

Turner

Review and Investigation

September 2006



PETER H. MARKESTEYN, M.D., F.C.A.P.

*Newfoundland and Labrador
Child and Youth Advocate's Delegate*

DAVID C. DAY, Q.C.

Legal Counsel

Volume I

Turner

Review and Investigation

September 2006

PETER H. MARKESTEYN, M.D., F.C.A.P.

Newfoundland and Labrador

Child and Youth Advocate's Delegate

DAVID C. DAY, Q.C.

Legal Counsel

Volume I

© 2006, by Government of Newfoundland and Labrador
St. John's, NL A1B 4J6
www.gov.nl.ca

No part of this publication may be reproduced, stored in retrieval system or transmitted in any form or by any means without the prior written consent of the publisher.

Library and Archives Canada Cataloging In Publication

Findings of Turner Review and Investigation / by Dr. Peter H. Markesteyn, Delegate of Child and Youth Advocate of Newfoundland and Labrador, and David C. Day, Q.C.

ISBN 1-55146-289-3

1. Child Welfare - Newfoundland and Labrador. 2. Child Death Review - Newfoundland and Labrador. 3. Child and Youth Advocate - Newfoundland and Labrador

I. Markesteyn, Peter H.	II. Day, David C.	III. Title
[pending]	[pending]	[pending]

Volumes One, Two and Three of the Findings of the Turner Review and Investigation, by Dr. Peter H. Markesteyn, M.D., F.C.A.P. and David C. Day, Q.C. are accessible, electronically, at the website of the Office of the Child and Youth Advocate: www.ChildAndYouthAdvocate.nl.ca

Dedication

Zachary Andrew Turner

18 July 2002 to 18 August 2003

and his father

Andrew David Bagby

25 September 1973 to 05 November 2001

FOREWORD

This report does not include all that is known about Shirley Turner. My mandate is limited to exploring the actions or inactions of government bodies with regards to policy or legislation and practices, and how that impacted on Zachary Turner. I have also described and discussed some of the actions of persons other than government. This was done in order to account for what was known, and therefore could have been known, by officials operating in the judicial, health and social service pillars. Some of the forces that played a role in the tragic death of Zachary, we will never know. We have some knowledge of the intense emotional toil this child's death had on his grandparents, his godparents, Shirley's children and Shirley's friends. I have observed some of the anguish in the hearts and minds of the frontline social workers who keep asking themselves, "Where did we go wrong? How did we fail this child?" This Report does not blame anyone. It is not meant to do so. It was commissioned to me, as an outsider with some knowledge of Newfoundland and Labrador's society, to find out not who was wrong, but what was wrong with the system that resulted in this preventable tragedy.

Foreword

Zachary was in the care of his mother when he should not have been. I reach this conclusion, not on hindsight - which is obvious to all - but based on information which could have been known, if investigated, by the parties responsible for Zachary.

In my judgment, based on the facts that became known to me, the recommendations that I have made, if implemented, will serve to reduce the likelihood of the death of a child occurring under similar circumstances.

Preface

These three volumes contain the Findings which result from my Review and Investigation into the circumstances of and surrounding the death of Zachary Andrew Turner in the Atlantic Ocean off the coast of Foxtrap, Newfoundland and Labrador, on 18 August 2003.

Thirteen-month old Zachary, at his passing, was a client of the St. John's Regional Health and Community Services Board, an agency of the Government of Newfoundland and Labrador (since absorbed - on 01 April 2005 - into the Eastern Regional Integrated Health Authority).

I conducted the Review and Investigation and prepared the Findings for the Child and Youth Advocate, Darlene M. Neville, an officer of the House of Assembly of the Province of Newfoundland and Labrador, whose Office appointed me Delegate of the Advocate on 17 May 2005 under section 14 of the *Child and Youth Advocate Act*.

Preface

My duties as Advocate's Delegate were performed by me in partnership with my experienced and highly respected legal counsel, David C. Day, Q.C., of St. John's.

The Findings are based on examination of about 100,000 pages of documents and reference materials, and some 150 interviews. The Findings are organized into 13 chapters and 10 appendices (which include tables, maps and photographs). A summary of my Recommendations is in the last chapter.

In preparing the Findings for the Child and Youth Advocate, I was, as the Advocate's Delegate, determined to assist the Advocate to fulfil her mandate under section 3 of the *Child and Youth Advocate Act*,

- (a) **to ensure that the rights and interests of children and youth are protected and advanced and their views are heard and considered;**
- (b) **to ensure that children and youth have access to services and that their complaints relating to the provision of those services receive appropriate attention;**

Preface

- (c) to provide information and advice to the government, agencies of the government and to communities about the availability, effectiveness, responsiveness and relevance of services to children and youth; and**
- (d) generally, to act as an advocate of the rights and interests of children and youth.**

I am particularly indebted to the Premier of the Government of Newfoundland and Labrador, The Honourable Daniel E. Williams, Q.C.; the Speaker of the House of Assembly, The Honourable Harvey Hodder; and the Clerk of the House of Assembly, John A. Noel, Barrister and Solicitor, for their confidence in, and encouragement and support of me as the Child and Youth Advocate's Delegate in the performance of my Review and Investigation into this tragedy.

A special word of thanks to the three Calgary consultants who volunteered their expertise and time in answering our general questions without specificity to the matter under investigation and review:

Preface

Gayle Gilchrist James, MSW
Former Professor, Faculty of Social Work
University of Calgary

John W. Mould, BSW, MSW
Child and Youth Advocate
Alberta Children's Services

Richard Frederick Ramsay, MSW
Professor Emeritus of Social Work
University of Calgary.

Particular thanks to our project consultants who, through their special knowledge and experience in the field of social services, provided me with valuable insight. They also donated many additional hours to this undertaking without charge:

Janet Mirwaldt, BSW, MSW
Former Child Advocate
Province of Manitoba

Janice Christianson-Wood, B.A., BSW, MSW
Special Investigator
Office of the Chief Medical Examiner
Province of Manitoba

John P. F. Chudzik, B.Sc., MSW
Former Provincial Program Coordinator
Manitoba Department of Family Services
Child and Family Support Services Branch

Preface

Kathleen Kufeldt, MSW, PhD, RSW
Former Chair of Child Protection
Memorial University of Newfoundland.

I am also grateful to Georgina Buddick and Kelly Hall, who provided executive and secretarial support, and John Day and Ronalda Steele, who provided us with both valuable and timely technical support. All worked long and tirelessly in preparing this text for publication and I thank them for their caring and competent work.

My special thanks to Dr. Ralph Butler and his wife Lorna for their kind hospitality during the last weeks I was in St. John's finalizing the report.

Finally, I am indebted to my wife Jane for her flexibility, understanding and patience in putting up with my lengthy absences from home.

Peter H. Markesteyn, M.D., F.C.A.P.
Winnipeg, Manitoba
31 July 2006

Table of Contents Volume 1

CHAPTER 1

Introduction to Findings of Review and Investigation

1.	<i>Introduction</i>	3
2.	<i>Review</i>	4
3.	<i>Findings</i>	4
	<i>Endnotes</i>	6

CHAPTER 2

The Child and Youth Advocate

1.	<i>Child and Youth Advocate Act in Newfoundland</i>	9
2.	<i>Child and Youth Advocate Legislation Elsewhere</i>	9
3.	<i>Functions of Child and Youth Advocate Legislation</i>	10
4.	<i>Beneficiaries of Child and Youth Advocate Act in Newfoundland</i>	16
	<i>Endnotes</i>	17

CHAPTER 3

Origins and Terms of Reference of Review and Investigation

1.	<i>Origins of Review</i>	23
2.	<i>Appointment as Delegate to Conduct Review</i>	25
3.	<i>Mandate of Review</i>	26
4.	<i>Interpretation of Mandate of Review</i>	28
5.	<i>Delivery and Reporting Findings of Review</i>	29
6.	<i>Disposition of Findings of Review</i>	31
	<i>Endnotes</i>	33

CHAPTER 4

**Performance of Review and
Investigation Under Child and Youth
Advocate Act**

1.	<i>Introduction</i>	39
2.	<i>Jurisdiction</i>	42
3.	<i>Process</i>	44
4.	<i>Standard Of Proof</i>	47
5.	<i>Approach</i>	49
6.	<i>Evidence</i>	52
6.1	<i>Direct and Circumstantial Evidence</i>	52
6.2	<i>Hearsay Evidence</i>	53
6.3	<i>Opinion Evidence</i>	54
6.4	<i>Documentary Evidence</i>	54
6.5	<i>Reliability of Evidence</i>	54
7.	<i>Hindsight</i>	55
8.	<i>Privacy</i>	57
	<i>Endnotes</i>	62

CHAPTER 5

Narration and Summary of Facts

1.	<i>Introduction</i>	73
2.	<i>Shirley Jane Turner</i>	79
2.1	<i>Parents</i>	79
2.2	<i>Upbringing and Secondary School Education</i>	80
2.3	<i>Post-Secondary Education; Marriages; Children; Parenting and Employment</i>	82
2.3 (a)	<i>First year undergraduate university</i>	82
2.3 (b)	<i>Second year undergraduate university</i>	82
2.3 (c)	<i>First marriage</i>	83
2.3 (d)	<i>First child of first marriage and parenting: 1982-1985</i>	83

Table of Contents Volume I

2.3	(e)	Third year undergraduate university.....	84
2.3	(f)	Employment: 1983-1987	85
2.3	(g)	Second child of first marriage and parenting: 1985-1987	85
2.3	(h)	First marriage separation	85
2.3	(i)	Unemployment and parenting: 1987-1988.....	86
2.3	(j)	Abortion.....	87
2.3	(k)	First marriage divorce	87
2.3	(l)	Second marriage.....	87
2.3	(m)	Employment: 1988-1993	87
2.3	(n)	Only child of second marriage and parenting: 1990-1993	88
2.3	(o)	Second marriage separation	88
2.3	(p)	Fourth year undergraduate university	88
2.3	(q)	Undergraduate graduation.....	89
2.3	(r)	Parenting: 1993-1994	89
2.3	(s)	Children abuse report.....	90
2.4		Post-Graduate (Medicine) Education; Marriage and Parenting.....	92
2.4	(a)	Decision to enter Faculty of Medicine	92
2.4	(b)	First year Faculty of Medicine	93
2.4	(c)	Parenting: 1994-1995	93
2.4	(d)	Second year Faculty of Medicine	93
2.4	(e)	Parenting: 1995-1996	94
2.4	(f)	Third year Faculty of Medicine: commencement	94
2.4	(g)	Parenting: 1996-1997	94
2.4	(h)	Second marriage divorce.....	95
2.4	(i)	Parenting: 1997-1998	95
2.4	(j)	Family matters.....	96
2.4	(k)	Third year Faculty of Medicine: conclusion	96
2.4	(l)	Fourth year Faculty of Medicine.....	97
2.4	(m)	Post-graduate (Medicine) graduation.....	97
2.4	(n)	Residency training: commencement	97
2.4	(o)	Parenting: 1998-2000	102
2.4	(p)	Internship and residency training: conclusion.....	106
2.5		Unmarried Relationships	106
2.5	(a)	Man from Pennsylvania	106

Table of Contents Volume I

	2.5 (b) Andrew David Bagby.....	116
3.	Andrew David Bagby	117
3.1	Parents	117
3.2	Upbringing and Secondary School Education	119
3.3	Post-Secondary Education and Employment	119
3.4	Post-Graduate (Medicine) Education	120
3.5	Unmarried Relationships	120
	3.5 (a) California Student	120
	3.5 (b) Shirley Jane Turner	122
4.	Shirley Jane Turner and Andrew David Bagby	123
4.1	Unmarried Relationship in Newfoundland	123
4.2	Impact of Previous Unmarried Relationships	124
4.3	Planning to Leave Newfoundland	124
	4.3 (a) Shirley Jane Turner	125
	4.3 (b) Andrew David Bagby.....	125
4.4	Leaving Newfoundland and Living in United States	126
	4.4 (a) Departures	126
	4.4 (b) Sac City, Iowa and Syracuse, New York	126
	4.4 (c) Long distance relationship: Part 1	127
	4.4 (d) Parenting: 2000	129
	4.4 (e) Council Bluffs, Iowa, and Latrobe, Pennsylvania	130
	4.4 (f) Long distance relationship: Part 2	131
4.5	Parenting: 2001	133
4.6	Murder of Andrew David Bagby	134
	4.6 (a) Background.....	134
	4.6 (b) Circumstances	139
	4.6 (c) Discovery.....	146
	4.6 (d) Pennsylvania investigation.....	150
4.7	Shirley Jane Turner's Response	170
	4.7 (a) Telephone calls: Part 1	170
	4.7 (b) Flight from Council Bluffs, Iowa to Toronto	177
	4.7 (c) Visit to Toronto	178
	4.7 (d) Journey from Toronto to Deer Lake	185
	4.7 (e) Journey from Deer Lake to St. John's.....	185
	4.7 (f) Settling in St. John's	185
	4.7 (g) Consulting psychiatrist.....	186

Table of Contents Volume I

	4.7 (h) Telephone calls: Part 2.....	197
4.8	Newfoundland Investigation	201
	4.8 (a) Surveillance	201
	4.8 (b) Memorial Service	202
	4.8 (c) Confrontation with Dr. Bagby's former fiancé	203
	4.8 (d) Telephone calls: Part 3.....	205
4.9	Pregnancy Confirmed.....	207
4.10	Extradition Proceedings: Part 1	210
	4.10 (a) Background.....	210
	4.10 (b) Provisional arrest warrant	216
	4.10 (c) Judicial interim release: Part 1.....	222
4.11	Parenting: 2001-2002.....	234
4.12	Community and Health Services: Part I	239
	4.12 (a) Introduction	239
	4.12 (b) Community Services	256
	4.12 (c) Investigation	288
5.	Shirley Jane Turner and Zachary Andrew Turner	300
	5.1 Birth of Zachary Andrew Turner	300
	5.2 Parenting: 2002-2003.....	301
	5.3 Community and Health Services: Part 2	302
	5.3 (a) Community Services	302
	5.3 (b) Health Services.....	326
	5.4 Parenting Proceedings: Part 1.....	339
	5.5 Financial Services.....	352
	5.6 Extradition Proceeding: Part 2.....	355
	5.6 (a) Background.....	355
	5.6 (b) Extradition surrender application.....	363
	5.7 Parenting Proceedings: Part 2.....	374
	5.8 Incarceration at Correctional Centre for Women	376
	5.9 Extradition Proceeding: Part 3.....	397
	5.9 (a) Administrative action by Dr. Turner and Canada's Justice Minister	397
	5.9 (b) Appeal.....	406
	5.9 (c) Judicial interim release: Part 2.....	407
	5.9 (d) Provision of legal counsel	419
5.10	Parenting Proceedings: Part 3.....	421

Table of Contents Volume I

5.11	<i>Life after Correctional Centre for Women</i>	426
5.12	<i>Community and Health Services: Part 3</i>	429
5.13	<i>Office of the Child and Youth Advocate</i>	441
5.14	<i>Attachment Therapy</i>	453
5.15	<i>Community and Health Services: Part 4</i>	456
5.16	<i>Unmarried relationship: Young man met in bar</i>	457
5.17	<i>Saying Goodbye</i>	465
5.18	<i>The Last Day</i>	467
5.19	<i>Deaths of Zachary Andrew Turner and Shirley Jane Turner</i>	478
5.20	<i>Investigation of Deaths of Zachary Andrew Turner and Shirley Jane Turner</i>	496
5.21	<i>At Rest</i>	514
5.22	<i>Extradition Proceedings: Part 4</i>	515
6.0	<i>Reviews</i>	516
	<i>Endnotes</i>	517

Chapter 1

Introduction to Findings of Review and Investigation

1. <i>Introduction</i>	3
2. <i>Review</i>	4
3. <i>Findings</i>	4
<i>Endnotes</i>	6

1. Introduction

Sometime after 3:00 a.m. on 18 August 2003, Dr. Shirley Turner committed suicide and murdered her 13-month old son, Zachary, when she entered the North Atlantic Ocean with Zachary secured to her bosom and both of them drowned. Dr. Turner most probably caused the deaths of her son and herself by jumping into the ocean from the end of the main wharf at the small craft marina in the Community of Foxtrap, Town of Conception Bay South, on the east coast of Conception Bay in the Province of Newfoundland and Labrador (“Newfoundland”).

When these deaths occurred, Dr. Shirley Turner was the subject of a legal proceeding in Newfoundland Supreme Court to extradite her from Newfoundland to the Commonwealth of Pennsylvania (“Pennsylvania”), United States of America (“United States”), for trial on criminal charges. The charges alleged that about 21½ months earlier on 05 November 2001 at Keystone State Park about 36 miles west of the City of Pittsburg (“Pittsburg”), Pennsylvania, she had also murdered Zachary’s father, Dr. Andrew Bagby, by shooting him five times.

2. Review

These conclusions are among Findings made under the *Child and Youth Advocate Act*¹ by me as Delegate of the Province's Child and Youth Advocate in partnership with, and on advice of my legal counsel, David C. Day, Q.C. These and the other Findings by me in this document derive from a process prescribed by the *Act* known as a "Review and Investigation" ("Review").

The Review was conducted by me at the request of the Advocate as a result of Zachary's death.

3. Findings

The Findings generated by my Review comprise my conclusions, insofar as feasible, following an exhaustive investigation by my legal counsel and me which: (i) determine the facts of, and surrounding, the death of Zachary Turner on 18 August 2003; and (ii) determine whether, from the perspectives of justice, community, health and financial services, Zachary's death was preventable.

1: Introduction to Findings of Review and Investigation

Globally, the factual circumstances which occasioned and are necessarily detailed in the Review and on which my resulting Findings (including proposals) depend, comprise a chronicle of unpalatable truths freighted with public and professional controversy. A woman trained to practice in a caring and trusted health care vocation dedicated to preserving life employed pre-mediation first to murder her former boyfriend and, later, to murder their son Zachary and kill herself.

Between the occurrences of these senseless deaths, she frequently resorted to fables and fabrications to mislead and manipulate justice, community, health and financial service providers with whom she had contact.

The wrenching tragedy of Zachary Turner's death has also afforded me an opportunity in these Findings to make recommendations. The recommendations address changes to Newfoundland legislation, policy, standards and practices. They encompass delivery of justice, community, health and financial services including operation of the Offices of the Medical Examiner and of the Child and Youth Advocate.

1: Introduction to Findings of Review and Investigation

In short, I recommend advocacy of a vehicle capable of delivering much more focused and co-ordinated, proactive state services. If the recommendations are accepted, adopted and administered, they may serve to prevent or minimize the prospect of deaths of other children and, more generally, benefit all children at risk in Newfoundland.

[Notes to Chapter 1]

¹ Statutes of Newfoundland and Labrador, 2001, Chapter C-12.01, Appendix 4, p.A.7.

Chapter 2

The Child and Youth Advocate

1. <i>Child and Youth Advocate Act in Newfoundland</i>	9
2. <i>Child and Youth Advocate Legislation Elsewhere</i>	9
3. <i>Functions of Child and Youth Advocate Legislation</i>	10
4. <i>Beneficiaries of Child and Youth Advocate Act in Newfoundland</i>	16
<i>Endnotes</i>	17

1. *Child and Youth Advocate Act in Newfoundland*

Enacted by the Province's House of Assembly on 13 December 2001, the *Child and Youth Advocate Act*¹ created the Office of the Child and Youth Advocate (CYAO) and came into force on 13 May 2002. A retired Judge of the Newfoundland Provincial Court, Lloyd L.W. Wicks was, under section 4(1) of the *Act*, appointed the first Advocate for a six-year term, effective from 16 September 2002, under section 6(1) of the *Act*. The Office of the Advocate opened on 18 November 2002 under the stewardship of Mr. Wicks.

2. *Child and Youth Advocate Legislation Elsewhere*

All provinces except Prince Edward Island have Child and Youth Advocate legislation or its equivalent. (None of the three Territories have child and youth advocate statutes, although the Northwest Territories is developing and may have already commenced introducing a Children's Advocate Program).²

In Newfoundland and New Brunswick, the office is held by the Child and Youth Advocate. In Saskatchewan and

2: The Child and Youth Advocate

Manitoba, the office holder is known as the Children's Advocate. The position is described as the Office of Child and Family Service Advocacy in Ontario, the Children's Ombudsman in Nova Scotia, and the Commission for Human Rights and Youth Rights (Commission des droits de la personne et des droits de la jeunesse) in Quebec. In British Columbia, the equivalent position - the Child and Youth Officer - is being replaced by the Representative for Children and Youth under legislation approved by the British Columbia legislature on 18 May 2006 (although not yet in force).

3. Functions of Child and Youth Advocate Legislation

Despite the differing nomenclature employed across Canada to describe it, the office of child and youth advocate created by legislation is among invaluable government initiatives in nine provinces including Newfoundland that serves, quoting the language of this Province's *Act*, the "interests and well-being" of children by best professional advocacy practices which are demonstrably prompt, perceptive and proactive.

2: The Child and Youth Advocate

The most ardent advocates for a large majority of children and youth in the Province are their parents or other caregivers. They are usually best positioned to know, provide for and advocate the best interests of their young sons and daughters. But what about children and youth whose care has been overtaken by the Province? And children and youth living with parents or other caregivers who are delinquent or inadequate in fulfilling an advocacy function? And children and youth in conflict with competent parents and caregivers with whom they reside?

In circumstances where the state necessarily intervenes in the care of a family's children (i.e., young persons up to 16 years old), "institutional 'voices' speak for the children," writes Michelle C. Christopher, a lawyer with the Calgary Youth Criminal Defence Office

as government assumes roles and responsibilities normally fulfilled [by parents or other caregivers]. [T]he child welfare system takes over and advocacy for the child then becomes the duty of the government.³

In Newfoundland, Regional Directors and social workers delivering services through four regional integrated health authorities (which, in 2005, replaced a larger number of

2: The Child and Youth Advocate

boards and other agencies) may stand with a child's parents or other caregivers to provide limited advocacy in the course of: (i) providing services under section 8 of the *Child, Youth and Family Services Act* including circumstances where a Regional Director or social worker makes an agreement for services with a child (a person up to 16 years old) or with a youth (a person from 16 up to 21 years old); (ii) providing alternate dispute resolution mechanisms to resolve a conflict between parent or other caregiver and a child or youth under section 13 of the *Act*; or (iii) providing care in the home to a child under section 22 of the *Act*.⁴

In other situations, Regional Directors and social workers must stand in place of the parents or other caregivers of a child or youth and replace them in parenting roles that include advocacy for that child or youth. These are situations where, under section 34 of the *Child, Youth and Family Services Act*,⁵ a court decides that a child (or, in exceptional circumstances, a youth) is in need of protective intervention and orders the child (or youth) placed in custody of a Regional Director on a temporary or continuous basis.

2: The Child and Youth Advocate

Unquestionably, the Regional Directors and social workers are dedicated to their formidable and confounding challenges of delivering services under the *Child, Youth and Family Services Act*. The services include advocacy for children (and youth) who are brought under the *Act*'s umbrella and become part of the social workers' caseloads. Nonetheless, as Ms. Christopher writes,⁶

the reality is that some children [and youth who come into the state's care] do not receive the services to which they are entitled while in care

perhaps due principally to the large and complex child protection caseloads which social workers carry. Ms. Christopher explains that

... particularly the very young, may not be able to articulate their concerns. At times, there may also be a conflict of interest when a social worker disagrees with a child about how to define the child's 'best interests' or faces systemic limitations or barriers in his/her capacity to effectively advocate for a child. And all too often, older or troubled children may conflict on a personal level with their assigned caseworkers, and may then experience a total breakdown in communication.

Here enters the Child and Youth Advocate. The Advocate in such circumstances provides children and youth with a separate advocacy voice - a voice that speaks

2: The Child and Youth Advocate

independently from, and as a monitor of Regional Directors, social workers and others who have legal or ethical responsibilities for children and youth in Newfoundland. The Advocate may intercede and espouse and facilitate for a child or youth in deserving circumstances.

The Advocate also monitors the professional department of the Provincial Director of Child, Youth and Family Services in performance of the Provincial Director's responsibilities detailed in section 5 of the *Child, Youth and Family Services Act*. Responsibilities of the Provincial Director prescribed by the *Act* include, under subparagraph (a), responsibility for "establishing province-wide policies, programs and standards" that the integrated regional health authorities - particularly Child, Youth and Family Services Regional Directors and social workers - are expected to implement and follow; under subparagraph (d), responsibility for "a province-wide computerized child, youth and family services information system;" and under subparagraph (e), responsibility for "advising and reporting to the minister [of Health and Community Services] on matters related to child, youth and family services."

2: The Child and Youth Advocate

As expressed in section 3 of the *Child and Youth Advocate Act*, the Office of the Advocate has been established

- (i) **to ensure that the rights and interests of children and youth are protected and advanced and their views are heard and considered;**
- (ii) **to ensure that children and youth have access to services and that their complaints relating to the provision of those services receive appropriate attention;**
- (iii) **to provide information and advice to government, agencies of the government and to communities about the availability, effectiveness, responsiveness and relevance of services to children and youth; and**
- (iv) **generally, to act as an advocate of the rights and interests of children and youth.**⁷

The three annual reports (the first covering the partial first year of operation of the Advocate's Office from November 2002 to March 2003) detail its advocacy. Essentially, two types of advocacy are provided: (i) individual (for example, ensuring a child's views were expressed in a custody proceeding); and (ii) systemic (such as the need for a dedicated support program for child victims of crime, other than for those who receive support because they are receiving

child protection services). The reports are published on the Office's website: www.childandyouthadvocate.nl.ca.

The philosophy of the Advocate's Office is to: support services for children and youth by the public provider (the Province) and by private providers (parenting caregivers and the community); ensure the services are provided; and enhance relationships between children and youth and their public and private service providers.

4. Beneficiaries of Child and Youth Advocate Act in Newfoundland

In Newfoundland, the *Child and Youth Advocate Act* applies, by reason of section 2(g) of the *Act*, to three classes of persons residing in the Province's 1,777 communities (2001 census data).⁸ They are (2005 census data):⁹

- (a) children: defined by section 2(c) of the *Act* as anyone under 16 years old who comprised, in 2005, 94,656 persons (18.3 percent of the Province's population of 515,961) and whose numbers had decreased from 2001 to 2005 by 10,162;

2: The Child and Youth Advocate

- (b) youth: defined by section 2(g) of the *Act* as anyone from 16 years old up to, although not including 19 years old, who comprised, in 2005, 20,437 persons (3.9 percent of the Province's population) and whose numbers had decreased from 2001 to 2005 by 3,825;
- (c) persons from 16 years old to, although not including, 21 years old who fit into four types of situations defined under section 2(g) of the *Act*: who included, in 2005, 14,453 persons 19 and 20 years old (2.8 percent of the Province's population) and whose numbers had decreased from 2001 to 2005 by 1,209.

[Notes to Chapter 2]

¹ Statutes of Newfoundland and Labrador, 2001, Chapter C-12.01, Appendix 4, p.A.7

² Alberta: *Child, Youth And Family Enhancement Act*, Revised Statutes of Alberta 2000, Chapter C-12.

British Columbia: *Office For Children And Youth Act*, Statutes of British Columbia 2002, Chapter 50: to be repealed, with substitution, by the *Representative of Children and Youth Act*, Statutes of British Columbia, 2006, Chapter 33, enacted 18 May 2006 (not yet proclaimed in force).

2: The Child and Youth Advocate

Manitoba: *The Child and Family Services Act*, Consolidated Statutes of Manitoba, Chapter C80, Part I.1 Children's Advocate [-] Office Of Children's Advocate.

New Brunswick: *Child and Youth Advocate Act*, Statutes of New Brunswick 2004, Chapter C-2.5.

Newfoundland: *Child and Youth Advocate Act*, Statutes of Newfoundland and Labrador 2001, Chapter C-12.01.

Nova Scotia: *Ombudsman Act*, Revised Statutes of Nova Scotia 1989, Chapter 327.

Ontario: *Child and Family Services Act*, Revised Statutes of Ontario, Chapter C.11 (see especially Section 102).

Quebec: *Youth Protection Act*, Revised Statutes of Quebec, Chapter P-34.1.

Saskatchewan: *The Ombudsman and Children's Advocate Act*, Revised Statutes of Saskatchewan 1978, Chapter O-4, Parts I, III (see especially Section 12.9), IV and V (especially Sections 30.1 - 34).

³ “The Child and Youth Advocate: Speaking Out for Children in Care” in *Law Now* (Edmonton: University of Alberta, February/March 2006), p.36.

⁴ Statutes of Newfoundland and Labrador, 1998, Chapter C-12.1, Appendix 5, p.A.25.

⁵ Statutes of Newfoundland and Labrador, 1998, Chapter C-12.1, Appendix 5, pp.A.55-A.56.

⁶ “The Child and Youth Advocate: Speaking Out for Children in Care” in *Law Now* (Edmonton: University of Alberta, February/March 2006), p.36.

⁷ *Child and Youth Advocate Act*, Appendix 4, pp.A.9-A.10.

2: The Child and Youth Advocate

⁸ Statistics Canada (St. John's: 2003); in response to specific inquiry by R.C.M.P. legal counsel during a Newfoundland Judicial Inquiry into the death of Norman Reid, 2000-2003.

⁹ Statistics Canada. Table 051-0001 (Ottawa: 2005).

