



Transcript of Proceedings

Copyright in this transcript is vested in the Crown. Copies thereof must not be made or sold without the written authority of the Director, State Reporting Bureau.

Issued subject to correction upon revision.

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

BYRNE J

No 3772 of 2001

ST LILLY ARTHUR

Plaintiff

and

THE STATE OF QUEENSLAND

Defendant

BRISBANE

..DATE 03/11/2004

..DAY 3

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

THE COURT RESUMED AT 10.00 A.M.

1

MR WILSON: Morning, your Honour. We are just waiting for Dr Moore to ring in.

MARILYN ANN MOORE, ON AFFIRMATION, EXAMINED,
VIA TELEPHONE LINK:

10

MR WILSON: Thank you, your Honour. Dr Moore, can you hear me?-- Yes, I can, thank you.

It's Keith Wilson speaking. I'm counsel for Mrs Arthur. Could you tell the Court, please, your full name?-- Marilyn Ann Moore.

20

Are you a psychiatrist by profession?-- I am.

Could you state to the Court, please, your qualifications?-- Bachelor of medicine, bachelor of surgery, fellow of the Royal Australian New Zealand college of psychiatrists, and certificate of child and adolescent psychiatry.

Do you still carry on practice from rooms at 67 Burns Bay Road, Lane Cove?-- I do.

30

And have you prepared a report dated 22 December 2000 pertaining to an examination you conducted of a lady by the name of Lily Arthur on 17 December 2000?-- I have.

And have you set out in that report accurately the information that was provided to you by Ms Arthur?-- I have.

And have you set out your diagnosis and opinion regarding Ms Arthur?-- I have.

40

Is that opinion your opinion honestly held?-- It is.

I have no further questions for you, Dr Moore. Could you please stand by?-- Thank you.

50

CROSS-EXAMINATION:

1

MR DAUBNEY: Dr Moore, my name is Martin Daubney. I'm the counsel for the defendant. Can you hear me?-- I can.

Do you have your report there?-- Yes, I do.

Could I ask you to turn to the second page of the report under the heading "Background History". In the second paragraph you say that Ms Arthur explained to you that her father was a drinker who left her mother without money on a number of occasions?-- Yes.

10

Did Ms Arthur also tell you that she recalls two occasions when her father physically abused her mother?-- No.

All right. If I can ask you then to go to the bottom of that page where you talk about Ms Arthur's father returning-----?-- Yes.

20

-----and trying to stab the prospective stepfather?-- Yes.

Did Ms Arthur tell you that she was in the room behind her stepfather when that occurred?-- No.

That - just bear with me for a moment - that she saw the back of her stepfather, the door being opened a bit and she heard the incident happen and that she recalls her stepfather being sufficiently seriously injured to be taken away in an ambulance?-- No, she didn't give me any of these details.

30

I see. Did she tell you that that was the first time that she had seen her natural father since he had deserted the family?-- No, she didn't actually tell me that she saw him on that occasion.

I see. Did she tell you any detail about the - about her seeing her stepfather - I beg your pardon, her natural father then in the back of the police car when she had-----?-- I'm sorry, there was a crackle in the line. I didn't hear that, sorry.

40

Did she tell you then about seeing her natural-----?-- Hello. Hello?-- Yes.

Can you hear me now?-- Yes, I can, thanks.

50

All right. Did she tell you anything about then seeing her father in the back of a police car and having a conversation with him?-- No.

She gave you no detail of any of that?-- No.

And I take it from that that she didn't tell you that that was the last occasion on which she saw her natural father?-- No.

1

All right. If I could ask you then to go to page 6 of your report?-- Yes.

At the top of the page you recount that Ms Arthur had told you that after she fell pregnant to another man that she was living with at the time she contacted her ex-husband who desperately wanted her back and she went back to live with him and his parents?-- Yes.

10

Did she describe that to you or did she tell you that that was an humiliating experience for her to have to go back?-- She didn't describe that about that particular issue. She described later difficulties in that relationship.

Did she tell you that she tried to escape about a week or so later?-- No.

Did she tell you that she was treated badly by her husband?-- Yes.

20

Did she tell you that she suffered emotional abuse from her husband on a daily basis for the next 18 years of their marriage?-- Not in that kind of detail, no.

Did she tell you about - I'm sorry, you seem to be aware that Ms Arthur lived with her husband with her husband's parents?-- Initially, yes.

Well, for the duration of their married life until his parents died?-- No, I wasn't aware of that.

30

Oh. Her father-in-law died about four years before she left that marriage. Were you aware of that?-- No.

Were you made aware that for many years while she lived with her husband and with her patients parents-in-law her father-in-law sexually harassed her on an almost daily basis?-- No, she didn't mention that at all.

40

Did she mention to you that in the early 1990s when she had come back to Queensland she was sharing a house with a dysfunctional bkie?-- No.

And do I take it from that that she didn't mention to you that she was living with a dysfunctional drugged out bkie with psychiatric problems who eventually threatened to kill her?-- No.

None of that was mentioned to you?-- No.

50

If I can take you, then, to page 7 of your report under the heading "Diagnosis And Opinion". You say, "Ms Arthur has suffered from recurrent depressions and post-traumatic stress disorder." In making your diagnosis of post-traumatic stress disorder do I take it that you have regard to the criteria in DSMIV?-- Yes.

You would agree with me, wouldn't you, that each of the extra incidents that I have mentioned to you now about which you hadn't been told were incidents which prima facie would fall under the first of the criteria in DSMIV for post-traumatic stress disorder?-- It would be highly stressful and would fulfil the requirement to consider the diagnosis, yes.

1

Perhaps if we can be a little bit more exact about this. The first criteria for a diagnosis of post-traumatic stress disorder under DSMIV is as follows - I don't know if you have the DSMIV there?-- I don't have it right in front of me but I know what the criteria are.

10

All right. Well, it is, just so that I can remind you, that, "The person has been exposed to a traumatic event in which both the following have been present: one, the person experienced, witnessed or was confronted with an event or events that involved actual or threatened death or serious injury or a threat to the physical integrity of self or others; and, two, the person's response involved intense fear, helplessness or horror."?-- Mmm.

20

So, each of those traumas that I described to you before of which you hadn't been aware are certainly factors that would need to be considered as falling under that first criteria for post-traumatic stress disorder; that's right, isn't it?-- Yes, yeah, they are extreme stressors, yes.

Knowing now of those other stressors, those other extreme stressors as you have just described them, it is not possible, is it, to attribute Mrs Arthur's current psychiatric condition solely to the alleged incidents surrounding the adoption of her child in 1967?-- No, it isn't.

30

We have nothing further for Dr Moore, thank you, your Honour.

RE-EXAMINATION:

40

MR WILSON: Dr Moore, can you hear me again?-- Yes, I can.

In terms of preparing your report of the 22nd of December 2000, how many consultations did you have with Ms Arthur?-- One.

And how long did that last for?-- In excess of an hour. I haven't got the exact time. I'd say about an hour and a half.

50

And in terms of obtaining the information that you have set out in your report, how is that done?-- By initially asking her to tell me why she had come and then asking her specific questions about different areas.

MR DAUBNEY: Your Honour - with respect, your Honour, how does this arise out of the cross-examination, we ask? My friend

asked a number of questions about, "Whether you were told this or whether you were told that".

1

MR WILSON: I was clarifying the process by which the information was elicited.

HIS HONOUR: Why does the process matter?

MR WILSON: Because if Ms Arthur was asked to provide details of events that she thought was important then that may explain the omission of something, or if the doctor asked questions with a view to eliciting whether there were other stressful incidents which might fall under criteria A of DSMIV that may be relevant as well.

10

HIS HONOUR: Mr Daubney, I'm inclined to think that whether it be relevant depends to some extent upon the use which potentially your side might wish to make of the omissions. If they had no significance beyond their impact upon the value of Dr Moore's opinion, that is one thing. If, on the other hand, you were seeking to rely on the omissions as potentially material in my forming a view about the reliability of Mrs Arthur's testimony, then that's another matter.

20

MR DAUBNEY: We are inclined, if we may put it that way, your Honour, to rely for both purposes. May we say also it's not as if, with respect, that my cross-examination of Dr Moore in relation to those matters comes as any surprise to our learned friend in view of the cross-examination of Dr Pickering yesterday, and in view of the nature of the questions put to Dr Pickering yesterday had our learned friend wanted to shore up the evidence of Dr Moore he ought have done that in evidence-in-chief to give me the opportunity then to make whatever further inquiries we wanted to of Dr Moore and the opportunity to cross-examine her.

30

HIS HONOUR: Do you want to ask some more questions of Dr Moore?

MR DAUBNEY: I don't - the problem is I don't know what's coming in.

40

HIS HONOUR: I overrule the objection.

MR DAUBNEY: Thank you, your Honour.

MR WILSON: Dr Moore, I think my question to you was the process by way you gathered the information that you have set out in your report, that is the background history details of the pregnancy and the like?-- Well, in my usual way, that is what - once I get to the background history part of the report the history is - as I obtained it from the person is not in the order that I have got it in the report necessarily because that's not how people talk. So in terms of background history I ask her about her early life and then get her to expand on answers that she gives.

50

And that's the means by which you obtained the information

relating to both background history and pregnancy?-- Well, yes, that she give me details of the pregnancy without me really having to ask anything.

1

And you recorded in your report what Ms Arthur told you?-- Yes.

Did you as part of your examination when you formed the diagnosis that you have set out on page 7 of your report investigate by further questioning whether there were other possible incidents which could have caused or contributed to that diagnosis?-- Yes, I always ask about other stressors and in fact she did give me a lot of other stressors, both in her early life, in the marriage. Well, she did talk about the abuse by the husband but not by the father-in-law.

10

Were you aware of those when you reached the diagnosis which you have set out in your report?-- I was aware of some issue which are set out in the report. Obviously I wasn't aware of the issues I haven't set out in the report.

20

Yes. You are aware, weren't you, of the fact that Ms Arthur's father had tried to stab or had in fact stabbed the prospective stepfather?-- Yes.

You were aware that the - Ms Arthur's first marriage was an unhappy one with emotional abuse?-- Yes.

And you were aware, weren't you, of the circumstances in which she gave birth to her first child and the circumstances in which she gave birth to her second child which also caused her some concern?-- Yes.

30

I have nothing further, thank you, your Honour.

HIS HONOUR: You want Dr Moore excused?

MR WILSON: Yes, thank you, your Honour.

HIS HONOUR: Thank you, Dr Moore.

40

WITNESS EXCUSED

MR WILSON: Thank you, your Honour. Your Honour, I tender a letter from the Queensland Government to the plaintiff dated 6 June 2003 in response to a freedom of information request pertaining to procedures that were in operation in 1967 relating to the taking of adoption consents.

50

HIS HONOUR: Exhibit 26.

MR WILSON: Is that Exhibit 27, your Honour?

HIS HONOUR: Yes, you are right. 27.

1

ADMITTED AND MARKED "EXHIBIT 27"

MR WILSON: Your Honour, that's the plaintiff's case

10

HIS HONOUR: Mr Daubney?

MR DAUBNEY OPENED THE CASE FOR THE DEFENDANT FROM 10.25 A.M.:
Thank you, your Honour. We tender the death certificate of
Jay Whalley known as Jay Smith at the time of her death.

HIS HONOUR: Exhibit 28.

20

ADMITTED AND MARKED "EXHIBIT 28"

MR DAUBNEY: We tender the death certificate of
Elsie Winifred Robinson.

30

HIS HONOUR: Exhibit 29.

ADMITTED AND MARKED "EXHIBIT 29"

MR DAUBNEY: We tender the death certificate of
Margaret Mary Slattery. Your Honour will hear from
Sister Lane, the archivist to the Sisters of Mercy, that that
lady's religious name was Mother Louise Lian.

40

HIS HONOUR: Now, there's no issue, I take it, concerning the
identity of the persons in Exhibits 28 and 29? By that I mean
there's no issue about whether those persons were persons I
have heard about in evidence?

MR WILSON: Your Honour, I understood from the comment that my
learned friend made yesterday he was going to call some
evidence as to who Elsie Robinson was. Provided he does that
we don't take issue with the fact the death certificate's been
put in.

50

HIS HONOUR: Yes. Exhibit 30 for the death certificate of
Margaret Mary Slattery.



1

ADMITTED AND MARKED "EXHIBIT 30"

MR DAUBNEY: We tender the death certificate of Margaret Condon. She will be identified by Sister Lane as having been Sister Isabelle.

10

HIS HONOUR: Exhibit 31.

ADMITTED AND MARKED "EXHIBIT 31"

MR DAUBNEY: We tender the certificate of explanation of the duty of disclosure.

20

HIS HONOUR: That can be placed on the file.

MR DAUBNEY: Thank you, your Honour. Your Honour will hear from Elizabeth Ann Marks, formerly sister Kerslake who attended at the child's birth. She recalls nothing. She will be giving evidence by telephone. There's no objection to her giving evidence in that way.

30

Your Honour will hear from Patricia Austin in relation to there being no files with the Queensland Police Service.

Your Honour will hear from Tracey Barry, who will confirm the identity of Elsie Robinson.

Your Honour will hear from Mr Nick Prins in relation to the files which would have been held by the department and which have been destroyed and the destruction policy in process.

40

HIS HONOUR: What will he say concerning facts which bear upon the likelihood that Ms Whalley may have made case notes or diary entries which might have been expected to find their way to the file?

50

MR DAUBNEY: Excuse me, your Honour, I'll clarify that. He won't be able to say whether there would or would not have been such notes drawn and what he can say is that there would or may have been a file known as the F for family file which would have related to the plaintiff's contact with the department while she was under care. That's the best that he can say on that, your Honour.

1

HIS HONOUR: In view, then, of Exhibit 27, do you propose at the end of the day to be suggesting that there is some reason to suppose that Ms Whalley may have made a note of the events surrounding the adoption?

10

MR DAUBNEY: We can't say one way or the other, your Honour. Just excuse me. The only person who could answer that would be Ms Whalley, with respect, your Honour.

HIS HONOUR: Not necessarily. Exhibit 27 looks, on the face of it, to indicate that the probabilities are that there was no standard operating procedure.

20

MR DAUBNEY: Mmm.

HIS HONOUR: Nothing in the manual indicating what ought to have been done and therefore nothing to suggest that the routine procedures would have required, for example, the attendance of a witness when the consent was taken other than the departmental officer; whether a note or other record was ordinarily to be made of the circumstances surrounding the consent; whether, for example, hospital staff would be expected to be consulted to confirm that the mother was in a physical and psychological condition to discuss the question of adoption - all these things are just unknown. But Exhibit 27 would suggest the probabilities are that there was no standing instruction which would have required such things to occur.

30

MR DAUBNEY: That's why your Honour will hear from Ms Eunice Feil, who was employed in the adoption section of the department at the same time, performing a similar job to Ms Whalley, who will describe to your Honour what the procedures were. Your Honour will also hear in that regard from Ms Mary Cattanach, who was also a child-care officer employed in the department at that time.

40

HIS HONOUR: And what will they say?

