and health development. She further advised that she did not believe making the decision for [redacted] as to whether to sue somebody was within her job description. Ms. Chung became [redacted]'s worker in June of 2001 and when she took over this case, she was not given consideration or instruction to commence legal proceedings. No steps were taken as the case was already in the hands of litigation services.

47. To advise and provide all the facts with regard to the people that did have the responsibility to consider whether or not [redacted] should commence a lawsuit or whether [redacted]'s case should be referred to the Public Trustee or whether [redacted] should apply for Crimes Compensation Board benefits what was the motivation for that person or those persons in failing to do those things, which the officer knows or must properly inform herself of (Under Advisement)

Answer: This is too broad, and is not answerable due to the passage of time.

48. To advise and provide all the facts with regard to what discussions did Her Majesty the Queen in Right of Alberta have with the Children's Advocate's Office with regard to the issue of the protection of legal rights of children under permanent guardianship orders, including who the people are on behalf of Her Majesty the Queen in right of Alberta and who was spoken to at the Children's Advocate's Office, which the officer knows or must properly inform herself of (Under Advisement)

Answer: This is too broad, and is largely duplicative. See undertaking 30.

49. To advise and provide all the facts in relation to the discussions, conversations or exchange of correspondence between the Children's Advocate's Office and Her Majesty the Queen relating to the issue of protection of legal rights of children whether recommendations were made by the Children's Advocate's Office with regard to the steps that the government should take to protect the children's legal rights, and if there were any, were those suggestions not followed, and if they were not followed, what was the motivation for not following the recommendations of the Children's Advocate if he made any, which the officer knows or must properly inform herself of (Under Advisement)

Answer: This is too broad, and is largely duplicative. See undertaking 30.

50. To advise whether the motivation for Her Majesty the Queen in Right of Alberta in terminating or negotiating the retirement of Bob Rechner related to his urging of the government to recognize their legal obligation to protect the legal rights of children under permanent guardianship orders (Refused)

Answer: Refused on the record.

51. To review the severance documents with regard to Bob Rechner to determine if there are any issues in those materials that are relevant to the issue of fraudulent concealment in the lawsuit of ~~_____~~ (Refused)
TW

Answer: Refused on the record.

52. To advise and provide all the facts with regard to whether in approximately 1994 the Children's Advocate Bernd Walter prepared a Children's Advocate's report reviewing the Child Welfare system and in that report did he make recommendations with regard to providing compensation to children in care who had suffered injuries while in care, which the officer knows or must properly inform herself of (Refused)

Answer: Refused on the record.

53. To advise and provide all the facts with regard to what was the motivation of Her Majesty the Queen in Right of Alberta for failing to accept and implement the recommendations made by Bernd Walter in his 1994 Children's Advocate report regarding providing compensation for children who were injured while in the care of Her Majesty the Queen in Right of Alberta, which the officer knows or must properly inform herself of (Under Advisement)

Answer: This question is too broad, and is not answerable given the passage of time.

54. To advise and provide all the facts with regard to whether Her Majesty the Queen in Right of Alberta had a formal or informal policy from October 2000 to the present time to never sue itself on behalf of children who were abused while in the care of the government, which the officer knows or must properly inform herself of (Under Advisement)

Answer: There was no formal or information policy.

55. To advise, if there was no such policy, formal or informal, why Her Majesty the Queen in Right of Alberta never sued itself on behalf of a child in care who had a potential lawsuit against Her Majesty the Queen in Right of Alberta for being abused while in care (Refused)

Answer: Refused on the record.

56. To advise after the decision of Justice Slatter in the VB case on November 3rd, 2004 whether Her Majesty the Queen in Right of Alberta or any employees of Her Majesty the Queen in Right of Alberta considered Justice Slatter's decision as it related to Tristan Weaver's situation (Under Advisement)

Answer: The VB decision was considered and precipitated a change in policy generally. The policy from 2005 to the present has already been produced. However, by the time the VB decision was released, [REDACTED]'s action was already in litigation, and any such discussions were in the context of discussions with counsel, and are therefore subject to solicitor client privilege.

57. To advise and provide all the facts with regard to why Her Majesty the Queen in Right of Alberta has three separate systems for children in care to obtain legal representation, what the motivation is for the different systems to obtain legal representation for children, and if any of those motivations are in relation to any conflict of interest that Her Majesty the Queen in Right of Alberta may have with regard to children in their care, which the officer knows or must properly inform herself of (Under Advisement)

Answer: This is too broad and goes beyond the scope of [REDACTED]'s claim. TW

58. To advise and provide all the facts with regard to whether it was the motivation for Child Welfare to have the Children's Advocate's Office report to Child Welfare, rather than the Legislature, so that the Children's Advocate's Office would not be independent and, therefore, cannot assist [REDACTED] to advocate independently for [REDACTED]'s legal rights, which the officer knows or must properly inform herself of (Under Advisement)

Answer: This question is too broad. There was no motivation as suggested. On April 1, 2012 the Child and Youth Advocate Act was proclaimed, making the Office of the Child and Youth Advocate an independent office reporting to the Legislature of Alberta.