Chapter 3

Origins and Terms of Reference of Review and Investigation

1. <i>Origins of Review</i>	23
2. <i>Appointment as Delegate to Conduct Review</i>	25
3. <i>Mandate of Review</i>	26
4. <i>Interpretation of Mandate of Review</i>	28
5. <i>Delivery and Reporting Findings of Review</i>	29
6. <i>Disposition of Findings of Review</i>	31
<i>Endnotes</i>	33

3: Origins and Terms of Reference of Review and Investigation

1. Origins of Review

This Review originated in frequent exploratory discussions with me by the Province's House of Assembly: Honourable Harvey Hodder, MHA, Speaker and Member of the House and Chairperson of the Internal Economy Commission; and John A. Noel, Q.C., a lawyer by training and experience, who is Clerk of the House. The exploratory discussions commenced 07 March 2005 at Honourable Hodder's request. The discussions were later joined at our invitation by my legal counsel, David C. Day, Q.C. From the outset of these discussions, Speaker Hodder and Mr. Noel expressed profound concern about Zachary's death; a concern, I understood from the Speaker, shared equally by the Premier, The Honourable Daniel E. Williams, Q.C., and the other members of the Government of the Province.

During these discussions I agreed to Speaker Hodder's request that, if asked by the Child and Youth Advocate, I would accept the onerous task of undertaking, on the Advocate's behalf, a review of circumstances related to Zachary's death.

3: Origins and Terms of Reference of Review and Investigation

These discussions were conducted with me by the Speaker of the House of Assembly because the Advocate is appointed on a resolution from, and serves as an officer of the House.

Having received my agreement to perform the Review, Speaker Hodder impressed upon me the House of Assembly's requirements that my Review be independent, impartial, thorough, fair, expeditious and effective.

The context of these discussions with the Speaker and the Clerk of the House of Assembly was the pending premature retirement, due to illness, of the incumbent in the Office of the Child and Youth Advocate, Mr. Wicks (the first Advocate) who had commenced, although not completed, a review and investigation into Zachary Turner's death.

Shortly after his retirement on 31 March 2005, Mr. Wicks was replaced on a temporary basis - from 17 May to 15 July 2005 (both inclusive) - under section 4(3) of the *Child and Youth Advocate Act*¹ by James G. Igloliorte, another former Judge of the Newfoundland Provincial Court (the second Advocate).

3: Origins and Terms of Reference of Review and Investigation

2. *Appointment as Delegate to Conduct Review*

The result of my discussions with Speaker Hodder was a verbal request to me on 17 May 2005 from the interim Advocate, Mr. Igloliorte, that I undertake the Review. I consented to do so.

The same day I received a letter from Mr. Igloliorte.² The letter, which reflected my discussions with Speaker Hodder and the verbal request from Mr. Igloliorte, appointed me a Delegate of the Child and Youth Advocate to conduct a Review *de novo* (a fresh review) relating to Zachary's death. (Media reports in March 2005 may have left the impression my obligation as Delegate of the Child and Youth Advocate was to complete the review and investigation earlier commenced. Those reports were not accurate).

In appointing me Delegate, the Child and Youth Advocate was acting under section 14(1) of the *Act* which states that:

[t]he advocate may in writing delegate to another person his or her powers ... except the power to make a report.³

3: Origins and Terms of Reference of Review and Investigation

3. *Mandate of Review*

The letter⁴ also furnished under section 14(1) of the *Act*,⁵ my terms of reference - my mandate. My mandate has been to:

Perform a Review and Investigation of the circumstances surrounding the death of Zachary Turner and provide ... a detailed account of ... [my] work and results [of my work].

In defining my terms of reference, the then Child and Youth Advocate was simply referring to the powers of the Advocate under the *Act* and identifying the particular matter in respect of which I must, as Delegate, exercise those powers. Principal among the Advocate's powers under the *Act* are the functions of "review" and "investigation."

Neither "review" nor "investigation" is defined by the *Act*. The meaning of each of the terms is, however, implicit in sections 15(1)(a), 16, 16(a), 18 to 20, 22, 23(1), 24(1) and 25 respecting a review,⁶ and in sections 16, 18, 18(a), 20 and 22 to 25 respecting an investigation.⁷ These provisions of the *Act*

3: Origins and Terms of Reference of Review and Investigation

expect a review and investigation that is thorough and advocates the affected child's best interests.

The Review and Investigation directed by my terms of reference related particularly to “the circumstances surrounding the death of Zachary Turner.” This I took to include both the circumstances of and surrounding Zachary's death.

Although not obliged to do so,⁸ I screened in a preliminary manner the particular subject of my terms of reference. I did so in the context of the purposes (section 3) and the powers and duties (section 15(1))⁹ of the Office of the Child and Youth Advocate established by the *Act*, by examining all readily available, relevant records. Based on that preliminary screening, I determined it to be necessary and thus undertook a Review and Investigation of the circumstances surrounding Zachary Turner's death.

Having, in my work as Delegate, exercised the Advocate's powers of review and investigation in relation to the “circumstances surrounding the death of Zachary Turner,” my terms of reference further required me to “provide ... a

3: Origins and Terms of Reference of Review and Investigation

detailed account” and “results” of my investigative work¹⁰ which I am providing to the Advocate in these Findings with a covering letter of transmittal (Appendix 2).¹¹

4. *Interpretation of Mandate of Review*

I interpreted the mandate of my Review to require me to determine:

- (a) What did providers of justice, community, health and financial services know?
- (b) Did they act appropriately based on what they knew?
- (c) Based on what they knew and how they acted, was Zachary’s death preventable?
- (d) What could they have known?
- (e) Why didn’t they know what could have been known? In other words, what went wrong?

3: Origins and Terms of Reference of Review and Investigation

- (f) Would a different outcome have resulted from what could have been known? In other words, was Zachary's death preventable?
- (g) How could fatalities similar to Zachary's death be prevented in future?
- (h) How did the Child and Youth Advocate respond to Zachary's best interests, before and after his death?
- (i) How could the Child and Youth Advocate have responded?
- (j) Could the Child and Youth Advocate, in future, function more effectively?

5. *Delivery and Reporting Findings of Review*

I have delivered these Findings on my work to the Advocate as required by my terms of reference and in accord with section 14(1) of the *Act*.¹² Reporting the Findings is the responsibility of the Advocate.¹³

3: Origins and Terms of Reference of Review and Investigation

The Advocate, Darlene M. Neville (the third Advocate), is a member of the Newfoundland and Labrador Bar and Law Society who practiced law for 13 years and was formerly a social worker in the Province. On 01 August 2005, she was appointed to succeed Mr. Igloliorte as the Advocate. (Her appointment was confirmed by the Lieutenant-Governor-in-Council on resolution of the Province's House of Assembly on 29 November 2005 while the House was next in session).¹⁴

The Advocate - unlike an Advocate's Delegate - either expressly or by implication: (i) may report under section 3(c) of the *Act*¹⁵ (to provide information or advice to provincial government departments and agencies or to the Province's communities); (ii) may report under section 15(1)(g)¹⁶ (to make recommendations to provincial government departments and agencies) in the manner prescribed by section 13(2);¹⁷ and (iii) may report to the Cabinet under section 24(2)¹⁸ (where a provincial government department or agency does not respond adequately or appropriately to recommendations made to it by the Advocate under section 15(1)(g)).¹⁹

In addition, the Advocate (i) shall, under section 16(b) of the *Act*,²⁰ report to the Cabinet when the Advocate reviews

3: Origins and Terms of Reference of Review and Investigation

and/or investigates a matter the Cabinet refers to the Advocate under section 16(a);²¹ (ii) shall, under section 25,²² report to a complainant where the Advocate reviews and/or investigates in response to a complainant's concern; and (iii) shall, under section 28,²³ report to the House of Assembly in the form of annual reports.

In addition, the Advocate may report in effect to the public of the Province under section 29(1) of the *Act*

relating generally to the exercise and performance of his or her functions and duties ... or to a particular case investigated by him or her, ... [under this *Act*].²⁴

I have therefore chosen to describe the detailed account of my work in performance of my terms of reference as “Findings.” I submitted my Findings to my principal, the present Advocate.

6. *Disposition of Findings of Review*

The *Act* does not specifically provide for the disposition by the Advocate of the work of the Advocate's Delegate. However, the Advocate may (in exercise of her discretion), adopt my Findings and report them to one or another, or all of:

3: Origins and Terms of Reference of Review and Investigation

(i) provincial government departments and agencies or the Province's communities, under section 3(c) of the *Act*;²⁵ (ii) provincial government departments and agencies, under section 15(1)(g);²⁶ or (iii) the public of the Province, under section 29(1).²⁷ Only the Advocate may make that decision.

While the *Act* under these sections expressly provides the Advocate with discretion to decide whether to report and to whom to report, the *Act* is silent on how the Advocate may report. I advise the Advocate to deliver my Findings as the report of the Advocate, under section 3(c) of the *Act*,²⁸ to the Speaker of the House of Assembly with a recommendation that the Speaker distribute my Findings by: (i) sending them to affected provincial government departments and agencies; (ii) tabling them in the House of Assembly; (iii) posting them on the Province's website; and (iv) making them available at cost in hardcopy to the public.

Other than with respect to reporting, which I am not authorized to do, the powers I exercised in conducting my Review and in preparation of my resulting Findings were identical to those of the Advocate.

3: Origins and Terms of Reference of Review and Investigation

My obligations as the Advocate's Delegate ended with delivery by me to the Advocate of these Findings at the beginning of September.

During performance of my work as Delegate of the Child and Youth Advocate, I wish to make clear that both the current Advocate and her staff, the Premier, the members of his Cabinet, most Departments and Agencies of the Province's Government and the Speaker and the Clerk of the Province's House of Assembly have afforded me their fullest co-operation and assistance.

[Notes to Chapter 3]

¹ Statutes of Newfoundland and Labrador, 2001, Chapter C-12.01, Appendix 4, p.A.10.

² Appendix 1.

³ Statutes of Newfoundland and Labrador, 2001, Chapter C-12.01, Appendix 4, p.A.13.

⁴ Appendix 1.

⁵ Statutes of Newfoundland and Labrador, 2001, Chapter C-12.01, Appendix 4, p.A.13.

⁶ Ibid., pp.A.14-A.20.

⁷ Ibid., pp.A.15-A.20.

3: Origins and Terms of Reference of Review and Investigation

⁸ The Child and Youth Advocate, and not a Delegate of the Advocate, has discretion, under the *Child and Youth Advocate Act*, sections 15 and 18 (Appendix 4, pp.A.14-A.15 and pp.A.16-A.17), to make a preliminary decision whether or not to review or investigate a matter. My terms of reference did not require me to make that preliminary decision.

⁹ Statutes of Newfoundland and Labrador, 2001, Chapter C-12.01, Appendix 4, pp.A.9-A.10; A.14-A.15.

¹⁰ Appendix 1.

¹¹ Appendix 2.

¹² Statutes of Newfoundland and Labrador, 2001, Chapter C-12.01, Appendix 4, p.A.13.

¹³ See, for example, the *Child and Youth Advocate Act*, Statutes of Newfoundland and Labrador, 2001, Chapter C-12.01, sections 3 (pp.A.9-A.10; 15 (pp.A.4-A.5); 16 (p.A.15); 24 (p.A.19); 25 (p.A.19); 28 (p.A.20); 29 (pp.A.20-A.21).

¹⁴ *House of Assembly Proceedings*, Vol. XLV, No. 38, 29 November 2005, 1:30 p.m.

¹⁵ Statutes of Newfoundland and Labrador, 2001, Chapter C-12.01, Appendix 4, p.A.9.

¹⁶ *Ibid.*, p.A.15.

¹⁷ *Ibid.*, p.A.13.

¹⁸ *Ibid.*, p.A.19.

¹⁹ *Ibid.*, p.A.15.

²⁰ *Ibid.*

²¹ *Ibid.*

3: Origins and Terms of Reference of Review and Investigation

²² Ibid., p.A.19.

²³ Ibid., p.A.20.

²⁴ Ibid., pp.A.20-A.21.

²⁵ Ibid., p.A.9.

²⁶ Ibid., p.A.15.

²⁷ Ibid., pp.A.20-A.21.

²⁸ Ibid., p.A.9.

Chapter 4

Performance of Review and Investigation Under Child and Youth Advocate Act

1. Introduction	39
2. Jurisdiction	42
3. Process	44
4. Standard Of Proof	47
5. Approach	49
6. Evidence	52
6.1 Direct and Circumstantial Evidence	52
6.2 Hearsay Evidence	53
6.3 Opinion Evidence	54
6.4 Documentary Evidence	54
6.5 Reliability of Evidence	54
7. Hindsight.....	55
8. Privacy.....	57
Endnotes	62

4: Performance of Review and Investigation Under Child and Youth Advocate Act

1. Introduction

Neither the *Child and Youth Advocate Act*¹ nor my terms of reference afforded me significant direction about the manner in which I conducted the Review. That, however, did not impede my work. I crafted my own method for conducting the Review that was faithful to the spirit of the *Child and Youth Advocate Act*.²

In doing so, I was not significantly assisted by the legislation authorizing and the procedure for a public inquiry - such as the 150-day “Mount Cashel” inquiry conducted by retired Ontario Supreme Court Justice Honourable Samuel H.S. Hughes, Q.C. (1989-1992),³ or a judicial inquiry - as was conducted over 97 days into two police shooting deaths by Honourable Donald S. Luther, a Provincial Court of Newfoundland Judge, formerly the Chief Judge of the Court (2000-2003).⁴ Although my Review is, by virtue of its nature (a review and investigation) and objectives (Findings on the interests and well-being of a child), a specie of the instrument widely described as an inquiry, a public inquiry usually is (but is not required to be) superintended by a sitting or retired Supreme Court Judge from Newfoundland or elsewhere in

4: Performance of Review and Investigation Under Child and Youth Advocate Act

Canada, who is called a Commissioner. A judicial inquiry must be conducted by a Newfoundland Provincial Court judge. Both of these types of inquiries enjoy evidence gathering authority to compel: (i) production of necessary documents and other things; and (ii) to compel attendance of persons to testify. Both kind of inquiries are assisted by police or other investigators.

By profession, I am a forensic pathologist and professor of forensic pathology. (Forensic pathology is a science which, among other things, enables identification of the cause and manner of a person's death (e.g., head injury by accident, suicide or homicide)).

In conducting this Review, I had limited authority to compel testimony or document production and only then by generously interpreting section 21 of the *Child and Youth Advocate Act*.⁵ (Section 21 provides the Advocate and consequently me, as the Advocate's Delegate, with

**the right to information respecting children and youth
... in the custody or control of a department or agency
[listed in the Schedule to the Act] of the [provincial]
government.**

4: Performance of Review and Investigation Under Child and Youth Advocate Act

Under section 31 of the *Act*,⁶ someone who allegedly obstructs me or refuses to honour a request from me in my efforts to obtain information to the extent section 21 of the *Act*⁷ permits, may be charged with a provincial offence).

Nonetheless, in carrying out the Review, my legal counsel and I necessarily and personally conducted an Investigation.

The only inquiry comparable to mine conducted since Confederation in this Province evidently was the Newfoundland Family Law Study (1967-1972) directed by Dr. Raymond Gushue, S.M., C.B.E., Q.C., former president of Memorial University of Newfoundland.⁸ He had no authority to compel evidence and he conducted his own investigation to the extent he regarded essential to his terms of reference. From acquainting myself with the conduct of that study, I learned the importance of the subtle art of persuasion in accumulating documents and obtaining witness testimony beyond what was available to me when I commenced the Review, and beyond what section 21 of the *Act*⁹ required to be provided to me.

4: Performance of Review and Investigation Under Child and Youth Advocate Act

What is common to the conduct of public inquiries, judicial inquiries and studies, however, are issues of: (i) jurisdiction; (ii) process; (iii) standard of proof; (iv) approach; (v) evidence; (vi) hindsight; and (vii) privacy. I will briefly address each of these issues in turn as pertains to my Review.

2. *Jurisdiction*

In performing the terms of reference of my Review into “the circumstances of the death of Zachary Turner,”¹⁰ I was limited to addressing matters pertinent to the infant’s death that constitutionally the provincial House of Assembly is authorized under the *Constitution Act, 1867* of Canada¹¹ to address by legislation. Therefore, I was entitled to consider provincial matters such as the administration of justice and community, health and financial services for which the Province is responsible. On the other hand, I could not constitutionally consider matters over which the Parliament of Canada has jurisdiction such as federal justice responsibilities for extradition and subjects related to extradition, and international relations of Canada with a foreign state - in this instance - the United States.

4: Performance of Review and Investigation Under Child and Youth Advocate Act

To the extent I could constitutionally deal with matters related to the circumstances of Zachary Turner's death, I did not have jurisdiction in conducting the Review to impose criminal sanctions, decide on civil interests or grant civil remedies, or order enactment of new legislation or amendment of existing legislation to comport with the portion of the Canadian Constitution known as the *Canadian Charter of Rights and Freedoms*.¹²

I was not conducting an adversarial criminal or civil trial that would have involved making definitive decisions on issues and pronouncing judgments.

Rather, my authority in conducting the Review has been limited to finding the germane facts and, based on them, to draw conclusions and make recommendations supported by my conclusions.

In short, my role has been advisory to assist the Child and Youth Advocate to advise the Government of the Province in the proper execution of its legal obligations - in particular, its obligations to children and youth.

4: Performance of Review and Investigation Under Child and Youth Advocate Act

3. *Process*

Essentially, “process” involves the means or procedure I chose - the review of the existing record and the evidence producing investigation - in performance of my mandate.

In my Review, I have endeavoured to examine the anatomy of a tragedy and furnish the Advocate with impartial, meaningful, constructive advice that the Advocate alone must decide whether or not to provide to the Provincial Government on how to respond to the tragedy such as by reforms of and revisions to legislation, policy, standards and practices, and changes to the system which delivers justice, community, health and financial services to the public.

And in that exercise the Provincial Government has consistently encouraged and not in the least hampered me. By that attitude, the Provincial Government - especially through the Speaker and Clerk of the House of Assembly - ensured my Review has been independent in the process of garnering and evaluating evidence, in fact-findings, in drawing conclusions, identifying problems, in making recommendations which the

4: Performance of Review and Investigation Under Child and Youth Advocate Act

facts warrant, and in having reasonable time and resources to do so.

First, beginning in May 2005, I examined the record including transcripts of 42 interviews assembled by the previously uncompleted Review.

Next, I secured substantial additional documents primarily from the Government of Newfoundland, the Government of the United States and the Royal Newfoundland Constabulary. I orally examined many witnesses, duly sworn or affirmed, both within and outside the Provincial Government, usually providing them in advance the questions and giving them, afterwards, draft transcripts of their testimony to enable them to correct any slips. I examined numerous additional witnesses by written questions to which most of them gave me sworn or affirmed written replies. Most witnesses who testified orally were represented by legal counsel and I understand many witnesses who provided written answers also chose to have benefit of legal advice. At one or another time, I employed and tasked four part-time, paid consultants on some features of the Review. These consultants also donated many hours of volunteered time in

4: Performance of Review and Investigation Under Child and Youth Advocate Act

order to proceed as expeditiously as possible. I held conferences about other aspects of the Review with several international experts - experts who donated their time. Yet other persons spoke with me on the record during conversations that did not involve the formalities of giving oral testimony or written answers. I read relevant literature. I met or spoke frequently with my legal counsel. I periodically apprised the Speaker and Clerk of the House of Assembly and the current Advocate of my progress. What resulted from the investigatory phase of the Review was a documentary record exceeding 100,000 pages including evidence and other information from more than 150 persons in the Provinces of Newfoundland, Nova Scotia, Manitoba and Alberta, and the American States of Pennsylvania, Iowa, Nebraska, South Dakota and California.

Finally, I structured and wrote my Findings.

The reader of my Findings will encounter repetition, particularly repetition of the facts as I found them. This was done intentionally. The reason was my desire that consumers of my Findings not be required to troll back and forth through the three volumes of the Findings to refresh their memories

4: Performance of Review and Investigation Under Child and Youth Advocate Act

about the factual context of subjects that are necessarily treated by me repeatedly in several of the 13 chapters of the Findings.

4. *Standard Of Proof*

In structuring and writing my Findings, I was required to define issues, assess the evidence, ascertain the facts, apply the facts to the issues, identify problems, draw conclusions and make recommendations.

Central to my Review was deciding the standard which the evidence must meet to support establishment of the facts. After all, the facts drive the conclusions and recommendations of my Findings. For the Findings to be credible, so must the facts.

Findings of public and judicial inquiries, and of studies and reviews, typically do not discuss this subject. The *Child and Youth Advocate Act*¹³ is likewise mute as is legislation providing for public and judicial inquiries in Newfoundland.¹⁴

The helpfulness of findings, which occasionally have considered standard of proof, I found was mixed. The Gomery

4: Performance of Review and Investigation Under Child and Youth Advocate Act

Commission of Inquiry *Fact Finding Report into the Sponsorship Program and Advertising Activities* in 2005 stated that:

The rules of evidence and the procedure followed at a commission of inquiry are very different from those of a court, and the findings of fact I have reached may not necessarily be the same as those of a court. There are no legal consequences attached to my determinations. My findings are simply findings of fact and statements of opinion which are supported by some evidence in the record of the Inquiry.¹⁵

I preferred a standard of proof in fact-finding, supported by something more than “some evidence.” The standard of proof of “some evidence” impressed me as somewhat vague and did not provide me much, if any, guidance. On the other hand, I regarded as unnecessary - and a bridge too far - to find the facts of my Review on the basis of the criminal law standard of “beyond a reasonable doubt.” This is not least because the consequences of my Findings are considerably different from, and potentially less serious than, those of a criminal trial.

4: Performance of Review and Investigation Under Child and Youth Advocate Act

Nowhere did I find any direction that the standard of proof must be absolute certainty. Not even criminal and civil trials require that.

The 2002 Walkerton Inquiry Report¹⁶ expressly used the standard of proof of probability. That is also the standard of proof in civil trials. What that standard of proof means, as I understand, is that the evidence of a fact must be more probable than not. Or, as a former Supreme Court of Canada Justice, John Sopinka, wrote in *The Law of Evidence In Canada* in 1992,

[s]imply put, ... the existence of the fact ... is more probable than its non-existence.¹⁷

That strikes me as a safe criterion to find facts. In the result, that is the standard of proof I used in determining the facts for my Findings.

5. *Approach*

The approach of my Review is intended to furnish significant facts, draw conclusions from those facts, identify from those conclusions the problems I concluded I must

4: Performance of Review and Investigation Under Child and Youth Advocate Act

consider, state salient issues with respect to those problems and make effective recommendations that are feasible to implement. My goal in formulating the recommendations, if implemented, is to increase the likelihood of preventing future fatalities of children such as baby Zachary and youth, and to prevent future harm (short of death) to them.

My intention in adopting this approach is described far more capably than can I by Mr. Justice O'Connor of the Superior Court of Justice of Ontario in presiding over the public inquiry from 2000 to 2002 into deaths and illness resulting from consumption of contaminated drinking water in Walkerton, Ontario.¹⁸ Justice O'Connor wrote that, among its functions, an inquiry can serve to restore public confidence and provide “a type of healing therapy for a community shocked and angered by a tragedy.”¹⁹ An inquiry can also serve to divert people from “a desire to assign blame and exact retribution” into the “constructive”²⁰ role of participating in an exercise that can lead to both reform and avoid the recurrence of the event that gave rise to establishment of the inquiry.

In formulating my approach to the Review, I adopted the credo “no name, no blame.” I have taken particular care to

4: Performance of Review and Investigation Under Child and Youth Advocate Act

avoid scapegoating, witch-hunting and harming professional and personal reputations. My rationale for taking this position is best stated perhaps by Mr. Justice Archie Campbell of the Superior Court of Justice of Ontario in describing his Bernardo Investigation Review conducted during 1995 and 1996²¹ into the investigation of crimes in Ontario (involving death and sexual assault) alleged against Paul Bernardo. He writes:

The public identification of individual mistakes or wrongdoing, while important, does not necessarily address the underlying problem. And unless the underlying problem is addressed, the same mistakes or wrongdoing will likely occur again if the system that permitted them is not fixed.²²

In my Review, I have not focused particularly on who did or said what to whom. Rather, I have concentrated on the circumstances underlying what happened and the avoidance of their repetition. Given the facts of Baby Zachary's death that I have found, I would be wrong to attempt to search for and identify villains among the living "when," as Mr. Justice Campbell maintains,

[t]he issues are best dealt with by encouraging people to go down a path where they can change the things that went wrong ...²³

That is not to say I was able to entirely avoid finding villainous behaviour. Painful to state, particularly considering my abiding sympathy and concern for her three children, Dr. Shirley Jane Turner, by her homicidal conduct, was the immediate trigger for this Review.

6. Evidence

6.1 Direct and Circumstantial Evidence

I have been alert in applying the standard of proof of a balance of probabilities to the point that the evidence which must satisfy the standard is in some respects direct and, at other times, circumstantial. My legal counsel provided me with a factual example of the distinction between the two types of evidence. Assume the fact to be proved is that “A” committed assault by biting off “B’s” ear. If a witness testifies that he saw “A” bite off “B’s” ear, that is direct evidence that “A” assaulted “B.” If a witness testifies that he saw “A” running from “B” with an ear in his mouth, that is circumstantial evidence tending to prove the fact “A” assaulted “B.” The legal significance of the difference between direct and circumstantial evidence wrote Mr. Justice Ritchie in an

4: Performance of Review and Investigation Under Child and Youth Advocate Act

appeal in the Supreme Court of Canada in 1971, quoting the trial judge, is this:

The two forms of evidence are equally admissible but the superiority of direct evidence is that it contains only one source of error, namely, the unreliability of human testimony, where[as] circumstantial evidence in addition to the unreliability of human testimony suffers from the difficulty of drawing a correct inference from the circumstantial evidence.²⁴

In applying the standard of proof to finding the facts, I have carefully taken into account both the unreliability of human testimony and the challenge of drawing the correct inferences from evidence which is circumstantial.

6.2 Hearsay Evidence

I am also aware that some of the evidence I received was hearsay. Briefly stated, hearsay evidence is a description of something said or done which the person testifying or speaking to me did not personally hear or see, but was told about by someone who did. What was said or done may have been direct or circumstantial in nature. I did not determine as being accurate any of my findings of fact based on hearsay evidence unless, in all the circumstances, that type of evidence,

in my view, necessary and reliable - the test for relying on hearsay evidence as stated in a 1990 decision of the Supreme Court of Canada.²⁵

6.3 *Opinion Evidence*

Some evidence I received consisted of opinions about what happened. I only accepted opinion evidence to the extent it assisted me in finding the facts where an aspect of my Review required special knowledge of an expert - special knowledge that I did not have. In that event, I have relied on expert opinion evidence to assist me infer facts.

6.4 *Documentary Evidence*

A good deal of the evidence I received was documentary. I insisted on receiving the original of the document or a copy that my legal counsel or I had compared with the original, or that we were otherwise able to verify was truly a copy of the original.

6.5 *Reliability of Evidence*

4: Performance of Review and Investigation Under Child and Youth Advocate Act

In obtaining all the evidence, I was conscious that the best means of testing its reliability and therefore the amount of weight I would place on it, was cross-examination. Cross-examination tests credit (the capacity to observe, retain and recollect events or accurately record them in documents) and credibility (believability) of what witnesses say, write or what they record in documents. Because my Review was not conducted in a manner that provided for cross-examination, I ensured my legal counsel vigorously tested the oral evidence in his direct examination of witnesses and carefully scrutinized the written and transcribed evidence, documents and other things I accumulated during my Review. Likewise, I instructed my counsel to identify whether evidence was direct or indirect, hearsay, or opinion before I carefully sifted, assessed and decided what facts were supported by the evidence. In this way, I have attempted to obtain the most dependable evidence as a basis for my fact-finding.

7. *Hindsight*

The process of finding and assessing the facts in my Review required me to avoid hindsight. I have endeavoured to employ considerable discipline in doing so. Hindsight, suffice

4: Performance of Review and Investigation Under Child and Youth Advocate Act

to define the term, is the perception, understanding or judgment of events after they occurred. As Mr. Justice Archie Campbell of the Superior Court of Justice of Ontario wrote in 2003, hindsight poses “an insidious temptation.”²⁶ In my fact-finding, I have become aware of information that was not known - and could not have been known - to those who made and executed decisions directly bearing on the rights and interests of Zachary Andrew Turner during the period most critical to my Review - from the murder of Dr. Andrew David Bagby on 05 November 2001 up to the demise of his son, Zachary, and of Zachary’s mother, Shirley Jane Turner, on 18 August 2003.

In finding the facts and in my perception, understanding or judgment of them, I have, in fairness to institutions and persons on whom I focused in my Review, placed myself in their positions at the time they made decisions (for example, decisions about provision of justice, community, health and financial services) and executed their decisions with respect to Zachary.

In my determination and assessment of facts and in my perceptions, understandings and judgments respecting those

4: Performance of Review and Investigation Under Child and Youth Advocate Act

facts which I decided were germane to my Review, I have done so in the context of the factual circumstances as I found them at the time decisions were made and carried out.