MR DAUBNEY: Well, Ms Feil will tell your Honour that because of the number of babies at that time being given up for adoption, she visited the hospital three days a week in order to take consents for the adoptions. There was a period of time after the birth during which the mothers were not allowed to sign a consent for adoption. She recalls that as five days, unless a legally qualified medical practitioner had given a certificate stating that the mother was in a fit condition to give her consent.

50

She will tell your Honour that the process was that the

Department of Children Services only became involved upon a referral from the report of inquiry, the form filled out by Ms Robinson in this case, and it would only have been if Ms Robinson, or whoever filled out the form, had marked that the baby was for adoption, or there was a query that the baby was for adoption, that the child-care officers became involved and then went to see the mother.

HIS HONOUR: Even in respect of mothers who were the subject of a Court order placing-----

MR DAUBNEY: Yes.

HIS HONOUR: -----the mother in the care and control of the Director?

MR DAUBNEY: As I understand it, yes, your Honour. She will say that single mothers who were keeping their babies were not seen by the child-care officer, and the report of investigation form was then sent back to the Department of Children Services for filing in that case.

She will tell your Honour that some of the single mothers had spoken to social workers or spoke to social workers at the hospital about the decision to adopt or whether or not they wanted to keep their child. Others had come into the Department of Children Services adoption section prior to the birth to arrange for the child to be adopted. She will tell your Honour that at that time, however, single mothers didn't have much option in reality unless they could make their own arrangements regarding care of the baby. There were no government benefits available in those days apart from child endowment. Practically, if the single mothers couldn't take the children home, they were unable financially to support their babies and for that reason alone would often decide to consent to the adoption.

Ms Feil can describe for your Honour the process that she followed in relation to obtaining an adopting mother's consent. She would read the consent form to them from top to bottom that-----

HIS HONOUR: Just before you tell me these things, were these her own ideas or was she given training?

MR DAUBNEY: No, the child-care workers were trained. They underwent about two years of lectures at the Child-care Guidance Clinic. In addition, all these women were trained nursing sisters and, at least in the case of Miss Feil and Miss Cattnach, were qualified midwives, your Honour.

Sorry, I think I may have opened, your Honour, incorrectly in relation to Ms Feil's evidence concerning her own procedure; I'll correct that if I may. She will tell your Honour that when obtaining a birth mother's consent to the adoption of her child, first of all she would give the mother the consent form and ask her to read it, and if the mother couldn't read it, then she would read it over for the mother. She would ask the

mother if she understood what was written on the consent form and, in particular, if she understood that the effect of an adoption order in respect of the child would be to deprive her permanently and totally of her parental rights in relation to the child. When the mother said that she understood the effect of the adoption, Ms Feil would then ask the mother if she wanted the child to be brought up in any particular religious faith, and if there was one stipulated, then that would be noted.

1

She would explain that if the mother signed an adoption consent form but later changed her mind about having the child adopted, she had 30 days from the date of signing the consent or the making of an adoption order, whichever was earlier, in order to revoke the consent and we think it's not contentious that that was in fact the law at the time. The mother would be given by Ms Feil a departmental card with the address and phone number of the department and she would tell them that if they changed their mind about having their child adopted and wished to revoke their consent, they should come into the department immediately. She - Ms Feil that is - would also tell mothers giving up their children for adoption that they could phone her at a later date and find out if their child had been satisfactorily placed with adoptive parents.

10

20

Ms Feil, for her part, would always allow mothers to see their babies if that's what they wanted, but the procedure in relation to mothers seeing babies was in fact regulated by the hospital rather than the department worker, your Honour.

30

Your Honour will, as I have said, also hear from Mary Cattanach, who was employed as a child-care officer in the department from about August 1965. Prior to her employment, she had been a senior sister at the Brisbane Women's Hospital from the mid-1950s, including being a senior sister in the labour ward and theatre. She was in charge of the labour ward for a significant period of her employment at the hospital. When she started working at the department, as a consequence of her significant experience she was authorised to attest to adoption consents.

40

Babies were placed in nurseries that were attached to the labour wards and she will tell your Honour that most wards have nurseries for babies that were up for adoption. She will also confirm to your Honour that it was up to the nursing sisters whether or not the birth mothers visited their babies.

She will confirm the procedure by which Ms Robinson, who worked at the Brisbane Women's Hospital in 1967, would visit each of the young, single mothers and complete the report of investigation and ascertain whether or not the mother wanted to adopt the baby. It was also Ms Robinson's responsibility to register the births. It was then, from the form completed by Ms Robinson, indicated that the baby was for adoption or there was a query as to whether the baby was for adoption that the child-care officer would visit the mother in question.

50

Ms Cattanach doesn't recall there being set guidelines

1

provided by the department for the process of obtaining adoption consents but she can tell your Honour about her routine. She recalls that the legislation provided that the birth mother would not be visited for the purpose of obtaining an adoption consent until five days had passed from the date of birth and the usual practice was for that consent to be obtained on the seventh day after the birth.

10

She, when she visited the birth mothers, would sit with the birth mothers for about half to three quarters of an hour to discuss the decision, the adoption consent and its effects. Of course, the birth mothers all had different ways of dealing with the situation: some would sob, some would switch off; others would be abusive and so on. She would try to calm them down. She would read the consent to adoption form over with them and she would take particular care to explain to them their rights of revocation of the consent. That was something that had been impressed on her to do.

20

If she was confronted with a situation where a birth mother was undecided about whether or not to give the baby up for adoption, she would have a discussion with the birth mother in which she pointed out the pros and cons. She will say no-one could force a birth mother to sign a consent; the baby was hers and that was it. That being said, she will also tell your Honour about the significant social stigmas for young, single mothers in the late 1960s. She would discuss the difficulties for young, single mothers keeping their babies and she would impress on the girls that it was their decision.

30

She knew - Ms Cattanach, that is, knew - Ms Whalley. She worked with her. In relation to any suggestion that Ms Whalley would have dominated a birth mother or coerced or pressured a birth mother into signing a consent for adoption, Ms Cattanach will say that that was simply not the Jay Whalley that she knew. The Jay Whalley that she knew wouldn't know how to apply that sort of pressure to anybody. She was an understanding, considerate and caring person.

40

HIS HONOUR: Can she recall whether she ever saw Ms Whalley deal with a mother?

MR DAUBNEY: No. Like Ms Cattanach, Ms Whalley was an ex-nurse, and Ms Whalley was in fact a former missionary who had been stationed at Mornington Island. She was involved with St Paul's Presbyterian Church. She was honest, and lying and deceitfulness just wasn't in her nature.

50

In relation to the allegation or the suggestion that Ms Whalley threatened to have the plaintiff sent to Karrala House, Ms Cattanach will say, apart from that sort of threat not being in Ms Whalley's character, that Ms Whalley in any event wouldn't have had the authority to send the plaintiff to Karrala.

In relation to a suggestion that Ms Whalley didn't tell Ms Arthur about financial benefits that may have been available, Ms Cattanach's recollection is that there were no

supporting benefits for single mothers at that time. There may have been a discretionary payment by the Director of the department but that would have been a one-off payment. 1

Again, in relation to the allegations that Ms Arthur wasn't allowed to see the baby, that was a matter for the hospital, in particular senior nursing staff, to determine the frequency and length of the mother's visit with the baby.

In relation to the suggestion that there was a discussion with Ms Whalley about fostering out the baby, Ms Cattanach will tell your Honour that Ms Whalley wasn't in a position to allow the baby to be fostered out. 10

Your Honour will also hear from Mr Graham Zerk, who was also employed as a child-care officer by the department as at September 1967. He also knew Ms Whalley and his contact with her in particular was up until 1969. He was not one of the child-care officers involved in the task of taking consents. His role was being involved in the adoption process by way of the assessment of the potential adoptive parents. But he did know Ms Whalley well. 20

Again in relation to the assertion that she would have dominated or oppressed someone, he says that his lasting impression is that she is one of the kindest and gentlest of people. She was non-aggressive and very caring and probably the most tender-hearted of all the child-care officers that he knew. 30

But he recalls that the task of attesting consents was normally allocated to a select group of female child-care officers, all of whom, to his recollection, had nursing backgrounds. They were selected for that role because of their nursing experience and training, because that facilitated their interaction with the mothers in the hospital settings after the births. 40

Mr Zerk will tell your Honour that it was highly improbable that child-care officers such as Ms Whalley placed pressure on prospective adoptive mothers to give up their babies for adoption in the late 1960s simply because there was so many babies being put up for adoption, that the department had difficulties placing the large number of babies. The real question for him is why would a child-care officer want to coerce a mother into having a baby put up for adoption when the system was already so flogged. 50

He cannot tell your Honour about the precise procedures involved in attesting to adoption consents in 1967. As I have said, he wasn't involved in that himself. However, he does recall that the department required strict compliance with legislative requirements, because of the, of course, immense impact that an adoption order or an adoption consent would have. 60

In relation to the suggestion that Ms Whalley threatened to have the plaintiff sent to Karrala House, Mr Zerk will tell

your Honour that whilst, theoretically, Ms Arthur was under the care of the state she could have been transferred to Karrala, the fact is that someone more senior than Ms Whalley would have had to authorise that transfer. It is not the sort of thing that Ms Whalley could have done off her own bat.

He was not present when an adoption consent was being attested to by Ms Whalley.

Otherwise, your Honour will hear from Professor Harvey Whiteford, the Professor of Psychiatry at the University of Queensland. Dr Whiteford had provided - and a consultant psychiatrist. Dr Whiteford has provided two reports, the first dated 24 October 2003.

HIS HONOUR: Exhibit 32.

ADMITTED AND MARKED "EXHIBIT 32"

MR DAUBNEY: And the second dated 21 September 2004.

HIS HONOUR: Exhibit 33.

ADMITTED AND MARKED "EXHIBIT 33"

MR DAUBNEY: Dr Whiteford will supplement those reports with some short oral testimony. We have given our learned friend notice of this. Dr Pickering's report came in late after Dr Whiteford had provided his last report.

Dr Whiteford will give some brief evidence, brief oral evidence, your Honour, on his views of hypnotherapy as a technique for psychiatric therapy; his views about the possibility of separating the plaintiff's traumatic events from 1967 from the other traumas in her life; his concern about whether the events of 1967 in fact fulfil the criteria for post-traumatic stress disorder under DSMIV; and his concerns about the fact that the plaintiff has had 129 sessions or 130 sessions now with Dr Pickering and, as I say, he would have expected to have seen results by now with such intensive treatment of the plaintiff.

HIS HONOUR: But what, if anything, will he say concerning the impact of any of the following upon the plaintiff's memory: the passing of time; the impact of other stressors in her life; and the impact of Dr Pickering's treatment?

MR DAUBNEY: We rather think your Honour will find the answer to those questions in Dr Whiteford's second report. Your Honour will also hear from Dr Whiteford, as part of his

criticism of hypnotherapy, that one of the acknowledged shortcomings of hypnotherapy is that it is susceptible to suggestibility on the part of the patients undergoing the hypnotherapy.

1

Those will be the witnesses to be called by the defendant, your Honour.

MR WILSON: Your Honour, could I rise at this time to make an objection to that part of Ms Cattanach's evidence and Ms Zerk's evidence -- Mr Zerk's evidence which seems to be perhaps best described as good character evidence. It is perhaps a clear example of propensity evidence, which is not admissible. That is, this lady wouldn't have the behavioural characteristics to do this sort of thing.

10

HIS HONOUR: Why is it not admissible?

MR WILSON: Because it doesn't prove one way or another whether the specific act or acts which are complained of occurred or did not occur. All it goes to, as I understand the way it's been opened, is this was a nice lady who was kind and gentle and I, knowing her, wouldn't think her capable of such a thing. That is, she wouldn't have the propensity to do it.

20

HIS HONOUR: I don't understand why it's not said to be admissible. This is not a criminal trial.

MR WILSON: I understand that.

30

HIS HONOUR: So the first issue is whether the evidence proposed to be adduced is relevant. That is, whether it tends logically and rationally to prove or disprove a fact in issue.

MR WILSON: And we say it's not relevant.

HIS HONOUR: Why is it not relevant to the question whether the words which your client alleges were spoken were spoken?

40

MR WILSON: Because none of these people were there. All their evidence goes to is the type of person Ms Whalley was as they observed her; that is, in different circumstances, perhaps as a co-worker, that she was a nice person.

HIS HONOUR: Well, there is always a risk that people will present one image in one context and another face in another. But what is the case that suggests that evidence of good character, if I can shortly describe it as that, is not admissible in a case such as this where on your client's case the woman was engaged in intimidating a teenage mother who had recently given birth, attempting to coerce her parting with her child, and doing so by making threats of continued incarceration either in the Holy Cross institution or at Karrala? Why is not her character material to the question whether she was the kind of person who might have done such a thing?

50

MR WILSON: Her general character, we say, is immaterial. It's what happened on the occasion that she had contact with the plaintiff.

1

HIS HONOUR: What is the name of the case which is said to give most support to this contention?

MR WILSON: Your Honour, the only passage I have is from Cross.

10

HIS HONOUR: Why not then come back to it if you wish-----

MR WILSON: I just thought I'd foreshadow it at this stage.

HIS HONOUR: -----after you have found the cases?

MR DAUBNEY: Ms Philipson will take the first witness, your Honour.

MS PHILIPSON: I call Nick Prins, your Honour.

20

NICHOLAS JOHN PRINS, ON AFFIRMATION, EXAMINED:

MS PHILIPSON: Thank you, your Honour. Mr Prins, for the Court could you state your full name, please?-- My name is Nicholas John Prins.

30

And you're employed by the Department of Families?-- At the moment I'm employed by the Department of Corrective Services, but I have been - I was an employee of the Department of Children's Services and whatever it was called over a period of 25 years.

And during the 1990s were you the manager of the - of information management for the Department of Families?-- The position was either called information services or information management but, yes, that was my position.

40

And in that position were you responsible for the head office records of the department?-- I was.

Were you also the officer who supervised the provision of information to former clients in care by summarising their files?-- That was one of my responsibilities. The Freedom of Information Act came in in 1992 and that provides people with access to documents, but the departmental records are not very useful to people so we provided them with - I guess descriptions of summaries of files, yes.

50

You became very familiar with departmental records?-- I did indeed.

And developed a personal interest in them?-- I did.

1

Are you aware of a claim or a woman by the name of Lily Arthur, formerly known as Lily McDonald?-- I am aware of - not personally but I do know of the name because of this particular Court case but I also know that - I think she was also a - no, I will just leave it at that.

And you caused searches to be undertaken in relation to files in the name of Lily McDonald formerly known as Lily Arthur?-- Not for this particular Court case. However, I think she did appear before the Forde Inquiry and at that time I was very heavily involved in locating material for the inquiry and would have been unsuccessful in locating information.

10

And in relation to Miss Arthur you say you're unsuccessful in locating information. Do you recall in relation to - locating any material on an adoption file?-- The Forde Inquiry never looked at adoption files. However, I am aware that in the 1974 floods something like 50,000 adoption files and information - infant life protection records were damaged. They were stored in the basement of Kanatara which was the headquarters of the Department of Children's Services, and they were flood affected.

20

What happened to them when they were flood affected?-- A number of different things happened. Some of the files were so badly affected with mud that they effectively were - weren't able to be retrieved whatsoever. A number of the adoption files were able to be retrieved, I understand, and in May that year I recall seeing a memo or something from the State archivist saying that they had a whole lot of departmental flood affected records and that those records needed to be microfilmed because they wouldn't last any more than 10 years.