59. To advise and provide all the facts with regard to whether the [REDACTED] family was properly qualified to accept a high needs child such as [REDACTED], which the officer knows or must properly inform herself of. TW

Answer: This question is too broad. To the extent you are asking about the Millar's training, evidence is produced in our Affidavit of Records A-9 and A-10, the files surrounding the Millars. Those records confirm that in April 1998, the Millar family was at the Approved Level and had subsequently moved to the Qualified Level in or around May 1999. The June 2000 annual evaluation listed the courses completed by the Millar family.

^{TW}
~~_____~~ was categorized as requiring a Qualified Level foster care and, as of May 18, 1999, the Millars were at the Qualified Level designation.

60. To advise and provide all the facts with regard to the times that they were deemed to have two children in their home and whether they actually had three children in the home, which the officer knows or must properly inform herself of.

Answer: This question is too broad. Pursuant to the May 18, 1999 annual evaluation the Millars were to have a maximum of two children in their foster home. The June 19, 2000 annual evaluation indicates that the Millars had two children placed with them; however, there was a planned 12-day period wherein they have three children in the home.

61. To provide all of the information and materials, documents, standards that apply to foster parents that were given to the Millars, as well as those materials that existed but were not given to the Millars.

Answer: Due to the passage of time, this undertaking cannot be answered. However, the Millars files have been produced at our producible documents A-9 and A-10.

62. To advise and provide all the facts about the categorization of ^{TW} ~~_____~~ by Child Welfare, Her Majesty the Queen in Right of Alberta, which the officer knows or must properly inform herself of.

Answer: Pursuant to the Intake Screening Form completed by Gail Perkins, the Placement Guide Score indicated Qualified was requested and that ~~_____~~ ^{TW} did not require a medical home at the time. Pursuant to their training certificates as of May 18, 1999, the Millar family was designated as being at the Qualified Level.

63. To advise and provide all the facts with regard to the level of training required for ^{TW} ~~_____~~'s designation, which the officer knows or must properly inform herself in regard to foster parents in general and then in particular if the Millars did receive those training requirements.

Answer:

~~It~~^{TW} was ~~designed~~^{defined} as requiring a Qualified foster home. As noted in Undertaking #59, the Millars had received the designation of Qualified in or around May 1999. Pursuant to an email from Bryan Kelly, located in the producible records, the Millars took a significant amount of training and met, or exceeded, the level of requirements they were currently in at the time.

64. To advise and provide all the facts with regard to whether the monitoring practices of foster parents changed and was the motivation of changing the monitoring of foster parents due to the fact that the previous monitoring system was found to be deficient, which the officer knows or must properly inform herself of (Under Advise)

Answer:

This is not capable of an answer due to the passage of time. We have produced, at document C-2 the general handbook. The general handbook is updated from time to time. Her Majesty the Queen is not aware of the monitoring system being found to be deficient generally from 2000 to the present.

65. To advise and provide all the facts with regard to whether child welfare workers were trained or told or advised that when they visit the children that they are to monitor the foster homes, foster parents, which the officer knows or must properly inform herself of.

Answer:

This question is too broad. To the extent See our producible document C-2, CWH-06-02-03 providing details on Case Management Responsibilities for a child welfare worker when dealing with a child placed in foster care. Post Placement responsibilities include intensive support during the first 3 months, as well as a service plan showing goals and tasks for each person involved, including the foster parent. During contacts with the child, the parent, and the foster parent, child welfare workers are directed to address various topics including topics pertaining to foster parents' care.

66. To advise and provide all the facts with regard to whether if foster parents didn't want to move up a classification, they could just not take any new training, which the officer knows or must properly inform herself of.

Answer:

This question is too broad. We would refer to our document production C-2, specifically "Services to Foster Families – Case Management" (CWH-06-04-04). A foster parent can request a change in classification. Upon receipt of same, if the supervisor approves the request, a schedule of upcoming training sessions is provided, and the foster parent must complete the required training. To maintain a home's classification, a foster parent must complete a set number of hours each year depending on their classification.

67. To advise and provide all the facts with regard to if the officer becomes aware of anything else with regard to any steps that Child Welfare took to ensure that foster parents were not abusing children in care, which the officer knows or must properly inform herself of.

Answer: First, this question is too broad. Second, this question is not relevant to [REDACTED] TW [REDACTED]'s claim, because the Millars were not permitted to continue as foster TW parents after [REDACTED]'s injury.

68. To provide any additional materials (other than policy manual) with regard to the duties of the foster home support worker as they existed in the year 2000.

Answer: Available records have already been produced.