I have therefore, in finding and analyzing the facts, placed myself in the position of organizations and personnel when events pertinent to my Review were occurring. I have asked myself: what did they know at the time of the events? What could they have known, but didn't, when those events occurred? Based on what they then knew or could have known, were their decisions appropriate?

8. *Privacy*

Because I have adopted a “no name, no blame” approach to preparation of these Findings, the issue of privacy has been less of a concern to my Review than might otherwise be the case. Still there are some aspects of the issue that require my consideration. The privacy issue relates to: (i) the identities of persons whose names are mentioned; and (ii) the information in documents, transcribed and written evidence, and other things I received during my Review, which I have chosen to include in these Findings.

4: Performance of Review and Investigation Under Child and Youth Advocate Act

The issue of privacy has, especially lately, become for the Provinces, Territories and Canada a compelling concern. This is evident in legislation of provincial and territorial assemblies and councils, and the Parliament of Canada. Witness, for example, the extensive umbrella legislation governing public bodies enacted by the House of Assembly in Newfoundland under the short title: *Access To Information And Protection Of Privacy Act*, portions of which came into force on 13 December 2004 and 17 January 2005.²⁷ And provisions of provincial legislation relating generally to citizens under the *Privacy Act* (including, under section 4(b), recordings of telecommunications and, under section 4(d), “use of letters, diaries or other personal documents of an individual”),²⁸ and to specific types of information relating to citizens in possession of particular institutions such as hospital records, under section 35 of the *Hospitals Act*.^{29 30}

As it relates to the Office of the Child and Youth Advocate generally, and to my Findings in particular, two aspects of privacy are involved: first, privacy laws influencing information I wished to obtain; and secondly, privacy laws governing what I could disclose in the Findings.

4: Performance of Review and Investigation Under Child and Youth Advocate Act

Information I wished to obtain is provided for in section 21 of the *Child and Youth Advocate Act*.³¹ Section 21 permitted me to accumulate “information respecting” Zachary

that is (a) in the custody or control of a department or agency of the [provincial] government ... necessary to enable ... [me] to perform [my] duties or exercise ... [my] powers [as Delegate of the Advocate] under the Act.

Information I wished to obtain other than from “a department or agency of the [provincial] government” required the consent of the persons who had or were entitled to the information, or persons with lawful authority to give consent including the estates of persons who are deceased,³² or had to be in the public domain (e.g., in court registries other than the Unified Family Court).

Either under authority of section 21 of the *Child and Youth Advocate Act*³³ by consent of the affected persons and persons having lawful authority to give consent for affected persons, including the estates of deceased persons or because in the public domain, I was successful in obtaining most information I required for my Review. This information included Eastern Regional Integrated Health Authority records

4: Performance of Review and Investigation Under Child and Youth Advocate Act

relating to services provided to or for Zachary by the Authority's Child, Youth and Family Services administration; hospital and patient records for Dr. Turner and Zachary; prison records for Dr. Turner; documents relating to court proceedings against Dr. Turner in Pennsylvania and Newfoundland; and information (including records) from friends, acquaintances and relatives of Dr. Turner. (Note: I did not receive any information from any solicitor approached by Dr. Turner for legal advice).

Information I could include in these Findings, in the event the Advocate decides to publish them, is provided for by sections 29(1) and 13(2) of the *Child and Youth Advocate Act*. Section 29(1)³⁴ provides that the Advocate,

[i]n the interest of children and youth or in the public interest, or in the interest of a person, department or agency of the government, ... may publish reports relating generally to the exercise and performance of ... [the Advocate's] functions and duties under this Act or to a particular case investigated by ... [the Advocate or the Advocate's delegate]

And section 13(2) of the *Act*³⁵ permits the Advocate to

disclose in a report made by ... [the Advocate] under this Act those matters which ... [the Advocate] considers it necessary to disclose in order to establish

4: Performance of Review and Investigation Under Child and Youth Advocate Act

grounds for ... [the Advocate's] conclusions and recommendation.

Although 29(2) of the *Act*³⁶ prohibits the Advocate from disclosing “the name of a child or youth in a report ... [the Advocate] makes” under section 29(1) of the *Act* unless the Advocate first obtains the consent of the child or youth and his or her parents or guardian, that is not an impediment to the Advocate disclosing Zachary’s name because he and his parents are deceased.

Both with respect to obtaining information for and including information in these Findings, I relied on section 3(2) of the *Privacy Act*³⁷ which states that

[t]he nature and degree of privacy to which an individual is entitled in a situation or in relation to a matter is that which is reasonable in the circumstances, regard being given to the lawful interests of others.

This section of the *Privacy Act* as interpreted in a 24 May 2006 decision of Chief Justice J. Derek Green of the Trial Division of Newfoundland Supreme Court sitting in Unified Family Court,³⁸ provides for a balancing of a person’s privacy interests against other interests.

4: Performance of Review and Investigation Under Child and Youth Advocate Act

I regard the interest of members of the public of Newfoundland to know the circumstances of and surrounding Zachary's death as outweighing the privacy interests of individual persons whose recorded telecommunications and whose letters, diaries and other personal documents I depended upon in my Review and resulting Findings.

[Notes to Chapter 4]

¹ Statutes of Newfoundland and Labrador, 2001, Chapter C-12.01, Appendix 4, p.A.7.

² Ibid.

³ Royal Commission of Inquiry into the Response of the Newfoundland Criminal Justice System to Complaints, Honourable Samuel H.S. Hughes, Q.C., Commissioner, St. John's, 1989 - 1992.

⁴ Judicial Inquiry into the Death of Norman Reid at Little Catalina, NL, Honourable Donald S. Luther, Inquiry Judge, Bonavista, Corner Brook and St. John's, 2000-2003.

⁵ Statutes of Newfoundland and Labrador, 2001, Chapter C-12.01, Appendix 4, pp.A.17-A.18.

⁶ Ibid., pp.A.21-A.22.

⁷ Ibid., pp.A.17-A.18.

⁸ Newfoundland Family Law Study (1967-1972). Gushue, R., and Day, David C., *Family Law In Newfoundland*. (St. John's: Government of Newfoundland and Labrador, 1973). The Study was established by Order-in-Council dated 19 September 1967 and, under the directorship of

4: Performance of Review and Investigation Under Child and Youth Advocate Act

Dr. Raymond Gushue, S.M., C.B.E., Q.C., published 14 reports and a book.

⁹ Statutes of Newfoundland and Labrador, 2001, Chapter C-12.01, Appendix 4, pp.A.17-A.18.

¹⁰ Appendix 1.

¹¹ *Constitution Act*, 1867 (formerly: The British North America Act, 1867), 30 & 31 Victoria, Chapter 3 (U.K.).

¹² *Canada Act*, 1982, Schedule B (Constitution Act, 1982, Part I).

¹³ Statutes of Newfoundland and Labrador, 2001, Chapter C-12.01, Appendix 4, p.A.7.

¹⁴ Public inquiry: *Public Inquiries Act*, Revised Statutes of Newfoundland and Labrador 1990, Chapter P-38; Judicial inquiry: *Provincial Offences Act*, Statutes of Newfoundland and Labrador 1995, Chapter F-31.1, Part IV.

¹⁵ Gomery, Mr. Justice John H. *Who Is Responsible? Fact Finding Report [of Commission of Inquiry into the Sponsorship Program and Advertising Activities]* (Ottawa: 2005), p.4.

¹⁶ O'Connor, Mr. Justice Dennis. *Part One: Report of the Walkerton Inquiry: The Events of May 2000 and Related Issues* (Toronto: Queen's Printer for Ontario, 2000), pp.36-37.

¹⁷ (Toronto: Butterworths, 1992), p.143, quoting from *McCormick on Evidence*. E.W. Cleary (ed.), 3rd ed. (St. Paul: West Publishing, 1984), p.962.

¹⁸ Walkerton Inquiry, Mr. Justice Dennis O'Connor, Commissioner, Walkerton and Toronto, 2000 - 2002.

¹⁹ O'Connor, Mr. Justice Dennis. *Part One: Report of the Walkerton Inquiry: The Events of May 2000 and Related Issues* (Toronto: Queen's Printer for Ontario, 2000), pp.473-474.

4: Performance of Review and Investigation Under Child and Youth Advocate Act

²⁰ Ibid.

²¹ *The Bernardo Investigation Review: Report of Justice Archie Campbell* (Toronto: 1996).

²² Campbell, Mr. Justice Archie, "The Bernardo Investigation Review" in: *Commissions Inquiry [:] Praise or Reappraise*, Manson, Allan and Mullan, David eds. (Toronto: Irwin Law Inc., 2003, p.399.

²³ Ibid., p.400.

²⁴ *Johns v. R.*, [1971] S.C.R. 781, per Ritchie J., p.788, quoting the trial judge.

²⁵ *R. v. Khan*, [1990] 2 S.C.R. 531.

²⁶ Campbell, Mr. Justice Archie, "The Bernardo Investigation Review" in: *Commissions Inquiry [:] Praise or Reappraise*, Manson, Allan and Mullan, David eds. (Toronto: Irwin Law Inc., 2003), p.397.

²⁷ Statutes of Newfoundland and Labrador, 2002, Chapter A-1.1.

²⁸ Revised Statutes of Newfoundland and Labrador, 1990, Chapter P-22.

²⁹ Ibid., Chapter H-9.

³⁰ There are also privacy principles developed under the common law (sometimes referred to as court- or judge-made law), perhaps the most important being "solicitor-client privilege." ("Privilege" in this sense means a right or immunity a person enjoys). Concisely summarized, as a general rule the privilege provides that when a person seeks legal advice of any kind from a solicitor (a lawyer) in his or her capacity as a solicitor, the communications involved between the person and the solicitor which at the time of the communications the person expects are confidential, are permanently protected from being disclosed by the lawyer or the lawyer's estate. If, of course, the person consulting the lawyer - or the person's estate after the person's death - chooses to disclose the communications with the lawyer or consents to the lawyer doing so, the person or his or

4: Performance of Review and Investigation Under Child and Youth Advocate Act

her estate is free to do so. (To this general rule there are exceptions although none are relevant to my Review).

³¹ Statutes of Newfoundland and Labrador, 2001, Chapter C-12.01, Appendix 4, pp.A.17-A.18.

³² *Interpretation Act*, Revised Statutes of Newfoundland and Labrador, 1990, Chapter I-19, section 27(1)(t).

³³ Statutes of Newfoundland and Labrador, 2001, Chapter C-12.01, Appendix 4, pp.A.17-A.18.

³⁴ *Ibid.*, pp.A.20-A.21.

³⁵ *Ibid.*, p.A.13.

³⁶ *Ibid.*, p.A.21.

³⁷ Revised Statutes of Newfoundland and Labrador, 1990, Chapter P-22.

³⁸ *H. v. H.*, Newfoundland Supreme Court [Unified Family Court], 2006 NLUFC 20.

Chapter 5

Narration and Summary of Facts

1. Introduction	73
2. Shirley Jane Turner	79
2.1 Parents	79
2.2 Upbringing and Secondary School Education	80
2.3 Post-Secondary Education; Marriages; Children; Parenting and Employment	82
2.3 (a) First year undergraduate university	82
2.3 (b) Second year undergraduate university	82
2.3 (c) First marriage	83
2.3 (d) First child of first marriage and parenting: 1982-1985	83
2.3 (e) Third year undergraduate university	84
2.3 (f) Employment: 1983-1987	85
2.3 (g) Second child of first marriage and parenting: 1985-1987	85
2.3 (h) First marriage separation	85
2.3 (i) Unemployment and parenting: 1987-1988	86
2.3 (j) Abortion	87
2.3 (k) First marriage divorce	87
2.3 (l) Second marriage	87
2.3 (m) Employment: 1988-1993	87

5: Narration and Summary of Facts

2.3	(n) Only child of second marriage and parenting: 1990-1993	88
2.3	(o) Second marriage separation	88
2.3	(p) Fourth year undergraduate university	88
2.3	(q) Undergraduate graduation	89
2.3	(r) Parenting: 1993-1994	89
2.3	(s) Children abuse report	90
2.4	Post-Graduate (Medicine) Education; Marriage and Parenting	92
2.4	(a) Decision to enter Faculty of Medicine	92
2.4	(b) First year Faculty of Medicine	93
2.4	(c) Parenting: 1994-1995	93
2.4	(d) Second year Faculty of Medicine	93
2.4	(e) Parenting: 1995-1996	94
2.4	(f) Third year Faculty of Medicine: commencement	94
2.4	(g) Parenting: 1996-1997	94
2.4	(h) Second marriage divorce	95
2.4	(i) Parenting: 1997-1998	95
2.4	(j) Family matters	96
2.4	(k) Third year Faculty of Medicine: conclusion	96
2.4	(l) Fourth year Faculty of Medicine	97
2.4	(m) Post-graduate (Medicine) graduation	97
2.4	(n) Residency training: commencement	97
2.4	(o) Parenting: 1998-2000	102
2.4	(p) Internship and residency training: conclusion	106
2.5	Unmarried Relationships	106

5: Narration and Summary of Facts

2.5 (a) <i>Man from Pennsylvania</i>	106
2.5 (b) <i>Andrew David Bagby</i>	116
3. <i>Andrew David Bagby</i>	117
3.1 <i>Parents</i>	117
3.2 <i>Upbringing and Secondary School Education</i>	119
3.3 <i>Post-Secondary Education and Employment</i>	119
3.4 <i>Post-Graduate (Medicine) Education</i>	120
3.5 <i>Unmarried Relationships</i>	120
3.5 (a) <i>California Student</i>	120
3.5 (b) <i>Shirley Jane Turner</i>	122
4. <i>Shirley Jane Turner and Andrew David Bagby</i>	123
4.1 <i>Unmarried Relationship in Newfoundland</i>	123
4.2 <i>Impact of Previous Unmarried Relationships</i>	124
4.3 <i>Planning to Leave Newfoundland</i>	124
4.3 (a) <i>Shirley Jane Turner</i>	125
4.3 (b) <i>Andrew David Bagby</i>	125
4.4 <i>Leaving Newfoundland and Living in United States</i>	126
4.4 (a) <i>Departures</i>	126
4.4 (b) <i>Sac City, Iowa and Syracuse, New York</i>	126
4.4 (c) <i>Long distance relationship: Part 1</i>	127
4.4 (d) <i>Parenting: 2000</i>	129
4.4 (e) <i>Council Bluffs, Iowa, and Latrobe, Pennsylvania</i>	130
4.4 (f) <i>Long distance relationship: Part 2</i>	131

5: Narration and Summary of Facts

4.5	<i>Parenting: 2001</i>	133
4.6	<i>Murder of Andrew David Bagby</i>	134
4.6 (a)	<i>Background</i>	134
4.6 (b)	<i>Circumstances</i>	139
4.6 (c)	<i>Discovery</i>	146
4.6 (d)	<i>Pennsylvania investigation</i>	150
4.7	<i>Shirley Jane Turner's Response</i>	170
4.7 (a)	<i>Telephone calls: Part 1</i>	170
4.7 (b)	<i>Flight from Council Bluffs, Iowa to Toronto</i>	177
4.7 (c)	<i>Visit to Toronto</i>	178
4.7 (d)	<i>Journey from Toronto to Deer Lake</i>	185
4.7 (e)	<i>Journey from Deer Lake to St. John's</i>	185
4.7 (f)	<i>Settling in St. John's</i>	185
4.7 (g)	<i>Consulting psychiatrist</i>	186
4.7 (h)	<i>Telephone calls: Part 2</i>	197
4.8	<i>Newfoundland Investigation</i>	201
4.8 (a)	<i>Surveillance</i>	201
4.8 (b)	<i>Memorial Service</i>	202
4.8 (c)	<i>Confrontation with Dr. Bagby's former fiancé</i>	203
4.8 (d)	<i>Telephone calls: Part 3</i>	205
4.9	<i>Pregnancy Confirmed</i>	207
4.10	<i>Extradition Proceedings: Part 1</i>	210
4.10 (a)	<i>Background</i>	210
4.10 (b)	<i>Provisional arrest warrant</i>	216
4.10 (c)	<i>Judicial interim release: Part 1</i>	222
4.11	<i>Parenting: 2001-2002</i>	234

5: Narration and Summary of Facts

4.12	<i>Community and Health Services: Part I</i>	239
4.12 (a)	<i>Introduction</i>	239
4.12 (b)	<i>Community Services</i>	256
4.12 (c)	<i>Investigation</i>	288
5.	<i>Shirley Jane Turner and Zachary Andrew Turner</i>	300
5.1	<i>Birth of Zachary Andrew Turner</i>	300
5.2	<i>Parenting: 2002-2003</i>	301
5.3	<i>Community and Health Services: Part 2</i>	302
5.3 (a)	<i>Community Services</i>	302
5.3 (b)	<i>Health Services</i>	326
5.4	<i>Parenting Proceedings: Part 1</i>	339
5.5	<i>Financial Services</i>	352
5.6	<i>Extradition Proceeding: Part 2</i>	355
5.6 (a)	<i>Background</i>	355
5.6 (b)	<i>Extradition surrender application</i>	363
5.7	<i>Parenting Proceedings: Part 2</i>	374
5.8	<i>Incarceration at Correctional Centre for Women</i>	376
5.9	<i>Extradition Proceeding: Part 3</i>	397
5.9 (a)	<i>Administrative action by Dr. Turner and Canada's Justice Minister</i>	397
5.9 (b)	<i>Appeal</i>	406
5.9 (c)	<i>Judicial interim release: Part 2</i>	407
5.9 (d)	<i>Provision of legal counsel</i>	419
5.10	<i>Parenting Proceedings: Part 3</i>	421
5.11	<i>Life after Correctional Centre for Women</i>	426

5: Narration and Summary of Facts

<i>5.12 Community and Health Services: Part 3</i>	429
<i>5.13 Office of the Child and Youth Advocate</i>	441
<i>5.14 Attachment Therapy</i>	453
<i>5.15 Community and Health Services: Part 4</i>	456
<i>5.16 Unmarried relationship: Young man met in bar</i>	457
<i>5.17 Saying Goodbye</i>	465
<i>5.18 The Last Day</i>	467
<i>5.19 Deaths of Zachary Andrew Turner and Shirley Jane Turner</i>	478
<i>5.20 Investigation of Deaths of Zachary Andrew Turner and Shirley Jane Turner</i>	496
<i>5.21 At Rest</i>	514
<i>5.22 Extradition Proceedings: Part 4</i>	515
<i>6.0 Reviews</i>	516
<i>Endnotes</i>	517

1. Introduction

What was known? What could have been known? Would learning what could have been known have made a difference?

These are the three cardinal questions I asked in finding, summarizing and analyzing the facts of this Review.

When persons responsible for providing justice, community health and financial services to the public interacted with Dr. Shirley Turner and her son, Zachary, what did they know and thus impacted their design and delivery of services to Dr. Turner and Zachary?

What could these services providers have learned, but didn't, about Dr. Turner and Zachary?

And, had service providers learned what could have been known, would their approach to assistance they furnished to mother and son have been different? And, made a difference resulting in a different outcome - in which Zachary Turner's life was preserved?

5: Narration and Summary of Facts

Of course, service providers didn't need to know everything about Dr. Turner and her son. What services providers needed to know was everything within the bounds of their training, experience and resources that was relevant to ensuring protection of Zachary's "best interests:"¹ his stability; his social development and, most importantly, his safety.

Zachary's "best interests" are the foremost concern of my Review.

This is because, central to the mandate of the Child and Youth Advocate who appointed me Advocate's Delegate to conduct this Review, as stated in section 3(a) of the Child and Youth Advocate Act,² is

to ensure that the rights and interests of children and youth are protected and advanced

Service providers knew nothing about Dr. Turner or her expected son until media reported the murder of her former boyfriend, Dr. Andrew Bagby, the child's father, shortly before she landed in Newfoundland in November 2001 from a medical stint in the United States.

5: Narration and Summary of Facts

What was learned by services providers about Dr. Turner and, after his birth, about her son Zachary, pertinent to services delivery, was acquired from 14 November 2001 until 18 August 2003, when both died in the Atlantic Ocean off the coast of the community of Foxtrap, Newfoundland.

What services providers could and should have learned about Dr. Turner and Zachary, germane to crafting an approach to delivering services to them was, I have concluded, considerably more than they did.

The facts illuminating what services providers knew, and could have known, but did not find out, is the necessary principal theme of this Chapter.

Identifying, summarizing and analyzing the facts of this Review has been a daunting task. While I say “Review,” that term is an abbreviation for the full scope of my work - a review and an investigation.

My terms of reference required both a review and investigation. In fact, a review by itself wouldn’t have sufficed.

5: Narration and Summary of Facts

What, for example, did service providers know about Dr. Turner's upbringing? Her record of parenting three children before Zachary's birth? Her prior encounter (in 1993) with social workers respecting those three children? Her psychological profile? Her extensive record of psychiatric problems? Her multiple suicide attempts? Her involvement in and surrounding the murder of Dr. Andrew Bagby, Zachary's father, and the probability of her conviction for that murder? Her credit (her capacity to perceive, retain and recall events) and credibility (her believability)? In other words, what did they know, relevant to delivering services to Dr. Turner and Zachary that may have made a difference to Zachary?

In ascertaining the facts during my Review, I sought to discern the context and tone of events and, as far as I was able, the intentions and motives of the participants in those events. I resolved to avoid speculation where the evidence was unavoidably incomplete.

The limited legal authority I possessed under the *Child and Youth Advocate Act*³ to gather evidence in conducting my Review as Advocate's Delegate was certainly much more

5: Narration and Summary of Facts

limited than the statutory powers available to the service providers of Dr. Turner and Zachary.

Service providers, in common with me, did have unrestricted access to several sources of pertinent information which, unlike these service providers, I discovered during my Review. These were archives of documents in the registries of the Newfoundland Supreme Court, Trial Division, on Water Street and Court of Appeal on Duckworth Street - both in St. John's; at the Province's Correctional Centre for Women on Duffitt Place in Clarenville; the recollections (sometimes supported by documents) of the District Attorney's Office in Pennsylvania; police departments in the States of Pennsylvania, Iowa and New York; and relatives, friends and acquaintances of Dr. Turner and Zachary across Canada and the United States.

What follows is a narrative, based on evidence accumulated during my Review. Despite gaps in the evidence of events, the narrative is sufficiently complete to have enabled me to conduct a comprehensive Review.

5: Narration and Summary of Facts

Sources of information relevant to the life of Zachary Andrew Turner that could have been known prior to his death were identified by me within a week of my commencement of this Review. I required considerably more time, however, than I expect social workers would have needed to access these sources and digest the information they provided; all of which are summarized in these Findings. The reasons are four-fold. First, my legal counsel and I worked without support staff (such as researcher, investigator and office administrator) as an economy measure. Secondly, my legal authority as Advocate's Delegate to access many of these sources was significantly more limited than the authority possessed by social workers. Negotiating access to these sources was often a tedious exercise. Thirdly, witnesses and documents germane to the Review (other than the social workers interviewed and Government of Newfoundland documents provided, without hesitation), were widely disbursed across Newfoundland, elsewhere in Canada and in the United States. And, fourthly, a Review of this nature has not previously been undertaken in Newfoundland. Consequently, I have endeavoured in these Findings to canvas all salient procedural and substantive issues, both legal and factual, involved in such a Review in comprehensive detail.

The information eventually accumulated was indeed substantial. This chapter, by far the longest of my Findings, distills and provides that information with twin objectives: (i) provide the Advocate and her constituency - the children and youth of Newfoundland - with an expansive account of the circumstances of and surrounding the death of Zachary, my mandate; and (ii) attempt to dispel some of the controversies resulting from his death.

2. *Shirley Jane Turner*⁴

2.1 *Parents*

At a United States Defense Station built from 1951 to 1953 in St. Anthony, Newfoundland, a woman native to the Province (born in or about 1935) found employment and met an American serviceman, surname “Turner.” He was from the State of Kansas. After his tour of duty at the Station, he returned to Kansas. He was accompanied or joined there by the woman. Shortly before or after traveling to Kansas, they married. In Wichita, Kansas, they established a home and the retired serviceman went to work. Together they had four children. One of the children born on 28 January 1961 was

5: Narration and Summary of Facts

“Shirley Jane Turner.” (Her genealogy table is Appendix A.5 to these Findings).

The couple separated and the woman returned to Newfoundland in 1968, bringing with her Shirley and her three siblings (two brothers and a sister). Shirley was then seven years old.

Her parents never reconciled. Eventually they were divorced.

Because Shirley was born in the United States and subsequently (1968) established residence in Canada, she was entitled to, and enjoyed, dual citizenship. One of the privileges of dual citizenship is the right to hold a passport from each of the United States and Canada. Prior to August 2000, Dr. Turner acquired both passports. Holding Canadian and United States passports meant, in the case of Dr. Turner, the right to seek, obtain and hold employment in both Canada and the United States and, as proved useful, to travel using both passports.

2.2 Upbringing and Secondary School Education

5: Narration and Summary of Facts

For more than a few years after coming back to Newfoundland, Shirley, her three siblings and her mother lived a somewhat nomadic existence.

With income support - then known as “welfare” - they first settled in Daniels Harbour on the Great Northern Peninsula (“Peninsula”) and, later, in Portland Creek (Appendix A.114, No.2).

By most accounts, the lifestyle of Shirley and her family was exceptionally frugal.

In Portland Creek, Shirley’s mother made the acquaintance of a gentleman from Daniels Harbour. Some relatives of Shirley characterized him as an upstanding person. He started a long-term social relationship with her mother.

Details of their relationship are, however, sketchy.

In Daniels Harbour and area, until the summer of 1980, Shirley Turner attended secondary school.

**2.3 *Post-Secondary Education; Marriages;
Children; Parenting and Employment***

(a) *First year undergraduate university*

Despite her underprivileged origins, Shirley was resolved to make a professional success of her life, against all odds.

In the autumn of 1980, Shirley Turner left the Peninsula to begin undergraduate university studies. Her interest at (what is now) Memorial University were Science and Education. Her first undergraduate year was spent at Memorial University's Sir Wilfred Grenfell campus in Corner Brook.

2.3 (b) *Second year undergraduate university*

In September 1981, Shirley commenced her second year of undergraduate studies at the Memorial University's St. John's campus. She maintained a "long-distance" relationship with a young man, a welder, who continued to reside in Parsons Pond. She became pregnant by him during the autumn of 1981.

2.3 (c) *First marriage*

She married him in Parsons Pond on 28 December 1981 during the Christmas-New Year University recess. The marriage was the first for each of them. In January 1982, she returned to St. John's to complete her second undergraduate year at Memorial University.

2.3 (d) *First child of first marriage and parenting: 1982-1985*

Shirley's first child of her first marriage - a boy - was born on 09 July 1982. She started, shortly after his birth, banking his "baby bonus" in a scholarship fund in the expectation her son would eventually follow in her footsteps and attend undergraduate university. He would do so as an older teenager, but his university education was not to be under the financial auspices of his "baby bonus" account.

Relations between Shirley Turner and her Parsons Pond mother-in-law were always lukewarm, at best. This was by choice of Shirley Turner. She would not permit the mother-in-law to actively serve in the role of paternal grandmother to Shirley's first son. And, she omitted reference in her son's

“baby books” to the mother-in-law’s frequent gifts to her grandson. Nonetheless, the wise and forgiving mother-in-law was to become a pillar of stability in Shirley’s troubled, abbreviated life. She was the person who would eventually claim her body and arrange for her burial in Parsons Pond some 21 years later.

2.3 (e) *Third year undergraduate university*

After spending the summer of 1982 in Parsons Pond, Shirley, her first husband and their son moved back in September to St. John’s where Shirley undertook her third undergraduate year at Memorial University. Her first husband filled the role of “stay-at-home parent” to their son.

In April 1983, Shirley and her immediate family returned to the Peninsula for the summer.

As an undergraduate student, Shirley aspired to become a doctor largely, I am informed, to enjoy the financial dividends she perceived a medical career would afford her. As mentioned, her upbringing had been marked by severe financial deprivation.

2.3 (f) *Employment: 1983-1987*

In August 1983, she, her husband and son were off to Labrador City where Shirley taught school, until June 1987. Shirley's principal teaching area was, of course, Science. She was popular as a teacher among her students.

2.3 (g) *Second child of first marriage and parenting: 1985-1987*

The second child of the first marriage - a daughter - was born to Shirley on 13 April 1985. Shirley, again, banked the daughter's 'baby bonus.' Her intention, at least at the time, was to fund a scholarship for the daughter's post-secondary education as she had been doing for their son.

2.3 (h) *First marriage separation*

Shirley's first marriage deteriorated. While living in Labrador City with her first husband, Shirley rekindled a previous romantic relationship.

Before her first marriage she had associated with another man, a fisherman. Although living in Labrador City,

Shirley managed to secretly liaise with this former boyfriend on Labrador's south coast where he was employed.

She managed this by visiting the Peninsula from Labrador City with her two children of the first marriage (her first husband being unable to obtain time off from his employment with the Iron Ore Company of Canada to accompany them), depositing the children for brief periods with a relative in Parsons Pond, travelling via a ferry service from St. Barbe on the northwest coast of the Peninsula to southern Labrador and, after each visit with the boyfriend, retracing her steps to the Peninsula, picking up the children in Parsons Pond and returning to Labrador City.

About March 1987, Shirley and her first husband separated in Labrador City. She came back to the Island with the two children when her secondary school teaching responsibilities ended in June 1987.