30

And were they subsequently microfilmed, are you aware?-- Those records were subsequently microfilmed, although not in their entirety.

Why was that?-- It was felt that (a) the cost was - was going to be prohibitive. At that time we didn't have the resources to do that. I wasn't actually involved in the process but this is my recollection of the material on file. So what happened was that there was some debate about what records should be microfilmed. That went to Crown Law and ultimately some form of list was developed that gave some guidance to people about what documents should and should not be microfilmed.

40

Do you recall what documents should - that the documentations that-----?-- The focus seemed to be legal documents, so the documents that actually - that people signed relinquishing their rights as parents were basically the main documents that were microfilmed.

50

And in relation to a person who was under the care and control of the department would there be any other files?-- Yes, there would be. In those days we used to have what are called

F files, "F" for family, and what would happen is that all contact with a particular child in care would be recorded on that particular file.

1

And you say "all contact"?-- Well, you know - I mean, basically any reports or Court appearance information or any - any - I guess documentation that related to that particular individual would end up on that file.

And if, for example, a social worker was to make document - make notations in relation to someone in care, would they be on that file or---?-- That would be the only place it would be.

10

And are you aware of what became of the F files?-- The F files were - a significant number of them were very badly damaged during the 1974 flood. As a matter of fact, we - some were so badly damaged that we were not able to identify them at all. Over the years what the department has done is we have a - the department has a range of index books and we have done audits of records that were around at the time. We have done audits of records, you know, since then and by deduction a number of - a whole lot of files have been destroyed and are no longer available.

20

And are you aware if any F files are available in relation to Lily McDonald?-- If there are any F files they would have been created since that period. What happens is - I'm not certain whether subsequent to that time a request has come in to the department asking for information. If that had happened there would be a file created on that request and that would contain - would have the same F number as the previous one.

30

A file from back in 1967 would no longer be in existence?-- That particular file would no longer be in existence.

Thank you. I have no further questions.

HIS HONOUR: Mr Wilson?

40

MR DAUBNEY: No cross-examination.

MS PHILIPSON: May the witness be excused?

HIS HONOUR: Thank you, Mr Prins. You are excused from further attendance.

WITNESS EXCUSED

50

MS PHILIPSON: I call Patricia Austin. Patricia Austin, I believe she's outside.

PATRICIA AUSTIN, SWORN AND EXAMINED:

MS PHILIPSON: Could you state your full name for the Court, please?-- Patricia Ann Austin

Your occupation?-- Administration officer with Queensland Police legal liaison unit.

10

And in that role do you have the authority to access the documents of the Queensland Police Service or cause investigations to be undertaken?-- To locate documents, I do.

And did you undertake or cause to be undertaken some investigations or searches in relation to a Lily McDonald now known as Lily Arthur?-- Yes.

20

And did you search the Queensland Police Service records in relation to Miss Arthur in 1967?-- I did.

Were you able to locate any documents?-- No, I wasn't.

Were those searches conducted in the names of Arthur or McDonald?-- Searches were taken in the names of Arthur and McDonald. I also spoke to as many people as I could of different heads of different areas. I spoke to the deputy commissioner staff officer who organised for the deputy to send out a request to the assistant commissioners of all the relevant areas so that they would - so that a diligent search could be undertaken. All searches came up negative.

30

Did you undertake any searches in relation to any other years?-- When we do our searches we put our names in and records will come up regardless. We then go through any records we find looking for the relevant time. With this particular one we found no records in relation to Lily Arthur or Lily McDonald.

40

Thank you. I have no further questions.

50

CROSS-EXAMINATION:

1

MR WILSON: Thank you, your Honour. Miss Austin, can I just ask you the process that was undertaken in conducting this search? Do I understand from the answer you just gave it was a computer search?-- Computer searches, yes, and a request by the - the deputy sent out - deputy commissioner at the time sent out a request to all the assistant commissioners for people to look in their stations and in their - any records that they have of that time.

10

Do you know of your own knowledge whether or not a request was made to the Moorooka Police Station?-- I do. I myself spoke to police - Moorooka Police Station and they had no records.

Are police notebooks kept in any particular location?-- Police notebooks are kept in - there's different procedures in place now as to what there was back then.

20

We will deal with 1967?-- In 1967 from inquiries that I made - it's not from my personal knowledge, of course - but from inquiries that I made in 1967 it was the officer in charge of the station at the time who made the decision of destruction of notebooks. Under legislation they had to be kept for 10 years. Despite that fact there are still some notebooks that do exist but no records were found of - in relation to this particular one.

30

Did I understand from that answer that records were found dating back perhaps to 1967?-- I don't know whether they are back to 1967. They were a lot of old notebooks found but they couldn't find any records relating to any incidents around that specific date in 1967.

Were those old notebooks perused?-- Yes, those old notebooks were perused.

Where were they located?-- At Moorooka.

40

Were any inquiries made at any station other than Moorooka?-- Because from the allegations made, that of the circumstances - the alleged circumstances, it - we had to try and ascertain who or which region might have responded or been designated a call to a Rocklea address. So, therefore, the search was extended to the whole of Metro South region covering all the stations there, yes.

Are there any records still extant of the police officers who were employed at the Moorooka station in 1967?-- No. Personally I located records and old station records for files of that time and every single police officer on that, the most recent retired in 2000 and most of them - most of them had - a lot of them had actually noted that they had died or - you know, on it, but we were unable to locate even - there's no officers still in the service who worked in Moorooka around that period. Between the periods 1966 to 1968 is what I

50

searched.

The officer who retired in 2000, when did he work at Moorooka?-- In 1968.

Did you make inquiries of him to determine if he knew anything about the matter?-- I have no addresses. We have no contacts for him, no.

Did you make any attempt to search the records of the Brisbane watch-house?-- Yes.

What happened there?-- There was nothing.

Thank you, your Honour. I have nothing further, your Honour.

MS PHILIPSON: No re-examination. May the witness be excused?

HIS HONOUR: Yes. Thank you, Ms Austin. You are excused from further attendance.

WITNESS EXCUSED

MS PHILIPSON: I call Tracey Barry, your Honour.

TRACEY LOUISE BARRY, SWORN AND EXAMINED:

1

MS PHILIPSON: Miss Barry, could you state your full name for the Court?-- Tracey Louise Barry.

And your position?-- Personal officer for the personal branch of Corporate Link.

10

That Corporate Link services the Department of Communities-----?-- And Child Safety.

-----and Child Safety?-- That's right.

Did you undertake - in your role there do you have the authority to undertake searches in relation to personnel for the department?-- Yes, I do.

And did you undertake any searches in relation to the identity of an E Robinson?-- Yes, I did.

20

What were you able to ascertain from those searches?-- I retrieve the file from archive and ascertained that Elsie worked for the Department of Child Services, which is the subdepartment.

Subdepartment?-- Subdepartment for the Department of Health and Home Affairs.

30

And you say Elsie. Her full name was?-- Elsie Winifred Robinson.

She was employed by the department. Do you have the dates of her employment?-- She was employed from the 15th of February 1952 and resigned on the 2nd of August 1970.

Thank you. I have no further questions.

40

CROSS-EXAMINATION:

MR WILSON: Just so I understand that correctly, Ms Barry, Miss Robinson was employed by the Department of Children's Services; is that right?-- The Department of Children's Services, yes, was a subdepartment for the Department of Health.

50

You can say she wasn't employed at the - for the Brisbane Women's Hospital?-- I can't - not from what the file stated.

Would the files enable you to draw that distinction?-- Not that I'm aware - no, it wouldn't have.

Were persons employed at the Royal or the Brisbane Women's

Hospital in 1967 employed by the Department of Children's Services?-- I'm not too sure on that.

I have nothing further, thank you, your Honour.

MS PHILIPSON: No re-examination, your Honour. May the witness be excused?

HIS HONOUR: Thank you, Ms Barry. You are excused from further attendance?-- Thank you.

WITNESS EXCUSED

HIS HONOUR: Will there be evidence concerning her role? I must say I had thought from the documentation I'd seen that she was on the hospital staff. It appears not.

MS PHILIPSON: The only searches that we have been able to undertake, your Honour, and at the evidence given by Miss Barry that the Department of the Health was a sub-branch and searches were undertaken. The only E Robinson that was identified was an Elsie Winifred Robinson who was - had the dates of employment that Miss Barry gave. Mr Evans, when we made inquiries of him and as he said yesterday, he was not able to ascertain any information about E Robinson.

INTERRUPTION BY TELEPHONE

MR DAUBNEY: Your Honour, Elizabeth Marks is ringing in and I would say this would be her now.

ELIZABETH ANN MARKS, SWORN AND EXAMINED VIA TELEPHONE LINK:

1

MS PHILIPSON: Miss Marks, you said your name was Ann?-- That's right.

Are you also known by the name Elizabeth Marks?-- That's right.

10

And your maiden name was Elizabeth Kerslake; is that correct?-- Elizabeth Ann Kerslake, yes. That's correct.

And your occupation before you retired, Miss Marks?-- Pardon?

Your occupation before you-----?-- I was a midwife, registered midwife.

Did you work at the Royal Women's Hospital then known as the Brisbane Women's Hospital in 1967?-- I did.

20

According to a birth certificate of Shane Stefan McDonald, a baby born to a Lily McDonald on the 1st of September 1967, you were the nursing sister in attendance at that birth of that child?-- I have been told so. I don't recall that specifically but I - I have been told I was.

Do you recall a woman by the name of Lily McDonald?-- Not at all, no.

30

Do you recall a baby by the name of Shane Stefan McDonald?-- I don't.

Have you been spoken to by the police in relation to these matters?-- Four years ago Detective Greentree interviewed me at the Stanthorpe Police Station in about July 2000.

And were you able to assist the police at that time?-- Only with very sparse recollections of my time at the Royal Women's, because that's 37 years ago.

40

Were you able to assist them in relation to the birth that I spoke of?-- Not at all, no. I don't remember.

Do you recall a person employed at the hospital or by the hospital by the name of E Robinson or Elsie Robinson?-- Not really, no. Should I?

Well, we're not sure, Miss Marks?-- Mmm.

50

I have no further questions, thank you?-- Thank you.

CROSS-EXAMINATION:

1

MR WILSON: Miss Marks, can you hear me?-- Yes, I can

It's Keith Wilson, counsel for Mrs Arthur speaking. During what period of time did you work at the Brisbane Women's Hospital?-- Well, I have been - I worked there in '67. I think I had three years there because I finished up there in '68 as the registered midwife. I was there for about three years, I feel, at that time.

10

So 1966 until 1968?-- Probably. As I remember, probably about that.

Were you a trainee nurse at that time?-- I was a registered midwife.

I'm sorry, I misunderstood you. I thought you completed your qualifications in 1968?-- No, I completed my qualifications at the Royal Women's Hospital - no, wait a minute. It was the Women's Hospital in Victoria.

20

Yes?-- Yes, I completed my training there as a midwife and I was employed on the registered staff at that time at the Royal Women's or the Brisbane Women's, as it was then known.

During your employment at the women's hospital were you employed exclusively in the capacity as a midwife in the labour wards?-- No. We worked around. We worked in the delivery wards and in the - in the - oh, delivery section and also in the nurseries. We worked around. We didn't - we weren't always in the labour ward.

30

But always in the wards of the hospital that dealt with either birth or new born children?-- Yes, yes.

And in your employment at the hospital you would have been involved in the birth of hundreds if not thousands of children?-- Oh, yes, yes.

40

So it wouldn't be possible for you to remember any individual one of them?-- No.

Can I ask you this: in 1967-----?-- Yes.

-----during the birth of a child-----?-- Yes.

-----immediately after the birth of a child-----?-- Yes.

50

-----wasn't it normal practice for the baby to be given to the mother?-- As I recall, yes, that would be right.

So that a bond could be formed between the two?-- That's as I recall it.

Do you know of any circumstances where the child would be not

shown to the mother?-- It's difficult to answer.

1

Was that the practice when children were born of unmarried single women?-- Well, I really - I mean, there weren't that many. I mean, when you think of it - that's 37 years ago and there weren't many children that were not - as far as I can remember, you know, there were not many children born for adoption, three or four, maybe, in the nursery, as I remember.

You think only three or four children were born during the three years that you worked at the hospital who were put up for adoption?-- Well, I mean, we always had adoption children in our nurseries.

10

Yes?-- And from what I can - every now and then there would be one or two or three at the most, but there seemed to be always children for adoption in our nurseries.

Was there a separate nursery kept for children to be put up for adoption?-- They were, and they - they had alias names so as the nursing staff we didn't know who the children belonged to. They had alias names.

20

And do I understand from that that if you didn't know who the children belonged to the children wouldn't be taken to their mothers?-- No. They were - they were nursed by the staff in a separate nursery, as I recall it.

And if it was apparent that the child was to be put up for adoption-----?-- Yes.

30

-----you said it was given an alias name?-- That's right.

Do you also agree that it would not be the case that that child would be named by the mother?-- Well, I wouldn't have understood that. I wouldn't have known that. The only names we knew the child - the children by were the little alias names on their cot. So, I don't know whether the mother gave that name or what, because that was in the hands of a separate department to the nursing staff. We had no dealings with that really.

40

Those children who were given alias names-----?-- Yes.

-----were they ones who were known to be put up for adoption immediately from the time of their birth?-- Yes.

In terms of those children who were named by their mother?-- Yes.

50

Were they taken to a separate nursery?-- Would you repeat that?

In respect of those children who were born - sorry, when named by their mother, were they taken to a separate nursery?-- I can't answer. I don't know how to answer that question.

Were there any children - you said earlier that there was a separate nursery?-- Yes

1

For children who were to be adopted or babies who were to be adopted?-- That's right, yes. That's right.

If the mother had named her baby so it was known whose baby it was, that child wouldn't have been put in the nursery for children - for babies that were being put up for adoption?-- No, I wouldn't think so.

10

Now, you said that you recall only a small number of instances where you were aware that people were to be put up for adoption. Do you recall whether it was the practice in those cases not to show the child to the mother at birth?-- No, I can't recall that. I really can't recall that.

Do you recall whether or not in the case of mothers who had delivered children which were to be put up for adoption, that those mothers were administered medication to suppress their lactation?-- That's a difficult one.

20

Do you remember a drug called Stilboestrol?-- Well, I know of it. I know of it.

What does it do?-- Well, it's a hormonal medicine that - mmm, yes. It probably would decrease lactation I would say.

Do you recall whether mothers who had delivered children who had been put up for adoption would be given Stilboestrol?-- No, I can't recall that, I'm sorry.

30

Excuse me. May I then ask you this: if a mother gives birth to a child and asks to see the child, is that something that would ordinarily be done, the mother's wishes would be accorded to?

HIS HONOUR: The inquiry was put in the present tense.

MR WILSON: I'm sorry. In 1967-----?-- Yes.

40

-----if a mother asked to see her child, would she be given the child?-- Well, she wouldn't ask - she wouldn't ask the nursing staff, that's for sure.

Who would she ask?-- Well, I - all - all the adoption children were in a different - they were seen by the - a different section of the hospital

Which section was that?-- Well, they had - they had the adoption people who would come and see them and speak with them. That was sort of separate to our work.