69. To provide any changes to the policy manual due to a determination that the proper policy manual was inadequate (Under Advisement)

Answer: First, there has been no determination that the proper policy manual was inadequate. Policies are updated from time to time. Updates relevant to this claim have been provided.

70. To advise and provide all the facts with regard to how often a foster family support worker has to meet with the foster parents in general and the Millars in particular, which the officer knows or must properly inform herself of.

Answer: This question is too broad. We would refer to our production, C-2 "Services to Foster Families – Case Management" (CWH-06-04-04). As of 1995, the foster care worker is to contact the foster parent at least once a month for the first three months. Following this period, the foster care worker will visit each foster home at least once every four months. During one of these visits they are to complete the annual evaluation.

The Millars' file has been produced at our producible document A-9 and A-10.

71. To advise and provide all the facts with regard to if there's a disagreement between the foster parent and the child welfare worker as to which respite home will be used, the child welfare worker has the final say, which the officer knows or must properly inform herself of.

Answer: This question is too broad. Pursuant to our production, C-2 "Services to Foster Families – Overview)" (CWH06-04-01), in 1998, if there is a disagreement between a foster parent and social worker that they cannot resolve, they are to use the Protocols and Guidelines for Resolution of Issues in Foster Care agreed to between the Department and the Alberta Foster Parent Association. It may also be used by a foster parent if they are concerned about a practice issue or about a child's service plan.

72. To advise and provide all the facts with regard to whether the foster homes need to get prior approval from Child Welfare with regard to things like babysitters, which the officer knows or must properly inform herself of.

Answer: This question is too broad. We would refer to our production C-2 "Services to Foster Families – Supporting a Family" (CWH-06-04-03). The document sets out criteria to be met for supplying babysitting to a foster parent including, except for foster parent training, including, but not limited to the arrangements and costs being pre-approved by the child welfare worker according to the procedures set by the regional director.

73. To advise and provide all the facts with regard to whether if the custody agreement by the parents subdelegated medical attention down to the child welfare worker, that could also potentially have been delegated down to the foster parents as care providers, and in this case was it delegated, which the officer knows or must properly inform herself of.

Answer: This question is too broad. Pursuant to the Custody Agreement with Ms. ~~_____~~ ^{KW}, it was agreed to that the director may "consent to ordinary medical or dental care".

Please refer to our production A -1 at page number stamped, 010364, which provides delegation from Ms. Gail Perkins to the Millars as foster parents of ~~_____~~ ^{TW} including:

- Consent to ordinary medical or dental care (including inoculations, examinations, treatment for minor illnesses, injuries and other procedures that are performed routinely and do not require hospitalization, surgery or general anesthetic); and
- Consent to emergency treatment or surgical procedures (including immediate measures necessary to preserve the child's life, health or physical well-being. This authority could only be used if contacting the director would delay treatment such that it would endanger the child's life)

74. To advise what duties were subdelegated to the foster parents (Under Advisement)

Answer: In addition to the answer for Undertaking #73, the foster parents were delegated the following powers and duties as outlined in our document A -1 at page number stamped 010364:

- Making decisions about daily routines
- Making decisions about recreational activities
- Enrolling the child in school or vocational training
- Making decisions about religious or cultural activities

75. To advise and provide all the facts with regard to whether there is a distinction between a frontline child welfare worker making a PGO application on behalf of the Director of Child Welfare as opposed to making an application on behalf of Her Majesty the Queen in Right of Alberta, which the officer knows or must properly inform herself of.

Answer: This is broadly worded. The application is made under legislation, and Her Majesty the Queen in Right of Alberta makes the application. Any individual involved and delegated under legislation by Her Majesty the Queen in Right of Alberta is the instructing party.

76. To advise and provide all the facts with regard to whether the PGO application itself is directed by the worker, not the lawyer, which the officer knows or must properly inform herself of.

Answer: This is broadly worded. Lawyers are counsel who take instructions from the delegated case worker, which is the instructing party.

77. To advise and provide all the facts with regard to whether all child welfare workers are governed by the Public Service Act, which the officer knows or must properly inform herself of.

Answer: This is a legal question. Section 2 of this legislation sets out its application.

78. To advise and provide all the facts as to whether the child welfare workers that were involved with [REDACTED] subscribed to an oath under Section 20(1) of the Public Service Act, which the officer knows or must properly inform herself of.

Answer: Pursuant to Section 20 of the Public Service Act, all new employees take and subscribe to the oath set out in the legislation.

79. To advise and provide all the facts with regard to the duty of fidelity that child welfare workers have to Her Majesty the Queen in Right of Alberta that are relevant to this action, including the directives or information expressed with regard to child welfare workers in relation to or in

connection to or as a result of the disciplinary proceedings against Jason Gibson, part of action number 003-0474-AC and 003-0513-AC, which the officer knows or must properly inform herself of (Under Advisement)

Answer: This is refused. This duty of fidelity is a legal question. Further, the undertaking is so broadly worded that it is not capable of an answer.