2.3 (i) *Unemployment and parenting: 1987-1988*

The evidence is vague as to Shirley's whereabouts and living means from June 1987 to July 1988. She established a

temporary home for herself and her two children in Deer Lake, at least from June 1987 to June 1988. Shirley evidently qualified for (what is now known as) Employment Insurance.

2.3 (j) *Abortion*

In July 1988 she aborted.

2.3 (k) *First marriage divorce*

Shirley's first marriage was over. She obtained a divorce on 29 January 1988.

2.3 (l) *Second marriage*

By 1987, if not earlier, Shirley's liaison with her former boyfriend had matured into a romantic relationship. On 22 July 1988, she was married to him in Corner Brook and they established residence together, sometimes on the Peninsula and at other times in Deer Lake, with her two children.

2.3 (m) *Employment: 1988-1993*

She taught school in Cow Head or Deer Lake from 1988 to 1993. Her last teaching position was with the Deer Lake Integrated School Board from which she resigned in June 1993.

2.3 (n) *Only child of second marriage and parenting: 1990-1993*

Shirley's only child of her second marriage, a daughter, was born 08 March 1990. As she had done for her other two children, she banked at least some of this third child's "baby bonus" in a scholarship fund for the child's college education.

2.3 (o) *Second marriage separation*

Not long after the birth of this child, if not earlier, Shirley and her second husband experienced marital discord. They permanently separated on 20 March 1991.

2.3 (p) *Fourth year undergraduate university*

Shirley's only child from her second marriage was three years old, and her two other children were eight and eleven years old when, in the summer of 1993, after completing her

fifth year of teaching on the Island (at Cow Head and at Deer Lake), she decided to resume her university studies for a year to obtain her undergraduate bachelor's degree. Peninsula relatives questioned her decision. "Are you sure you should do that?" one relative recalls, challenging Shirley, "because you have three young children" (or words to that effect). She responded that only one year was required for her to complete the degree. She assured her detractors that her formal education would then come to an end and she would resume teaching.

A scholastically bright woman, she completed her fourth undergraduate year at Memorial University from September 1993 to April 1994.

2.3 (q) Undergraduate graduation

In May 1994, Shirley Turner graduated with her undergraduate degree from Memorial University.

2.3 (r) Parenting: 1993-1994

This achievement was no modest undertaking. She came to St. John's in late August or early September 1993 with the three children and rented an apartment. Her second husband, from whom she had been estranged since 1991, at first remained on the Peninsula.

In late October 1993, he came to St. John's and cared for her two older children, as well as the youngest child, fathered by him. Shirley lived separately and apart from him under the same roof.

2.3 (s) *Children abuse report*

On 29 October 1993, shortly after Shirley Turner's estranged second husband arrived in St. John's, a report was made to, what was then, the Department of Social Services, alleging physical and other child abuse committed by Shirley. A man boarding with Shirley and her three children (which generated some supplementary income for her) became upset about, what he alleged, was Shirley's ongoing mistreatment of two of her three children. Because of this he ceased boarding there. He discussed his concerns with a therapist at Memorial University.

5: Narration and Summary of Facts

The therapist later told a Department of Social Services social worker that the boarder

witnessed [the older daughter] being struck in the face by her mother for no reason. ... [Shirley] always swears and curses at the child and sometimes at ... [the son]. ... [Shirley] has left ...[the older daughter] at home on weekends [and] evenings unsupervised [and] she has to go to school on bus unsupervised. [T]hat this has been ongoing for at least 2 months. Most of abuse is directed at ... [the older daughter].

When the son and older daughter were interviewed in the presence of the principal of [...] School, St. John's, where the two children were then being educated, they informed a social worker that their mother was a disciplinarian who sent them to their rooms for "time out" periods or spanked them with her hand or, sometimes, the son indicated, with a belt. They didn't deny the abuse report.

The two children did not exhibit any physical marks or present any behavioural problems. The husband told a Department social worker that Shirley was "in charge of [the] children and discipline." He added that he was aware of "time outs" and spanking with her hand. However, he stated the belt - to his knowledge - was used only as a threat. He was not asked about his whereabouts during most of the period

5: Narration and Summary of Facts

material to the abuse report. He was then living on the Great Northern Peninsula while the children and Shirley, from whom he was estranged, were in St. John's.

Although three messages were left by the Department for Shirley at her apartment, she never answered them. An entry in the Department's Case Record states:

Attempted ... [to have conversation] with ... [Shirley] to discuss situation - as she was at M.U.N. she couldn't be contacted during the day.

The file on the abuse report (number 900-745) was closed 11 January 1994 without the Department ever having spoken to Shirley.⁵

2.4 Post-Graduate (Medicine) Education; Marriage and Parenting

(a) Decision to enter Faculty of Medicine

While back visiting on the Peninsula in the summer of 1994, having obtained her undergraduate degree in May of that year, she surprised her immediate and extended family. She announced her decision to return in the autumn to Memorial University in St. John's to enter the Faculty of Medicine to

5: Narration and Summary of Facts

obtain a medical degree. She intended to do so, she said, without taking her children to live with her.

2.4 (b) *First year Faculty of Medicine*

In September 1994, Shirley had been accepted and enrolled in the Faculty of Medicine. She left for St. John's, alone.

2.4 (c) *Parenting: 1994-1995*

Her two oldest children, then nine and twelve years old, remained behind with the Parsons Pond mother-in-law who, I understand, lived next door to the children's father (Shirley's first husband). Her third child, born of the second marriage, lived in Portland Creek with her second husband from whom she had been separated since 20 March 1991.

2.4 (d) *Second year Faculty of Medicine*

The following September - in 1995 - she returned to St. John's for the second year of her medical studies.

2.4 (e) Parenting: 1995-1996

She was, unlike the previous year, now accompanied by her three children. They lived with Shirley for the entire academic year. Provision she made for the children's care, while she was in class or laboratory and the children were not in school, is not known to me.

2.4 (f) Third year Faculty of Medicine: commencement

In September 1996, Shirley commenced her third year as a student in Memorial University's Faculty of Medicine.

2.4 (g) Parenting: 1996-1997

She brought the three children with her to St. John's when she started her third year of medical degree studies in September 1996. Not ascertained by me are the arrangements she made for their care. Known, however, is that by February 1997, Shirley told family and other relatives that she had reached the point in her medical studies where her student obligations were incompatible with her parenting of the three children.

5: Narration and Summary of Facts

Up to February 1997, Shirley and her first or second husband - when she cohabited with either of them - had continuous custody of the three children of her two marriages. The “baby bonus” was received by her. When she was living with a husband, she and her spouse contributed to support of her children. When not living with a husband, they paid child financial support, usually on a monthly basis.

2.4 (h) Second marriage divorce

On 21 February 1997, Shirley was divorced from her second husband. She was granted custody of the only (female) child of the second marriage.

2.4 (i) Parenting: 1997-1998

In spite of having been granted custody, within days after the divorce proceeding, the youngest child was, again, residing with her father in Portland Creek. And her two children from the first marriage were, again, living with the Parsons Pond mother-in-law.

This parenting arrangement continued for the duration of Shirley's medical education.

2.4 (j) *Family matters*

By now, the relationship of Shirley's mother and her cohabiting partner was becoming fragile. He took ill. She left him and moved to Ontario. The partner remained behind and continued living in his house in Daniels Harbour. This turn of events distressed Shirley. She had developed a daughter-like bond with this man and maintained contact with him until his death.

I cannot but wonder what impact the failed marriage and the marriage-like relationships of both her mother and herself had on Shirley Turner.

2.4 (k) *Third year Faculty of Medicine: conclusion*

Having delivered her three children to the Peninsula in February 1997, Shirley returned to St. John's and completed the third year of her formal medical education in the spring of 1997.

2.4 (l) *Fourth year Faculty of Medicine*

From September 1997 to spring 1998, Shirley completed the requirements of her fourth year as a student in the Faculty of Medicine.

2.4 (m) *Post-graduate (Medicine) graduation*

In May 1998, she graduated from the Faculty with a MD degree. She became known as: Dr. Shirley Jane Turner.

2.4 (n) *Residency training: commencement*

For the next two years (1998 to 2000), Dr. Turner continued her medical training as an intern and then as a resident in various Newfoundland teaching hospitals in St. John's, Corner Brook, Norris Point, St. Anthony and, perhaps, Grand Falls. Her residency was in Family Medicine.

Part of Dr. Turner's residency training in St. Anthony was with Grenfell Regional Health Services (Grenfell). When, in 2000, the part of her residency with Grenfell ended, she received a letter, dated 05 September 2000, thanking her for her work:

5: Narration and Summary of Facts

Your willingness to undertake part of your training [with Grenfell] in a fashion that was also a positive contribution to the delivery of health care to the people of South East Labrador was commendable. We were all impressed by your openness to ideas and suggestions and your cheerfulness.

Residency training undertaken by Dr. Turner in St. John's, however, generated a less flattering professional appraisal.

A senior and very experienced physician and member of the Faculty of Medicine had a markedly different take on Dr. Turner during periods of her residency while he and two other physicians were responsible for her supervision. In a statement requested by the Constabulary on 01 December 2001 (amplified during a further interview), he and two other physicians, in the course of operating a Family Practice clinic at St. John's, supervised two periods of Dr. Turner's two-year residency: from 11 November to 08 December 1999; and again from 03 February to 26 April 2000.

On arriving for the first of these two residency periods (11 November to 08 December) two days late, she provided a list of days convenient for her to work, expecting another resident and the physician to tailor their schedules to work

5: Narration and Summary of Facts

around hers. When he made a critical comment of the progress of this part of her residency, she demanded the comment be expunged,

became quite hostile[,] yelling, crying and accusing me of treating her unfairly [and] twice hung up on me [during telephone conversations about her demand].

On another occasion, he discovered that

[s]he lied right to my face and forcibly argued her case accusing me of improper supervision.

When Dr. Turner

reported that all her previous [residency] evaluations were above average and that no other preceptor had ever had a problem with her performance,

he made inquiries which established

[b]oth statements ..., were false.

After agreeing to her request to leave this residency period a day early so that she could travel to western Newfoundland to visit her children, and cautioning her to drive safely, he saw her the next day at the Faculty of Medicine.

5: Narration and Summary of Facts

The second residency period (03 February to 26 April) did not improve this supervising physician's professional impressions of Dr. Turner. This residency was remedial in nature. Because of some negative evaluations received from earlier rotations in her residency and some of her behaviours during those earlier rotations, Dr. Turner was sent back to this physician and two of his professional colleagues for further evaluation.

The physician stated to the Constabulary that

[s]he missed nine days of this three month rotation (most residents miss one day per year) using excuses such as children being sick (they live 500 km from St. John's), migraine headaches or no excuses at all.

The physician recalled an occasion, when he asked Dr. Turner why she had missed a residency day, she replied that she had been up all the night before tending to one of her children who had been ill. When he reminded her that none of her children lived in St. John's, she replied that she had been on the telephone until 2 a.m. as one of her children was ill on the west coast of the Island and, because the treating doctor had administered the wrong antibiotic, she had to awaken a pharmacist to go to his pharmacy to obtain the correct

5: Narration and Summary of Facts

antibiotic. (The caregivers of the children have no recollection of such events).

After this remedial rotation, the physician discovered that some reports Dr. Turner made to him of her clinical findings and treatment of patients she saw during the rotation were untrue. One patient stopped coming to his Family Practice clinic shortly after an encounter with Shirley Turner. He and his two colleagues

were so concerned about Shirley Turner's approach to confrontation and the truth that we would never give her feedback or hold any major discussion [with her] alone. This is the only time in 21 years of teaching that I have had to use this approach.

The physician concluded that

I felt I was being manipulated whenever I spoke with Shirley Turner. When negative items would come up she would change the topic to one of my failings. She could be charming[,] friendly and lively but when caught in an untruth she would become angry, accusatory and loud. I always felt Shirley Turner was 'putting on a show,' as if she were playing the role but had no feeling for her work. I cannot recall a trainee like Shirley Turner in that her approach lacked personal commitment and her relationships with people seemed, at least to me, to be superficial when compared to the over 400 residents I have supervised during the past 21 years.

In an interview with an assessment officer with the Office of the Child and Youth Advocate, during its uncompleted review, the physician said:

you might say [Dr. Turner] was a manipulative[,] guiltless psychopath ... [which is] the medical term I would use, but at the time, ..., we recognized that she was not always telling the truth about where she was all the time, and she would[,] when confronted[,] gradually escalate her response to a confrontation, but we never thought about having her assessed by a psychiatrist It rare comes to that in residency. People with major psychosis are usually picked up in Medical School.

In hindsight, and I emphasize “in hindsight,” the physician said Dr. Turner

was cute, petite, always looked injured She just fooled everyone, I think.

In the opinion of the physician, the experience with Dr. Turner prompted constructive changes in the residency evaluation process.⁶

2.4 (o) Parenting: 1998-2000

As mentioned before, during the period 1998 to 2000 while Dr. Turner attended to her medical residency

5: Narration and Summary of Facts

obligations, the older children continued to live with, and were financially supported by their father and the Parsons Pond mother-in-law. Dr. Turner's youngest child lived with and was supported by the child's father and a woman with whom he had taken up residence. They lived in Deer Lake and later in Portland Creek. Very little financial support for any of the children was being contributed by Dr. Turner although, by or during this timeframe, she had arranged for the monthly "baby bonus" she had been receiving for the three children to be paid to the children's fathers.

In 2000, Dr. Turner's two older children underwent significant changes in their lives.

Shirley's son, then 18 years old, wanted to start undergraduate university studies in September 2000. This development brought to light Shirley's finances since she returned to Memorial University in 1993. And the revelation of those finances very much disturbed a member of her extended family on the Peninsula.

Principal among the sources which had financed Shirley's last undergraduate year (1993 to 1994) and her

5: Narration and Summary of Facts

subsequent graduate medical studies (from 1994 to 1998) were student loans. The loans were apparently calculated incorrectly on the basis she had the continuous custody of her three children while completing her undergraduate degree and, afterwards, while attending medical school.

Another source of education financing surfaced in 2000 when Dr. Turner's son was eligible to commence undergraduate university. During a visit to the Peninsula in the summer of 2000, she told an extended family member she would have to assist her son to obtain a student loan so that he could register to commence his undergraduate studies. Dr. Turner was reminded that the son's "baby bonus" had been placed by her in a scholarship fund for that purpose during much of the previous 18 years of the son's lifetime. Shirley confessed that she had spent his - indeed, all the children's - 'baby bonus' money, in addition to her student loan, to enable her to pay her living expenses and attend Memorial University's Faculty of Medicine from 1994 to 1998. This quite understandably angered the extended family member. Shirley assured her that, having graduated from the Faculty of Medicine at Memorial University and having completed her post-graduate residency training, she was on the cusp of

5: Narration and Summary of Facts

earning “big money.” This “big money,” she said, would enable her to assist her three children with their post-secondary education.

To finance commencement of his university education in autumn 2000, Dr. Turner’s son obtained student loans and worked part-time and full-time in at least one restaurant and one ‘take-out’ establishment.

Dr. Turner’s 15-year old daughter, who by now had completed grade 10 (Level 1) in high school, wanted to leave Parsons Pond and live in Ontario in order to continue a romantic relationship with a young teenage boy whom she had met in Newfoundland. The boy had moved to Ontario in the summer of 2000. The older daughter spent part of the summer of 2000 in Ontario, enjoying social contact with the boy. Although she came back to Newfoundland to start school in September 2000, she prevailed on her mother three weeks after returning to allow her to resume living in Ontario.

Dr. Turner obliged. Despite the fact that this child was only 15, she funded her travel back to Ontario and paid her \$700 for the cost of continuing her secondary education there

5: Narration and Summary of Facts

through home schooling. The daughter returned to Ontario. This arrangement would have constituted grounds for child protection intervention.

Meanwhile, Dr. Turner's younger daughter continued, as she had since February 1997, to live with her father in Deer Lake and then in Portland Creek.

2.4 (p) *Internship and residency training: conclusion*

By the summer of 2000, Dr. Turner had satisfied the requirements of residency training. She was now qualified to practice medicine.

2.5 *Unmarried Relationships*

(a) *Man from Pennsylvania*

I pause in my principal narrative to reach back briefly in time and turn attention to an episode in Dr. Turner's life elsewhere, on 07 April 1999. At that time, Dr. Turner was undertaking medical residency training in Newfoundland.

5: Narration and Summary of Facts

The background to this episode is that about March 1996 (a year before the divorce from her second husband took effect), Dr. Turner made the acquaintance of a St. John's bachelor nine years her junior. Their romantic relationship began in late winter 1996. He attempted to end the relationship a few months later; shortly before his employment required him to relocate to another part of Newfoundland, about a ten-hour drive from St. John's. A "long distance relationship won't work for us," he told her.

Dr. Turner evidently wasn't listening, but she expected him to do so. She inundated him with telephone calls at his relocation residence very shortly after he acquired a telephone number there. When he answered her calls, she talked with intensity and velocity.

In November 1997, the man underwent a career change and, for that purpose, he enrolled at a vocational institute in Halifax.

The additional distance which now separated the man from Dr. Turner did not discourage her. Her marathon telephone calls to him continued and were punctuated by

5: Narration and Summary of Facts

unwelcomed personal visits to him in Halifax. This state of affairs continued into the summer of 1998.

When Dr. Turner appeared at the man's apartment door in the summer of 1998, he made the mistake of letting her in. She refused to leave. He chose capitulation over summoning the police. She remained there until he completed his vocational institute training at the end of July 1998.

Two 1998 events particularly stand out in this man's recollection during the period of Dr. Turner's uninvited lodging at his Halifax apartment.

First, he recalls an evening when he and Dr. Turner were walking back to his apartment. Dr. Turner carried her platform-heeled shoes in one of her hands. Dr. Turner was arguing with him. Without warning and abruptly, she forcefully assaulted him by hitting him with one of the shoe heels in the jaw. Never again did he doubt Dr. Turner's capacity for violence which, to an impartial observer, he pointed out, was disguised by her diminutive 5 foot, 100 pound stature.

5: Narration and Summary of Facts

And, secondly, on another summer night in Halifax, Dr. Turner became emotionally overwrought. The man has forgotten the cause. He escorted Dr. Turner on foot to a Halifax hospital. The hospital's emergency department staff who examined her there admitted her for overnight psychiatric examination. From this incident grew the need for Dr. Turner to be treated as an outpatient in Halifax by a psychiatrist.⁷

In late summer 1998, after visiting his parents in St. John's, this man moved to Pennsylvania. He figured he had heard the last from Dr. Turner.

He was mistaken. Dr. Turner traveled from St. John's to pay him an unannounced visit in Pennsylvania. On the night of 07 April 1999, she was on the doorstep of his residence in Westtown-East Goshen.

Although Dr. Turner was about to commence or perhaps had already entered the embryonic stage of her relationship with a third year Memorial University medical student, she had not yet emotionally disengaged from the association with the former boyfriend.

5: Narration and Summary of Facts

At 6:08 p.m., the man reported to Westtown-East Goshen Regional Police Department in Chester County, Pennsylvania, that he had arrived at the entrance to his third floor apartment to discover Dr. Turner lying on the floor, slumped against the apartment's exterior door or a nearby exterior wall. She was attired in a long black dress. Cradled in her left arm was a luxuriant bouquet of red roses.

On her person were two letters in her handwriting: a 4-page letter addressed to the man; and a single-page letter addressed to her former psychiatrist, also living in the United States. Each letter was signed "Shirley."

As he approached Dr. Turner, "her right arm slowly rose toward him;" the suicide note, addressed to him, was in her hand. He took the note. Dr. Turner's right arm slumped back to the floor.

In addition to wishing the man "a great life," the letter instructed him to return to "Hertz" her motor vehicle (which she rented during her visit to Pennsylvania from Newfoundland); to divide the \$60,000 payable under her life insurance policy "with Health Care Corporation" among her

5: Narration and Summary of Facts

three children in equal shares; to inform her family she wished to be cremated; and to report her death by telephone to a named female person (a lifelong friend, originally from a Peninsula community, who is now residing near St. John's).

Dr. Turner's other letter - considerably more legible - includes the acknowledgement to her former psychiatrist,⁸ who was also a friend,

"I am not evil, just sick."

The man reported to police and paramedics whom he immediately summoned that when he discovered her outside his apartment, Dr. Turner told him she had taken

some pills and wanted to die.

Police investigation revealed that Dr. Turner had evidently ingested 32 (23 milligram) tablets of Unisom (an anti-histamine), and 42 (25 milligram) tablets of Nauzone, together with a 20 ounce bottle of Pepsi Cola and a bag of potato chips. The empty containers for the medications - one box for Unisom, three boxes for Nauzone and the Pepsi bottle -

were together in a discount drugstore shopping bag located by police outside the apartment building where, Dr. Turner later informed police, she had discarded them.

Pharmaceutical consultant PharmaCorp of Montreal, on examining the police report of the attempted suicide by Dr. Turner, provided me this opinion respecting the medications ingested by her:

Unisom tablets in the ... [United States] contain ... doxylamine succinate. ... Doxylamine succinate belongs to the ethanolamine class of antihistamines ... promoted over the counter as “sleep aids.” Doxylamine succinate also has antinauseant and anathematic properties. Side effects include drowsiness, vertigo, nervousness, epigastric pain, headache, palpitation, diarrhea, disorientation, irritability, convulsions, urinary retention, or insomnia ... [which] have been reported [by users]. Symptoms of overdose [on Unisom] include dryness of mouth, dilated pupils, sleepiness, vertigo, mental confusion, restlessness or tachycardia. Fatalities have been reported from doxylamine overdose characterized by coma, grand mal seizures and cardio respiratory arrest.

Although unable to locate a medication called “Nauzone” (which the Westtown-East Goshen police may have misspelled), PharmaCorp was familiar with a United States over-the-counter medication sold under the trade name

5: Narration and Summary of Facts

Nauzene which, when ingested in large quantities, “would probably stimulate vomiting,” PharmaCorp advised.

The rationale for taking Unisom and Nauzene (if that) “is difficult to determine” reported PharmaCorp.

If Dr. Turner had ingested the entire contents of a box of Unisom, the resulting adverse physiological effects would not have been sufficient to cause her death, opined Pharmacorp, which added the comment that

[t]he individual reported to have consumed these products [Unisom and Nauzene (if that)] was a medical practitioner, [who] would have had a fundamental understanding of what effects to expect, and, in any case, would have had access to more appropriate drugs to ensure success in committing suicide if that was the intent.

Paramedics summoned by the man took Dr. Turner to an area hospital where her stomach was pumped and she was resuscitated.

Whether this was a suicide attempt or a suicide gesture, I cannot address. As a physician, Dr. Turner would have been aware of and probably had access to medications much more

likely to have efficiently and expeditiously occasioned her death. Moreover, in choosing the portals of a former boyfriend's apartment for her demise, she probably had calculated the prospect of being discovered and thereby rescued from the potential, gradually lethal effects of the substances she consumed.⁹

On the morning after this untoward event, the man arrived at his Pennsylvania workplace to find a telephone voice message awaiting him. The caller was a female who, in the man's opinion, was attempting to disguise her voice although, to his mind, unmistakably was Dr. Turner. The caller's message was that "Dr. Turner died last night."

The telephone calls from Dr. Turner (as they had been earlier, when she lived in Canada) were a staple of her efforts to maintain contact with the man in Pennsylvania from September 1998, when he established residence there, until late 1999 or early 2000. Some of her calls were chilling; especially when she appeared to be under the influence of alcohol. She made threats to the man such as: "You will die;" "I'll stab you;" "You'll soon be 6 feet under;" and, "The time will come when I'll have to call your family, your friends" -

5: Narration and Summary of Facts

which the man took to be veiled suggestions that his life was in jeopardy.

She also engaged in incessant harassing telephone calls to this man's parents back in St. John's. This is another story, which I will not address in these Findings.

Both before and after her 07 April 1999 suicide attempt, Dr. Turner appeared unannounced at the man's Pennsylvania residence. After the suicide attempt, he was afraid to respond to a knock at his door. Several times, he correctly surmised, the knock came from Dr. Turner. In response, he telephoned the Pennsylvania State Troopers. In short order, he would, on these occasions, hear the Troopers arrive and counsel Dr. Turner to leave the apartment building where the man was living. On one occasion, he received a telephone call from Dr. Turner in which she informed him,

me and a friend are partying here in New York. Come on down and join us,

(or words to that effect). He declined the invitation, but fully - and correctly - expected the call would be followed by a knock

5: Narration and Summary of Facts

on the door from Dr. Turner. The knock came a day and a half after the telephone call.

The man became so concerned that he telephoned the Pennsylvania State Troopers to place on record his apprehension because, he told the Troopers,

he could not be certain what Dr. Turner would do next.

Dealing with Dr. Turner, he recalled, required him to engage in a psychological chess game in which he always had to think four or five moves in advance.

When he learned of Dr. Bagby's death from the Pennsylvania State Troopers, he did not hesitate to offer them his opinion of the perpetrator. He informed my counsel,

I slept with my doors bolted in Pennsylvania and one of my roommates stayed on the couch each night [for several months afterwards] with an axe. We figured I was next.

2.5 (b) *Andrew David Bagby*

Not long before or after her April 1999 attempted suicide in Westtown-East Goshin, Pennsylvania, Dr. Turner began a social relationship with a California-born medical student. He was completing the third year of his Faculty of Medicine studies at Memorial University. At the time, she was in the first year of her two-year Family Medicine residency program. The romantic liaison appears to have commenced sometime during the period from March to June 1999.

He was about 12 years and 8 months her junior. His name: Andrew David Bagby (Appendix A.114, No.1).

3. *Andrew David Bagby*

3.1 *Parents*

Born in Chatham, England, Andrew David Bagby's mother, Kathleen Daphne Barnard, qualified as a registered nurse in 1962 and the following year was registered as a nurse/midwife. In October 1967, when she emigrated to the United States, she met her husband, David Franklin Bagby. He had been born in Kansas, Missouri, and was serving in the

5: Narration and Summary of Facts

United States Navy (1964 to 1968) when he made Kathleen's acquaintance in Long Beach, California.

They were married on 29 March 1968 in Compton, California, where they initially settled. They have since lived in California, moving to San Diego in 1971, to San Jose in 1977 and to their present community of residence, Sunnydale, in 1978.

Both members of this ambitious, industrious couple were career-oriented. After their marriage, Kathleen continued her studies graduating with a Bachelor of Science degree in Nursing from the University of California (San Diego) in 1976, and a Master of Science degree in Nursing in Ambulatory Women's Health (Nurse Practitioner) from the University of California (San Francisco) in 1981. Since 1963 (in England - then California), she has practiced as a midwife, an obstetrics-gynecology nurse, or an obstetrics-gynecology nurse practitioner. Her husband, David, meanwhile, was graduated with a Bachelor of Science degree in electrical engineering from California State University (Long Beach) in 1971, and with a Master of Science degree in electrical engineering from California State University (San Diego) in

1975. His employment has been (from 1971 to 2000) in various aspects of computer engineering and, since then, as a technical writer.

They were living in San Diego on 25 September 1973 when their only child, Andrew David Bagby, was born.

3.2 Upbringing and Secondary School Education

Andrew was raised by both his parents in California. He attended secondary school in or near the communities in which they lived.

3.3 Post-Secondary Education and Employment

Andrew undertook his post-secondary studies in a Science discipline and graduated with a Bachelor of Science degree in Biological Science from the University of California (Irvine) in 1995.

Following undergraduate graduation, he worked for a year in California as a researcher at Stanford University.

By the summer of 1996, perhaps earlier, he chose to pursue a career in medicine.

3.4 Post-Graduate (Medicine) Education

Andrew took his medical degree studies from September 1996 to May 2000 at the Faculty of Medicine at Memorial University. His studies required, in his third and fourth years of the medical degree program, to do clinical clerkships in a number of mandatory and elective medical disciplines, ranging from one to three months' duration. He rotated through some of his clerkships outside the Province of Newfoundland.

3.5 Unmarried Relationships

(a) California Student

I digress here, briefly, to introduce a former California fiancé of Dr. Bagby's. I do so because her role in the narrative figures prominently from two perspectives. First, she casts light on the substantially unreliable credibility of Dr. Turner. And, secondly, she provides significant information about the death of Dr. Bagby on 05 November 2001.

5: Narration and Summary of Facts

Andrew and his former fiancé met in the State of California while both attended junior high school there. Quite by chance while engaged to Andrew, she selected, sight unseen, the Faculty of Medicine at Memorial University from among the calendars of approximately fifty medical schools to which Andrew planned to apply for admission as a student. “Why don’t you do this one,” she suggested to him. He did and he was accepted.

She accompanied him in the summer of 1996 to St. John’s where he began his medical studies at the Faculty of Medicine in September. Concurrently, she registered for undergraduate courses. When Memorial University’s undergraduate year ended, a short time before the medical faculty year, she returned to California. Andrew followed when he completed his first year of medical studies. During the summer of 1997, Andrew and this young woman dissolved their engagement while both were in California. However, until his death, she always remained a close friend of Andrew’s and to this day is very close to his parents.

In fact, during the two years after their engagement ended in 1997, Dr. Bagby nurtured her gradually acquired interest in medicine. She recalls that he

was really instrumental in helping me figure out what I wanted to do.

In September 1999, she began her first year of medical studies at the Faculty of Medicine, Memorial University.