50

So in the case of those children who were identified as being put up for adoption, is it your evidence that the nurses then had no part to play in deciding whether or not the baby should be taken to the mother?-- That's right. It wasn't our jurisdiction at all.

Thank you. I have no further questions, your Honour.

RE-EXAMINATION:

MS PHILIPSON: Ms Markes, it is Kay Philipson again. In May 1967 when you were working at the hospital?-- Yes.

10

Did you have any dealings with mothers in relation to them giving their children up for adoption, or was that - you spoke of a separate section to your work, or "our work" I think you described it?-- Well, the mothers were nursed just the same as everybody else as far as I can remember. They weren't in any special rooms or separate to mothers. Only the babies were separated as far as I can remember.

20

Did you have any dealings with any mothers in relation to them actually giving up their children for adoption, or was your role purely a nursing role?-- Only in their general care. Only in their general care. We would only - in their general well being, in their care while they were in the hospital.

So your knowledge of any practices in relation to the adoption of children is limited to the evidence you have given today?-- That's right. Yes.

30

Thank you. I have no further questions. May the witness be excused, your Honour?

HIS HONOUR: Thank you, Mrs Markes.

WITNESS EXCUSED

40

HIS HONOUR: 10 to 12.

THE COURT ADJOURNED AT 11.35 A.M.

THE COURT RESUMED AT 11.51 A.M.

50

MR DAUBNEY: I call Mary Cattanach.

MARY MILTON CATTANACH, SWORN AND EXAMINED:

1

MR DAUBNEY: Mrs Cattanach, can you tell us your full name, please?-- Mary Milton Cattanach.

Where do you live?-- 17 Alenola Street, Chapel Hill.

You're retired?-- Yes.

10

You were previously employed by the Department of Children Services?-- Yes.

You were employed as a child-care officer by the Department of Children Services from the about 1965?-- That's correct.

Before you worked for the department, where had you worked?-- Immediately prior to that, at what is now the - well, was then the Women's Hospital.

20

And for how long did you work at the Women's Hospital?-- Close to seven years.

And what was your job at the Women's Hospital?-- Mostly the labour ward and the theatre.

And what was your position in those wards?-- Senior sister.

When did you undertake your training for registration as a nursing sister?-- I began my training at the Royal Brisbane Hospital in 1950 and completed it beginning of '54, in May '54.

30

And after registration did you undertake any other certificates?-- Yes, I did obstetrical training at the Crown Street Women's Hospital in Sydney.

And after you finished your training at Crown Street, where did you work?-- That's when I went to the Women's Hospital.

40

I see. Was it - you've told us that it was from your job as a senior sister at the Women's Hospital that you then went to work for the department?-- That's right.

And when you went to work for the department in August of 1965, what job did you go into?-- Could you repeat the question for me, please, Mr Daubney.

When you first started working for the department in 1965?-- Yes.

50

What was your job?-- I was a child-care officer.

And what were your responsibilities as a child-care officer?-- Well, the responsibilities - we all had a division, like a pie chart, of the city and surround and we were responsible for everything that concerned the department within those

divisions we were allocated to. But those of us who were registered nurses, on a monthly basis we took turns in going to the hospitals to see about the - taking adoption consents.

Apart from your training and experience as a nursing sister and a senior sister of the hospital, did you undertake any other training or education for your work as a child-care officer?-- Yes. When I started in the department, those of us that didn't have relevant training, there was an in-service training course which lasted for three years and comprised of three-hour lectures for three nights a week and three-hour exam papers at the end of each year, and if we completed those successfully, we would then - we were more or less on a probationary basis until then, we were fully-fledged child-care officers.

I take it you successfully completed that course?-- Yes.

Did you know Jay Whalley?-- I knew Jay Whalley, yes.

When did you first come to know Jay Whalley?-- Well, I first came to know her when I went to work in the children services department and I had - we had had brief passings before that but didn't really know each other.

Do you know whether Ms Whalley completed the course that you've just described to his Honour?-- She did, at the same time as I did.

Was part of your work as a child-care officer to attest adoption consents?-- Yes.

And did you - I'm sorry. At which hospitals did you perform that work?-- Royal Women's, the Mater, and Boothville Hospital, a Salvation Army one at Windsor, and occasionally there was a small maternity hospital at Corinda, to go there, but that was pretty infrequent. It was an offshoot of the Royal Women's Hospital.

From your time working at the Women's Hospital and subsequently as a child-care officer, are you able to tell his Honour what the procedure was in terms of where babies were placed after they were born?-- Well, if the girl had intimated that she was going to offer her baby for adoption, they were - there was no specific nursery that those babies went to but they were dotted around - each ward had a nursery attached to it bar one, where mothers that didn't have babies were. They were to be still births, adoption babies or maybe small premies that were very ill and they didn't have nursing mothers around them to upset them. So that was a ward that was kept for mothers with no babies. But each of the other wards had a nursery attached and adoption babies were sort of scattered around those different nurseries.

HIS HONOUR: When you say adoption babies scattered about, you mean babies in respect of whom the mother had indicated before birth-----?-- That's right, your Honour.

-----a willingness to have the child adopted out?-- Yes, your Honour. That's correct.

1

MR DAUBNEY: What about babies where the mother hadn't given any indication before birth that the baby was to be adopted out, where do those babies go?-- Well, they would just go to the normal ward, whichever ward had a bed spare that could accommodate. She would and her baby would be there, the baby was her responsibility, and they were both in the care of the hospital.

10

Whose responsibility or say so was it as to a mother visiting or having contact with her baby?-- Well, that would be at the discretion in the sister in charge of the ward in whose nursery the baby was placed. She would say whether she - or how often she could visit the baby, because it would be upsetting to visitors and what have you if she was hanging around distressed all the time.

From the time you started working as a child-care officer, was it any part of your function to specify whether or not a mother could see a baby?-- No. Until the - until the consent was signed, the baby was still the mother's. Absolutely.

20

Do you recall an Elsie Robinson?-- Yes.

Was she working at the Women's Hospital in 1967?-- I think she would have been, yes.

All right. Do you recall what Ms Robinson's job was?-- She checked with the labour ward on a daily basis to ascertain if any of the mothers were offering their baby for adoption and then she would see those mothers and she would - and I think most of the babies she - oh, I'm a bit hazy on this, Mr Daubney, but I think she used to prepare birth registrations for any babies that were born, but she'd see specifically the ones for adoption and we would check with her as to which babies were offering - being offered for adoption.

30

Right. How would the information about which babies were being offered for adoption pass from Ms Robinson to yourself?-- Well, she would have the forms filled in and she would have "baby for adoption" at the bottom of it and-----

40

Just before we go on, which form are you talking about that she would have filled in?-- Oh, I can't remember the name of it. It was a form for the registration of birth. I'm not sure. That's asking me to remember back a long way.

All right. Your Honour, may I see Exhibit 2, please?-- I would recognise the form if I saw it.

50

I am going to show you a document, Mrs Cattanach?-- Now, I remember.

It is called a "Report of Investigation". Is that the sort of document you were just talking about?-- Absolutely, yes, that's it.

Right. So the procedure was that Mrs Robinson would attend on the mother, complete that form and, I'm sorry, what then happened? What - in terms of involvement of a child-care officer?-- She would have them and we would collect them from her and then proceed to see the mothers-----

COURT REPORTER: I'm sorry, could you repeat that.

MR DAUBNEY: Could you just repeat your last sentence. Did you say "then proceed to see the mothers individually"?-- Yes, yes.

10

How did you know whether there were report of investigation forms to be collected from Mrs Robinson?-- We'd usually ring the hospitals to find out.

And with what frequency did you phone the hospitals? We're talking about the era about 1967?-- Yeah, well, at that time we had - as I said, those - there were four registered nurses there who did this round - hospital round. We used to - I think it was a month at a time but we still had our other departmental work to attend to. So it was usually three days a week that we went. If I remember rightly it was Monday, Wednesday and Friday, unless we'd had - that would sort of be a routine thing. Then if we had to go because the time - the five full days had elapsed, the mother wanted to be discharged, and we would go and see her, make a special visit to the hospital.

20

All right. We might take it one step at a time. In relation to the report of investigation, did you ever encounter a situation where it was noted that the baby was not to be adopted?-- Oh, yes, frequently.

30

And what action did you take if a report of investigation noted that a baby was not to be adopted?-- Well, there would be no action to take because the baby that - the mother - it's the mother's baby. She collects it and she goes home with it.

40

So there would simply be no contact from a child-care officer in that instance?-- No. There would be no need to have contact.

In relation to a form that stated "baby to be adopted", that then prompted the child-care officer-----?-- That's right.

-----to go and visit the mother?-- We had to have some indication that she was contemplating offering the baby for adoption.

50

Were there any ever any situations where there was a question mark as to whether the baby was to be adopted or not?-- Sometimes the mother was undecided, yes.

And what action did the child-care officers take in that sort of situation?-- Well, we would just go and see her another day.

1

10

20

30

40

50

You yourself mentioned a timeframe a few minutes ago. Can you explain to his Honour, please, what the timeframe was for these processes to be followed, that is the report of investigation and then if necessary any attendance by the child-care officer?-- Well, five full days had to elapse from the date of the baby's birth until the time the mother signed the adoption consent. That meant if the baby was born on the 1st of the month the consent would be taken on the 7th, because those five days - if it was born one minute after midnight on the first day that day didn't count at all, it had to be five full days after that. So the seventh would be normally the day that you would take it.

1

10

All right. When you then had received a report of investigation form that noted that a baby was for adoption or raised a query as to whether a baby was for adoption, what process did you then undertake?-- Well, I'd go to see the mother and talk to her about her decision.

Do you recall whether there were any guidelines set by the department for the process of obtaining adoption consents?-- I can't specifically recall any definite guidelines. I think it would be explained to us by other departmental members who had taken consents. The way they did it, you might formulate your own method of proceeding with it.

20

Did you have your own method of proceeding with it?-- Yes, more or less.

What was that?-- Well, I'd talk to her and explain the process of adoption. I would show her the form. I'd explain each item on the form, explain to her what it all meant, her rights of revocation, the 30 day period after she had signed it which she could change her mind, and I explained, I felt, in full detail as to what it really meant.

30

How long would you spend with the birth mothers?-- Well, a normal period of time would be between 30, 45 minutes. It all depended on her state, her mental state. Some of them would be very upset with them and you would have to spend longer with them.

40

Different birth mothers in different situations-----?-- Yes.

-----would have different reactions?-- That's right.

What was the range of reactions that you had to deal with from these different mothers?-- Well, uncontrollable distress, some of them wouldn't - barely speak to you at all, and others would be quite abusive and rude because that was the only way they reacted to the stress that they were under, and so you just tried to calm them down and talk to them.

50

Now, what steps did you take to ensure that the birth mother understood the adoption or the consent to adoption form?-- Well, I felt that I'd explained to her in detail and I'd ask her was there anything that she was in doubt about and I could go over it again.

And you mentioned to his Honour that you took care to explain their rights of revocation?-- That's right.

Can you expand on that?-- Yes.

What were a birth mother's rights of revocation? Do you recall?-- Yes. From the time - I think it was from the time she signed the consent she had 30 days and the director did not sign the adoption order until that 30 days had elapsed, and if she didn't approach the department to revoke the consent then the director would sign the adoption order.

10

Did you ever encounter situations where mothers were undecided as to whether they were going to give their babies up for adoption?-- I can't - well, you mean even after 30 days had passed?

Sorry, I'm going back now to your attendance, I beg your pardon. You have received the form from-----?-- Yes.

20

-----Miss Robinson, you have then gone to see the mother and the mother tells you that she's undecided?-- That would happen sometimes, yes.

And what did you do in that situation?-- Well, I'd make arrangements to see her again, give her more time to think about it, maybe discuss it with family or whatever, and see her again.

30

What discussions did you have with a mother in that sort of situation?-- Well, I'd explain to her the pros and cons of having the baby in adoption and keeping it, the difficulties she could encounter if she was alone and had no family support and what it could mean to her having her own baby. She had to decide which outweighed the other. I used to tell her it would be the most difficult decision she would ever have to make in her life.

What pressure did you put on undecided mothers to adopt out their baby?-- Absolutely none.

40

Why?-- Well, it had to be their decision and theirs alone. It couldn't be anyone else's. They were the birth mother and the decision they made about the baby had to be theirs, not mine, not their parents', not anyone's, and I used to explain that she had to be the one that decided.

Were there any departmental guidelines or instructions to indicate that mothers should be pressured into giving their babies up for adoption?-- I don't think anyone would do it.

50

HIS HONOUR: Mrs Cattnach, there must, I suppose, have been times when you knew of the circumstances of the mother and what you could expect her to go to after she'd left hospital where you yourself have thought it would be in the best interests of the child to be adopted out?-- Yes, your Honour. This is what I was trying to imply when I said that I'd

explained the pros and cons of either side, whether she kept it or whether she released it, and I thought it was only fair that she should be made aware of the difficulties that she could encounter if she didn't have family support, and in those days there wasn't too much family support. 1

I raise it because I wonder whether it isn't possible that from time to time you felt that you ought in the interests of the child and in the interests of the mother, as you assessed the situation, to recommend adoption?-- No, I can't recall ever - I would never have recommended it straight out. I didn't feel that I should get involved, that I had to remain impartial as to what my personal feelings were. 10

MR DAUBNEY: In terms of the pros and cons that you would discuss with a single mother in that situation, remembering that we're talking about the late - mid to late 1960s, what were the sort of cons that faced a single mother in those days?-- Well, her ability to earn a living plus take care of a new baby. This was a big issue because there were not the financial benefits available in those days to single mothers that there are today. 20

What societal difficulties did women in that situation face, or social difficulties?-- I think that would sort of depend on - their young teenage friends used to be very envious of having this little baby and would visit them a lot, but that used to get a bit boring after a while, I think, but that sort of fell away. A lot of them found themselves in difficulties some time afterwards and reapproached the department to have the baby offered for adoption again, and sometimes neighbours got police involved. That happened too. 30

You knew Jay Whalley?-- Yes.

How long did you know Jay Whalley?-- For 30 years.

It's been alleged in evidence that there was an incident in which Ms Whalley when interviewing a prospective - or when interviewing a birth mother was not friendly, dominated the birth mother, bombarded her with information and effectively coerced her and threatened her until she signed the consent to adoption form?-- Well, I have absolutely no hesitation in stating that that was not Jay Whalley's personality at all. She was a very kind, caring, considerate lady and she wouldn't know how to be domineering. 40

What do you know, having known her for 30 years, of her personal history before she became a child-care officer?-- For a number of years, I can't recall just how many, she worked in the mission station in Mornington Island and the Gulf. I think she virtually ran that station, with a bit of help from the local flying doctor no doubt and what have you, and she was - she had very, very strong, deep, religious convictions. She was very much involved with St Paul's Presbyterian church in St Paul's Terrace and altogether she was a very good, honest, reliable person. 50

It's been suggested in evidence before his Honour that in the course of interviewing a birth mother and putting pressure on the birth mother to procure her consent to sign an adoption consent that Ms Whalley threatened to have the birth mother sent to Karrala House?-- Well, that wouldn't have happened because she would not have had that authority.