80. To advise and provide all of the facts with regard to the extent of the duty of fidelity of a child welfare worker to its employer as to whether it extends to allowing a child welfare worker to recommend and to assist a children under a permanent guardianship order to commence legal proceedings against Her Majesty the Queen in Right of Alberta, which the officer knows or must properly inform herself of (Refused)

Answer: Refused.

81. To provide all of the facts with regard to any training or any manuals or any verbal or written communications to child welfare workers with regard to whether their duty of fidelity may extend to allowing them to recommend to children under permanent guardianship orders to assist them to sue Her Majesty the Queen in Right of Alberta, which the officer knows or must properly inform herself of. (Refused)

Answer: Refused.

82. To advise and provide all of the facts with regard to any documents that exist, memos, communications, notes, letters, correspondence, reports, dealing with the issue of conflict of interest of an employee of the government recommending to children or third parties to commence legal proceedings against Her Majesty the Queen in Right of Alberta and, in particular, that those inquiries be directed to the Children's Advocate's Office and, in particular, to Bob Rechner, whose Children's Advocate Reports commented on what he believed to be a conflict of interest, which the officer knows or must properly inform herself of (Under Advisement)

Answer: Refused. This is broadly worded and not capable of an answer. To the extent that you are requesting records related to suing for children tin care or conflicts of interest in doing so, the available records have been produced, including the Bob Rechner report from 2000/2001.

This is Exhibit " 0 " referred to in the Affidavit of [REDACTED] DB

Sworn before me this 30 day of April A.D. 2021

A. Garber

A Commissioner of Oaths in and for the Province of Alberta

Allen A. Garber
Barrister and Solicitor



1201 TD Tower, 10083-102 Ave NW, Edmonton, AB, CANADA T5J 4K2
☎ 780.423.3441 📠 780.420.1763 www.cbmlp.com

Email: akostek@cbmlp.com
Direct Line (780) 702-2308
Legal Assistant: Marija Grasa

Our file: 27146-329

November 12, 2020

Via email: allan@garberlaw.ca

Allan Garber
108, 17707 – 105th Avenue NW
Edmonton, AB T5S 1T1

Attention: Allan Garber

Re: ^{TW} [REDACTED] v. Her Majesty the Queen et al
Action No. 0203 09700

I am writing to address the questions you raised in your various emails.

Examinations for Discovery

The following parties were examined in this matter:

1. Florence Chung, ^{TW} [REDACTED]'s social worker, was examined July 15, 2004;
2. Jackie Stewart was examined on the Government Defendant's Affidavit of Records on July 16, 2004.
3. Bill Meade was examined November 24, 2004;
4. Kelly Besler, the government's officer was examined April 28, 2005;
5. Bryan Kelly, a government employee, was examined February 6, 2006;
6. Rebecca Fitzgerald, also a government employee, was examined February 6, 2006;
7. Judy Kolasa was examined June 1, 2011 on her Affidavit in support of an application to quash the examination of Sherry Wick; and
8. Ed Garek was examined pursuant to Court Order with Sherry Wick present on August 28, 2012.

On August 19, 2020 you indicated that you needed to do examinations on liability. However, on review of this matter, those examinations were already completed vis a vis HMQ long ago. We will not consent to any further examinations with respect to Her Majesty the Queen.

In terms of the remaining individually named government employees, we note that Ken Holmstrom provided multiple dates for examinations of any other Defendants in this matter more than 15 years ago. I attached the following correspondence following a demand by Mr. Lee to examine them:

- (a) July 13, 2004 letters from Mr. Lee demanding to examine Wendy Mitchell Kuban, Gail Perkins, Brenda Scott, Rebecca Fitzgerald, Iris Evans, Bob Rechner, John Mould and Bill Mead;
- (b) June 14, 2005 Letter from Ken Holmstrom to Mr. Lee providing multiple examination dates;
- (c) June 24, 2005 Letter from Ken Holmstrom to Mr. Lee providing multiple examination dates;
- (d) November 1, 2005 Letters from Mr. Lee to Mr. Holmstrom and Mr. Holmstrom to Mr. Lee discussing further witnesses Mr. Lee wanted to examine, and further dates provided to Mr. Lee;
- (e) November 25, 2005 Letter from Ken Holmstrom to Mr. Lee providing multiple examination dates;
- (f) December 19, 2005 Letter from Ken Holmstrom to Mr. Lee providing multiple examination dates;
- (g) February 27, 2006 Letter from Ken Holmstrom to Mr. Lee asking him to advise who else he wants to examine;
- (h) September 18, 2006 Letter from Ken Holmstrom to Mr. Lee asking him to advise who else he wants to examine.