Dr. Bagby's former fiancé and Dr. Turner were, of course, acquainted with each other. While Dr. Turner was undertaking the second of her two years of Family Medicine residency, his former fiancé was commencing her first year in the Faculty of Medicine. Their relationship ranged from being cautiously amicable to unreservedly vitriolic, entirely due to Dr. Turner's fluctuating moods and attendant behaviour.

3.5 (b) *Shirley Jane Turner*

As I have previously stated, Dr. Bagby met Dr. Turner in 1999, while he was completing his third year of medicine at Memorial University's Faculty of Medicine and Dr. Turner

was in the second year of residency. They became a romantic couple by May 1999.

4. *Shirley Jane Turner and Andrew David Bagby*

4.1 *Unmarried Relationship in Newfoundland*

As a couple, Dr. Bagby and Dr. Turner traveled together to San Francisco in the autumn of 1999 and, by some accounts, to London, England, in November 2000. He played ‘Easter Bunny’ to her younger daughter when she came from her father’s western Newfoundland residence to visit Dr. Turner in St. John’s in 2000.

When Dr. Bagby graduated with his medical degree in medicine in May 2000, Dr. Turner attended his graduation and other related social events in St. John’s.

Before leaving Newfoundland in late summer 2000 to commence medical practice in the United States, Dr. Turner gave her son a computer owned by Andrew Bagby of which, she said, Andrew approved. Dr. Turner also left him with her car.

4.2 *Impact of Previous Unmarried Relationships*

When his former fiancé, as a Bagby's family friend, accepted invitations from his parents to some of the functions marking Dr. Bagby's graduation, Dr. Turner took strong exception.

**... [Dr. Turner] just had trouble understanding why ...
[she and Dr. Bagby] still needed to be friends.**

On Dr. Bagby's graduation day, Dr. Turner 'turned' on this young lady who, by now, had formed a relationship with another man. Dr. Turner invited her into a room at the Faculty of Medicine where she "was very, very angry." Dr. Turner made baseless allegations against her, for example, saying to her,

... you can try all you want but he doesn't want you ...

A few months later, when she happened to meet her at the Faculty, however, Dr. Turner said she had come to realize that she

wasn't trying to make moves on ... [Dr. Bagby]

4.3 *Planning to Leave Newfoundland*

(a) Shirley Jane Turner

Dr. Turner decided not to practice medicine in Newfoundland. In December 1999, she made an agreement with Trimark Physicians Corporation of Fort Dodge, Iowa, to serve as a doctor with Trimark's health care clinics in Sac City, Iowa, beginning 01 September 2000. Her initial annual compensation was estimated to be US\$171,325.^{10 11}

From the perspective of the Health Labrador Corporation in Happy Valley-Goose Bay, Shirley's professional career decision to practice medicine in Iowa and not Newfoundland was disappointing. It had, apparently, hoped she would accept employment with the Corporation after completing her residency medical training in 2000. In a 15 November 2000 letter to her, the Corporation wrote that

[w]e are sorry to have lost you to the States. Not having you on our team is a great loss to us.

4.3 (b) Andrew David Bagby

5: Narration and Summary of Facts

By late summer of 2000, Dr. Bagby, for his part, had finalized arrangements to commence his post-graduate residency in the City of Syracuse in the State of New York.

4.4 Leaving Newfoundland and Living in United States

(a) Departures

Apparently Dr. Turner and Dr. Bagby departed Newfoundland together with the intention of continuing their romantic relationship in the United States. While some semblance of a relationship appears to have continued after the summer of 2000, theirs was a “long distance” romance. The entire time each of them resided in the United States - a period of about 14 months - they lived approximately one thousand miles apart.

4.4 (b) Sac City, Iowa and Syracuse, New York

About August 2000, Dr. Turner emigrated to Sac City in the northwestern part of Iowa, leaving her three children in Canada (Appendix A.114, No.3).

In July 2000, Dr. Bagby acquired accommodation in Syracuse, about 955 miles from Sac City, and became a Surgical Resident there at State University of New York.

4.4 (c) *Long distance relationship: Part 1*

During the next year (2000 to 2001), as recalled by Dr. Turner (in conversations with acquaintances), she visited Dr. Bagby in Syracuse seven times and he visited her once in Sac City. She paid most, if not all, of the travel costs involved (Dr. Bagby's medical residency income was substantially less than her medical practice salary).

One of their meetings is noteworthy. On 29 May 2001, Shirley Turner had been visiting Andrew Bagby for several days in his Syracuse apartment. Only Dr. Bagby and Dr. Turner were staying there. The apartment building was always secured against entry into the elevator or stairwells and, most of the time, secured against entry into the building itself unless a person knew the security codes and possessed the necessary security cards. When he left the apartment for work at 6:00 a.m. on 29 May, he was aware Dr. Turner would be leaving the apartment that day to return to Sac City. When she left his

5: Narration and Summary of Facts

apartment at 8:15 a.m. for her journey back to Sac City, however, she left the entrance door unlocked. She phoned Dr. Bagby and informed him that, inexplicably, she had closed the door, but had left it unlocked. No one else was expected there. Dr. Bagby had his key to the apartment on his person. He had not asked Dr. Turner to leave the entrance door unlocked.

As planned, Dr. Turner traveled to Sac City. Dr. Bagby returned to his apartment at 6:30 p.m. Initially, nothing appeared amiss. His premises had not been disturbed. He shortly realized, however, that some of his property had disappeared from the apartment since he had left in the morning: a lap top computer and carrying case; two of his collection of DVD movie discs; seven of his collection of compact disc music albums; a cigarette lighter; a Palm Pilot; and a cheque book (which cheques he immediately arranged to have voided). Within an hour, Dr. Bagby reported the (selective) burglary to the Syracuse Police Department. When reached by telephone in Sac City by the Police Department, Dr. Turner denied stealing Dr. Bagby's missing property. No other apartments reported thefts that day and there was no tampering with the apartment building's doors, elevator or

5: Narration and Summary of Facts

stairwell security. A criminal charge in respect of the theft was never laid.

4.4 (d) Parenting: 2000

While living in Sac City, Dr. Turner was also involved in travel to facilitate some contact with her three children.

In December 2000, less than four months after emigrating to the United States, Dr. Turner paid for the three children - then 10, 15 and 18 years old - to meet her in the midwestern United States, probably Iowa, and travel from there with her to California to visit Dr. Bagby's parents.

Kathleen and David Bagby by then were residing in Sunnydale, a suburb of the City of San Jose, California. The trip was not uneventful. The son and younger daughter traveled from Newfoundland to Toronto where they met the older daughter, then living there (in Mississauga). They missed their flight from Toronto to the United States and spent a night in a Toronto hotel. Later, in California, Shirley had a dispute with the older daughter and struck her in the face (with her open hand).

5: Narration and Summary of Facts

Never financially generous with her three children, Dr. Turner, while living in Sac City, sent about \$300 to each daughter and about \$700 to the son.

4.4 (e) Council Bluffs, Iowa, and Latrobe, Pennsylvania

On 10 July 2001, Dr. Turner resigned from her professional position in Sac City. This was far sooner than Trimark Physicians Corporation had expected, especially since her contract called for her to practice medicine in Sac City for at least 10 years. Besides, she owed Trimark US\$156,591.22.¹²

In the summer of 2001, Shirley Turner was again on the move. This time from Sac City to Council Bluffs, about 117 miles to the south (Appendix A.114, No.3). There, she took up residence in an apartment and secured a Family Practice position with Alegent Health. Although she commenced reporting for work on 01 October 2001, she did not acquire approval to practice (including hospital privileges) until 05 November 2001.

5: Narration and Summary of Facts

Given the manner in which events in her life unfolded, she was to practice in Council Bluffs for only a couple of days.

Meantime, in May 2001, Dr. Bagby completed his employment at State University of New York, Syracuse. In July 2001, he commenced his duties as a Family Practice Resident at the hospital in Latrobe (2006 population: 8,994), 46 miles east of Pittsburg. He was under the supervision of Dr. T. Clark Simpson, M.D., chief resident of the Family Practice program at Latrobe Area Hospital. Dr. Bagby's duties included providing Family Practice services in Saltsburg, a small community about 16 miles to the north of Latrobe, also under Dr. Simpson's supervision (Appendix A.114, No.5).

Partway between Latrobe and Saltsburg is the 1,200 acre Keystone State Park.

Dr. Bagby was now living 946 miles from Dr. Turner.

4.4 (f) *Long distance relationship: Part 2*

By her own admission, Dr. Turner had time on her hands, from September to 05 November 2001, when she

5: Narration and Summary of Facts

finally acquired her license and hospital privileges in Council Bluffs. During this time she often traveled.

In September 2001, Dr. Turner, again, visited Dr. Bagby's parents in California; on this occasion accompanied by two of her adult friends from St. John's.

Dr. Bagby did not accompany Dr. Turner on this journey, nor was he with them in California.

Dr. Turner also commuted socially between Council Bluffs and Latrobe, and stayed with Dr. Bagby. She underwrote the cost of most, if not all, of these journeys and also paid for many of the social outings with Dr. Bagby in the Pittsburg and Latrobe areas.

After Dr. Bagby and Dr. Turner left Newfoundland in the summer of 2000 - he for Syracuse, New York, and she for Sac City, Iowa - Dr. Bagby's former fiancé very occasionally had platonic telephone contact with him, which continued after Dr. Bagby moved from Syracuse to Latrobe, and Dr. Turner relocated from Sac City to Council Bluffs.

5: Narration and Summary of Facts

When, on 24 September 2001, his former fiancé telephoned from St. John's to speak to Dr. Bagby in Latrobe, seeking his counsel on difficulties she was encountering in her medical studies, Dr. Turner happened to be visiting with Dr. Bagby.

Dr. Turner told her she was pregnant by Andrew and that she had an appointment to abort the pregnancy after a wedding in Pennsylvania on 20 October 2001 that she was going to attend with Dr. Bagby.

However, the next time they spoke on the telephone in mid-October 2001, very shortly before that wedding, Dr. Turner told her that she (Dr. Turner) had changed her mind.

I'm going to keep the baby so I cancelled the appointment for the abortion [in Pennsylvania].

She didn't know that Dr. Turner wasn't then pregnant. However, when Dr. Turner visited Dr. Bagby in Pennsylvania to accompany him to the wedding on 20 October 2002, she did become pregnant by him.

4.5 Parenting: 2001

If Dr. Turner had any contact in person with her three children while she resided in Council Bluffs, I discovered no evidence to support her having done so.

4.6 Murder of Andrew David Bagby

(a) Background

When Dr. Turner told friends before September 2000 that she had decided to practice medicine in the United States instead of Canada, one of them - a physician friend - provided Dr. Turner with some personal security advice. During contact with police in the United States in November 2002, Dr. Turner said:

**[when I told him I was] moving to the States he's like:
'you need to get a pistol.'**

Or so Dr. Turner claimed. The advice was that she obtain a gun for her protection in the United States.

Evidently Dr. Turner did not immediately heed this advice. Having moved from Newfoundland to Sac City in August 2000, no record was located that she obtained a gun

5: Narration and Summary of Facts

while she lived and practiced medicine there nor, for that matter, that she equipped herself with a firearm from late summer 2001, when she moved to Council Bluffs, until October 2001.

Nothing distinguished Council Bluffs as a place where a gun was more likely to be needed than in Sac City. Nonetheless, on 11 October 2001, Dr. Turner purchased a permit which entitled her to buy a gun. On 16 October 2001, relying on the permit, she purchased a pre-owned HP22 Phoenix Arms model semi-automatic .22 calibre hand gun, together with a box for storage and transportation of the gun. When she made this purchase, the gun's vendor told her that if she "really needed it for protection," she should buy a permit to carry the weapon on her person. She did not get such a permit.

Both before and after her visit to Dr. Bagby in Pennsylvania on and around 20 October 2001, Dr. Turner received firearms lessons in the safe handling, maintenance and use of the gun. She took these firearms instruction from The Bullet Hole in Omaha, Nebraska. Before commencing lessons, she bought two boxes of American Eagle .22 calibre

5: Narration and Summary of Facts

ammunition. She brought her gun in its box and some of the American Eagle ammunition to her first firearms lesson.

Dr. Turner's firearms instructor was not impressed with her gun. The gun "was of poor quality and malfunctioned frequently," he would later tell United States police. The malfunction problems included failure of the gun to properly "feed" the ammunition. As a result, the gun sometimes ejected live rounds. The instructor suggested she experiment with another brand of ammunition. To her second, and certainly to her third lesson, Dr. Turner brought CCI .22 calibre ammunition. The gun continued to "feed" improperly. It still ejected "live" rounds. Dr. Turner received her third - what proved to be her final - lesson at The Bullet Hole on 25 October 2001.

The next day, Dr. Turner paid another visit to Dr. Bagby. As before, she drove across the state line to Omaha, Nebraska. From Eppley Field in Omaha, she flew to Pittsburg and then to Latrobe's Arnold Palmer Regional Airport in Pennsylvania. Dr. Bagby welcomed her at the Latrobe Airport. They stayed together in Dr. Bagby's apartment until Saturday, 03 November 2001.

5: Narration and Summary of Facts

This visit proved distressing for Dr. Turner. By now, it is likely she suspected that she was not Dr. Bagby's only romantic interest. During the visit, Dr. Turner and Dr. Bagby argued loudly. No physical violence transpired between them. The subjects of their argument were a female radiology clerk and a blonde haired doctor, both employed at the Latrobe hospital.

During the period from 26 October 2001 to 03 November 2001, while Dr. Turner visited with Dr. Bagby, the radiology clerk received two anonymous telephone calls. Both calls were made on 29 October 2001. The first call (from Dr. Turner's cell phone) at about 8:45 a.m. was answered by the radiology clerk. The caller, a woman, requested the clerk to go to the Latrobe hospital library. The clerk went to the library and, observing nothing of consequence, returned home. By the time the clerk arrived back home, there was a recorded phone call on her telephone message manager. The call had been made from Dr. Turner's cell phone at 9:31 a.m. The caller - the same woman - directed the hospital clerk to

ask Dr. Bagby about the beautiful blonde lady doc he's been seen with.

5: Narration and Summary of Facts

The caller went on to say that “Dr. Bagby hurts people.” The clerk reported both calls to Dr. Bagby.¹³

Dr. Turner’s suspicions were well founded. Prior to 03 November 2001, Dr. Bagby had arranged a “date” in Latrobe for the evening of 03 November 2001 with the radiology clerk. He informed Dr. Turner of the date during her late October/early November visit to Latrobe. Because, as Dr. Turner would later tell United States police, she regarded her relationship with Dr. Bagby as involving a “don’t ask/don’t tell” mutual understanding, she was upset with Dr. Bagby because he had told her about his planned “date.”

Late in the morning on Saturday, 03 November 2001, Dr. Bagby drove Dr. Turner to Latrobe Airport. They had lunch there at a restaurant. However, in the Latrobe Airport on 03 November, Dr. Bagby ended their relationship.

Dr. Turner departed the airport at 12:38 p.m. for her Council Bluffs home. She flew from Latrobe, via Pittsburg, to Omaha, and traveled by car from Omaha to her Council Bluffs residence, arriving there about 6:00 p.m.

5: Narration and Summary of Facts

While she was traveling back from Latrobe to Council Bluffs, Dr. Bagby went to a drug store in Latrobe, where he purchased a box of prophylactics. The box was stamped with the manufacturer's lot number. He put the receipt for this purchase in his wallet.

The condoms themselves were never found - not on Dr. Bagby's person, in his vehicle or at his residence. But the box itself, or a remarkable facsimile, would eventually surface. Later in November, a box with the same manufacturer's brand name and lot number would be located (empty) by United States police in the waste basket in Dr. Turner's Council Bluffs apartment.

Early the next day, Sunday, 04 November 2001, Dr. Turner telephoned Dr. Bagby. She woke him up. He promised to call back and did so later in the morning, and again in the afternoon. In one of those conversations, Dr. Bagby told Dr. Turner that his date planned for the night before had not, in fact, taken place. The radiology clerk had fallen asleep.

4.6 (b) *Circumstances*

5: Narration and Summary of Facts

The second telephone call from Dr. Bagby to Dr. Turner must have occurred in the early afternoon of 04 November 2001. Because, about 1:00 p.m. Iowa time (2:00 p.m. Pennsylvania time) on that day, Dr. Turner boarded her Toyota Rav 4 and started on her journey from Council Bluffs for Latrobe.

With her in the car were her gun and some ammunition. She was entitled to carry the gun in her vehicle - in a gun box - but not on her person.

Assuming she drove within the speed limit and allowing about 60 minutes for rest, restroom and refuelling stops, Dr. Turner drove about 946 miles (1,523 kilometres) during the next 15 and one-half hours.

Her precise route is unknown. Certain, however, is that Dr. Turner made calls from her cell phone at 8:08 p.m. and 8:10 p.m., Iowa time, to Omaha on 04 November 2001 from the Chicago area (confirmed by her cell phone service provider), some seven hours - about 460 miles - into her road trip. Assuming she chose the shortest route, the driving on this leg of the trip (from Council Bluffs to Chicago) itself required

5: Narration and Summary of Facts

about 6 hours, 40 minutes. Both calls were made to Omaha (Appendix A.114, No.4).

Dr. Turner continued her road trip eastward for about another 90 miles. At 11:19 p.m. on 04 November 2001, Iowa time (12:19 a.m. on 05 November 2001, Pennsylvania time) she used her cell phone near South Bend in the State of Indiana (Appendix A.114, No.4).

She was now approximately 410 miles from Latrobe, Pennsylvania.

05 November 2001 was supposed to be a noteworthy day in Dr. Turner's medical career. She had been waiting since 01 October to qualify to practice medicine. This was the first day after having obtained her license and hospital privileges enabling her to practice family medicine at her new position at Alegen Health in Council Bluffs.

At the Council Bluffs medical centre where she was supposed to report for work on 05 November, staff understood she was, on that date, confined to bed in her Council Bluffs apartment with a severe migraine headache. The information

5: Narration and Summary of Facts

was based on one of those two telephone calls Dr. Turner had made from the Chicago area to Omaha - to the residence of an Alegent Health staff member.

Reporting for work that morning in Council Bluffs - 946 miles away - was, however, furthestmost from Dr. Turner's mind. Quite the contrary. By 5:30 a.m. on 05 November 2001, Dr. Turner had covered the remaining 410 miles of her eastward drive from Council Bluffs to Latrobe.

Dr. Turner's journey halfway across the United States ended at the front door of Dr. Bagby's Latrobe residence. Much of what occurred during the next eleven and one-half hours has been established from staff at the Latrobe hospital and at the nearby Saltsburg clinic, and from cell phone and Internet records.

When, at about 7:30 a.m. - some two hours later - Dr. Bagby arrived for work on 05 November 2001 at the Latrobe Hospital, he appeared to hospital staff to be agitated. He told his supervisor, Dr. T. Clarke Simpson, that Dr. Turner had arrived at his residence door between 5:00 and 5:30 a.m. that day. She was angry with him because he had ended their

5: Narration and Summary of Facts

relationship on the Saturday before, prior to her flying back to Council Bluffs.

Dr. Bagby also told his supervisor he had agreed to meet Dr. Turner after work that day in a licensed establishment or at a park. The meeting would have to take place before 7:30 p.m. as Dr. Bagby planned to meet at his supervisor's Latrobe residence for a social occasion.

While Dr. Bagby began his rounds at the Latrobe Hospital on 05 November, Dr. Turner was across the street in his residence.

At 8:07 a.m., she used Dr. Bagby's residence telephone to call Alegent Health. She wasn't coming to work that morning, she informed a nurse there (as she had earlier informed an Omaha employee by cell phone, while driving from Council Bluffs to Latrobe), because she was suffering from a severe migraine headache and planned to confine herself to bed for the day in her Council Bluffs apartment. She added that she would appear for duty the next morning, 06 November 2001. At 9:46 a.m., Dr. Turner used the dial-up connection on Dr. Bagby's computer over Dr. Bagby's

5: Narration and Summary of Facts

residence telephone line to access the Internet. At 9:50 a.m., Dr. Turner accessed her Hotmail account. Still later in the day, Dr. Turner contacted the e-Bay Internet site from this computer to check on the status of her bid, sometime earlier, to buy a doll.

During the day, she apparently located in Dr. Bagby's residence the box of condoms he had purchased on Saturday, 03 November, or perhaps more accurately, she took the box, which contained the condoms. The condoms were never located. Whether Dr. Bagby or Dr. Turner disposed of them, I do not know.

During the same day, Dr. Bagby and his supervisor traveled from the Latrobe Hospital to Saltsburg where they worked in the Family Practice Clinic. Between 4:30 p.m. and 4:45 p.m., the supervisor left the Saltsburg clinic. He was, as mentioned before, expecting to see Dr. Bagby at his residence back in Latrobe at 7:30 p.m.

Shortly afterwards at 5:00 p.m., Dr. Bagby also left the clinic. The head nurse there saw him leave.

5: Narration and Summary of Facts

He drove the approximately eleven and one-half miles from the Saltsburg clinic to the Park, a journey of about 30 minutes.

While doing so, Dr. Bagby attempted to reach Dr. Turner. He appears not to have quite known where she was. At 5:20 p.m. and again at 5:26 p.m. he called from his cell phone to Dr. Turner's cell phone. The calls were not answered. At 5:27 p.m., Dr. Bagby telephoned his residence. Whether or not he reached Dr. Turner there is unknown. His residence was about seven miles from the Park.

Between 5:27 p.m. and 6:10 p.m., Dr. Bagby arrived at Keystone State Park in his Toyota Corolla. Before or during the same period, Dr. Turner reached the Park in her Toyota Rav 4. In any event, the vehicles of Dr. Bagby and Dr. Turner were parked, side by side, in the day-use parking lot beside one of the Park's roads. Both vehicles, unoccupied, were seen there at 6:10 p.m. that day by a resident of Derry, Pennsylvania, as he walked home through the Park from a hunting excursion. No one was seen in or around either vehicle on the parking lot. Dr. Bagby left his cell phone in his vehicle.

Sometime after 6:10 p.m. on 05 November 2001, Dr. Bagby was murdered close to his parked vehicle.

4.6 (c) *Discovery*

I say “sometime after 6:10 p.m.” In fact, if committed by Dr. Turner, the murder of Dr. Bagby must have occurred around 8:30 p.m., because almost three hours later, at 11:26 p.m. (the time needed to drive from the Park westward to the Cleveland area, about 172 miles west of the Park) Dr. Turner made a call on her cell phone from there. The call was to the residence of a nurse in Council Bluffs, who worked at Alegent Health. Dr. Turner told the nurse that she had slept all day in Council Bluffs and was now driving on an interstate highway where, she noted, she could drive fast. She explained to the nurse that she liked driving fast. She added that she would report for work in Council Bluffs the next morning, but not to expect her at the expected reporting time of 9:00 a.m.

During the evening of 05 November 2001, Dr. Bagby’s mother in California telephoned Dr. Turner’s cell phone. The call was not answered.

5: Narration and Summary of Facts

Back in Pennsylvania, Dr. Bagby did not keep his 7:30 p.m. appointment at his supervisor's home.

Overnight, the weather in Keystone State Park had been frosty.

About 4:30 a.m. on Tuesday, 06 November 2001, the same resident from Derry, Pennsylvania, was again out and about for another day of hunting. As he walked through the Park, he observed what later proved to be Dr. Bagby's vehicle, parked in the same location he had seen the vehicle the previous evening. The other vehicle was gone. In the early morning darkness, he did not notice anything untoward. He walked on.

Almost an hour and one-half later - between 5:50 a.m. and 5:55 a.m. - with daylight emerging, a Latrobe resident traveling through the Park saw considerably more. On the Park's day-use parking lot, he noticed the frost-covered body of Dr. Andrew Bagby, face down and turned slightly to one side (exposing part of the left side of his face) on the ground in proximity of Dr. Bagby's vehicle (Appendix A.114, No.6).

5: Narration and Summary of Facts

He notified a Park Ranger. The Ranger in turn contacted the Pennsylvania State Troopers. Two Troopers immediately responded to the scene. Very shortly after arrival there, they designated the Park's day-use parking lot a crime scene. A criminal investigation into Dr. Bagby's murder was commenced by State Troopers Michael McElfresh and Randall Gardner.

While Dr. Bagby's remains were being discovered in the Park, Dr. Turner was progressing westward in her vehicle back to Council Bluffs. She was true to her word that she wouldn't reach Alegent Health in Council Bluffs by 9:00 a.m. A nurse at the health care facility telephoned Dr. Turner's cell phone at 9:00 a.m. and, not reaching Dr. Turner, left a message, informing her that a patient was booked to see her at 10:30 a.m. This was to have been her first patient since she was licensed to practice medicine in Council Bluffs. At 9:48 a.m. or 9:52 a.m., Dr. Turner, using her cell phone, called the nurse at Alegent Health and again, true to her word, reported that she had not slept all night and could not be at the facility for the 10:30 a.m. appointment. She informed the nurse she had to take her vehicle to a carwash, then go home to shower and change her clothes. Dr. Turner had a distance to go. When

5: Narration and Summary of Facts

she made this cell phone call she was in Stuart, Iowa, about 90 miles east of Council Bluffs but closing the distance.

At 10:40 a.m., Dr. Turner made another cell phone call - to another health facility in California, where Dr. Bagby's mother, Kathleen was employed. Dr. Turner didn't make contact with Mrs. Bagby at that time. Shortly afterwards Dr. Turner called again. This time she did speak with Mrs. Bagby. Dr. Turner asked her whether she had heard from her son lately. "Not since Sunday," [04 November], Kathleen Bagby replied. For her part, Dr. Turner remarked, "Not since Saturday" [03 November], when she had left Latrobe to travel back to Council Bluffs.

Before ringing off, Dr. Turner added that she had to go home to tidy up in preparation for seeing a patient at 11:30 a.m. At 11:00 a.m., Dr. Turner, her hair wet, arrived at Alegent Health in Council Bluffs.

On 06 November 2001, Dr. Turner telephoned the Bagbys twice, inquiring whether they had spoken that day to Andrew.

4.6 (d) *Pennsylvania investigation*

Back at Keystone State Park, Pennsylvania, the criminal investigation into the murder of Dr. Bagby was rapidly gaining momentum.

Examination of Dr. Bagby's parked vehicle revealed his cell phone.

Examination of Dr. Bagby's wallet found on his person disclosed his identity. The wallet also contained the drug store receipt for the box of condoms that he purchased on 03 November 2001.

Dr. Bagby's body was dressed in the hospital "fatigues" he had worn to work the day before and a jacket (his hospital identification card hanging from the neck). On the ground beside the body was one "live" cartridge, which had either been dropped or ejected, unspent, from the firearm used to kill him. The five bullets that entered his body (and the sixth unspent found on the ground) were from a .22 calibre firearm of the type owned by Dr. Turner. And the manufacturer of the ammunition was CCI.

5: Narration and Summary of Facts

Of significance, Dr. Turner's gun had ejected cartridges, unspent, during firearms instruction she received in the second half of October 2001 at The Bullet Hole in Omaha. To the first lesson - if the reader needs reminding - Dr. Turner brought American Eagle ammunition. When they sometimes ejected from her weapon unspent during that lesson, her instructor suggested she try another brand of ammunition. To one or both of her two later lessons in October she brought CCI-manufactured ammunition which, however, also occasionally ejected unspent from her gun.

The gun that served as the instrument of Dr. Bagby's murder was never located. And the only ammunition Dr. Turner professed - falsely - to have owned and turned over to the Council Bluffs police, who assisted the Pennsylvania State Troopers in the investigation, was manufactured by America Eagle, not CCI.

Dr. Bagby's body was removed from the Park later on 06 November 2001. The same day, the Chief Coroner and Forensic Pathologist to the State of Pennsylvania conducted the autopsy on the remains. The coroner was Cyril Wecht, M.D., J.D.¹⁴

5: Narration and Summary of Facts

Dr. Wecht's autopsy concluded that Dr. Bagby's death was caused by five gunshot wounds:

(i) to the head - entering in the mid-occipital region (i.e., the right rear side of the head above the top of the spine) and exiting the body from the right posterior lateral neck region (i.e., the area near the base of the right side of the back of the neck);

(ii) to the face - entering in the right cheek and exiting the body from the left post-auricular region (the area near the top of the left side of the neck);

(iii) to the chest - entering the left upper anterior chest region (i.e., the upper area of the front of the chest) and lodging behind the left acromio-clavicular juncture in the front of the scapula (i.e., in the area behind the left shoulder bone);

(iv) to the buttocks - entering at the top of one of the buttocks [between the tops of the buttocks] and lodging in the area to the front of the base of the urinary tract; and

5: Narration and Summary of Facts

(v) again to the buttocks - entering one of the buttocks [on the side] and lodging in the soft tissues of the right upper anterior thigh region (i.e., the front upper area of a thigh).

Dr. Wecht further concluded that Dr. Bagby sustained a blunt force type injury of the scalp in the upper occipital region (the area near the top of the back of the head).

He excluded any ante-mortem (before death) disease processes as a cause or contributing cause of death.

Having identified the causes of death, Dr. Wecht formed the opinion that the manner of Dr. Bagby's death was homicide.¹⁵

Although almost certainly Dr. Bagby was murdered on Monday, 05 November 2001, State of Pennsylvania records legally pronounced him dead on Tuesday 06 November - the date his body was found and the autopsy on his body was performed.