Do you recall what financial benefits were available to single mothers at that time in 1967?-- No, I don't think there was any government payment - financial benefit. I have a vague idea that the department in really stressed circumstances might have made a small one-off payment of - this is just - I can't absolutely guarantee this. There were - there was help available from the Salvation Army and people like this with food coupons and perhaps accommodation briefly, but I really didn't become involved with that side of it very much.

At that time in 1967 was it possible for the baby of a young single mother to be put in foster care rather than being adopted out?-- Well, there could be instances where that would happen. If she had - wouldn't be placed in foster care unless there was something medically wrong with the baby and it wasn't - she had signed an adoption consent and because of the medical condition it wasn't immediately able to be placed. It could be put in foster placement, what they called temporary foster placement or deferred adoption, but other than that, no, if the mother had not signed the consent it wouldn't be placed in foster care.

All right. If the mother was a minor and a ward of the State would that have had an impact on the advice given to her or the treatment given to her by a child-care officer in 1967?-- That would have come from a child-care officer. That would have to have come from the director or perhaps the senior child-care officer if the director wasn't at that time available, but we didn't have the authority to determine where they would go and when they would go.

I see. Excuse me, your Honour. Thank you, your Honour. That's the evidence of Mrs Cattanach.

CROSS-EXAMINATION:

1

MR WILSON: Mrs Cattanach, can I ask you, please, about your time as a midwife before you joined the department. You said that you worked in part at the Brisbane Women's Hospital?-- That's correct, yes.

And I take it as part of that time you worked in the labour word or delivery rooms?-- Most of the time.

10

And you worked there, did you, up until the time you joined the department in August 1965?-- No, there was a two year break, a two year break.

You were working somewhere else?-- No, I was looking after my mother who was very ill.

I see. So the last time that you were at the Royal - the Brisbane Women's Hospital was in 1963. Would that be right?-- I think if I remember correctly I left in - either April or May '63.

20

Can I ask you about the practice at that time in terms of a young mother who is giving birth to her child in the delivery room, the circumstances in which that child would be taken away without being shown to the mother? Do you recall firstly whether that ever occurred?-- I wouldn't know. I can only know that I always asked them myself if they wished to see the baby before it was taken away, but I wasn't present at every delivery.

30

No?-- Look, I'm sorry, could I ask you - I have a slight hearing loss and I am having a little bit of difficulty in hearing your voice.

I'm sorry. I will speak up?-- That's better, thank you.

In terms of those deliveries that you attended whilst you were a midwife at the Brisbane Women's Hospital, did you ever attend the birth where the baby was taken away?-- Never.

40

And you can't say whether or not that was done obviously in instances where you weren't there?-- No, I would have no idea.

In terms of those babies that were put up - sorry, I will withdraw that and start again. There were circumstances, weren't there, where mothers had signified before giving birth that the child was to be put up for adoption?-- Mmm-hmm, yes.

50

In those cases was the baby taken to a separate nursery at the hospital?-- The nurseries were attached to all the postnatal wards.

Yes?-- And it would go to one of those nurseries. They weren't all collected in one particular nursery.

Was there a ward for unmarried mothers?-- No. Well - they weren't very - you mean after they'd had the baby?

Mmm?-- Yes, there was. Ward 9 it used to be, yes.

A separate ward for unmarried mother?-- Well, mothers that didn't have a baby. That may have been stillbirths-----

Yes?-- -----or very ill premature babies that would - the mother didn't have a baby there.

10

Or babies that were thought to be put out for adoption?-- Yes, offered for adoption, yes.

It would be cruel, wouldn't it, to put those mothers in with married ladies who were breast feeding their babies?-- It could be rather distressing, yes.

And in terms of those ladies who were taken to the unmarried mother's ward, it was the practice, wasn't it, not to allow them contact with their children?-- No, it wasn't the practice. They could have limited access but whether they did or not once again was purely at the discretion of the sister in charge of the that particular ward.

20

The decision to administer - are you aware of a drug called Stilboestrol?-- Stilboestrol, yes.

What's that?-- It suppresses the milk supply.

30

In what circumstances would you administer that?-- To someone who wasn't - wouldn't be breast feeding a baby.

And that could be, I take it, for a number of reasons?-- Yes, well, for a number of reasons.

Including?-- Including adoption.

Adoption?-- Mmm. There was no need to lactate if you have not got a baby to feed.

40

But I take it that in your time as a nurse you wouldn't administer that drug to a mother until the decision had been made to adopt out the child?-- You wouldn't administer it to the mother until the doctor had given the instruction.

And in the case of a baby who's to be put out for adoption until that decision had been made?-- Well - yes, well, that decision would have to be made. The doctor would be aware of that decision when he prescribed it.

50

And how would the doctor be aware of that decision? Is there some notation made?-- It would probably be notated and he would also talk to the patient and ask her was she decided on that. The doctors had quite a responsibility to look after the patient whether the baby was being adopted or not.

Do you know whether that document that you have been shown, which is described as the report of investigation, was kept on the hospital file of the patient? Now, that document came to, what, the Department of Children's Services, as it then was?-- This document?

1

Yes?-- No, this is - yes, this would have - this is a children's services one, yeah. This is the one she filled out for the babies that were being offered for adoption.

10

You have given some evidence that you used to take turns and I think you said it was roughly on a monthly-----?-- About a month at a time, yes.

-----rotation where you'd go to all the hospitals and take the consents?-- Yes. All the maternity hospitals, yes.

And there were four of you that did this job?-- Mmm-hmm.

And you went on your own?-- Went on our own, yes.

20

There was nobody else present when you took consents?-- There was no need to be, no - well, we assumed there was no need to be.

I ask you then when you started work at the department in August of 1965 you said that you didn't have this period of training?-- Mmm-hmm.

Did I understand you correctly that that training took place over three years?-- Over three years.

30

And was it three hours at a time?-- Three hours at a time for three nights a week.

For every week of the year?-- Every week.

And Miss Whalley did the course at the same time as you?-- At the same time. As many other departmental officers did.

40

So in 1967 you and Ms Whalley would have been two thirds of way through the training course?-- We would have been - well, I don't think we started - they weren't ongoing all the time. I think - I don't think we started in '65, I think it was '66 before they started - they'd start a new group.

Yes?-- I think. I'm not sure. It could have been as long as '67, I'm not sure. I just can't remember that detail.

So, there may have been a period of time where both you and Ms Whalley had no training, no - none of this in-service training?-- None of the in-service training. There could have been a brief period.

50

In terms of the group - this in-service training course, what did it comprise? Was it a series of lectures?-- Well-----

INTERRUPTION BY TELEPHONE

WITNESS: -----I was told - I don't know-----

MR WILSON: Could you just wait?-- I thought it was going to stop.

10

MR DAUBNEY: That's a misunderstanding from one of our witnesses, your Honour. We will attend to that.

MR WILSON: Sorry, I was asking you, Mrs Cattanach, whether or not the in-service training course comprised a series of lectures?-- Yeah, and I was told - I don't know whether it was accurate or not - but someone did tell me when the university started a full-time associate work degree course they'd had prior to that a diploma course that they were scrapping and the department took it up and used part of it or all of it, I don't know which, as the in-service training course.

20

30

40

50

And who were the lecturers at the course?-- Oh, psychiatrists-----

1

Not their names-----?-- Yes, psychiatrists, psychologists, the director of the department - oh, a number of people.

And that covered the whole range of your responsibilities-----?-- Yes, covered the lot.

-----as a child-care officer?-- That'd be right, yes.

10

And those responsibilities included much more than the taking of adoption consents?-- Oh, yes, yes. The Act, that was part of it, and the regulations, and we had to be able to quote it all.

I was going to ask you that. Were you taken through the provisions of the child services-----?-- Yes.

Children Services Act?-- Yes, of course. As I say, we had to quote and - we had exam - three-hour exam papers.

20

And the adoption Act?-- And the adoption Act, yes.

And Ms Whalley would have attended those same lectures as you?-- Yes, we all did the same lectures.

You knew Ms Whalley for 30 years. You became very good friends?-- We were very good friends, yes.

30

Very close friends?-- I would say we were fairly close friends. We had very much the same interests, apart from the work.

You attended her wedding?-- Yes.

In terms of the procedures that were followed, do I understand this correctly, that a child-care officer, whether it be you or one of the other three - were all you nurses, the four of you?-- Yes, yes, well we were all registered nurses.

40

All former nurses?-- Yes.

One of those forms would come into the department, the report of investigation forms?-- Mmm.

Were they kept in a location where you'd have access to them?-- They were kept within the adoption section, which was very much almost a closed section. If you were doing as we used to call it the hospital rounds, taking the consents, you had access to the adoption department.

50

Yes?-- But every Tom, Dick and Harry in the department did not have access to those files.

When it was your turn to do the hospital rounds, were you given a bundle of these reports? I'm just wondering how you knew who to go and see?-- No, you'd collect them at the

hospital. I used to ring the hospital or I'd speak to Ms Robinson or whoever it was at the other hospitals and ask them were there any consents to be taken.

So that document was kept at the hospital?-- It was kept at the hospital till such time as we took the consent and then, that was it.

And when you went to the hospital, did you sit down and speak with whoever had completed the report of investigation to get some background information?-- Well, sometimes, perhaps; perhaps not some other times. I really can't specifically recall who I spoke to on each occasion I went.

For example, if you were given a form with a question mark, "Baby for adoption, question mark", did they ever come in?-- Occasionally they would. I see this one has one.

And what would that have signified to you?-- That the mother hadn't really made up her mind.

Would you then ask the person who completed the report of investigation, "What's the situation here?" "What's happening"?-- Well, I really couldn't be definite about this but I would imagine that Ms Robinson would not consider that part of her responsibility to query the mother about it. That was our job if we wanted to know the baby was going to be adopted or not, to quiz her about any part of it, other than things that are listed here. Not all of - not even all of that.

That notation, had you received it, would have signified to you there was some uncertainty in the mother's mind?-- Oh, absolutely, yes.

Do you agree that in those circumstances it was inappropriate to approach the mothers and attempt to persuade them to give up their child?-- It wouldn't be inappropriate to approach them but you wouldn't attempt to persuade them in any direction.

Do you accept that in so far as you spoke to these mothers of new born children, that they placed trust in you?-- I don't think they would have really looked at us one way or the other in respect of trust or mistrust. I couldn't be sure about that.

Do you accept that they placed-----?-- We were a stranger to them; why would they trust us straight off?

You were the person who was taking their new born child and finding new parents for it?-- We didn't even do that. There was a particular officer in the department that found the placements for them.

Do you accept that the mothers of new born children placed confidence in you?-- No, I wouldn't attest to that. I don't see why they should. As I say, we were a stranger. They

didn't know - they were a bit stressed at the situation. I don't think they would be thinking of us, really, as someone they could trust. After all, if you were handing your baby over to a stranger, not that we took them away, but you didn't feel that they would have any feelings towards you, but trust - not feelings of trust.

1

In terms of the approach which you took, did it make any difference to your approach whether the mother was under 21?-- No.

10

Made no difference at all?-- She was still the mother of the baby.

Did the age of the mother make any difference?-- No.

So if a mother was aged 15, you'd take the same approach as one aged 26?-- Oh, no, not a big age difference like that. I'd expect a 15-year-old to be somewhat more immature than a 26-year-old would be.

20

Yes?-- And so there could be a different approach.

Do I take it from that answer then that the maturity of the mother is something that you take into account?-- Oh, you'd take into account, yes.

And whether they understand the process of adoption?-- Well, you could only explain it once, twice or however many times seemed necessary and ask her did she understand it. You could only accept the fact if she said yes, that she did understand it.

30

It was your practice to show the mother the form that she signed?-- I'd go through it item for item with her.

Did you also show her the form?-- Yes.

And you signed it as well?-- I signed it, yes. Not this particular form; this was the adoption consent form.

40

No, no, I'm talking about your general practice?-- Yes.

In terms of mothers who were in the care and control of the Director of Children's Services, was that a relevant factor that you took into account when taking the consent?-- Well, you'd have to give it some thought.

How would-----?-- If she was in care and control, then, once again, it's in the Director's too hard basket.

50

What do you mean by the Director's too hard basket?-- Well, the director of the department, he determines what will happen to them, not the child-care officer.

Well, in terms of-----?-- And that would be a difficult decision to make. That's what I mean by the too hard basket.

In terms of a child who was in the care and control of the state, of the director?-- Mmm.

Firstly, how do you ascertain whether the mother is or is not under care and control?-- Well, the children Courts make that care and control order.

But when you go to the hospital, is there anything that - any information that you're given as to whether or not the person is the subject of such an order?-- I can't recall. As I said, I can't remember everything that happened nearly 40 years ago.

Well, deal with it a step at a time. The first contact you have is when you go to the hospital and are given a report form?-- Yes.

Do you know whether anything is provided for on there telling you whether the person is under care and control?-- Well, if a child, a juvenile, is under the care and control, usually they would be in a children's institution of some kind. Care-----

Even if they'd given birth to a child?-- Care and protection, they could stay at home with their parents or whatever, whatever accommodation they had. But when they're in care and control, this was only something that was applied to juveniles that were quite uncontrollable.

In terms of those people who were kept in institutions when they gave birth, they went to a hospital though, didn't they?-- They went to the hospital to have the baby, yes, and they would return to the institution from which they came afterwards.

And my question to you was how would you know whether such a person, a young lady, who had given birth, was the subject of a care and control order?-- Well, we would know where she'd come from. If she had come from a children's institution, we would know that.

How would you know that?-- The ambulance would bring them in. That information would come from the ambulance.

In terms of when you attend the hospital to take the adoption consent, how do you know how she's got to the hospital?-- Well, if she came in an ambulance brought from one of the children's institutions, I think this one is Holy Cross or something, she - we would have known where she came from. It would be on the chart. It would be mentioned on here that she had been brought in by ambulance from Holy Cross Home.

So that information you would ordinarily expect to be recorded on the report-----?-- That would be on the report, yes. I - I would imagine. I can't specifically recall any instance where it happened but it seems the logical way to have been done.

Just so we're not at cross-purposes, is it your evidence that your practice was not to make any specific inquiry of the

mother as to whether or not she was the subject of a care and control order?-- Well, under normal circumstances I'd have no reason to ask her. But as I say, if she came - she was under an order of care and control, she would have come from a children's institution - a girl's institution and we would have known that that's where she came from and that would have been - the hospital would have notified them of that.

1

Now, if you get a report-----

10

HIS HONOUR: You mean you wouldn't have asked because there was other information that you would certainly have had that would have told you that?-- Yes.

MR WILSON: Now, if the person who filled in the form correctly had told you that the lady had come from one of the institutions, did that make any difference then to the procedure that you followed?-- There is no reason why it should.

20

It wasn't a relevant consideration that that person was under the care and control of the Director of Children Services?-- No, I thought I had sort of clarified that bit, that we would have known that she was under a care and control order. That would have come to our - brought to our attention by somebody.

But in terms of taking the adoption consent, the process - the procedure that was applied by you was no different to a person who wasn't the subject of a care and control order?-- The actual procedure, no.

30

You didn't, for example, seek a representative from the director's office to be present?-- No.