Correspondence from and to Mr. Lee concerning Discoveries [TAB 1]

In terms of Bill Meade, on October 4, 2004 Ken Holmstrom advised that Bill Mead "did not become CEO of Ma'Mowe until May of 2001. In the time frame of October 19th to 22, 2020 Steve Brown was the CEO."

October 4, 2004 Letter from Ken Holmstrom [TAB 2]

Bill Meade was ultimately examined on November 24, 2004, and his evidence under oath is that he did not move to the Ma'Mowe Authority until January, 2002. He had no knowledge of [REDACTED]'s file, and had no involvement whatsoever in [REDACTED]'s file. TW

Transcripts [TAB 3]

Jackie Stewart had already been examined.

On April 11, 2011 Mr. Lee served an Appointment and Conduct Money to examine Sherry Wick. This was contested on the basis that the Defendant government entity had already been examined, and this was resolved at case management with an order that resulted in Ed Garek being examined August 28, 2012.

Correspondence from and to Mr. Lee concerning Discoveries [TAB 1]
May 27, 2011 Affidavit opposing further examinations of Government Defendant [TAB 4]

The government officers were examined at length. Ample opportunity was given to examine both the individually named government employees as well as the government officers on the involvement, or lack thereof, of Iris Evans, Paula Tyler, Keray Henke, Gail Perkins, Carol Adagala, and Wendy Mitchell-Kuban.

In our view, once we were asked to consent to a Form 37, and setting the matter down for Trial but for some additional expert reports, the Plaintiff had already had ample opportunity to conduct any further examinations they desired. Once the Form 37 was executed, the parties certified that they were ready for Trial but for the expert reports.

As a result, we will not consent to any further examinations absent a Court Order.

Liability

(a) There was never any admission of liability

As discussed in our email exchanges the week of August 21st, 2020 Judge Holmstrom denies that he ever admitted liability for this matter.

Liability has never been admitted. In fact, on January 11, 2005 Mr. Lee advised that since liability was not admitted, he would not be delaying examinations.

January 11, 2005 letter [TAB 5]

I note that on January 10, 2008 Mr. Lee made the following representations before Justice Thomas:

... the defendant has not admitted liability in any way ... [emphasis added]

P. 14 line 26-27 [TAB 6]

An April 20, 2011 letter from Mr. Lee notes that liability was not admitted.

April 20, 2011 letter [TAB 7]

Contrary to Mr. Lee's advice, liability examinations had already taken place.

Following this date Mr. Lee continued to identify more people he wanted to examine. For instance in 2012 Mr. Lee wanted to examine [redacted] foster mom, [redacted]. Ken Holmstrom felt this was not appropriate and encouraged Mr. Lee to address this in case management.

In any event, on December 18, 2019, in advance of this matter appearing before Justice Feth to set the Trial in this matter, I sent you an email that specifically said:

Hi Allan,

For ease of reference I attach our Amended Amended Statement of Defence. The Government defendants do not admit liability. They specifically deny negligence and they specifically deny vicarious liability. We admit that the Co-Defendant, David James Millar, assaulted [redacted]. We don't represent David Millar or his wife.

TW

December 18, 2019 email [TAB 8]

I reiterated this again multiple times this past August, 2020 when you again brought up liability. From our perspective, there are no surprises here.

(b) Amendments to the Statement of Defence

The error in the Amended Statement of Defence was corrected on notice to both Mr. Lee and the case management Judge. In fact, the Case Management Judge, Justice Macklin signed the Fiat. In this regard, please find enclosed the following:

- (a) July 30, 2003 Letter from Ken Holmstrom to Mr. Lee explaining the error and immediate efforts to correct it;
- (b) September 5, 2003 hand written note from Mr. Lee confirming that he consented to the Fiat;
- (c) September 24, 2003 Letter from Ken Holmstrom to the Case Management Judge concerning the Amended Amended Statement of Defence; and
- (d) October 7, 2003 letter to Mr. Lee serving the Amended Amended Statement of Defence.

2003 Correspondence concerning the Amended Amended SOC [TAB 9]

No one changed their positions based on this. The error was fixed without delay and on notice to all parties involved. Jackie Steward was examined on the Affidavit of Records after this correction, and not before as you alleged previously.

Document Production

(a) Updated Exchange of Records

You have asked me what documents were provided since the Affidavit of Records was sworn. Document production was, as follows:

- (a) March 13, 2006 Ken Holmstrom provided the updated children's services records on disc;
- (b) November 12, 2008 Ken Holmstrom provided the updated records;
- (c) January 8, 2009 Ken Holmstrom provided the updated medical records;
- (d) October 26, 2009 Ken Holmstrom provided Dr. Joshko's October 8, 2009 Expert report;
- (e) On February 28, 2011 Ken Holmstrom provided the updated children's services records on disc;
- (f) On January 9, 2012 Mr. Lee provided a Conway Scanlan and Associates Report dated December 14,

2011;

- (g) On August 10, 2012 Ken Holmstrom provided updated children's services records;
- (h) March 7, 2017 I provided you with ^{TW} [REDACTED]'s statement of Benefits;
- (i) April 3, 2017 I provided you with the updated Child Intervention file (Volumes 8-11);
- (j) December 4, 2017 I advised you that the normal protocol for records listed on the Statement of benefits is for you to request them directly, as they are not government records; and
- (k) December 21, 2017 you provided me with ^{TW} [REDACTED]'s school records.