More probably than not, the author of Dr. Andrew Bagby's death was Dr. Shirley Turner. Her behaviour before

5: Narration and Summary of Facts

Dr. Bagby's death, some findings at the crime scene and her behaviour afterwards are consistent with this conclusion.

While the criminal investigation into Dr. Bagby's murder progressed in Latrobe, Pennsylvania, on 06 November 2001, Dr. Turner saw three patients at Alegent Health in Council Bluffs. Before she left work on that date, however, Dr. Turner had become a focus and, very soon, became the sole focus of the Pennsylvania criminal investigation into Dr. Bagby's murder.

The identification, early on 06 November 2001, of Dr. Bagby as the deceased in Keystone State Park led Pennsylvania State Troopers on that date to the Latrobe Hospital where he had primarily practiced medicine. There, State Troopers learned from Dr. Bagby's supervisor, Dr. T. Clarke Simpson, about Dr. Bagby's relationship with Dr. Turner. In particular, the Troopers learned from his supervisor that Dr. Bagby had told him about the unexpected arrival from Iowa of Dr. Turner at Dr. Bagby's door in Pennsylvania at 5:30 a.m. on the previous day, 05 November, and about his expectation of meeting with Dr. Turner after work that day.

5: Narration and Summary of Facts

Randall Gardner, a Corporal in the Pennsylvania State Troopers, put in a telephone call from the Pennsylvania Police Barracks in Greensburg to Dr. Turner at Alegent Health, her workplace.

On his first call, Corporal Gardner was unable to reach Dr. Turner. He spoke to another physician at Alegent Health. When he called again later on 06 November, he made contact with Dr. Turner.

Corporal Gardner tape-recorded the call. He informed Dr. Turner that he was doing so. The transcript, which reduces to writing their telephone conversation, runs 58 single-spaced, typewritten pages. Dr. Turner's spontaneous responses to Trooper Randall's carefully, yet casually, expressed questions were, for the most part, blatantly false.

After establishing that Dr. Turner was acquainted with Dr. Bagby and discussing a point she raised about her "accent," he informed her that Dr. Bagby was dead. She twice asked if Corporal Gardner was sure. The Corporal said he was. She responded,

5: Narration and Summary of Facts

I just wasn't expecting this.

Dr. Turner related to Corporal Gardner that she had last seen Dr. Bagby shortly before “12:38” on Saturday afternoon, 03 November 2001, at Latrobe Airport, where Dr. Bagby had seen her off at the end of her visit with him. Further, she informed Corporal Gardner that she had last spoken with Dr. Bagby on Sunday, 04 November 2001, when he returned a telephone call she had made to him.

She said she knew he had a “date” that Saturday evening, but that she had learned later from Dr. Bagby that he “was stood up.”

She and Dr. Bagby had not parted on bad terms, she said, although she had not wanted to know of the fact he had planned the “date.” Granted, they had a “doosie of a fight” during her nine-day visit to Latrobe, which may have been heard by the neighbour in the other half of the duplex in which Dr. Bagby resided. However, no violence was involved during their “loud” verbal argument. Dr. Bagby

wouldn't lay a finger on me.

5: Narration and Summary of Facts

They were, she said, “quite happy” when she left Latrobe on Saturday, 03 November 2001. Dr. Turner described their relationship as “passionate.”

The State Trooper informed her that Council Bluffs police, who were assisting in the Pennsylvania Police investigation into Dr. Bagby’s death, would be visiting her at her apartment that evening.

She said that Dr. Bagby had “not at all” indicated that anything was wrong, when she last spoke with him.

She next provided a detailed account of her movements from arriving back in Council Bluffs on Saturday, 03 November 2001, until Tuesday, 06 November 2001. She said she had telephoned Dr. Bagby from the Omaha airport where her flight ended, drove home by about 6:00 p.m., started to unpack, then retired at “7:38” p.m. Next morning, Sunday, 04 November, she said she called Dr. Bagby about 6:30 a.m. or 7:00 a.m. She said she had woken him up. He promised to call back later and did so twice, both on Sunday. She said that she telephoned a martial arts instructor during the morning to arrange a class for the next week; visited an Omaha zoo on

5: Narration and Summary of Facts

Sunday afternoon; attended a movie in Council Bluffs about 7:00 p.m. on Sunday evening; then purchased some take-out food for supper; arrived back at her apartment about 10:00 p.m.; and, because she had a migraine headache - she felt “a bit yucky” - she retired shortly thereafter.

On Monday, 05 November, she told Corporal Gardner, she “called in sick” when she awakened about 10:30 a.m. because she was still suffering from the migraine for which she took two medications. She said:

I was home all day by myself ... I was pretty much out of it all day I didn't go anywhere Monday, ... didn't leave the house till [this morning, Tuesday, 06 November].

Much of her account was a contrived alibi.

In fact, on Sunday afternoon and evening, and into the early hours of Monday she was driving across the continental United States from Iowa to Pennsylvania to meet Dr. Bagby. From Dr. Bagby's perspective, their meeting would come as a complete surprise. After completing her Iowa to Pennsylvania journey and reaching his apartment between 5:00 a.m. and 5:30 a.m. Monday, she spent part or all of the remainder of

5: Narration and Summary of Facts

that day in Dr. Bagby's apartment. She then got into her car and, with reasonable probability, murdered Dr. Bagby in Keystone State Park, Pennsylvania, and started back by road from Pennsylvania to Iowa.

Pennsylvania State Trooper Denis Bernard would later drive from Keystone State Park to Dr. Turner's Council Bluffs apartment. He relied for his route on Mapquest because the first police search of Dr. Turner's apartment on 09 November 2001 turned up computer printouts from Mapquest of parts of a road journey between Pennsylvania and Iowa. The journey required 15.5 hours, including an hour for rest stops.

On Tuesday morning, she told Corporal Gardner, she did personal errands in Council Bluffs. In particular, she detailed the messages as including arrangements to have her vehicle washed and going home to change her clothes (not improbable, considering she had - from Sunday afternoon to Tuesday morning - driven her vehicle about 2,000 miles).

Then, she reported to the Pennsylvania State Trooper (truthfully, in this event) she had gone to Alegent Health, her

5: Narration and Summary of Facts

place of employment, to see a scheduled patient - the first of three patients she saw that day.

After establishing from Dr. Turner that she possessed a gun “for protection,” Corporal Gardner asked her:

Do you know where the gun is now?

To which Dr. Turner replied:

It should be in a case, it’s a little black case, and it’s like a little smaller version I guess of a brief case. And actually, it’s either in my closet or my bedroom. Or it’s in the car. And I honestly cannot 100 percent say.

Corporal Gardner:

Do you carry it?

Dr. Turner:

Do I carry it on my person?

Corporal Gardner:

Yeah.

Dr. Turner:

No.

Later, in the telephone interview, Dr. Turner acknowledged that she did not have a permit to carry the gun

5: Narration and Summary of Facts

on her person and knew she was prohibited, by law, from doing so. Dr. Turner told him she did not carry the gun on her person.

Corporal Gardner informed Dr. Turner that he was “interested in the gun” and asked her if she was agreeable to

turn the gun into your local police department [in Council Bluffs] so they can get it to us for us to look at?

Dr. Turner replied affirmatively.

While Corporal Gardner continued to question her about her gun, Dr. Turner sought to assure him:

..., you know I tried to be as honest as I can remember.

Pennsylvania State Police wanted to examine Dr. Turner’s gun, the State Trooper told Dr. Turner, because Dr. Bagby had died under suspicious circumstances.

The telephone conversation continued:

I assume from what you’re saying is that if Andrew died under suspicious circumstances. With the questions you’re asking me, it sounds like he’s been shot. Can you tell me that?

5: Narration and Summary of Facts

Corporal Gardner:

Well I think you're an intelligent woman and I can't tell you any more than I've told you right now.

Toward the end of the telephone conversation, Corporal Gardner informed Dr. Turner that

very soon I'm going to have the local Police Department [in Council Bluffs, where Dr. Turner resided] speak with you and I ... would like ... to have you turn that weapon over to them.

Dr. Turner called back to Corporal Gardner in Greensburg, Pennsylvania, shortly following his call to her. She informed him her gun was missing. She didn't know its whereabouts. She told him she found the case for the gun in her vehicle. She added that she was in the habit of keeping her vehicle locked. To her knowledge, she said, the vehicle had not been tampered with or showed signs of forced entry.

About 6:50 p.m. on 06 November 2001, two Council Bluffs police officers (Sergeant Jerry Mann and Detective Bob Sellars) arrived at Dr. Turner's apartment, where they questioned her for about an hour as an assistance to the Pennsylvania State Troopers in Greensburg.

5: Narration and Summary of Facts

When Corporal Gardner made telephone contact with her earlier that date, Dr. Turner appears not to have been the sole focus of the State Troopers' criminal investigation into Dr. Bagby's death. At least Corporal Gardner denied Dr. Turner's statement to him early in their conversation that he had said as much when he had previously spoken to another physician at Alegent Health.

By the time, later the same date, when the Council Bluffs police commenced their interview with Dr. Turner, she was clearly the only suspect. Before the interview started, the police provided her in writing with what is often described both in the United States and Canada as a "police caution."¹⁶ Dr. Turner waived her rights and signed the written caution.

Most of the police questioning which followed related to Dr. Turner's gun and her ammunition.

While she decided she needed a gun "for protection" since entering the United States in the summer of 2000, Dr. Turner said, she procrastinated in acquiring a firearm until October 2001. The whereabouts of her gun, she said, was unknown to her. She had last seen the gun on 25 October. On

5: Narration and Summary of Facts

that date, she said, the gun (in its box) had been taken by her from her apartment to a firearms lesson at The Bullet Hole. After the lesson she returned her gun to its box, placed the box in her vehicle, drove home, took the gun box out of her vehicle and stored it in her apartment closet. When she looked for the gun in anticipation of the police coming to her apartment on 06 November, she retrieved the gun box from her closet, opened it and discovered the gun was missing.

Because her apartment had not been burglarized, she speculated to the questioning Council Bluffs police that the gun was stolen from its gun box in her vehicle - before carrying the box from her vehicle to her apartment after her firearms lesson. Her “best guess” was that, after placing the box, containing her gun, in her vehicle - after her last lesson on 25 October - she had left her car unlocked and someone had taken the gun from the box, before she arrived back and carried the box to her apartment. She had not, she said, mailed the gun to Dr. Bagby.

Left unresolved for the interviewing police was a critical point. If Dr. Turner left The Bullet Hole with the gun in its box, placed it in her vehicle, drove home and carried the box

from her vehicle to her apartment, when would anyone have had an opportunity to steal the gun?

Turning to Dr. Bagby's death:

Detective Sellars:

Did you kill Andrew?

Dr. Shirley Turner:

No, I did not. If I knew I would tell you, if I had any idea. And I did not.

Detective Sellars:

.... [A]s detectives we [him and Sgt. Mann] are sent to a lot of classes, we learn to do investigations and there are things that we do and things that during the investigation and one of the things we are trained in is body language, I'm getting the distinct feeling that you are not telling us everything you know. I'm getting some feelings which say there is some things that you are not being totally truthful, now I'm not saying necessarily that you killed Andrew, I'm not saying that. But what I am saying is that I'm getting the feeling that you are not telling us everything you know, okay. One of the things I'm getting the feelings about is the firearm. Do you know where the firearm is?

Dr. Turner:

No, I don't.

5: Narration and Summary of Facts

What ammunition, the police asked, was Dr. Turner using in her gun? The ammunition, she answered, was manufactured by American Eagle, pointing to “that box there,” which she had produced to the police officers, “and another box,” which was not produced. (It may have been used in her early couple of lessons at The Bullet Hole). But the police knew the five rounds in Dr. Bagby’s body and the sixth unspent shell found by Pennsylvania State Troopers on the ground beside Dr. Bagby’s body were CCI, not American Eagle ammunition.

Police questioning of Dr. Turner about her ammunition continued:

Detective Sellars:

Did you buy rounds when you went over to Bullet Hole to shoot?

Dr. Turner:

No, I used those [again, pointing to the box of American Eagle ammunition].

But Sergeant Mann and Detective Sellars doubted her answers.

Detective Sellars:

5: Narration and Summary of Facts

Once again, I'm getting the feeling you are not being truthful with me. Nobody is saying that -

Dr. Shirley Turner:

I don't know how to say it any different.

Detective Sellars:

All I'm trying to do is get the truth here and like I [previously said to you, I am] not saying you are a bad person, I'm not saying that at all. Obviously you are a caring person, you wouldn't be a doctor if you weren't a caring person.

The two police officers ended the interview at 8:00 p.m. and left Dr. Turner in her apartment.

After the two Council Bluffs police officers departed on 06 November 2001, Dr. Turner telephoned her firearms instructor. She told him her .22 calibre hand gun was missing. She wondered aloud why anyone would steal her gun and not the box in which she had stored the weapon.

Not long after the Council Bluffs police interview with Dr. Turner on 06 November 2001, no doubt reported by Council Bluffs police to them, Pennsylvania State Troopers McElfresh and Gardner made an appointment to travel to Council Bluffs and there meet with Dr. Turner and her

5: Narration and Summary of Facts

attorney. When the two Pennsylvania State Troopers arrived in Council Bluffs, Dr. Turner cancelled the interview.

But the journey to Council Bluffs was not unprofitable for them. They went over to Omaha and interviewed Dr. Turner's firearms instructor.

Yes, the instructor told them, Dr. Turner had used American Eagle ammunition for the first lesson or so. Because the ammunition misfired, the instructor had suggested she try another brand of ammunition. Dr. Turner agreed. The last time she appeared at The Bullet Hole for a firearms instruction on 25 October 2001, she had different ammunition. The brand was CCI - the brand of ammunition used to murder Dr. Bagby. The instructor remembered it well. Like the American Eagle brand, the CCI ammunition sometimes also misfired when used by Dr. Turner in her gun during the 25 October lesson.

Dr. Turner's gun, the instructor reported to the two State Troopers from Pennsylvania, was a secondhand .22 calibre pistol, the type of weapon used to murder Dr. Bagby.

5: Narration and Summary of Facts

And the instructor remembered one other thing. Dr. Turner, he informed the State Troopers, had not appeared for her firearms lesson on 05 November 2001, the day Dr. Bagby was murdered in Latrobe, Pennsylvania.

Dr. Turner's position was that she wasn't in Latrobe on 05 November, had only ever used American Eagle ammunition in her gun, hadn't killed Dr. Bagby and didn't know where her gun was.

But, the next day - 07 November 2001 - Dr. Turner telephoned a State Trooper and told him that she had given her gun to Dr. Bagby. (This, as we know, was contrary to what she had told a Pennsylvania State Trooper by telephone, on 06 November, and to the Council Bluffs Police on the same date).

The State Troopers' visit to Council Bluffs also uncovered a piece of physical evidence. On 09 November 2001, State Trooper McElfresh and one of the two Council Bluffs police officers, who conducted the 06 November 2001 interview with Dr. Turner, executed a warrant to search at Dr. Turner's Council Bluffs apartment. In a bathroom wastebasket at the apartment they found an empty condom box, identical -

including the same manufacturer's lot number - to the one purchased earlier by Dr. Bagby.

4.7 Shirley Jane Turner's Response

(a) Telephone calls: Part 1

The police interviews were completed on 06 November 201. Dr. Turner began making telephone calls from Council Bluffs on 07 November.

The recipient of one of her early calls was Dr. Bagby's former fiancé. She was then in St. John's - a student in the Faculty of Medicine at Memorial University. We conducted a lengthy sworn interview with her. She remembered Dr. Turner's telephone call to her at about 8:15 p.m. or 8:30 p.m. on 07 November 2001 with considerable precision.

Dr. Turner began the call with general conversation. After expressing appreciation to her for having been

**so good about listening through all these problems
between me and [Dr.] Bagby,**

Dr. Turner said

I called to update you on what happened.

(Apparently Dr. Turner and Andrew's former fiancé hadn't spoken since Dr. Turner called her in advance of going to Pennsylvania to attend a wedding on 20 October with Dr. Bagby).

As she recalled the conversation, Dr. Turner told her

we went to the wedding [on 20 October 2001 in Pittsburgh], everything went well, we got along very well, I came home, I ended up having a miscarriage, then ended up back in Pennsylvania [for 9 days, from 26 October to 03 November 2001] for him to give me some support.

Dr. Turner continued - in the largely one-sided conversation - by eventually saying "Andrew is dead." In this manner, Andrew's former fiancé learned of his violent death. When asked what had happened, Dr. Turner replied that Andrew had been shot in a park, as a result of which he died.

At this point in the conversation, Dr. Turner received a telephone call from a Pennsylvania State Trooper. She put her on "hold," took the call and then resumed their conversation.

5: Narration and Summary of Facts

In reference to police having interviewed her (on 06 November 2001), she said:

I haven't told ... [police] about the miscarriage and ... I haven't told them about something else

The “something else” Dr. Turner had not told the police about, she said, was the gun. She explained that she possessed a gun for her personal protection. Andrew, she said,

... had wanted to borrow the gun until Christmas, with the understanding he would help me buy a gun at Christmas 2001.

By “Christmas,” as Dr. Turner explained, she meant November 2001, for which, she said, she had purchased an airline ticket to travel to Pennsylvania to see him considering that both were professionally committed for the calendar days of the 2001 Christmas holiday season.

But, she added,

I don't know what to do with the ticket I don't know whether I should still go on the trip to Pennsylvania [in November];

5: Narration and Summary of Facts

Dr. Turner's narrative of arrangements to have Dr. Bagby purchase her a gun were recalled by his former fiancé as follows:

I'm going to buy a nicer gun[,] a Glock or something[,] at Christmas and ... in the meantime [I agreed that] he could borrow ... [the gun I now own]

And added, that

[I] took ... [the gun] down to him.

Later on 07 November 2001, Dr. Turner telephoned Corporal Gardner, the Pennsylvania State Trooper with whom she had on 06 November twice spoken by telephone at his Barracks in Greensburg, Pennsylvania. She confessed to him that she had not been truthful with him about the location of her firearm. She had told him during her last telephone interview that she was unaware of the gun's whereabouts. In fact, she now informed Corporal Gardner, she had given the gun to Dr. Bagby. She didn't say when.

On 08 November 2001, Dr. Turner again telephoned from Council Bluffs to Dr. Bagby's former fiancé in St. John's. During this conversation, and in several subsequent telephone calls to her, Dr. Turner stated that she wished to

5: Narration and Summary of Facts

contact Andrew's parents to inform them he had been murdered. The former fiancé suggested for her to, at least, leave a message at the place of employment of Dr. Bagby's mother in California for her to call Dr. Turner. Dr. Turner did not do so, for reasons she never articulated.

During this telephone conversation, Dr. Turner stated that she had last seen Dr. Bagby on the Saturday she flew back to Iowa after her visit with him in Pennsylvania.

Both on 08 November 2001 and on the dates of several subsequent telephone calls to Andrew's former fiancé prior to 15 November, Dr. Turner insisted on providing some details of her passionate physical interaction with Dr. Bagby.

In one of those subsequent telephone calls, she informed Dr. Turner that a memorial service for Dr. Bagby, originally scheduled for St. John's on 16 November by the Faculty of Medicine, had been moved to 20 November.

Throughout these telephone calls, Dr. Turner maintained that her relationship with Andrew was continuing after she last saw him on leaving Pennsylvania to return to Council Bluffs,

5: Narration and Summary of Facts

Yet, his former fiancé by now understood from other sources that Dr. Turner had, since Andrew's death, e-mailed and phoned two graduates of Memorial University's Faculty of Medicine (friends of Andrew's) and informed them that before Andrew died Dr. Turner and Andrew had "broken off" their relationship, but were "working this out."

On 09 November, 2001, the date a search warrant was executed by State Trooper McElfresh and a Council Bluffs police officer, Dr. Turner telephoned one of those two Memorial University medical graduates. She reached him in Nova Scotia. He was already aware that Dr. Bagby had been murdered.

"When", he asked Dr. Turner, "was the last time she had seen Dr. Bagby?" She replied: "On Monday, 05 November 2001" - information Dr. Turner was disclosing for the first time. That, he realized, was probably the day Dr. Bagby had been killed. He asked Dr. Turner if she had read the newspaper report that she had given Andrew a gun. No, she answered, she had not read the newspaper. And no, she had not given Andrew a gun. This, of course, was contrary to what

5: Narration and Summary of Facts

Dr. Turner had, by now, informed both Corporal Gardner and Dr. Bagby's former fiancé.

Sometime on 09, 10 or 11 November 2001, Dr. Turner made another telephone call to Nova Scotia. This call was to another Memorial University medical graduate. She told him she was the last person to see Andrew in Keystone State Park, on the evening of 05 November. She stood beside Andrew in the Park and gave him her gun. And, by the way, she added, she was aware that police had executed a search warrant at her apartment on 09 November 2001. They had removed a pair of brown boots, lint and a dryer lint catch from the apartment, but had failed to also seize the clothes she had been wearing on 05 and 06 November 2001, because they were still lying on the edge of her bed after the search was completed. What is more, she told him, the shoes she had been wearing on 05 and 06 November 2001 were also left behind by police in her apartment.

She added that she was considering a permanent departure from the United States.

5: Narration and Summary of Facts

Sometime between returning to Council Bluffs on 06 November and before 12 November, Dr. Turner spoke with a close physician friend, who resided in South Dakota.¹⁷ She and Dr. Turner had met while both were students in the Faculty of Medicine at Memorial University. They apparently discussed Andrew's murder. As a result, Dr. Turner told David Bagby in a telephone conversation on 27 November 2001, the friend, a psychiatrist

offered to take \$20 in order to become her [Dr. Turner's] professional consultant so she wouldn't have to testify.¹⁸

4.7 (b) *Flight from Council Bluffs, Iowa to Toronto*

Shortly following this telephone call, Dr. Turner made a decision on her future domicile. On Monday, 12 November 2001, she left her Council Bluffs apartment, took a taxi to the airport in Omaha and flew to Toronto. She left most of her possessions behind in her apartment. Her Toyota remained in the apartment building's parking lot.

Dr. Turner would tell Dr. Bagby's father in a telephone call to him on 27 November 2001 that she left the United

5: Narration and Summary of Facts

States for Canada on the advice of a United States attorney (she took advice from at least two attorneys in the United States, at one time or another). She reported one of them as advising her,¹⁹

Get in your vehicle and go to Canada,

(or words to that effect).

4.7 (c) *Visit to Toronto*

Travelling on her Canadian passport, she arrived in Toronto and registered in a motel. She telephoned her older daughter who was living in Mississauga. The daughter, carrying her cellphone, came to the hotel to visit with her mother.

Dr. Turner told her that, following Dr. Bagby's murder, she had stayed in a hotel in the United States (she did not specify the dates or duration of the stay). The reason, she said, was her fear that Dr. Bagby's murderer may have seen her in his company at Keystone State Park and may have targeted

5: Narration and Summary of Facts

her.²⁰ The implication was that her leaving the United States was a personal security measure.

[However, while still in Toronto, she would inform an extended family member and a friend in Newfoundland by telephone that she had come to Canada for either a recreational visit, or because her son had been injured in an auto accident. (This was patently false because the accident did not occur until after she left the United States, on 12 November 2001). On 01 February 2002, one of her United States' lawyers deposed an affidavit stating that he advised her, in the wake of Dr. Bagby's murder, to return to Canada to receive the support of her family. And, in an affidavit she deposed in support of her 'bail' application to the Newfoundland Court of Appeal in January 2003, she stated she returned to Canada "because of the death of a friend," without reference to Dr. Bagby.]

On the long holiday weekend of 10 November 2001, Dr. Turner's son decided to drive from St. John's, during a recess in the calendar of Memorial University, to visit his paternal grandparents. He often made this journey to visit them.

5: Narration and Summary of Facts

En route - late Friday night, early Saturday morning, November 10 - his vehicle bumped into a highway abutment, coming around Bonne Bay on the Peninsula. Some superficial damage was caused to the vehicle.

On 10 or 11 November 2001, two residents of Parsons Pond received long distance telephone calls from a relative of Dr. Turner's. The relative told both residents that Dr. Turner had reported the shooting death of Dr. Bagby. The relative further informed one of the residents that Dr. Turner had said Dr. Bagby's death must have resulted from a "drive-by" shooting.

Returning, on 12 November, from Parsons Pond to St. John's, Dr. Turner's son had another accident; this time, much more serious. His vehicle went off the Peninsula Highway near Howley. He was taken by ambulance to the Western Memorial Hospital in Corner Brook; was treated and released. He went to an aunt's residence in Corner Brook to stay the night and returned to the hospital the next day for follow-up.

When word of this second motor vehicle accident reached Parsons Pond on 12 November, a relative of Shirley

5: Narration and Summary of Facts

Turner's telephoned the son's sister in Toronto. On making the call to the daughter's cell phone, the relative learned that Dr. Turner was in a hotel in Toronto and that the daughter was visiting her there. In conversation with Dr. Turner, the relative asked Dr. Turner why she was there, and not in Iowa. Dr. Turner replied she was in Toronto to visit her daughter.

On 13 November, Dr. Turner telephoned an extended family member on the Peninsula. The family member asked Dr. Turner about the circumstances of Dr. Bagby's death. Dr. Turner replied that Andrew had been standing on a street in Latrobe, when a car drove by and shots that killed him were fired from the vehicle.

Another extended family member on the Peninsula spoke by telephone with Dr. Turner later in the day. Dr. Turner told this person that after returning to Iowa on 03 November 2001 from what she maintained was her last visit in Latrobe with Dr. Bagby (that is, the nine day visit), Andrew had telephoned her and asked to borrow her gun. He requested she fly with the gun, at his expense, from Iowa to Latrobe where he would meet her. Dr. Turner reported that she told

5: Narration and Summary of Facts

Andrew she couldn't board a plane with a gun. Andrew, she said, then requested Dr. Turner to

jump aboard your machine and drive the gun from Iowa to Pennsylvania.

Dr. Turner continued:

Like, stupid that I was, I drove non-stop to Pennsylvania with the gun

(or words to that effect).

Another extended family member on the Peninsula who spoke with Dr. Turner on 13 November told her that

if you think you're innocent, I'm sure you didn't drive 16 hours without stopping for gas. And how did you pay for your gas, by credit card or what?

(or words to that effect). Dr. Turner did not reply.

In a telephone conversation with yet another extended family member on the Peninsula on 13 November, Dr. Turner continued the account of her contact with Dr. Bagby before his death that she had started relating earlier in the day to a different extended family member. She stated she had met Andrew in a Pennsylvania park and given her gun to him. He had put the gun in a white plastic bag and placed the bag in the

5: Narration and Summary of Facts

trunk of his car. They exchanged “good-byes,” kissed and parted, and she drove back from Pennsylvania to Iowa. Dr. Turner added that Andrew was alive when she last saw him in the park.

[Later in November 2001, Dr. Turner told a family member by telephone that Dr. Bagby’s death “could have been a homosexual thing” (or words to that effect) of which no evidence was found by three police forces which investigated or assisted in investigation of Dr. Bagby’s death, or by me, in my Review].

On returning to the hospital the next day, 13 November, Dr. Turner’s son learned he had a punctured lung which might require surgery. He was hospitalized. A family member telephoned Dr. Turner in Toronto and informed her. She responded that she would immediately travel to Corner Brook.

Meantime, Dr. Turner continued telephoning Dr. Bagby’s former fiancé.

In one of those telephone calls, prior to 15 November, Dr. Turner introduced the subject of her immediate future

5: Narration and Summary of Facts

plans. She reported that her son in Newfoundland had experienced a minor motor vehicle mishap, followed by a more serious vehicle accident “in slush” on the west coast of the Island. It was because of the more serious accident that she was returning from Iowa to Newfoundland. Her purpose in doing so, she said, was to assist him drive from Corner Brook to St. John’s to continue his Memorial University studies.

(While, in fact, by the time the son had been involved in the more serious motor vehicle accident, Dr. Turner had already departed the State of Iowa for Canada, and was in a Toronto hotel before she became aware - probably even before occurrence - of the more serious accident. Dr. Turner had left Iowa for Toronto early on 12 November 2001. The more serious accident occurred later on that date).

In a subsequent telephone conversation with her, also before 15 November, the former fiancé recalled Dr. Turner telling her that she (Dr. Turner) had, before leaving the United States, obtained a leave of absence until the end of November from her employment in Iowa, and had an airline ticket to return there on 30 November.

4.7 (d) *Journey from Toronto to Deer Lake*

On 14 November 2001, Dr. Turner, accompanied by her older daughter, flew from Toronto to Deer Lake Airport where she rented a car.

On 15 November 2001, Dr. Turner next telephoned Dr. Bagby's former fiancé. Dr. Turner had reached Toronto from the United States on 12 November and flown from Toronto to Deer Lake on 14 November. During this call, Dr. Turner said she was in Corner Brook, planning to drive from there to St. John's with her son when he was released from hospital.

4.7 (e) *Journey from Deer Lake to St. John's*

On 16 November 2001, Dr. Turner's eldest daughter flew back to Toronto. Dr. Turner, accompanied by her son, drove from Deer Lake to St. John's.

4.7 (f) *Settling in St. John's*

From 16 November 2001 to 18 August 2003 - when she died - Dr. Turner ordinarily resided in St. John's.