When the consent was taken?-- Well, I suppose if you like to look at it in that, like, we were the representatives of the director's office.

In terms of the process that was then followed, if I could ask you whether you have any knowledge of that, once the consent was taken, did it form part of some record of the department?-- In the adoption section, yes.

40

And did you have anything to do with it thereafter?-- Not after that, no.

You had nothing to do, for example-----?-- Once the consent was signed, my part of it was done.

You didn't have anything to do, for example, with processing the actual adoption order?-- No, no.

50

In terms of the evidence that you gave before about revocation, was it your understanding at the time that the birth mother had 30 days-----?-- That's-----

-----To revoke her consent?-- That was laid down in the regulations, yes.

Were you aware that if an adoption order was made earlier than the 30 days, that stipulated the time limit?-- Would you mind repeating that question, please.

Were you aware that if an adoption order was made earlier than 30 days after the birth - I'm sorry, after the consent, that that provided the time limit within which the mother could revoke her consent?-- The adoption order was never made within the 30 days limit. Thirty days was set down, hard and fast rule.

10

And I take it, therefore, that when you gave advice to birth mothers, in terms of the time limit that was available to them to revoke their consent, it would only have referred to the period of 30 days?-- Thirty days from then on, yes. She had that period. She could come in probably on the 30th day and she would still have been able to revoke the consent.

In terms of those children who were returned to the institutions, who are under a care and control order, were any steps taken to your knowledge to ascertain from them within the 30-day period whether or not they wished to revoke the consent?-- Well, it was explained to them that they approach the department, and if they were in an institution, they were to approach whoever was in charge of that institution or the child-care officer who was overseer for that institution, that they want to tell them that they want to revoke the consent.

20

Did the child-care officer who took the consent have any part to play in that?-- No.

30

That was left to another officer?-- That's passed over to the-----

So you would rely on the birth mother getting in touch with the department?-- Well, getting in touch with someone. If the - the head of the institution she was in, the child-care officer that visited the institution, one or the other.

40

And you then rely on the person at the institution to get in touch with someone from the department?-- Well, it was their responsibility to do that, yes.

You were aware of the institution known as Karrala in 1967?-- Yes.

And it had an infamous reputation?-- I don't know about infamous. It wasn't the best place I suppose.

50

Do you accept that if a girl of the age of 17 was threatened to be sent to Karrala, that it would cause her fear and apprehension?-- Depend who threatened her. If the Children's Court Magistrate threatened her, yes, she would have reason to be apprehensive.

If somebody threatened her who she thought had the power to send her to that institution?-- Well, the only people who

would have had the power would have been the Magistrate of the Children's Court or the Director of the Department of Children Services. Nobody else had the power.

1

But in answer to my question, if a girl of the age of 17 thought the person who told her she might be sent to Karrala had the power to do so, you accept that would cause her fear and apprehension?-- It may well do.

Do you accept that in circumstances where the birth mother was undecided at the time you went to take the consent, that it would have been inappropriate for you to attempt to persuade the mother to give up her child for adoption?-- I would never attempt to persuade her one way or the other.

10

You gave some evidence about discussing the pros and the cons?-- Mmm, but that's not persuading her. Not in my book anyhow.

It depends how one puts the pros and the cons?-- Well, I did my best to put it in the most simple and understanding way I could. I could do no more.

20

In terms of the pros, what were they?-- Did she have someone to help her, parents, family? Did she have a job where she could have the baby with her, to be - probably other instances I can't think of right off the top of my head at the moment.

You say they're the positive things you asked?-- They're the positives to her keeping the baby.

30

So if she had someone to look after her?-- If she had someone to look after her who could support her and the baby adequately, yes.

If she was in a relationship where she intended to get married, would that be a relevant consideration?-- It would be a relevant consideration by anyone. She would have to get consent if she was under age, either parental consent or the Court's consent.

40

That would be something relevant to ascertain in terms of the - this giving of the advice of the pros and the cons?-- If she was thinking of getting married and she was marrying a young man in a steady job with a reasonable income that could support them, yes.

In terms of the cons, what were they?-- How was she going to cope, financially, would be the big one.

50

Yes?-- Because if she could - unless she could get a job where she could have the baby with her, there would be no question of her being able to work because she'd have to have someone to care for the baby.

Anything else other than that?-- Oh, not off the top of my head, no. There could be others, reasons.

And you say that these meetings that you attended usually lasted for about 30 to 45 minutes?-- Roughly, yes.

And during that time, would most of the discussion involve these pros and cons?-- Not most of it but that would definitely come into it, if she was undecided. The majority of them had already made up their mind.

Mmm?-- And explained the process of the adoption and what was on the form and they were ready to sign.

Mmm?-- It would be only someone who was undecided which you would go through that long - longer discussion.

And in those cases where somebody was undecided, the discussion of the pros and the cons would take most of the time that you spent with the birth mother?-- Oh, 50-50. I don't think most of it.

And in terms of your knowledge of Ms Whalley, you gave some evidence that she had strong, deep, religious convictions?-- Yes.

She disapproved of unmarried mothers?-- Not that I'm aware of.

In terms of the mid-1960s, can I suggest to you that pressure was placed on unmarried mothers to give up their children for adoption?-- No, I couldn't accept that at all.

And that pressure was placed by each of the four of you who worked as child-care officers of the department?-- Sorry, could I just have that again, please. I'm not sure I understood.

Yes. I had earlier put to you that there was pressure put on unmarried mothers to give up their children for adoption and you disagreed with that?-- I disagree with that, yes.

And then I'm suggesting to you that that pressure was put on young unmarried mothers by each of the four of you?-- Well, that's out of the question. No, it's not - didn't come into it at all. It would not have happened, I'm quite definite on that, with any of the others.

And I suggest to you that it was inappropriate for a child-care officer to approach a birth mother who was undecided as to whether to give her child up for adoption?-- Well, you'd have to approach her to find out if she'd made up her mind but you wouldn't approach her for any other reason that had she yet decided whether she was going to offer the baby for adoption or not, and then you would make arrangements to see her another day.

Do you say that the only inquiry that should be made is whether or not she's made up her mind?-- That's about all you do, yes.

It would be wrong, therefore, you would agree, to attempt to

get her to make up her mind at that consultation or that meeting?-- Well, I'd be quite confident saying that no attempt would ever be made at that stage. If she hasn't made up her mind, she hasn't made up her mind. That's it. 1

And therefore you agree that it would be wrong to try and get her to make up her mind at that time?-- Well, it would be wrong but I don't know that anyone - I don't think anyone would have done it, and I think that's what you want me to say and I can't agree with that. 10

Now, at the time that you attended on birth mothers, did you make any inquiries to determine what medication they were receiving?-- The medication was the responsibility of the doctor looking after them, not mine.

But in terms of their fitness to give you a consent, what inquiries did you make as to the medication they were receiving?-- Well, when you're a experienced registered nurse, if a patient is on a sedative of any kind, you can detect it by the way - their mannerisms. 20

Yes?-- You know they're under the influence of something. When you're taking a consent seven days after the birth of a baby, any medication that she would have had of a sedative nature or anaesthetic nature or anything else would have happened a week beforehand and its effects would long be gone. So there would - I don't know of any patient that was on - kept on sedatives for long period of time, say, a week. 30

Sorry, had you finished?-- Yes.

In terms of your practice, it was relying on the observations of the person concerned?-- Well, that's a big part of a nurse's job, observation.

And do you accept that it would be inappropriate to take a consent from a young, unmarried mother in circumstances where she wasn't in apparent full control of her faculties?-- If that became apparent to you, then you would go up to the sister in charge of the ward and ask her was she on any sort of sedation. 40

You'd make some inquiry?-- You'd make inquiry, yes.

And finally, Mrs Cattanach, can I ask you these couple of questions. In terms of a young, unmarried mother who you were visiting for the purpose of taking a consent, if that lady was under the age of majority, under the age of 21, did you take any steps to have a parent or family member or some independent person there?-- No. 50

Thank you. I have nothing further, thank you, your Honour.

RE-EXAMINATION:

1

MR DAUBNEY: Why not?-- Why not? Because that would be seen as inviting parental pressure.

You were asked some questions about the circumstance where a birth mother had been in one of the institutions under care and control prior to being admitted to hospital for delivery. You have a copy of a report of investigation before you there?-- Mmm-hmm.

10

Under the mother's details do you see, "Address prior to birth: Holy Cross"?-- Mmm-hmm.

How many Holy Crosses were there in Brisbane in 1967?-- One.

And what was your understanding as a child-care officer of Holy Cross?-- It was a - virtually a secure institution for teenage girls who had proved one way or another they were somewhat unmanageable.

20

It was one of the institutions about which you were talking about before, was it?-- Yes, one of the institutions, yes.

You were asked questions about a mother being administered with milk suppressing medication?-- Mmm.

At the risk of stating the obvious, would one need to have recourse to the hospital file in order to ascertain when the administration of that medication commenced?-- Well, if you were there to take a consent, really, that doesn't come into it but you could have - well, I worked at the hospital for so long, most of the staff there knew me and they allowed me to browse through files, the hospital files and things, and to go through the nurseries and examine the babies myself.

30

Sorry, I think we're talking at cross-purposes?-- We're talking-----

40

I'm talking about the - a note - if a note was kept of when the administration of that medication-----?-- Oh, it would be on the file, yes.

That would be on the file?-- That would be on the file, in the doctor's writing.

And you would need to have a look at the file to be able to find out when the dosage started?-- Yes.

50

And when it finished?-- Yes.

And so on. The same would apply to any sedatives or any other medication?-- Mmm, mmm.

That the mother had been on, antibiotics, whatever?-- Yes.

You'd need to refer to the file?-- Mmm.

1

In order to see when the medication started, what the dosages were, when the medication was ceased and so on?-- But that would be unnecessary from our point of view. They're just there to see her. It would only be if there was some sort of sedative that she'd been given.

I understand that. I suppose what I'm asking is that's where the record would be?-- That's where the record would be.

10

Thank you, your Honour. May Mrs Cattanach please be excused?

HIS HONOUR: Mrs Cattanach, you spoke of child-care officers visiting institutions. When you mentioned that, did you have in mind an institution such as Holy Cross in 1967?-- Yes, it was one of them.

Can you recall now with what frequency child-care officers went to Holy Cross at that time?-- It would be up to the child-care officer involved as to how often they went, how often they saw the necessity to attend. I had nothing to do with Holy Cross myself at all. I was involved with another girls' institution on the side of town.

20

Is there anything arising out of that?

MR WILSON: No, your Honour.

MR DAUBNEY: Excuse me, your Honour. No, thank you, your Honour. Unless your Honour has anything further?

30

HIS HONOUR: Thank you, Mrs Cattanach, you're excused from further attendance.

WITNESS EXCUSED

40

MR DAUBNEY: Is that a convenient time, your Honour?

HIS HONOUR: 2.30.

THE COURT ADJOURNED AT 1.58 P.M. TILL 2.30 P.M.

50

THE COURT RESUMED AT 2.29 P.M.

1

MS PHILIPSON: I call Sister Kay Lane.

KAY MARGARET LANE, SWORN AND EXAMINED:

10

MS PHILIPSON: Sister, could you tell the Court your full name and address, please?-- My full name is Sister Kay Margaret Lane, 41 Rowena Street, Kenmore.

You are an archivist with the Sisters of Mercy?-- Yes, I am.

And did you undertake some investigations and searches into the legal identities of a Mother Lian from the Holy Cross home and a Sister Isabelle?-- Yes, I did.

20

And are you able to tell the Court the legal name of Mother Lian?-- Mother Lian was Mary Margaret Slattery.

Marry Margaret or Margaret Mary?-- I beg your pardon, Margaret Mary Slattery.

And Sister Isabelle's legal identify?-- Was Margaret Condon.

30

Thank you. I have no further questions?-- Thank you.

MR WILSON: No cross-examination.

MS PHILIPSON: May the witness be excused?

HIS HONOUR: Yes, thank you. You are excused from further attendance?-- Thank you.

40

WITNESS EXCUSED

MR DAUBNEY: Thank you, your Honour. There's no objection to Miss Feil, who is quite elderly, giving evidence by phone, so may we have just a moment so she can call in, please, your Honour?

50

HIS HONOUR: Yes.

MR DAUBNEY: Thank you.

EUNICE LILLIAN FEIL, SWORN AND EXAMINED, VIA TELEPHONE LINK:

1

MR DAUBNEY: Hello, Miss Feil, can you hear me?-- Yes.

It's Martin Daubney speaking. I'm counsel for the defendant in this case?-- Yes.

Is your full name Eunice Lillian Feil?-- That's correct.

10

Do you live at unit 32 64 Thorn Street Kangaroo Point?-- That's correct.

You are now retired?-- Yes.

May I inquire how old you are?-- I'm almost 81. I will be 81 on the 3rd of December this year.

Thank you. Were you formerly employed at the Department of Children's Services?-- Yes.

20

Were you employed in the Department of Children's Services from about 1967?-- From 1967, yes.

Before that had you trained as a nurse?-- Yes.

When did you do your nurse's training?-- Well, I did my nursing - my general nursing training three years at Toowoomba Hospital, between the years '42, '43, '44. Then I went to the Brisbane Women's Hospital and completed my obstetrics and midwifery training in 1945. I then - I'm not too sure of the exact year but I decided to do my child welfare training which I also did in Brisbane at St Paul's Terrace and I think that was the next certificate, nursing certificate which I obtained. It could well be that before I did that I went down to Victoria and nursed down there for some time and did another post-graduate course in infectious diseases nursing. I think I did that before I did my child welfare training. After I finished my child welfare training and gained that certificate in maternal and child welfare I worked at Biloela. I went up and worked at the maternal and child welfare clinic in Biloela. We looked after the Biloela mothers and babies and also opened up clinics in all the surrounding country areas. And then after I left Biloela I went back to Toowoomba and worked at the Toowoomba maternal and child welfare clinic and surrounding areas for another year. And do you want me to go on from here?

30

40

Yes, please?-- Well, then from there I went into the RAAF nursing service and had a commission in the RAAF nursing service for four years. I served at Laverton and Amberley and in Toowoomba and I also had a year up in Japan and Korea. The Korean war was - broke out and I was sent up there and I served in Korea. I could mention I guess that we - the RAAF evacuated 12,700 sick and wounded United Nations forces from Korea to hospitals in Japan.

50

After your airforce service, did you come back to work in the hospital system?-- Yes.

1

Where did you work then?-- Yes. I decided to go back to Victoria and I gained - I did another post-graduate course in nursing of people with tuberculosis and I worked at Griswold - I was down there for about a year and I worked at Griswold Sanitarium outside Melbourne and also at the - oh, the hospital there in the City of Melbourne, I just can't think of the name of it. I was there for about a year. And then the chest clinic had opened in Brisbane in the meantime and with the drive to try and wipe out tuberculosis and I started work as a nursing sister at the chest clinic in George Street and I worked there for 12 years. I might mention that in those days there was no such thing as a chest hospital. There were no beds around anywhere but there were quite a few people around with tuberculosis and we treated people at home, and that included some children who were suffering with tuberculosis. We also at that time vaccinated I suppose you could say hundreds of school children with BCE vaccination, which was to - for the prevention of tuberculosis.

10

20

Where were you working before you went to the Department of Children's Services?-- I was working at the chest clinic.