Correspondence enclosing updated records [TAB 10]

Once ^{TW} [REDACTED] turned 18 his Children's Services file was closed.

In February, 2018 you asked me how to get ^{TW} [REDACTED]'s updated records, and we connected you with a lawyer with Alberta Health Services who facilitated getting the records for you. Those records were sent directly to your office.

On May 22, 2018 you advised that you had the Glenrose records for ^{TW} [REDACTED] and subsequently provided us a copy.

On September 5, 2018 Samantha Balfour and Sarah Trough became ^{TW} [REDACTED]'s guardians. You provided us with the guardianship order.

Criminal Injuries Review Decision

We note that ^{TW} [REDACTED] was awarded \$36,500 under the Victims of Crime Act, but that that decision was appealed by Weir Bowen. On May 15, 2007 that appeal was heard, and a decision issued June 19, 2007. The Criminal Injuries Review Board awarded ^{TW} [REDACTED] \$83,500. The additional \$47,000 was to be forwarded to the Public Trustee's Office.

June 19, 2007 Criminal Injuries Review Board Decision [TAB 11]

(b) Documents with respect to the alleged duty to Sue

You asked me about document production related to any policies ect. related to the government bringing actions on behalf of children in care.

I understand that you, Mr. Lee, or both, obtained these records in collateral litigation against the government that was ultimately certified as a class action.

Our understanding is that this portion of ^{TW} [REDACTED]'s claim was subsumed in the Class Action brought by Mr. Lee in *TL v. Alberta (Director of Child Welfare)*. Please find enclosed an excerpt from the hearing on May 24, 2005 in this matter. You will note that at page 42 Justice Thomas asked Mr. Lee if ^{TW} [REDACTED] formed part of the

class:

The Court: ... Mr. Lee, there is a class action that you have started. Is ^{tw} [REDACTED] part of that class action?

Mr. Lee: My instructions ... are these, if the class action is certified at some point in the future, that we would be agreeable to moving portions of this claim that are similar to the class action into the class action ...

Excerpt from transcripts [TAB 12]

Recall that Action 0503 09047 was issued for ^{tw} [REDACTED] and the allegations for "failure to sue". For ease of reference that Statement of Claim is attached.

Statement of Claim from 2005 Action [TAB 13]

On July 14, 2010 Justice Thomas issued a letter to Mr. Lee noting that the 2005 action was stayed pending the certification of the class action, and that this action would remain dormant until the certification of the class action.

July 14, 2010 letter from Justice Thomas [TAB 14]

The class action was certified in 2008, and settled in 2015.

(c) Conclusion with respect to Document Production

Our understanding is that the allegations with respect to the duty to sue were dealt with in the Class Action, which resolved.

We have provided updated records throughout the life of this file.

Once ^{tw} [REDACTED] turned 18, his Children's Services file was closed.

It appears that you already have all records with respect to that. Any records from medical doctors have to be obtained directly from those medical practitioners, and you have obtained records directly as needed.

Pages 27-29 of our Production

You advised that these were partly cut off or missing. I enclose those pages.

Pages 27-29 of production [TAB 15]

Answers to Undertakings requested at the Examination of Jackie Stewart

You advised that you do not have the answers to undertakings from Jackie Stewart. I went back and reviewed that transcript. Several questions would have subsequently been covered by the subsequent class action that Tristan was a member of. That matter resolved, and to the extent that those same allegations are pled in this action, those matters are duplicative. The other issue I note is that several questions are quite broad, and I am unable to determine who you specifically want me to follow up with, and with respect

to what record.

In any event, our answers are enclosed. I am following up on item 6, although my understanding is that this question was resolved at the examination of Ed Garek.

Upcoming Case Management

As advised previously, we will need to have the deadlines for expert reports revised due to the serious COVID delays. I have been waiting on Dr. Shelby's updated report in order to determine if we need to retain our own expert. Any word on when her report will be ready?

I have your application materials, which I have read. I've addressed the concerns raised in this letter along with your other questions. I have not yet had an opportunity to review Mr. Lee's brief, but will do so next week.

I believe I have answered and responded to all your questions while I was in hospital as well as your subsequent emails. If there is anything outstanding, please let me know.

Yours truly,

CHOMICKI BARIL MAH LLP

Per:

AMANDA F. KOSTEK

CC: Tony Slemko

Via email: tslemko@cbmlp.com

This is Exhibit "P" referred to in the Affidavit of [REDACTED] DB
[REDACTED]
Subscribed before me this 30 day
of April A.D. 2021.