In St. John's, Dr. Turner took up temporary residence in an apartment her son was renting in company with several of his friends while he attended Memorial University.

When Dr. Turner arrived in St. John's with her son on 16 November 2001, she arranged for him to be hospitalized for further treatment of his injuries.

4.7 (g) Consulting psychiatrist

Dr. Turner next decided to contact a family physician for herself. She made and, on 18 November 2001, kept an appointment with a family physician. At that appointment, she presented herself as grieving the death of Dr. Bagby and being stressed by that and other recent events. She requested and obtained from the physician a letter of referral to a psychiatrist.

She, however, did not want a referral to any psychiatrist. She wanted a referral to a particular psychiatrist, Dr. John Doucet. The only apparent reason for wanting to consult Dr. Doucet was that she knew him when both - he a psychiatrist; she a fourth year medical student doing a psychiatry clinical

5: Narration and Summary of Facts

clerkship - worked in the Department of Psychiatry at the Health Sciences Centre.

That Dr. Turner needed psychiatric services seems evident from her previous medical history.

She had been consulting a female psychiatrist in the United States. One of two notes she had written before attempting suicide on 07 April 1999 in Westtown-East Goshen, Pennsylvania had been addressed to that psychiatrist. The context of the note suggests she had consulted that psychiatrist sometime prior to her 1999 suicide attempt. Further, in 1998 and 1999, Dr. Turner consulted in St. John's a psychiatrist who had, in 1998, diagnosed her with major depression. (For no evident reason, she appears not to have sought a referral to him in November 2001, although he was continuing to practice psychiatry in St. John's). In 1998, she was seen by a psychiatrist in Halifax (as a result of having been escorted to a Halifax hospital by a former boyfriend). And, on 06 November 2001, the day she returned from Pennsylvania to Iowa, after murdering Andrew Bagby, she had, in Council Bluffs, consulted a psychiatrist who prescribed

sleeping medication for her (and may have otherwise followed her, professionally, for her mental health).

In the letter of referral, the St. John's family physician wrote that she was referring Dr. Turner to Dr. Doucet to be treated.

Dr. Turner did not have long to wait before seeing Dr. Doucet. Her first appointment with him was on 20 November 2001, two days after the referral.

"This referral to me," wrote Dr. Doucet (in a letter to the Royal Newfoundland Constabulary, dated 25 August 2003)

was requested by Ms. Turner as I had previously been acquainted with her a few years earlier during her rotation through Psychiatry when I was a staff physician working at the Health Science Complex and she was a fourth year medical student for a two month period working on our Psychiatry service.

Dr. Turner's past history, ascertained Dr. Doucet,

revealed episodes of depression and anxiety on at least two occasions in the past. These were secondary to [that is, they derived from] stressors at the time. First was in 1991 when she saw a psychologist for several visits when she was a driver of a motor vehicle, which struck a pedestrian [on the Great Northern Peninsula]. She was

diagnosed, she's reported[,] with post traumatic stress disorder but was not treated with any medication. In 1996 when her children left her custody to live with their father[,] she had a very difficult time and felt rather depressed and anxious for several months.

(This occurred, in fact, in February 1997 when she returned her three children by her first and second marriages, then living with her, to their fathers on the Peninsula because her commitments as a medical school student precluded her from caring for them in St. John's).

For these conditions, Dr. Doucet stated in his letter,

[s]he was treated briefly with an antidepressant but this did not improve [her].

Several months after first consulting him, Dr. Doucet stated in his letter, Dr. Turner reported that she had attempted suicide, explaining to him that

this was a very difficult and vulnerable time because she was still without her children and having difficulty coping with her Family Practice [residency] program [which was part of her medical training] and felt an overwhelming sense of grief and helplessness after the break-up of a relationship. She reported this was a very embarrassing time, which she felt was very impulsive and regretted.

5: Narration and Summary of Facts

I have already described this suicide attempt which occurred on 07 April 1999.

(Several months after making this report to Dr. Doucet, she instructed the second attorney, whom she had retained in Pennsylvania to defend her on the criminal charges alleging she had murdered Dr. Andrew Bagby, that she had not made an attempt on her own life).

More recent history furnished by Dr. Turner to Dr. Doucet, as documented in his letter to the Constabulary, involved

a boyfriend, Dr. Andrew Bagby, being killed two weeks prior to her visit to me. This was a very traumatic and confusing episode and she felt consumed by shock, disbelief and grief. She felt a terrible sense of helplessness and hopelessness and loss of control and inability to be of significant help to her boyfriend Andrew, the police and his family. She was also initially stressed by the fact that her son had been involved a week earlier in a serious motor vehicle accident and was currently hospitalized. Additional stressor is the fact that earlier this week she had a positive pregnancy test.

The pregnancy resulted from intimacy with Dr. Andrew Bagby on 20 October 2001, when she visited Pittsburg to attend a wedding with him. (That visit preceded journeys to

5: Narration and Summary of Facts

Pennsylvania to see Dr. Bagby, later in October by air, and again in early November, by road).

Dr. Doucet's letter to the Constabulary, describing his 20 November 2001 examination of Dr. Turner, continues:

She complained of severe emotional distress, crying spells, poor sleep and appetite, distressing dreams and having difficulty focusing and concentrating.

Dr. Doucet's initial assessment of Dr. Turner on 20 November 2001 was that she presented symptoms of (i) the type of Adjustment Disorder predominated by anxiety and depression; (ii) Post Traumatic Stress Disorder; and (iii) bereavement.

These represent three different species of psychiatric conditions. This is because, in the science of psychiatry, a diagnosis of Adjustment Disorder does not apply when symptoms of bereavement are present; although, as here, may be present independently of bereavement, nor is bereavement a feature of Post Traumatic Stress Disorder. However, Dr. Doucet is careful to state that while Dr. Turner presented with the profile of a person suffering from Adjustment Disorder, she exhibited "features" of Post Traumatic Stress Disorder and

Bereavement, meaning that she may not have suffered from either of those conditions, themselves.

The fourth edition of the *Diagnostic and Statistical Manual of Mental Disorders* published in 1994 and commonly referred to as “DSM IV,” provides that the

essential feature of an Adjustment Disorder is the development of clinically significant emotional or behavioral symptoms in response to an identifiable psychosocial (...) stress or stressors. The symptoms must develop within 3 months after the onset of the stressor(s). The clinical significance of the reaction is indicated either by marked distress that is in excess of what would be expected given the nature of the stressor, or by significant impairment in social or occupational (academic) functioning [It] must resolve within 6 months of the termination of the stressor (or its consequences). However, the symptoms may persist for a prolonged period (i.e., longer than 6 months) if they occur in response to a chronic stressor (e.g., chronic disabling general medical condition) or to a stressor that has enduring consequences The stressor may be a single event (e.g., termination of a romantic relationship), or there may be multiple stressors. Adjustment Disorders are associated with an increased risk of suicide attempts and suicide. The percentage of individuals in outpatient mental health treatment with a principal diagnosis of Adjustment Disorder ranges from approximately 5% to 20%.²¹

Post Traumatic Stress Disorder is, states DSM IV,

characterized by the presence of an extreme stressor and a specific constellation of symptoms. In contrast, Adjustment Disorder can be triggered by a stressor of any severity and may involve a wide range of possible symptoms.

Often misunderstood or misdiagnosed, Post Traumatic Stress Disorder is a psychiatric condition with very specific symptoms, which, available data indicates, are developed by 8 percent of men and 20 percent of women. The American Psychiatric Association²² defines the condition as

a psychiatric disorder that can occur in people who have experienced or witnessed life-threatening events In some cases the symptoms of PTSD disappear with time, whereas in others they persist for many years. PTSD often occurs with - or may contribute to - other related disorders, such as depression, substance abuse, problems with memory, and other problems of physical and mental health. PTSD usually appears within three months of the trauma, but sometimes the disorder appears later. In people with PTSD, memories of the trauma reoccur unexpectedly, and episodes called “flashbacks” intrude into their current lives. This happens when sudden, vivid memories, accompanied by painful emotions, take over the person’s attention. Flashbacks may be so strong that individuals feel like they are actually re-living the traumatic experience or seeing it unfold before their eyes and in nightmares.

The National Center for Post-Traumatic Stress Disorder in the United States²³ offers the opinion that persons most likely to develop PTSD include those who experience real or

5: Narration and Summary of Facts

perceived responsibility and betrayal. And, the Center states that

[t]he distinctive profile associated with PTSD is ... seen in individuals who have both PTSD and depression.

Dr. Doucet did not diagnose Dr. Turner as presenting a separate disorder involving depression that she had, historically, experienced. Dr. Turner had suffered from depression. This involved a significant episode of major depression in 1998 and 1999 for which she was prescribed significant medication - medication she ceased taking contrary to medical advice. Dr. Doucet's file on Dr. Turner did not include the chart recording treatment by another St. John's psychiatrist for a major depression. Moreover, this psychiatric disorder - in 1998 and 1999 - was in addition to the "two occasions" involving "episodes of depression and anxiety" - in 1991 and 1996 - about which, Dr. Doucet stated in his letter, he was informed by Dr. Turner.

In addition to Adjustment Disorder and symptoms of Post Traumatic Stress Disorder, Dr. Doucet, in his initial examination of Dr. Turner, on 20 November 2001, also

5: Narration and Summary of Facts

identified symptoms of bereavement. DSM IV states²⁴ that bereavement

is generally diagnosed instead of Adjustment Disorder when the reaction is an expectable response to the death of a loved one. The diagnosis of Adjustment Disorder may be appropriate when the reaction is in excess of, or more prolonged than, what would be expected.

Historically, and on 20 November 2001, Dr. Doucet wrote,

[t]here was no evidence ... of any delusions or hallucinations. There was no history of suicidal ideation and no history of any intent or risk for harm to others.

Dr. Doucet's letter to the Constabulary reported that he saw Dr. Turner professionally

on a regular basis every week or two and then on a monthly basis over the following year.

During that period,

[t]here was no change in my mind about the initial diagnosis and certainly never at any time any change in assessment for risk factors of harming herself or others.

During that period, Dr. Doucet presumably revised his initial conclusion, relating to Dr. Turner, that "[t]here was no

5: Narration and Summary of Facts

history of suicidal ideation,” because she did, eventually, disclose to him her suicide attempt in 1999. That revelation by Dr. Turner, however, did not impact Dr. Doucet’s assessment that she was not at risk of harming herself or others.

As well, “over the following year” after the initial 20 November 2001 consultation, Dr. Doucet reported that

[f]requently the issues raised [by Dr. Turner] were not related to her own very stressful circumstances but rather issues of about how her children were coping and she frequently expressed worries about her youngest child]. She would not take any medications during her pregnancy [with Zachary] for fear of causing harm to her unborn child. She did eventually agree in the fall of 2002 [after Zachary’s birth on 18 July 2002] with a brief trial of some antidepressant medications. She was placed very briefly on Celexa 20 mg per day, which she did take for about six weeks but found no improvement and more problems with drowsiness and sedation as a side effect and this was discontinued.

On 11 January 2002, Dr. Doucet wrote to the Department of Human Resources, Labour and Employment, to whom Dr. Turner had applied for income support, stating that Dr. Turner

is followed by me on a regular basis. She is presently unable to work for medical reasons.

Dr. Doucet, in his letter, to the Constabulary, then turned to his

last visit with ... [Dr. Turner] on July 15, 2003. At that time she reported significant but brief periods of feeling very tense and anxious and difficulty sleeping and episodic fatigue. There were marked feelings of uncertainty fearing the lack of resolution of her legal problems. She reported her mood as ‘generally good and trying to be optimistic.’ She appeared a little tense and tired but very reactive otherwise. There was no indication of any thoughts of harm to herself or others.

As a result of that “last visit,” Dr. Doucet gave Dr. Turner a prescription for Lorazepam 0.5 mg. twice daily for a total of 30 tablets. This was primarily to be used on an “as needed basis” if there was any persistent insomnia or overwhelming anxiety.

4.7 (h) Telephone calls: Part 2

On the night of 16 November 2001 when Dr. Bagby’s former fiancé returned to her home in St. John’s from a visit to a cinema, she found a message on her telephone message manager. The message was from Dr. Turner, now in St. John’s after a day long trans-island drive with her son from Corner Brook. Dr. Turner wanted to borrow her stethoscope

5: Narration and Summary of Facts

because she was concerned about her son. When she returned the call about quarter to one on the morning of 17 November, the person receiving the call said that Dr. Turner was not at home.

Fifteen minutes later, at about 1:00 a.m., there was a knock at the door at her residence. Concerned that her visitor was Dr. Turner, she called a friend with the intention of having the friend on the telephone while she answered the door. The friend's line was busy.

She opened the door to find Dr. Turner there.

During an unwelcomed visit of about 45 minutes, she positioned herself in the hallway facing Dr. Turner who was standing near the door.

Dr. Turner was, she said, relieved to learn from her that Andrew's memorial service was to be held in an auditorium rather than a chapel at Memorial University. Dr. Turner remarked that she would not attend the service were it held in a chapel "out of respect for Andrew's wishes because he was an atheist" (of which I found no evidence). She quoted Dr.

5: Narration and Summary of Facts

Turner as adding his parents could not have thought that important because they had arranged for a religious service for their son on the previous Wednesday, 14 November 2001, in Pennsylvania.

Dr. Turner expressed dismay about having been “left out” of the memorial service program for Andrew.

Particularly disturbing to the former fiancé about this nocturnal meeting was Dr. Turner’s allegation that she could have been Dr. Bagby’s killer. To counter this grievous, spurious assertion, she arranged for provision of a letter, on 28 November 2001, from the Health Care Corporation of St. John’s to the Royal Newfoundland Constabulary, which provided first-hand evidence of her physical presence in St. John’s when Dr. Bagby died.

She was so unsettled by Dr. Turner’s visit that when Dr. Turner departed, she attempted again at 2:00 a.m. to reach the friend she had earlier telephoned - this time successfully - in an effort to calm her nerves.

5: Narration and Summary of Facts

Later that day, 17 November, Dr. Turner telephoned her, preoccupied by the subject of who should and should not participate in the memorial service on 20 November. She recalled Dr. Turner informing her that she (Dr. Turner) may speak at the service.

On 18 November, Dr. Turner telephoned her again and left a message on her telephone recorder that, suffice to say, was perplexing to her. In the message, Dr. Turner said:

I'm calling because I really need to get in touch with Andrew's parents ... you could give them my number and ask them to call If you could do that or let me know if you can't do that then I can try another way of getting in touch with them

- as if she had not previously and repeatedly suggested how Dr. Turner could do so.

Despite the fact Dr. Turner had hurriedly left the United States and had earlier told her that she (Dr. Turner) had no intention of returning to the United States, Dr. Turner telephoned her on 19 November and said she was only

thinking of moving back from [the United States to Newfoundland].

And added:

I'm probably going to be around here a lot more ... so you'll see me around a lot more[,] you'll see me a lot rounder.

This last remark of Dr. Turner's was, obviously, a reference to her pregnancy. The remark, however, left her confused. Twelve days earlier on 07 November, Shirley had told her by telephone that after visiting Andrew in Pittsburg on 20 October, she had returned to Council Bluffs and had miscarried. Was Dr. Turner, in truth, pregnant?

Ten days later, Dr. Turner, and fourteen days later, the Constabulary would know beyond doubt the answer to this question.

4.8 *Newfoundland Investigation*

(a) *Surveillance*

In response to a request, on 19 November 2001, from Pennsylvania State Troopers, the Constabulary's Intelligence Unit opened a file, on 20 November 2001, dedicated to

5: Narration and Summary of Facts

assistance to the Troopers. The subject of the file was Dr. Turner.

Initially, the Intelligence Unit deployed two Constabulary members on 20 November to Memorial University where Faculty of Medicine members had scheduled a memorial service for that day in memory of Dr. Bagby. The service began at 12:30 p.m. The Constabulary and Memorial University security office co-operated in video taping and photographing the event. In attendance was Dr. Turner.

4.8 (b) Memorial Service

Mourners at the memorial service included most, if not all, of the members of the Faculty of Medicine. Dr. Turner approached one of them after the service to point out that she was the person “sobbing” in the back of the room while the service was being conducted. She (falsely) led him to believe she was at home in Iowa when Dr. Bagby died in Pennsylvania. His recollection was that Dr. Turner told him (again falsely) that she had learned of Dr. Bagby’s death from a Faculty of Medicine graduate then living in the State of South Dakota.²⁵

Dr. Turner, ever voluble, continued the conversation with the Faculty member by informing him she had returned from the United States to Newfoundland to deal with the medical requirements of her son. The Faculty member then made an excuse to break off the conversation and went elsewhere. Left behind were Dr. Turner and the Faculty's Officer for Student Affairs who later told the Constabulary Intelligence Unit (as noted by the Unit):

In retrospect she talked more of herself, her son and the activities around his ... [motor vehicle accident] than Andrew who was[,] after all[,] the reason for the immediately concluded memorial service. Not one reminiscence of Andrew, seems odd to me now.

4.8 (c) *Confrontation with Dr. Bagby's former fiancé*

Dr. Turner did not speak at the service. However, Andrew's former fiancé was invited by Dr. Bagby's family to participate and did so.

The participation in the memorial service by her did not, apparently, sit well with Dr. Turner. Following the service, Dr. Turner verbally attacked her for having participated.

5: Narration and Summary of Facts

At 4:30 p.m. on 20 November, the former fiancé approached a Memorial University security office employee. She reported to him of having been confronted after the service by Dr. Turner. She also reported, as noted in the Constabulary Intelligence Unit's file, having received a

number of disturbing phone calls from Shirley Turner and is concerned for her safety ... [she] is that concerned[,] she has someone move in with her.

She told the security office employee about several particulars of the telephone calls from Dr. Turner. One of the particulars is, here, worthy of being addressed. She said that Dr. Turner had no intention of returning to the United States.

On 21 November, about 8:30 a.m., Dr. Turner telephoned Dr. Bagby's former fiancé as if nothing untoward had occurred after the memorial service the day before. Dr. Turner said, as she recalled,

Andrew's not here So ... they'll [the police] just have to ... you know believe, take into account what I said.

5: Narration and Summary of Facts

The same day his former fiancé met with Faculty of Medicine and security office representatives to discuss her security concerns.

The next day she gave a sworn statement to the Constabulary Intelligence Unit.²⁶

She recounted primarily to the Unit the telephone conversations and personal contacts she had experienced with Dr. Turner since Dr. Bagby's death.

After this interview, the Constabulary detailed special patrols around her residence in St. John's for a short period of time.

The day after submitting to the Constabulary interview, she received an e-mail from Dr. Turner. The message was a rambling, vicious attack on her, accusing her of insincere and manipulative behaviour, punctuated by assertions about the romantic relationship, which Dr. Turner maintained she had enjoyed with Andrew.

4.8 (d) Telephone calls: Part 3

5: Narration and Summary of Facts

On 20 November 2001, Dr. Turner telephoned Andrew's former fiancé again and disclosed to her that she was "still pregnant" by Dr. Andrew Bagby.

Between 20 and 27 November 2001, Dr. Turner telephoned a resident of Paradise, Newfoundland, who was employed at Memorial University and had been acquainted with Dr. Turner. To her, Dr. Turner revealed that she had last seen her gun in the trunk of Dr. Bagby's vehicle on the weekend before his death. And that, contrary to what some persons believed, her relationship with Dr. Bagby had not ended before his death.

On 27 November 2001, Dr. Turner telephoned Dr. Bagby's father. She was adamant; she planned to remain in Canada. She told him she had walked away from all her belongings in Iowa. As for the gun, she said the firearm belonged to her.

For its part, the Constabulary Intelligence Unit gathered evidence that on 28 November 2001, Dr. Turner arranged to send to her Iowa lawyer - via overnight courier - among other

things, the keys to her Council Bluffs apartment and the key to her Council Bluffs mailbox.

The Unit also contacted the Director of Intelligence and Contraband at the Canada Customs and Revenue Agency and requested “an alert be placed on Canadian border crossings” for Dr. Turner.

On 29 November 2001, the Intelligence Unit made an entry in its database stating that Dr. Turner was staying at her son’s apartment. The entry added the portentous warning, “use caution, suicidal tendencies.”

4.9 Pregnancy Confirmed

The same day, 29 November 2001, Dr. Turner had an appointment for an ultrasound. How I know requires me to return to the role of the Intelligence Unit of the Royal Newfoundland Constabulary in this matter.

On 30 November, the Intelligence Unit received information that some students in the Faculty of Medicine and some professional personnel, especially personnel associated

5: Narration and Summary of Facts

with Family Medicine, were concerned about Dr. Turner being around. Further, the Unit was asked by State Trooper Nolan to “keep tabs” on Dr. Turner. And the Unit also received a telephone call from a former Memorial University Faculty of Medicine graduate now residing in Nova Scotia.

The graduate reported he was going, together with his best friend, another graduate from the Faculty, to meet with the police in Halifax. He proposed reporting to Halifax police, as noted by the Intelligence Unit, that

Shirley told his best friend [the other graduate] she was on the parking lot [in Keystone State Park, in Pennsylvania] with Dr. Bagby the day he was murdered.

He asked the Unit to inform him and the Halifax police, should Dr. Turner leave Newfoundland.

On 01 December 2001, Pennsylvania State Troopers executed a second search warrant at Shirley Turner’s Council Bluffs apartment. In executing the warrant, the Troopers seized from the apartment clothing and shoes. The second warrant had been obtained after the Troopers spoke to one of the Nova Scotia physicians with whom Dr. Turner had

5: Narration and Summary of Facts

communicated in November 2001. [She had told him that, when the first search warrant was executed at her Council Bluffs apartment on 09 November 2001, State Troopers had not taken the clothes and footwear she had been wearing on 05 and 06 of November].

By 30 November 2001, the Constabulary's Intelligence Unit was heeding Trooper Nolan's request that "tabs" be kept on Dr. Turner. In fact, the Unit had already been doing so.

On 02 December, while conducting surveillance on the apartment of Dr. Turner's son where Dr. Turner had been staying since her arrival in St. John's on 16 November, Unit members observed Dr. Turner and her son - now home from hospital - putting out a plastic bag of garbage. Unit members immediately seized the garbage. Within the garbage was the answer to the question - 'Was Dr. Turner pregnant?' - and considerably more.

The garbage included the documentary results of an ultrasound conducted on Dr. Turner on 29 November 2001. Endorsed by Dr. Turner on a card²⁷ containing two photographs of a fetus were the words:

S.J. Turner[.] A.D. Bagby[.] Conception date: Oct. 20, 2001[.] EDC: July 13, 2002. Full bladder Bambino.

4.10 Extradition Proceedings: Part 1

(a) Background

From 06 or 07 to 11 December 2001, Dr. Turner visited the West Coast of the Island of Newfoundland. I do not know the details of the visit, except that the security office at Memorial University informed the Constabulary's Intelligence Unit that she stayed with her former second husband's wife. If that is accurate, any cordiality they then may have enjoyed would soon dissipate. By spring 2002, Dr. Turner made a complaint of child abuse against the woman.

On 12 December 2001, Dr. Turner returned from Corner Brook to St. John's.

On the same date, an extradition proceeding was commenced in Newfoundland to attempt to legally require Dr. Turner to be brought, in custody, from Newfoundland to the State of Pennsylvania, and to stand trial in Pennsylvania on

5: Narration and Summary of Facts

criminal charges filed there accusing her of having murdered Dr. Bagby in that State.

An understanding of the origin of the extradition proceeding requires some background.

By 27 November 2001, having accumulated sufficient evidence to charge Dr. Turner with one count of (i) murder in the first degree, and (ii) criminal homicide, Pennsylvania State Troopers obtained a warrant for her arrest on both counts.

The same day, Pennsylvania State Trooper Kirk Nolan telephoned the Constabulary. He said he had the warrant issued in the Commonwealth of Pennsylvania for Dr. Turner's arrest on criminal charges, alleging that she had murdered Dr. Bagby in Pennsylvania. And, he informed the Constabulary, he was on his way to Newfoundland to attempt to execute the warrant, unless Dr. Turner chose not to voluntarily submit to arrest under the warrant. In that event, the United States would apply to a Newfoundland Court and to Canada's Minister of Justice to extradite her back to Pennsylvania.

5: Narration and Summary of Facts

On 28 November 2001, the Constabulary in turn informed Dr. Turner that the warrant for her arrest had been issued in Pennsylvania, and requested a meeting with her at her son's apartment at 6:15 p.m. Dr. Turner preferred to meet at Constabulary Headquarters. She then telephoned her lawyer in Iowa who, in turn, telephoned the Constabulary in St. John's. A meeting of Dr. Turner and the Constabulary did not take place that date.

Dr. Turner could submit voluntarily to the Pennsylvania arrest warrant. She decided instead that she would not return to the United States, unless extradited. She was legally entitled to take that position.

As a result, on 29 November 2001, a Police Criminal Complaint (equivalent to an "Information" under Canada's *Criminal Code*) was signed on behalf of what is legally described as the Commonwealth (i.e., the State) of Pennsylvania. The Complaint against Shirley Jane Turner alleged two criminal offences contrary to the State's criminal law legislation: (i) murder of the first degree; and (ii) criminal homicide; both in relation to Dr. Bagby's death.²⁸

5: Narration and Summary of Facts

Appended to the Complaint was the “Affidavit of Probable Cause” of State Trooper McElfresh. The Affidavit summarized some of the evidence which verified the basis for the two criminal charges.

The intentional killing of a person (involving willful, premeditated and deliberate intent to kill) is murder in the first degree. Causing a person’s death either intentionally, or knowingly, or recklessly, or negligently is criminal homicide. In other words, the Complaint alleged that Shirley Jane Turner intentionally murdered Dr. Bagby or intentionally, knowingly, recklessly or negligently caused his death.

Both charges in the Complaint - the allegation of killing Dr. Bagby and the allegation of causing the death of Dr. Bagby - were stated in the Complaint to have been

a result of several gunshot wounds with a .22 caliber firearm ... [as a result of Dr. Bagby being] “shot several times, twice in the head, once in the chest and twice in the rectal area” and having received “a blunt trauma to the back of the head.”

(“Trauma,” in this context, meant injury caused by violence to the body from an external source).

5: Narration and Summary of Facts

Pennsylvania State criminal legislation has been interpreted to permit conviction for murder in the first degree, founded on circumstantial evidence.²⁹

Under Pennsylvania State criminal legislation, the sentence for murder in the first degree is death or life imprisonment. The sentence for criminal homicide is the same. A Pennsylvania Assistant District Attorney told my legal counsel in a telephone conversation that a sentence of life imprisonment, if imposed, meant precisely that - ‘for the remainder of the sentenced person’s natural life.’ Unlike Canada, the State of Pennsylvania’s legislation makes no provision for parole with respect to sentences for the offences for which Dr. Turner was charged.

On 05 December 2001, the Commonwealth of Pennsylvania commenced the process of attempting to extradite Dr. Turner from Canada (where she was now residing in St. John’s) back to Pennsylvania where she was charged, on 29 November, with Dr. Bagby’s murder on 05 November.

A legal subject of considerable complexity, “extradition” means, essentially, delivery of a fugitive to the

5: Narration and Summary of Facts

state or country where the fugitive is accused of crimes from another country where the fugitive is residing.

The extradition proceeding conducted in the Newfoundland Supreme Court involved, for the sake of narration, six aspects. They are:

(a) the United States' application for, and Turner's arrest on, what is described in extradition law as a "provisional warrant of arrest" and her first appearance in the Trial Division of the Court, during which she was admitted to judicial interim release;

(b) the extradition surrender application to the Trial Division by the United States of America for an extradition order which was granted and resulted in an order for her committal into custody to await a decision by Canada's Minister of Justice as to whether she should be extradited;

(c) administrative steps taken on behalf of, and by Dr. Turner and Canada's Justice Minister after Dr. Turner's committal into custody;

5: Narration and Summary of Facts

(d) Dr. Turner's appeal to the Court of Appeal challenging decisions of the Trial Division in the extradition application proceeding (which awaited hearing by the Court when she died);

(e) Dr. Turner's successful application in the Court of Appeal for judicial interim release until her appeal was heard and, unless revoked at the appeal hearing, until the appeal was decided; and

(f) Dr. Turner's application to the Court of Appeal for legal assistance with her appeal.

4.10 (b) Provisional arrest warrant

On 05 December 2001, the District Attorney for Westmoreland County, John W. Peck, and the Assistant District Attorney, Judith Petrush, of the Westmoreland County District Attorney's Office, Greensburg, signed a "Request For Provisional Arrest" of Dr. Turner.

The effect of the request, which described Dr. Turner as a fugitive from Pennsylvania, was an application to Canada to

5: Narration and Summary of Facts

extradite Dr. Turner back to Pennsylvania, to be tried on the two criminal charges laid on 29 November 2001.

Attached to the Request were documents supporting it. Among them was a “Statement Of Urgency.” The Statement included allegations that Dr. Turner:

- (i) “fled her residence” in Council Bluffs, Iowa, “on learning that she was the focus of the investigation into the homicide” of Dr. Bagby;
- (ii) “abandoned her apartment and belongings” in the apartment in Council Bluffs;
- (iii) having failed to report to her physician’s position at a professional centre in Council Bluffs, “was terminated” from that employment;
- (iv) had told Dr. Bagby’s mother that she had been advised by a United States lawyer, she consulted after Dr. Bagby’s death, to go to Canada from the United States;

(v) further told Dr. Bagby's mother "she did not intend to return to the United States;"

(vi) was "a danger to herself and the community" based on the Westtown-East Goshen suicide-related incident in 1999; and

(vii) was "a danger to the community" based on the circumstantial evidence of the charges that Dr. Bagby's killing resulted from murder in the first degree or criminal homicide committed by Dr. Turner.