All right. So you went from the chest clinic to work for the Department of Children's Services in 1967?-- That's correct.

And in what job were you employed in at the Department of Children's Services?-- I was employed as a child-care officer.

30

Right. And as a child-care officer were you one of the people authorised to take consents for adoption-----?-- Yes, that's-----

-----from mothers?-- Yes, that's correct.

Right. And where were the mothers or at which hospitals were the mothers?-- Well, they were at - the majority, I suppose, were at the Brisbane Women's Hospital but there were also mothers surrendering babies for adoption at the Mater Mother's Hospital, at Boothville Salvation Army Hospital at Windsor and occasionally at the Corinda Maternity Hospital.

40

How often - sorry, I will say that again. How often did you attend at the hospitals in those days for the purposes of taking consents for adoption?-- We went to the hospital three days a week, I think it was Mondays, Wednesdays and Fridays, from memory, but the mothers, of course, were not allowed to sign a consent until I think - within five days after the birth unless a legally qualified medical practitioner gave a certificate stating that the mother was in a fit condition to give a consent early. So the mother's were really all ready to leave the hospital by the time we arrived to take the consent.

50

How did you find out which mothers to go to for the purposes of taking the consents? What was the process that-----?-- Well, the process was, as I remember it, in the 1960s single mothers who came to the Brisbane Women's Hospital to give birth would have been spoken to by Miss Robinson. Miss Robinson was a middle aged lady at the time, a clerk at the hospital and I think she was responsible for seeing that the child's birth was registered. She was also required to partly complete another form called the Report of Investigation regarding all single mothers.

All right?-- This was in compliance with 85 - section 85 of the Children's Services Act said that the birth of the babies from all the single mothers had to be reported to the director of the Children's Services Department and he was responsible for making sure that these children were being adequately cared for. So, Miss Robinson probably would have spoken to the lady concerned in this complaint and she would have ascertained the details required for the registration of the birth and she would have partly completed this form or the Report of Investigation form and at that time she would have asked the mother if she was keeping the child or having it adopted, and when mothers advised Miss Robinson that they were having the baby adopted she would write on the bottom of the sheet "baby for adoption". She would write that on the bottom of the Report of Investigation form. Single mothers or mothers not married to the father of the child who had indicated to Miss Robinson they were keeping the child would also have the same Report of Investigation form partly completed by Miss Robinson and at the bottom of this form would be printed "baby not for adoption". So, when we arrived at the hospital we would go into the office and see Miss Robinson and she would hand us this - these forms and - which were all to be taken back to the Department of Children's Services in compliance with section 85 of the Children's Services Act. This section was later deleted, I might add, some years later because it was felt that it discriminated against single mothers. And, anyway, we would - we would be concerned with the sheets - the forms that Miss Robinson had filled out.

All right. So you'd collect the forms and you'd mention that some of the forms would have "baby not for adoption" written on them; that is correct?-- That's correct, yeah, that's correct.

Did you have anything to do with those mothers where the form said "baby not for adoption"?-- No, nothing.

What did you-----?-- I purely put the forms in my bag and took them back to the Children's Services Department. I didn't see them at all. I was only concerned with the forms - the one from mothers where Miss Robinson had written on the form "baby for adoption".

Did you ever encounter any situations where the mother at that time was undecided as to whether the baby was going to be adopted?-- I will just think for a moment. I can't recall

seeing any mothers. I can't say I didn't because this is a long time ago and - 30 years ago, so it's a bit difficult to remember but I can't recall seeing any mothers who were undecided about adoption.

1

All right. So, when you went to see or when you saw the forms that indicated that the baby was for adoption would you then go and see the mother?-- Yes.

And did you have a-----?-- I would first of all go to the baby's nursery-----

10

Yes?-- -----and see the baby. The baby's medical documents were made available to me and I would - by this time a paediatrician would examine the baby and decided - made a comment regarding the baby's fitness for adoption or if the baby wasn't fit for adoption they would make a comment as to - as to why it wasn't fit for adoption, but first I would first of all do this before I went to the mother.

20

Then when you went to the mother, assuming that the baby was fit for adoption, did you have a regular practice of how you dealt with the mother?-- Oh, yes, yes.

What did you?-- Regarding the babies who weren't fit for adoption, we - it didn't mean that we - that we didn't - we didn't take an adoption consent because a lot of them could be adopted later on. I am just trying to think. I mean, if they were a young single mother and they had no way of looking after the child we didn't - we didn't say that their child couldn't be adopted, but we - we would have perhaps taken longer to place those babies to adopted parents because they might have had some - some health problem that not all adopted parents would want to accept. We had what was called in those days a deferred adoption list and we had a special lot of parents who were willing to take a child who perhaps wasn't perfectly medically or what was called medically fit for adoption. So, I mean, I - if the mother had no way of caring for the child the director would still take it into care.

30

Right. Coming back, then, to you going to talk to the mothers-----?-- Yes.

40

-----can you tell his Honour what process you went through when you were talking with the mothers about consent for adoption?-- Yes, yes. Well, I would go to the ward where the mother was, which was indicated on the forms that had been given to me. I would approach the mother and tell her that I'd come to take the consent to the adoption of her child. I'd introduced myself, say who I was, where I was from. I would find a secluded part of the hospital which - where we could speak privately. From memory, I think it was usually the solarium of the hospital which was a large area up one end of the hospital ward. We'd both sit down and I'd produce a form of general consent by a parent or guardian to an adoption order. I'd then - I'd write - I had the child's name. The mothers had been asked to name the child when they were - Miss Robinson registered their birth, and I would write the

50

child's name at the top of the form. From memory I think it would have said, "In the matter of such and such a child". The child - and then that would be followed by the mother's name, the mother's full name and address, who was named on the form as being the mother of the child who was born at Brisbane in the State of Queensland on - whatever date it was, and the mother - I then pass that consent form over to the mother and ask her to read it through from beginning to end.

And after she'd read it through?-- After she'd read it through I'd ask her if she understood it and if she couldn't read I'd read it through fully from beginning to end. The mother would hand the form back to me and then I would read out aloud the points that were very important with the consent.

What were the very important points with the consent?-- Well, I will just refer to a note I have made here for a moment. It is an important point. I have lost my notes, but anyway I can remember it. The important part of the consent was that the mother understood the nature and effect of an adoption order which application may be made. That was one point I remember on the form.

And what did the mother need to understand about the nature and effect of the adoption order?-- Excuse me. I will have to just look at the consent and I can read it to you - exactly what I said to them.

Are you looking for a form of consent, are you?-- Yes.

A form of general consent?-- Yes, form of general consent. I have it now.

Right?-- It said, section 1, "I understand the nature, art and effect of the adoption order for which application may be made", and I would read this out aloud to her then. "In particular I understand that the effect of such order will be to deprive me permanently and totally of my parental rights in relation to the said child". So I sort of emphasised that and I said, "Now do you understand that?", and when they said yes, they understood it I'd continue, they "consented to the making of an adoption order in respect of the child in favour of any person whose application for adoption order had been approved by the director", and then I'd - on this form I would cross out - there was a part there where it said, "The consent of such and such a person who is the father of the said child is also required". Well, I'd cross that out and I'd get the mother to initial that later because these mothers were all single mothers and it wasn't as though it was a legitimate child being adopted. We occasionally had legitimate children being adopted, but in this case no other - I would read that, "No other person is required to consent to the adoption of the said child", and then I would ask the mother if she wanted the child brought up in any particular religious faith. The majority of mothers didn't have any great preference regarding this and we would write in there, "Child to be brought up in any faith", but the Catholic mothers very often said they -

who were raised Catholics themselves - very often said they desired that child would be brought up in the Roman Catholic faith and if that was what they said that was what was written, because back at - we kept full adoption lists of people, Catholics who wanted to adopt a boy, Catholics who wanted to adopt a girl, Protestants who wanted to adopt a boy or Protestants who wanted to adopt a girl, and anyway having - having satisfied myself that the mother understood this I would ask her to sign the consent and I would also - I don't think at that - if I remember rightly in those days there was anything on the form that the mothers signed back in 1967 that said anything about revocation of consent but I would explain to the birth mother that if she signed an adoption consent but later changed her mind about having the child adoption - adopted she had 30 days from the day she signed the consent or until an adoption order was made, whichever was the earlier-----

All right?-- -----in which she could revoke her consent to the adoption. And I gave each - each mother a departmental card with the address and phone number of the department and told them if they changed their mind about having their child adopted and wished to revoke their consent to the adoption to come in to the department to ring up and/or come in to the department immediately, and I did stress to them that adoption orders for children because the number of children being given up for adoption - children that had been - were doing well and the paediatrician had said were medically fit for adoption they were placed fairly soon and - so the mother didn't have too long in which she could revoke her consent unless the child for some reason was kept in the hospital for 30 days.

All right. I'm sorry?-- I told mothers who were giving up their children for adoption they could phone me at a later date and find out if everything had gone well and that the child had been placed with suitable adoptive parents, and some of them took advantage of this and rang me later. Others didn't.

What about the mothers seeing the child, did you forbid mothers from - in this situation-----?-- No, no.

-----from seeing their children?-- No, no, no, never. No, the babies that were up for adoption were always on a different floor of the hospital to where the mother was, so it meant that I - I took the mother and - before she signed the consent I took the mother down to the nursery where the baby was and spoke to the - whoever was in charge in the nursery and the baby's cot was wheeled over to the door of the nursery glass door and the baby looked - the mother looked at the child through the door of the nursery. I can't remember - I don't think any mothers ever asked me if they could hold the child. I can't remember any. If they had have I think whoever was in charge of the nursery would have given them permission to hold the child but I - I don't recall anyone ever asking me to do that.

Do you remember this: when you started working at the Department of Children Services, did you undergo any training or course of studies with the department?-- Oh, yes, yes, yeah. Yes. 1

Do you recall what that was?-- Yes. I made a few notes here about that, if you would bear with me for a moment. Yes, that started soon after I was appointed as child-care officer. It was a two-year - what they called a two-year in-service training course, attending lectures two nights a week for two years I think it was. It was at least two years, mmm. I think it was two years. Subjects studied were psychology, child guidance law and administration, and the lectures were given by doctors and psychologists from the Child Guidance Clinic and also by a member of the legal profession. And I think we had a few little exams along the way if I remember rightly. At the end of the course, though, we had a - one big exam which went on for two - two nights. I was successful in passing this examination in all subjects we'd studied. I don't think there's much more I can say about that. I had done a fair bit of reading by that time. 10 20

All right. Did you know Jay Whalley?-- Yeah, I knew Jay, yes, I know - I worked with her for several years.

Were you friendly with her?-- Yes, yes, we were friends. We didn't see each other away from work but we were friends. Would you like me to say my opinion of Jay Whalley or?

No, perhaps if you can just listen to the question and answer the questions as we ask them?-- Yes, yes. 30

How long did you work with Jay Whalley for?-- That's a bit of a hard one.

What, several years or many years?-- Oh, several years, several years.

All right?-- I'd say, yes, several - several years. 40

And - and-----?-- I retired, well - I retired 1984 and she was still working there, I think, then. 1967 to '84 I knew her.

Yes. During that time did you observe her work practices?-- Yes. Oh, yes. I didn't closely observe it because we were so busy doing our own work but, yes, I thought she was a very capable lady.

She's been described in these proceedings as being not friendly in her dealings with a prospective adoption mother, as being dominating, as bombarding the mother with information or requests or statements, as threatening the mother with-----?-- What was that? 50

With threatening the mother?-- Threat - threatening.

With bad things happening to the mother if she didn't give her baby up for adoption. Is that-----?-- What's the last little

bit you said?

Threatening the mother?-- Threatening, yes.

With bad things if the mother didn't give the baby up for adoption. Is that-----?-- No, that doesn't describe Jay Whalley. No, no, I don't think she was that type of woman. I had-----

Well, just-----?-- I never saw her attesting to an adoption consent but I think - knowing her as long as I did, I think she was a woman of integrity and that she - she would have - she would have read through the consent form and explained to the mother that in signing the form she was giving up all parental rights to the child and she would have also, of course, asked her if she wanted the child to be brought up in any particular religious faith.

But in terms of the emotional sort of terms that have been used, her threatening and being dominating and that sort of thing, was that consistent with the Jay Whalley that you knew?-- No, not at all. Not at all.

Stay there, Ms Feil, there'll be some more questions now from Mr Wilson. Thank you, your Honour, that's the evidence of this witness.

MR WILSON: Thank you, your Honour.

CROSS-EXAMINATION:

MR WILSON: Ms Feil, can you hear me?-- Yes, Mr Wilson.

When in 1967 did you start work as a child-care officer?-- Yes.

Do you recall what part of the year?-- Do I recall it?

Mmm?-- Oh, yes, very well.

When did you start?-- I don't know the exact date.

Do you recall whether you worked most of 1967 with the department or did you start towards the end of the year?-- Look, I'd have to - I'd have to look it up. If I see - I was attested to take consents for adoption in 1967, so-----

Now, you've obviously got some documents in front of you there, have you?-- Oh, I've just got a few notes that I've made but I haven't got the date of my starting work as a child-care officer. I don't know where that would be. I'd probably have to ask them in at the department.

What notes have you got in front of you?-- Oh, just notes I've

jotted down, trying to think of what I might be asked today. 1

And have you got copies of documents such as the general form of consent?-- I've got a copy of that, yes.

The report of investigation?-- I haven't got that.

Any other documents?-- No, no, I've just got a copy of an adoption consent, which I think might have been added on to - I don't think it's quite the same consent that I would have taken back in those days. I think it's slightly different but I have got a current form of consent. 10

Whenever you started in 1967 with the department, do you agree that there were then four child-care officers who were responsible for taking consents?-- I don't know.

Do you know a lady by the name of Mary Cattanach?-- Yes.

And you knew Jay Whalley?-- Yes. 20

And yourself?-- Yes.

Was there anyone else who took consents?-- I've got - I've got a list here somewhere, if you'll bear with me, and I'll read through the list and see if I can see a name I recognise.

Well, no, I-----?-- Pardon?

Had you finished?-- Well, do you want me to have a look at this list? 30

All I wanted to know, really, Ms Feil, was whether there was a small group of you who were entrusted with this task of taking consents and I have suggested to you that there were really four of you, perhaps one person in addition to yourself, Ms Whalley and Mrs Cattanach?-- Well, I've found the list now. People who were attested - authorised in writing to take consents, and I'm just going through it. There's a Margaret Garrett. She was a child-care officer and she - she - at the time, appointed about the same time as I was. She could have been attested. According to this list, she could take consents. There was Suzanne Trevenan, who left later to be married, and Patricia Trusdale. They could have both taken consents about that time. They were also child-care officers mentioned on this list. 40

It sounds like there were a number of people who were entrusted to take these consents; is that right?-- Well, I - I - according to this list I've got here that came to me, I think, from Mr Dearlove's office, and there were a number of people, yes. 50

Now, you said that you were attested to take consents?-- Mmm.

What did that involve? Did you have to pass some test or complete some paperwork, or what was involved in you being one of the people who was attested to take consents?-- Well, I

think the very fact that I'd been appointed as a child-care officer and all my - I might - I didn't add when I was talking about my experience as a child-care officer I was also a Justice of the Peace at the time. But I would say my qualifications as a child-care officer were considered sufficient-----

And-----?-- -----to make me capable of taking an adoption consent.