A. G. Gauthier
A Commissioner of Oaths in and for
the Province of Alberta

Alan A. Gauthier
Scriber and Seal

Nov 12, 2020

Answers to Undertakings Requested of Jackie Stewart

1. To ask Doug Lewis for any document relevant to be provided in an Affidavit of Records as they relate to Paragraph 24 of the Statement of Claim. (Under Advisement)

Answer: Refused. This was dealt with and resolved as part of the Class Action in T.L. v. Alberto (Director of Child Welfare). Our understanding is that Tristan was a class member.

2. To Inquire of Child Welfare for any documents related to ^{TW} [redacted]'s request for legal fees to be paid. (Under Advisement.)

Answer: Refused. We do not see how this is relevant to the remaining issues in this action. The Class Action was resolved in 2015.

3. Provide all documents in relation to Child Welfare's actions that it took in requesting a next friend.

Answer: Refused on the Record on the basis that they are already public record, or covered by Litigation Privilege.

4. Produce internal records that relate to Child Welfare's role as guardian. (Under Advisement.)

Answer: Refused. This undertaking is too broad. If you have a specific record you are looking for, please advise.

5. Number Documents (Under advisement)

Answer: The records are already numbered.

6. Advise if file provided includes working notes of member of special case review.

Answer: Pending.

7. Ask people CC'd if they have documents in their own file relevant to the lawsuit (Under Advice.)

Answer: This is simply too broad. You need to specify exactly what records you want us to ask about and what specific individuals you want us to follow up with.

8. To produce document indicating who CEO was of Ma'Mowe Region from date of [redacted]'s birth until date Statement of Claim was issued. (Under Advice)

Answer: On October 4, 2004 Ken Holmstrom advised that Steve Brown was the CEO.

We view this undertaking to be complete.

This is Exhibit " Q " referred to in the
Affidavit of [redacted] DB
Sworn before me this 30 day
of April A.D. 2021
A Commissioner of Oaths in and for
the Province of Alberta

Allen A. Gaiber
Commissioner and Solicitor

Allan Garber

From: Allan Garber
Sent: April 10, 2021 11:24 AM
To: Amanda Kostek; Damian Shepherd
Cc: Robert Lee; [REDACTED] D13
Subject: [REDACTED] v. HMTQ
TW

On January 18, 2021, Justice Feth ordered your client to pay the Plaintiff \$4000.00 in costs in respect of your abandoned application. We are now almost three months later and it still has not been paid. What gives? This is completely unacceptable. There is no other way to describe this.

Allan Garber
Barrister & Solicitor

11420 – 142 Street NW
Edmonton, AB T5M 1V1
Telephone (587) 400-9310
Fax (587) 400-9313
Email allan@garberlaw.ca

Note: This email address is not a valid address for service pursuant to Rule 11.21 of the Alberta Rules of Court. If you need to serve legal documents on Allan A. Garber, as lawyer of record, please do so by courier, recorded mail or fax.

This is Exhibit " R " referred to in the
Affidavit of [REDACTED] DB
Sworn before me this 30 day
of April A.D., 2004
A. Guler
A Commissioner of Oaths in and for
the Province of Alberta

Allen A. Guler
Barrister and Solicitor

From: leerobertp@netscape.net,
To: akostek@cbmlp.com, allan@garberlaw.ca,
Cc: dshepherd@cbmlp.com,
Subject: Re: ~~██████████~~ TW
Date: Tue, Apr 13, 2021 12:15 pm

Ms. Kostek,

The Honourable Mr. justice Feth had asked HMTQ to inquire if there was anyone in the Government that was supervising the lawsuits by foster children (or something to that effect). has your client provided a response yet?

Yours truly,

Robert P. Lee
Barrister and Solicitor
Victims Rights Law
18, 11420 - 142 Street
Edmonton, AB T5M 1V1
Ph/fax: 780 800 5584
Email: Robert@victimsrightslaw.ca
www.victimsrightslaw.ca

****WE HAVE MOVED EFFECTIVE SEPTEMBER 29, 2020****

This is Exhibit " S " referred to in the
Affidavit of [REDACTED] DB

[REDACTED]
Sworn before me this 30 day

of April A.D. 2021

[Signature]
A Commissioner of Oaths in and for
the Province of Alberta

Allan A. Garber
Barrister and Solicitor



Illustration by Arty (page 2)

ALBERTA CHILDREN'S SERVICES ANNUAL REPORT 2000 - 01

Strong children, families and communities.

Section one

Ministry of Children's Services
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS
 For the year ended March 31, 2001

Note 6 Contingencies (in thousands)

At March 31, 2001, the Ministry is a defendant in 63 legal claims (2000 – 45 legal claims). Sixty of these claims have specified amounts totaling \$143,670 and the remaining three have no specified amounts (2000 – 40 claims with specified amounts of \$70,057 and five with no specified amounts).

Included in the total legal claims are 43 claims amounting to \$124,706 in which the Ministry has been jointly named with other entities. Thirty-six claims amounting to \$97,480 may be partly covered by the Alberta Risk Management Fund.

The resulting loss, if any, from these claims cannot be determined.

Note 7 Payments under Agreements (in thousands)

The Ministry has entered into various agreements to deliver programs and services that are fully funded by other entities. These agreements restrict the use of funds to the purpose set out in the agreement. Revenue is recognized as expenses are incurred. Excess funds received amounting to \$60 (2000 - \$3) are included in accounts payable. Certain agreements require expenses to be incurred prior to receipt of the funds. Reimbursement for expenses incurred for which funds have not been received, in the amount of \$1,300 (2000 - \$0) are included in accounts receivable.

The full amount of expenses allowed for under agreements with the program sponsors are as follows:

	(In thousands)	
	2001	2000
Alberta Learning - Calgary Rocky View CFSA	\$ 928	\$ -
Alberta Human Resources and Employment - Calgary Rocky View CFSA	230	-
Metis General Council, Justice Canada and Alberta Justice - Metis Settlements CFSA	211	151
Alberta Learning, and Alberta Health & Wellness - Ma'Mowe CFSA	794	-
Justice Canada - Neegan Awas'sak CFSA	35	-
Ft. McMurray Public School Board - Awasak CFSA	264	180
Elk Island School Division - Sakaigun Askiy CFSA	39	-
	<u>\$ 2,501</u>	<u>\$ 331</u>



Alberta children's Services

2001-2002 ANNUAL REPORT • SECTION 1

Our Legacy...
Alberta's Future
Alberta Children's Services



Alberta
CHILDREN'S SERVICES

Ministry of Children's Services

Notes to the Consolidated Financial Statements For the year ended March 31, 2002

NOTE 5 COMMITMENTS

At March 31, 2002, the Ministry has the following commitments:

	(In thousands)	
	2002	2001
Service contracts	\$ 4,448	\$ 4,556
Long-term leases ^(a)	\$ 2,205	\$ 2,263

- (a) The Ministry leases certain equipment and vehicles under operating leases that expire at various dates to 2007. The aggregate amounts payable for the unexpired terms of these leases are as follows:

	(In thousands)	
2003	\$	940
2004	\$	629
2005	\$	366
2006	\$	151
2007	\$	119

NOTE 6 CONTINGENCIES (In thousands)

At March 31, 2002, the Ministry is a defendant in 76 claims (2001 - 63 legal claims). Sixty-six of these claims have specified amounts totaling \$219,567 and the remaining ten have not specified any amount (2001 - 60 claims with a specified amount of \$143,670 and three with no specified amount).

Included in the total legal claims are 46 claims amounting to \$129,350 in which the Ministry has been jointly named with other entities. Forty-six claims amounting to \$137,709 are covered by the Alberta Risk Management Fund.

The resulting loss, if any, from these claims cannot be determined.

NOTE 7 PAYMENTS UNDER AGREEMENTS (In thousands)

The Ministry has entered into various agreements to deliver programs and services that are fully funded by other entities. These agreements restrict the use of funds to the purpose set out in the agreement. Revenue is recognized as expenses are incurred. Excess funds received amounting to \$3 (2001- \$60) are included in accounts payable. Certain agreements require expenses to be incurred prior to receipt of the funds. Reimbursement for expenses incurred for which funds have not been received, in the amount of \$1,006 (2001 - \$1,300) are included in accounts receivable.



Children's Services

Annual Report
2016-17

Alberta 
Government

MINISTRY OF CHILDREN'S SERVICES
NOTES TO THE FINANCIAL STATEMENTS (Continued)
MARCH 31, 2017

NOTE 7 CONTINGENT LIABILITIES
(in thousands)

The Ministry is involved in legal matters where damages are being sought. These matters may give rise to contingent liabilities.

As at March 31, 2017, the total amount claimed for all likely claims is \$122,100 (2016: \$131,150). Included in the total likely claims are claims in which the Ministry has been jointly named with other ministries. Included in the total likely claims are claims covered in whole or in part by the Alberta Risk Management Fund.

The Ministry has been named in 48 (2016: 44) claims of which the outcome is not determinable. Of these claims, 44 (2016: 43) have specified amounts totalling \$477,765 (2016: \$506,424). The remaining 4 (2016: 1) claims have no amounts specified. Included in the total claims, 37 claims totalling \$464,700 (2016: 39 claims totalling \$ 496,480) are covered in whole or in part by the Alberta Risk Management Fund. The resolution of indeterminable claims may result in a liability, if any, that may be significantly lower than the claimed amount.