And it is the case that you were attested to take adoption consents literally from when you started work as a child-care officer and not after you had completed the course of training that you've spoken about?-- That's probably correct, yeah.

In the course of training that you've spoken about-----?-- I - I don't think I took any adoption consents before I - in 1967 I might add. And Jay Whalley had been at the department for longer than I had at the time. I don't know how long she was there before I arrived. But I don't remember taking consents for a few years after that, probably about in mid-1970 I think. I'm not sure.

So you didn't, to your recollection, take consents in 1967?-- No, no, I don't think I did.

So the procedure you have spoken about in terms of going to the hospital?-- Yes.

And the various things that you did was all the matters that you attended to from 1970 onwards?-- Well, I don't think it had changed. I think it - I think - I think it was the same - it would have been the same. Ms Robinson was there in 1967 and I recognise her - her writing on something - some form I looked at the other night, on the TV of all places-----

But I just-----?-- I don't think there'd have been any change in the - any change. The consent form was just the same in 1967 as it would have been in 1970.

Do you know when the change was made to the consent form to include the information about revocation of the consent?-- Well, no, I don't know but I notice this consent form that I have been given recently to read to help me with this has got something on it about revocation of consent. I don't think, from memory, that the consent that was signed - the consents that I took even in 1970, I don't think they - they had anything on the consent form about revocation. I don't know when that was added.

But do I understand it correctly that the evidence you gave about what occurred when a consent was taken was evidence of what you did from 1970 onwards?-- Well, I don't really know. I worked in the adoption section from 1972 to '76 and I know what I did then but prior to that, I - I was from time to time asked to go to the hospital and take adoption consents. So - what was your question again?

The evidence you've given, and you gave it at some length, about going to the hospital, speaking to Ms Robinson-----?-- Yes.

1

-----going to see the mother-----?-- Yes.

-----the process that you went through?-- Yes.

I just wanted to make sure that that was evidence of what you did from 1970 onwards?-- Well, I know I was at the hospital in 1969 because I spoke to Ms Whitty, the social worker at the hospital in 1969, and she told me I was there then. So I would say I took occasional consents at the hospital. I didn't do it full time. I did it full-time from '72 to '76. But I would have been up there, I think, prior to that. I was told - I probably did it for a few weeks at a time.

10

Can I ask you this then?-- Hmm?

Can I ask you this?-- Yes.

20

Either in your employment with the department or in this course of training that you were given, was any attention drawn to any procedures that should be followed when consents were taken?-- I don't - I don't know to be quite honest.

When you went to take a consent?-- Mmm.

Did you do that by yourself?-- Yes.

30

There was never anyone else present?-- No, no.

Can I ask you this: if you went to visit a mother who was a minor, under age, did that make any difference to the procedure that you followed?-- I don't think so. If there was any - if there was any doubt about the mother's capacity to understand what she was signing - I can remember one instance I asked the mother's - the mother's - I think it was her brother, from memory, to be present when she took the consent - when I - when I took the consent.

40

I'm going to-----?-- But, no, no, not as a rule. It didn't really make a difference, the age of the mother.

Did you make - I'm sorry, I'll start again. If the young mother that you were going to visit was a person who was the subject of an order for care and control by the Director of Children's Services, did that make a difference to the approach you took?-- Well, I've thought about this. I can't recall ever - ever taking a consent from a girl who was in care and control. I don't think I ever did. I think I'd remember if I - if I had have done so.

50

You have given evidence that the report of investigation that you received may have a notation on it, "Baby for adoption"?-- Yes.

Or, "Baby not for adoption"?-- That's right.

Do you recall seeing reports where there was a question mark as to whether the child was for adoption or not?-- I didn't recall - I didn't - did you say I recalled it?

No, do you recall-----?-- Oh, do I recall. No, I don't. I don't.

Was it your practice only to take a consent from a mother who had made a decision to put her child up for adoption?-- That's correct, yes, yes.

10

Did you ever have to deal with a mother who was uncertain as to whether or not to put her child up for adoption?-- No, by the time I talked to the mother - mothers were tearful and sad about putting a child up for adoption but they'd made their decision and they were - they were ready to sign the consent by the time I - I saw them.

Were there some mothers who were uncertain when you first met them but that uncertainty was removed after you'd finished speaking to them?-- No, I don't think so. I think - I can't recall seeing any mothers who - who - some mothers were sad about the whole process but I can't remember seeing a mother who wasn't ready to sign the consent.

20

Did I understand your evidence correctly that the babies who were to be adopted were kept in a nursery on a different floor-----?-- That's correct.

30

-----to the birth mothers?-- Yes.

And the birth mothers were in the unmarried mothers' ward?-- No, there was no unmarried mothers' ward, not at - I don't recall any unmarried mothers' ward. The mothers were in with all of the other mothers, as they were scattered all over the hospital.

You're saying that women who had given birth and were putting up their child for adoption were in the same ward as mothers who were breastfeeding their babies?-- Well, I don't recall them being held in a separate wards, so they must have been I suppose.

40

Do you recall whether - I'm sorry, I'll start that again. As I understood your evidence, before you went to see the mother and before you had the consent for adoption form signed, you first visited the nursery to have a look at the baby?-- Yes.

And there had been certain babies as it were earmarked for adoption?-- By the time I - I visited the nursery and I saw the babies whom I'd been informed had been given up for adoption - would you mind repeating your question.

50

Yes. The nursery that you went to?-- Yes.

Contained those babies who were, I use the word "earmarked" or selected or given up, however you want to describe it, for

adoption?-- Yes.

1

They were kept in a separate nursery?-- Yes.

And you went there first?-- Yes, because I wanted to be able to tell the mother about the baby, if it was - if it was well and-----

Is that because the mother wasn't permitted to see the baby?-- The mother was permitted to see the baby.

10

Well, why would you need to tell the mother whether the baby was well or not?-- Oh, I would just tell her that I'd seen the baby. I wouldn't - I don't know if I'd tell her the baby was well. I'd tell her I'd seen the child because I wanted to know before I went to the mother if the pediatrician had - who examined the child had said that the baby was medically fit for adoption.

When you took consents from birth mothers, apart from filling in the form of general consent, a copy of which you have in front of you, did you make any separate notes on the hospital file of the mother?-- No.

20

Did you make any separate notes or report to the Department of Children Services?-- What do you mean by separate notes?

Like a file note of an interview that you had with the mother, case notes, however you want to describe it, of the conversation that you had with the birth mother?-- No. No, I don't think I did. I went back and talked to the placement officer about the mother and the baby and gave as much information as I could about the mother and the baby and-----

30

So in terms of your discussions with the birth mother-----?-- Mmm.

-----the only document that was generated as a result of that was the form of general consent, which she signed and I presume you signed as well?-- I signed it as a witness.

40

Yes. And the birth mother would have signed it as well?-- Exactly. Yes.

But you didn't make any other notes which were attached to that or formed part of the file which you then passed on elsewhere in the department?-- Oh, I would - I would have made some notes about the young lady whom I'd seen.

When would you have done that?-- Oh, when I - when I went back to the office before I - you know, the personality of the mother, that type of thing.

50

Did you do that in every case?-- Yes. Yes, I did.

Are you sure about that?-- Well, I'll just make sure what you're asking me is correct. I'd go back - I'd have written down a fair bit about the physical attributes of the mother,

her height, her colouring-----

Isn't that information all on the report of investigation?-- It would - I think it was on a report called "Expected Child For Adoption"; I'm not quite sure. But-----

Well, let's deal with these forms?-- Mmm.

There's a report of investigation?-- Mmm.

10

Do you accept that?-- Do I what?

Do you accept that there was a document called "Report of Investigation"?-- Yes, yes.

And that's a document that you were given when you went to the hospital?-- Yes.

And do you accept that that document contained details of the physical characteristics of the mother?-- Yes.

20

And the father where that information was supplied?-- That's right.

And it also contained details of the religion of the mother?-- Yes, I think it did.

Particulars of the name of the child?-- Yes.

The date of birth of the child?-- I think it - I don't know, it probably had that on it. It's hard to remember. It's so many years ago.

30

And the date - I'm sorry, and the place where the birth mother was in the hospital?-- The what?

The place where the birth mother was in the hospital, that is, what ward she was in and what bed she was in?-- No, I don't know - yeah, well, it - it would have had that on it, otherwise I wouldn't have known where to have found the birth mother.

40

Exactly?-- Mmm.

And you have also referred to a questionnaire of an expected child for adoption?-- Yes.

Is that another document that you were given at the hospital?-- No, I wasn't given that document at the hospital. That was - that was a document that we made out later. See, these - these report of investigation - I made out - when I went back to the - the office, I made out a separate form for passing on to the placement officer. The placement officer didn't receive the report of investigation form.

50

And the form that you passed on to the placement officer was that described as the questionnaire for expected child for adoption form?-- From memory, I - I think it was. On that

form I would have described the name of the mother, the age of the mother, all her physical characteristics, her occupation, her education.

1

Yes?-- Her family.

And details-----?-- Her - her health, any hereditary history in her family of illnesses such as epilepsy, diabetes, things that should have been passed on to the adoptive parents.

10

Whether she'd had any previous children?-- No, that wouldn't have been put on it.

Any social interests that the mother had?-- Yes, that was put on it.

And any general remarks that you might have?-- Yes, something about the personality of the mother and-----

And in so far as-----

20

HIS HONOUR: Will you allow her to finish, please, Mr Wilson.

MR WILSON: I'm sorry, your Honour?-- Pardon?

Had you finished your answer, Ms Feil?-- Yes, I think so.

On that form you would also include the particulars you were given, in particular the father of the child?-- Yes, that's correct, yes.

30

When you said before you would make of notes of the mother and your discussions with her, can I suggest to you the notes were made on this form, that is the questionnaire "Expected Child For Adoption"?-- It was on the form that I gave to the placement officer.

Yes?-- I think it might have been "Expected Child For Adoption". It is difficult to remember, but it was on a different form. It wasn't - I didn't hand the report of investigation form to Ms McDonald. I wrote out another form.

40

I understand that?-- Mmm.

Now, I may have misunderstood your evidence before but did you say that those reports of investigation which were marked, "Babies not for adoption" or, "Baby not for adoption"?-- Yes.

You might still have taken a consent?-- Why would - did you - say that again, please.

50

I said I may have misunderstood your earlier evidence. I was asking you whether there were circumstances where a report of investigation contained the comment, "Baby not for adoption"?-- "Not for adoption", no, no-----

Whether you would have still taken a consent because-----?--

No, I wouldn't have.

Because the mother might have changed her mind?-- No, I wouldn't have. The baby is not for adoption, if that was marked on the - on the mother's form, I wouldn't have - I wouldn't have gone near the mother. I wouldn't have approached the mother. I only approach the mothers whose forms were marked "baby for adoption".

10

20

30

40

50

And you never-----?-- And - I mean, some of these mothers whose babies weren't for adoption, they were older women. They were quite possibly living in a stable de facto relationship but they weren't married to the father of the child and I didn't - didn't go near them.

1

You said that when you spoke to the birth mother you found a secluded part of the hospital to speak to them at?-- Yes.

Did you make any inquiries as to the mother's capacity at the time to understand what was occurring; that is, whether she was on any medication or drugs?-- I don't think so, but I - I would have known from my nursing experience if that were the case. But, no, I think had that been the case that the sister in charge of the ward who would have been well aware that I was there would have told me if the mother was on any medication or drugs. I think I would have been informed by the nursing staff.

10

And you agree that you would also form your own impression from your experience as a nurse?-- I probably would. Oh, well, I don't know about medication, but if the mother was drugged I would have known. I mean, I never came across a mother who was drugged but I - I think I would have known if the mother was under the influence of drugs.

20

And in those circumstances you wouldn't take a consent?-- Well - oh, no, no. It never happened. If I thought a mother was under the influence of drugs, sedation, that type of thing, I wouldn't have taken a consent.

30

There was some social stigma attached to single unmarried mothers, young, unmarried mothers in the 1960s, wasn't there?-- Oh, yes, a good deal.

When discussing with those people placing their baby for adoption - placing her baby for adoption, did you discuss the pros and cons of that course of action?-- Well, I didn't - I didn't go into great detail about that. I suppose I was in a position to tell the mothers that we had quite a long waiting list of people who'd been approved by the director as being suitable people to adopt a child and if they decided if - if they had decided to have their child adopted we were confident that the child could be placed with suitable adoptive parents.

40

Can I ask you then whether your practice was this, and when you took the consents perhaps in 1969 but from 1970 onwards that you only took them from mothers who had already agreed to put up their babies for adoption? Do you agree with that?-- Yes, yes.

50

That in those circumstances you didn't have any discussions with the mothers about the pros and cons of giving their child up for adoption?-- No. I didn't go into-----

You had the mother-----?-- I mean, I assured them that the baby would be well cared for if it was given up for adoption but I didn't go into the pros and cons if the mother had

1

signified when she entered the hospital that her baby was for adoption. I wouldn't - I wouldn't have gone into any pros and cons.

You simply had that person sign the form of consent after making sure they understood?-- Yes. I certainly went over it thoroughly with them and made sure they realised what they were doing.

And that would make no difference whether the person was over or under the age of 21 years?-- No, no, no, no.

10

Or indeed whether they were under the age of 18 years?-- No, I don't think it would have.

Thank you. I have no further questions, your Honour.

MR DAUBNEY: Unless your Honour has anything?

HIS HONOUR: Thank you.

20

MR DAUBNEY: Thank you, Miss Feil?-- Yes.

WITNESS EXCUSED

MR DAUBNEY: Unfortunately we have run out of witnesses for the afternoon, your Honour. Tomorrow we have Professor Whiteford and Mr Zerk. We expect that Professor Whiteford will be relatively short. I understand from our learned friend that he will be fairly quick with him in cross-examination. Mr Zerk's evidence shouldn't take long. We're in your Honour's hands. Certainly from our side we will be ready to address immediately the evidence concludes.

30

I'm sorry, I should have asked may we borrow out - have access to and if necessary borrow out the exhibits on our solicitor's usual undertaking to preserve the exhibits, your Honour?

40

HIS HONOUR: Yes. You can just arrange for your solicitor to discuss it with my acting associate.

MR DAUBNEY: Thank you very much, your Honour.

HIS HONOUR: If you're contemplating addressing tomorrow perhaps I should ask whether either of you has the decision of the Supreme Court of Canada in KLB?

50

MR DAUBNEY: I don't, but I don't know if our learned friend does, your Honour.

MR WILSON: I'm not sure if it's the same one. Is it a more recent case referred to in the decisions-----

HIS HONOUR: It's decided on the 2nd of October last year.

1

MR WILSON: No, I don't have that, your Honour.

MR DAUBNEY: No, your Honour.

HIS HONOUR: Oh, well. If I have and you don't that suggests that the balance of the afternoon could profitably be spent by looking more widely at the cases and commentaries that might assist.

10

10 o'clock tomorrow.

THE COURT ADJOURNED AT 3.36 TILL 10 O'CLOCK A.M. THE FOLLOWING DAY

20

30

40

50

60