The Request and supporting documents were sent to the Office of International Affairs in the United States Department of Justice [Criminal Division] in Washington which, in turn, passed the Request on to the United States Department of State.

Under section 13(1) of the *Extradition Act*, a statute of the Parliament of Canada, a Judge (usually described in practice as a "Justice") of the Trial Division of Newfoundland Supreme Court may, on an *ex parte* application (meaning, in this context, without notice to the person subject to the

5: Narration and Summary of Facts

proposed extradition proceeding), issue a warrant for provisional arrest. The warrant, if granted, amounts to a Court order requiring the arrest of the person named in the warrant. The person named in the warrant, if issued, will be the person sought to be extradited from Canada to another state.

Application for the warrant is made to court by counsel representing, in effect, both the United States and Canada. Canada will not apply on behalf of just any State. The application will only be made on behalf of a State which is an “extradition partner.”³⁰

Under the *Extradition Act* sections 7, 11 and 12, the application can only be made if an extradition partner makes a request to the Minister of Justice of Canada, and the Minister approves of the request.

An extradition proceeding usually commences with a request to Canada’s Minister of Justice by an extradition partner to approve the making of an application by Canada’s Attorney General (who also fulfils the Federal Justice Minister’s duties) for a provisional arrest warrant under section 13(1) of the *Act*, and not for an extradition order. The reason?

5: Narration and Summary of Facts

The extradition partner desiring extradition of a person from Canada will want to bring that person before a Canadian superior court as soon as practicable, after a court in the extradition partner (in this instance, the United States) is satisfied that grounds exist to charge and try that person. This usually means that the extradition partner wants that person brought before a Canadian superior court before it has had an opportunity to prepare a formal extradition request to Canada and the documentation supporting the request.

The request was for the “provisional” arrest of Dr. Turner in the sense that Pennsylvania wanted Dr. Turner arrested temporarily; that is, until the United States, in consultation with the Commonwealth of Pennsylvania prepared:

- (i) a formal extradition request to Canada; as well as,
- (ii) evidence documents for an extradition hearing in Canada at which an extradition order would be requested to authorize Canada’s Justice Minister to surrender Dr. Turner to the United States.

Having received the request from the United States for provisional arrest of Dr. Turner under *Extradition Act* sections

5: Narration and Summary of Facts

7 and 11(1), Canada's Minister of Justice gave approval for an application to court for an order to arrest Dr. Turner under *Extradition Act* section 12. As a result, Canada's Attorney General applied on 12 December 2001 for a warrant of provisional arrest. The application was to a Judge of Newfoundland Supreme Court's Trial Division.

As is customary in cases such as this, the application was made by legal counsel for Canada's Attorney General employed by Canada in Newfoundland, to a Judge of the Supreme Court Trial Division at the Court House, St. John's.

To obtain the provisional extradition warrant, counsel for Canada's Attorney General had to satisfy the Judge, under section 13(1) of the *Extradition Act*, of the following three conditions:

- (a) **it is necessary in the public interest to arrest the person, including to prevent the person from escaping or committing an offence;**
- (b) **the person is ordinarily resident in Canada, is in Canada, or is on the way to Canada; and**
- (c) **a warrant for the person's arrest or an order of a similar nature has been issued or the person has been convicted.**

5: Narration and Summary of Facts

The Judge was satisfied that the arrest of Dr. Turner was “necessary in the public interest,” that she was “ordinarily resident in Canada” or, at least, was “in Canada,” and that a warrant for her arrest “has been issued” in Pennsylvania. As a result, the Judge on 12 December 2001 issued the warrant for the provisional arrest of Dr. Turner. (I note that Dr. Turner never gave any indication that she would avoid arrest).

The warrant was given by the Court to the Royal Newfoundland Constabulary.

On 12 December 2001 at 11:20 a.m., two Constabulary members from the Intelligence Unit, acting under authority of the provisional arrest warrant and accompanied by Dr. Turner’s lawyer, Randy Piercey, went to the apartment of the son of Dr. Turner and there arrested her. She was brought to Constabulary Headquarters in St. John’s.

At 2:10 p.m. on 12 December, Dr. Turner was escorted, in custody, from Constabulary Headquarters to the Court House.

4.10 (c) *Judicial interim release: Part 1*

5: Narration and Summary of Facts

When she was brought under arrest to the Court House by Constabulary members as required by *Extradition Act*³¹ section 17(1), Dr. Turner applied for “judicial interim release,” commonly known as “bail.”³²

The release provisions of the *Criminal Code*,³³ contained in Part XVI of the Code, are lengthy and detailed. In the case of Dr. Turner, the applicable release provision appears to me to have been *Criminal Code* section 522(1) which reads, in relevant part:

... a judge ... shall order that the accused be detained in custody unless the accused, having been given a reasonable opportunity to do so, shows cause why ... detention in custody is not justified ... [under] section 515(10).

The general rule respecting release under the *Criminal Code*³⁴ section 515(1) is that the Crown must justify detention of an accused.

Section 522(1),³⁵ which requires the accused to establish why he or she should not be detained in custody, rather than the general rule, appeared to me to govern in Dr. Turner’s case because the charges outstanding against her related to murder.

In any event, whether *Criminal Code*³⁶ section 522(1) or *Criminal Code* section 515(1) applied to Dr. Turner's release application, presumably both provisions were enacted by the Parliament of Canada with the intention of serving the public interest; namely, the administration of justice and the protection of the public, including the accused. Neither of them was specifically mentioned at Dr. Turner's release application during the first hearing in her extradition proceeding although, no doubt, the presiding Supreme Court Justice was mindful of them in conducting the release hearing.

The task of convincing the Court to deny Dr. Turner her release was not inconsiderable. For instance in *R. v. Rondeau*,³⁷ a 1996 decision of the Quebec Court of Appeal, the Court decided that release is not to be refused to a person who may pose a risk of re-offending or interfering with the administration of justice while at liberty, except where that person poses a substantial likelihood of doing so and the substantial likelihood endangers the protection or safety of the public.

Also relevant is the part of Canada's Constitution known as the *Canadian Charter of Rights and Freedoms*, especially sections 7, 11(d) and 11 (e). Section 7 provides that

[e]veryone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Subparagraph 11(d) states that

[a]ny person charged with an offence has the right to be presumed innocent until proven guilty, according to law in a fair and public hearing by an independent and impartial tribunal;

And subparagraph 11(e) requires that

[a]ny person charged with an offence has the right not to be denied reasonable bail without just cause.

On the other hand, the Charter right of “everyone” to “life, liberty and security of the person” extends not only to accused persons but also to the remainder of the public. And, the *Rondeau* decision³⁸ of the Quebec Court of Appeal, in reaching its conclusion, stated that factors relevant to release include:

- (i) the nature of the offence;

- (ii) the circumstances of the offence, including prior and subsequent events;
- (iii) the likelihood of conviction;
- (iv) the degree of participation of the accused person;
- (v) the relationship between the accused and the victim;
- (vi) the profile of the accused, including occupation, lifestyle, criminal record, family situation and mental state;
- (vii) the accused's conduct prior to the alleged offence; and
- (viii) the danger that the accused's release represents for the community specifically affected by the offence.

The following occurred on 12 December in the Supreme Court Trial Division relating to Dr. Turner's release application:

Defence counsel:

... We have conditions that we're going to offer to your lordship for release, so I'm assuming from that that the Crown's perspective is that, at least right now, she's not a security risk, and I'd ask in light of that that she be permitted to leave the dock and sit up here.

Canada/United States counsel:

I don't see any problem with that, my lord.

The Court:

**You want to tell us how we get here for a start?
The background.**

Canada/United States counsel:

... Ms. Turner was initially arrested pursuant to a provisional arrest warrant granted by this court pursuant to section 13 of the *Extradition Act*. Pursuant to section 17 of the *Extradition Act* the individuals responsible for arresting Ms. Turner had a responsibility to bring her before the court within 24 hours, either a judge or justice, in this case a judge. Having brought this particular individual before the court pursuant to section 17, the issue of release pursuant to the *Extradition Act* now arises. This court does have the power pursuant to those sections to release this particular individual, if it chooses, and the provisions of the *Criminal Code* in fact even apply. What I would propose to the court are a number of release conditions, which if acceptable to the court are already acceptable to the Attorney General [of Canada] and to ... [defence counsel] regarding Ms. Turner's release.

....

The Court:

.... What is the position then with respect to the release?

Canada/United States counsel:

5: Narration and Summary of Facts

As far as release, my lord, what we would suggest is that Ms. Turner be released on a recognizance.

The Court:

One second now. Yes?

Canada/United States counsel:

With sureties in the amount of \$75,000 Canadian.

The Court:

How many?

Canada/United States counsel:

I understand there's going to be two for a total of 75.

Defence counsel:

Yeah. I think all we're concerned with is that it total up to 75. We've arranged for people to come in that will total up to 75, my lord. So it will be a total of 75. One person is going to take 65 and then there's a couple going to take another 10,000.

[Canada/United States counsel and Defence counsel specify the conditions of the Recognizance, considered below.]

The Court:

Is that it, ... [Canada/United States counsel]?

Canada/United States counsel:

Yes, my lord.

Defence counsel:

Yes, my lord. These are all acceptable. I think I'd just like to point out early on here that Dr. Turner has been very cooperative in keeping the members of the Royal Newfoundland Constabulary aware of her whereabouts, so she has cooperated.

The Court:

Now then. All right. I'm prepared then, with the consent of counsel, to have the accused released on the conditions as outlined by counsel, that is the recognizance in the amount of \$75,000 and the conditions as read into the record by counsel.

I gather from this court officer certified transcript, that:

(a) Canada/United States counsel and Defence counsel consented that Dr. Turner be released;

(b) Canada/United States counsel did not present any evidence, other than documentation filed in Court earlier in the day in support of its successful application for a provisional warrant of arrest;

(c) The Court relied on the submissions from both counsel, in their respective capacities as officers of the Supreme Court; submissions which consented to Dr. Turner's release from custody. For its part, the Court had discretion independently of the *Criminal Code*,³⁹ to abide the agreement of counsel that Dr. Turner be released.

At the end of Dr. Turner's release hearing, the Court set the next hearing date in Dr. Turner's extradition proceeding, under *Extradition Act*⁴⁰ section 21(1)(a), for 05 February 2002 at 10:00 a.m.

After the release hearing, Dr. Turner was required to provide a Recognizance with sureties before being released on bail.

A Recognizance, for the purpose of 'bail,' is Form 32 in *Criminal Code*⁴¹ section 849. In some respects, the form reminds me of a promissory note. [Persons (including an accused) who execute a 'bail' Recognizance are saying to a Court in the language of a Recognizance that they have "acknowledged themselves to owe to Her Majesty The Queen" the amounts stated opposite their names on the document, if

the accused “fails in any of the conditions” stated in the Recognizance. Sureties aren’t required to deposit cash, although an accused can be required to do so instead of providing sureties. Unless sureties are named in a release order by a Court, a person volunteering to meet the obligations of a Recognizance may sign the document].

The persons signing a Recognizance are: (i) the accused; and where sureties are required as a term of release of an accused (ii) the sureties. If the accused is judicially found to have violated any condition of his or her release as ordered by the Court, the Crown may apply to the Court for an order that the accused and sureties pay part or all of the amounts for which each has signed under the Recognizance. If the Crown’s application is granted, the Crown can, depending on the terms of the resulting order, seize the property of the accused and sureties to the value of some or all of the amounts for which each of them has signed.

No formal law or informal directive in Newfoundland governs procedures for signing a Recognizance (or any other type of ‘bail’ document) which is ordered before an accused, judicially granted release, is given liberty.

5: Narration and Summary of Facts

In the absence of law or directive, the practice has developed, and was applied in this case before the Recognizance was executed, of informing the accused and the sureties produced by the accused of their obligations under the Recognizance, and questioning them generally about their capacities to meet the financial obligations under the Recognizance to be signed by them. A Trial Division staff person vested with the authority of a justice of the peace took these steps before Dr. Turner and her sureties executed the Recognizance. It is unclear to me what exactly each of the potential sureties told the justice of the peace about his/her financial situation. Certainly, however, the justice of the peace knew that one of the three sureties was a practicing psychiatrist and that the other two sureties were married to each other and had significant incomes and/or property.

Dr. Turner and the three sureties executed the Recognizance. Dr. Turner was not required to sign for any amount.⁴² However, the three sureties signed for \$75,000 - the physician for \$65,000⁴³ and each of the spouses for \$5,000.

A summary of these terms of Dr. Turner's release, evidently written by a court employee from the record of the

5: Narration and Summary of Facts

‘bail’ hearing in order to prepare the Recognizance document, includes “sureties \$100,000,” with the sum of \$100,000 crossed out and the sum of \$75,000 substituted. This was a clerical oversight. The sum of \$100,000 was never proposed by Dr. Turner’s legal counsel or requested by the federal Crown counsel who appeared, or the Justice who presided at the release hearing.

After the Recognizance was signed by Dr. Turner and the three sureties, Dr. Turner was released.

The conditions of the Recognizance required Dr. Turner to appear in court as required: report weekly to the Royal Newfoundland Constabulary; reside at a stated St. John’s address; notify the Constabulary 24 hours in advance of any address change; not leave Newfoundland; surrender her two passports (issued by the United States and Canada); have no dealings with weapons and not contact or communicate with Dr. Bagby’s family or with seven named persons. Those persons were: a man from Pennsylvania; his parents; Dr. Bagby’s former fiancé; two Memorial University Faculty of Medicine graduates (telephoned by Dr. Turner in Nova Scotia shortly after Dr. Bagby’s death); and a Faculty of Medicine

member who had supervised two periods of Dr. Turner's residency training.

I found no evidence that Dr. Turner contravened any of the conditions of this Recognizance (which was in effect until 14 November 2002).

4.11 Parenting: 2001-2002

In St. John's, Dr. Turner maintained a fairly active social life - going to dinner, movies and, with her son, to thrift stores and shopping malls.

As stated before, on arrival in St. John's from Deer Lake, she stayed with her son in his apartment. She stayed there from 16 November 2001 until early January 2002.

Her son remained with Dr. Turner in the apartment during the Christmas season. Relations between them deteriorated. She sold his computer - a computer he and several of his friends had built, which he used for his University studies - for \$900. Her son complained to another family member that he was concerned his mother "would leave

5: Narration and Summary of Facts

me with nothing” (or words to that effect). Her son went to the home of his grandmother in Parsons Pond for the New Year season. Before leaving St. John’s by air, he requested his mother to vacate the apartment prior to his returning to St. John’s in January 2002.

By the time Dr. Turner’s son flew back to St. John’s in early January 2002, Dr. Turner had vacated the apartment. She had taken her son’s video camcorder with her.

On 05 January 2002, Dr. Turner moved to rented accommodation on Campbell Avenue, St. John’s. And, on 15 January, she set up residence in an apartment on O’Reilly Street.

There she began a diary on 27 January 2002 which, at her death on 18 August 2003, occupied parts of three journals. The diary was, she wrote,

for my new child (son) conceived - Oct. 20/01. to be read when you are much older (18 yrs. maybe).

On 30 April 2002, she wrote in her diary:

Someone has taken your Dad (before he even knew you existed) and now maybe you'll lose me too. I can't bear to think of adoption. But I have to do what's best for you. I just don't know what that is. Everything is so uncertain now I'm trying to be strong and get through this, I have bad days, awful days, and then not so bad days.

By now (on 01 April 2002), Dr. Turner had moved to an apartment on Pleasant Street, St. John's.

Easter was approaching. None of her three children was living with her. Her older daughter was living in Mississauga, Ontario. Her son was now living on his own in St. John's. Her younger daughter was living with her father in Portland Creek. She had been living with him continuously since February 1997 when Dr. Turner, then attending medical school, had returned the daughter to her second husband. At the same time, she had returned her other two children to her first husband and his mother in Parsons Pond, all this without applying to vary existing judicial orders, which had placed custody of all three children with her.

Dr. Turner told her second husband that she wanted access to her younger daughter during her Easter vacation from school. He hesitated to permit his daughter to travel to St.

5: Narration and Summary of Facts

John's for access with Dr. Turner because she, after all, was charged with two criminal offences. Nonetheless, he reluctantly agreed that she could stay with Dr. Turner in St. John's from 29 March to 07 April 2002, provided her older sister would go and stay with her as well.

The two daughters arrived in St. John's on 29 March 2002 to commence what she and her father understood would be a 10-day access visit.

However, the older daughter did not stay with Dr. Turner for very long. Dr. Turner struck her during an argument several days after she arrived in St. John's. She left and went to the Peninsula to visit there with family.

Dr. Turner would only tell CYFS later that she had left to undertake employment in a Toronto factory.

The younger daughter remained behind with her mother.

On 06 April 2002, Dr. Turner informed her second husband by telephone that their daughter would be staying with her in St. John's. She legally had custody of the daughter

5: Narration and Summary of Facts

since their divorce was granted on 21 February 1997. The daughter wanted to stay with her mother in St. John's.

The only evidence indicating why Dr. Turner took this decision is that she told her younger daughter,

if you don't spend time with me now, you may not get the chance.

Whether Dr. Turner knew that the youngster had started her 2001-2002 school year in Deer Lake, and had since transferred to school in Daniels Harbour is unclear. In any event, she enrolled her in [...] School in St. John's effective 08 April 2002.

On 09 April 2002, the child's father commenced an application in Unified Family Court, St. John's, to vary the parenting order made when Dr. Turner divorced him and to grant him custody of the daughter. The first hearing date on his application was scheduled for 11 April.

The hearing in Unified Family Court on 11 April 2002 was brief. Both parents of the younger daughter appeared. Because Dr. Turner was unrepresented by legal counsel, her

5: Narration and Summary of Facts

ex-husband's application was adjourned, giving Dr. Turner time to obtain counsel. Meantime, the Court made no change in the 21 February 1997 order which provided that Dr. Turner have custody of this daughter. The father was ordered to be given "generous" access to his daughter.

Considering that the Court was about an eleven-hour drive from his home and he had neither sufficient funds nor the stomach for the trauma the proceeding was involving for him, he took no further action.

4.12 Community and Health Services: Part I

(a) Introduction

For much of the 21 months Dr. Turner lived in Newfoundland, after returning from Iowa in November 2001, she received child-related services. Recipients of the services were, initially, her younger daughter and, later, her son Zachary, as well as Dr. Turner herself as mother of both children ("community services" and "health services").

5: Narration and Summary of Facts

Adequately understanding the services delivered to the three Turner family members first requires a rudimentary knowledge of the legal framework within which the services were provided.

Community and health services are delivered principally in accordance with the dictates of the *Child, Youth and Family Services Act*.⁴⁴ The legislation was enacted in 1998 and came into force on 05 January 2000.⁴⁵

The *Act* represents the third comprehensive reform of child welfare legislation in Newfoundland since Confederation. (The previous statutory overhauls of child welfare law occurred in 1964 and 1972).

The services were, until 01 April 2005, furnished by social workers, their supervisors and regional directors employed by regional health and community services Boards throughout the Province. From 01 April 2005, services have been delivered by four regional integrated health authorities.⁴⁶

5: Narration and Summary of Facts

Young persons eligible to receive the services are children (persons actually or apparently under 16 years old),⁴⁷ and youth (persons 16 years or older to, but not including, 18 years) in Newfoundland.⁴⁸

In delivering services under the *Act*, social workers are guided primarily by written policies, procedures and standards. The written policies, procedures and standards - voluminous documents - are, in fact, essential to services delivery. (Incorporating them in the *Act* would have neither followed legislative practice nor been practicable because they frequently change).

Duties of the Provincial Director of Child, Youth and Family Services, appointed by the Cabinet of the Provincial Government under section 5 of the *Act*, include responsibility for “establishing province-wide policies, ... and standards” (as well as programs), and “monitoring, evaluation and research of the established policies, ... and standards” (as well as established programs).

5: Narration and Summary of Facts

Interpretation and administration of the *Act* is governed by general principles enunciated in section 7 of the *Act*. They include:

- (a) **the overriding and paramount consideration in any decision ... shall be the best interests of the child;**
- (b) **every child is entitled to be assured of personal safety, health and well-being;**
- (c) **the family is the basic unit of society responsible for the safety, health and well-being of the child; [and]**
- (d) **the community has a responsibility to support the safety, health and well-being of a child and may require assistance in fulfilling this responsibility;**

(The community's responsibility for a child includes, under section 15(1) of the *Act*, the obligation of

a person [who] has information that a child is or may be in need of protective intervention [defined by section 14], ... [to] immediately report [all information about] the matter [in his or her possession] to a director [defined by section 2(1)(f)], social worker [defined by section 2(1)(n)] or a peace officer [defined by section 2(1)(j)].

The community's responsibility to report under section 15(1) applies also to persons performing professional duties who have

5: Narration and Summary of Facts

reasonable grounds to suspect that a child is or may be in need of protective intervention

under section 15(4)).

Separately stated are principles under section 8 of the *Act* which govern the provision of services under the *Act*. They include the principle under section 8(b) that

services shall be provided using the least intrusive means of intervention.

These principles - intended to assist social workers and other involved professionals to: (i) interpret and administer the *Act*; and (ii) deliver services under the *Act* - are implicitly to be interpreted and implemented in the best interests of the child.

Section 9 of the *Act* defines a child's "best interests." The definition includes (in other words, is not all inclusive) the following:

- (a) **the child's safety;**
- (b) **the child's developmental needs;**
- (c) **the child's cultural heritage;**
- (d) **where possible, the child's views and wishes;**

- (e) **the importance of stability and continuity in the child's care;**
- (f) **the continuity of a child's relationship with his or her family, including siblings or others with whom the child has a significant relationship;**
- (g) **the child's geographic and social environment;**
- (h) **the child's supports outside the family, including child care and the school environment; and**
- (i) **the effect upon the child of a delay in the disposition of a judicial or other proceeding with respect to the child.**

The *Act* does not provide that any of the elements comprising the definition of “best interests” deserve more emphasis than others.

The purposes of the *Act* are stated on page 65 of the 2005 Advisory Committee, which is tasked to review the operation of the *Act*.

Incidentally, section 75(1) obligates the Minister of Health and Community Services, who is responsible for the *Act*, to establish an advisory committee, whose function is

to review every 2 years the operation of the Act and to report to the minister concerning its operation and stating whether, in its opinion, the principles (under

5: Narration and Summary of Facts

section 7, 8 and 9 of the Act) and purpose of the Act are being achieved.

The committee appointed in September 2002 has since reported on one occasion.

In addition to following the provisions of the *Act* and of the 2005 Advisory Committee Report's Statement of Principles, social workers in daily professional social worker practice are expected to adhere under the *Social Workers Association Regulations* [CNLR 1132 / 96, ss. 2(e), 4(b)(ii)] to the *Code of Ethics of the Canadian Association of Social Workers*.

Social workers must also be faithful in their professional practice to the, largely unwritten, best professional standards of practice. Essentially, the standards of best practice involve, in the context of a particular case, defining issues and selecting strategies for best addressing the issues.

The two pillars authorizing services under the *Act*, delivered in accordance with the principles expressed in sections 7, 8 and 9, are sections 10 and 16.

5: Narration and Summary of Facts

One pillar is section 10(1) which states that a regional director or a social worker

may provide services to children, youth and families, and may enter into written agreements with respect to the services to be provided and the responsibilities of each party to an agreement.

Where the services relate to a youth, the services agreement may be made with the affected youth under section 11. And as a prelude to, or instead of an agreement, section 12 provides for the use of alternate dispute resolution mechanisms to resolve child- or youth-related conflicts (including family group conferences, pre-trial settlement conferences and mediation).

The other pillar is section 16(1) which obligates a regional director or a social worker,

[u]pon receiving information that a child is or may be in need of protective intervention ... [to] assess the information to determine if there are reasonable grounds to believe that a child is in need of protective intervention.

A child in need of protective intervention is defined by section 14. There are 11 groups of circumstances contemplated by the definition. They include:

(i) where the child is, or is at risk of being, physically harmed by the action or lack of appropriate action by the child’s parent, and (ii) where a child has no living parent or a parent is unavailable to care for the child and has not made adequate provision for the child’s care.

Whether being “unavailable” refers to only a parent who is physically unavailable or also refers to a parent who is psychologically unavailable has not yet been judicially considered.

One of the other groups of circumstances which define a “child in need of protective intervention” is section 14(k) where the child

is actually or apparently under 12 years of age and has (i) been left without adequate supervision, (ii) allegedly killed or seriously injured another person or has caused serious damage to another person’s property, or (iii) on more than one occasion caused injury to another person or other living thing or threatened, either with or without weapons, to cause injury to another person or other living thing, either with the parent’s encouragement or because the parent does not respond adequately to the situation.

The *Act* does not, however, include in the definition the circumstance where the parent or other caregiver of the child allegedly killed or seriously injured another person.

5: Narration and Summary of Facts

If a Regional Director or social worker receives information that a child “is or may be in need of protective intervention,” he or she “shall” react by “assess[ing] the information to determine if there are reasonable grounds to believe” that the child is in need of protective intervention under section 16.

Section 16 does not require the Regional Director or social worker to proactively investigate. However, the *Act* elsewhere implies that some investigation may be undertaken. Section 18(1), for example, provides that the Regional Director or social worker “may” apply to court for an order if he or she

is denied access to a child where he or she believes that access to the child is necessary to determine if the child needs protective intervention

The purpose of the Regional Director or social worker applying to court is to seek an order:

- (a) that a person disclose the location of the child;**
- (b) requiring a person to allow the [regional] director or social worker or another person to interview or visually examine the child;**
- (c) authorizing the director or social worker to remove the child from the place where the child**

5: Narration and Summary of Facts

is located for an interview or medical examination; and

- (d) authorizing a medical practitioner or other qualified health care practitioner to examine the child.**

The *Act* nowhere provides, however, for a Regional Director or social worker to apply to court for an order authorizing a qualified medical practitioner to examine the parent or other caregiver of the child.

If reasonable grounds exist to believe a child is in need of protective intervention, the Regional Director or social worker has a range of options. Principal among them are provided for under sections 21 and 23.

Under section 21 of the *Act*, a Regional Director or social worker may apply to court

for an order to prohibit contact between the child and ... [a] person

where there are

reasonable grounds to believe that contact between a child and ... [that] person would cause the child to be in need of protective intervention.

5: Narration and Summary of Facts

To that extent, the *Act* contemplates Regional Directors and social workers functioning proactively.

Section 23 of the *Act* authorizes a Regional Director or social worker, where he or she

believes (a) that a child is in need of protective intervention; and (b) a less intrusive course of action is not available or will not adequately protect the child

to apply for a warrant to remove the child.

Further, subsection 23(3) provides that where a Regional Director or social worker

has reasonable grounds to believe there would be an immediate risk to the child's health and safety, if no action were taken during the time required to obtain a warrant, the [regional] director or social worker may enter a premises or vehicle or board a vessel or aircraft, by force if necessary, to remove a child without a warrant.

If a child is removed (either with or without warrant), the involved Regional Director or social worker must, under section 29 of the *Act*, file an application for an order that the removed child is in need of protective intervention and obtain a date for a presentation hearing. At the presentation hearing,

5: Narration and Summary of Facts

the court decides whether or not sufficient evidence obtains to proceed with hearing of the protective intervention application.

If a Regional Director or social worker, who has reasonable grounds to believe that a child is in need of protective intervention, does not remove the child, either with or without warrant, he or she must, under section 28 of the *Act*, file in court a protective intervention application and obtain a date for hearing of the application without first proceeding to a presentation hearing.

Formidable is the task of a Regional Director or social worker seeking to obtain from a court - the Unified Family Court of Newfoundland Supreme Court in St. John's and area, and the Provincial Court elsewhere in the Province - an order which declares a child to be in need of protective intervention defined, as I noted earlier, by section 14 of the *Act*.

Mr. Justice J. Douglas Cook of the Unified Family Court in a 28 February 2006 decision (at paragraph 37) of the Court, wrote that

[i]n determining whether a child is in need of protective intervention, there is a 'heavy onus' or 'high civil

burden' imposed on the Director to satisfy the court that allegations necessary to intervene are clearly met.

Justice Cook referred (at paragraph 38) to a 1993 decision of Mr. Justice (now Chief Justice) J. Derek Green of the Supreme Court Trial Division, sitting in Unified Family Court, which stated that

... the standard of proof at the stage of determining whether a child is in need of protective intervention is that of a balance of probabilities, recognizing that in any given case, for a court to be satisfied that it should intervene, the nature and quality of the evidence ought to be commensurate with the seriousness of the allegations made.

Rumour and speculation are not sources of evidence relied upon by a court in deciding protective intervention applications, nor by me in preparing my Findings.

If satisfied on the evidence that a child is in need of protective intervention,

all available options should be considered and compared in determining what is in a child's best interests

wrote Justice Cook (at paragraph 39).

5: Narration and Summary of Facts

All available options are provided for under sections 34 to 36 and, perhaps, section 37 of the *Act*. They include, under subsection 34(2)(b), an order that the affected child

be placed in the custody of a person other than the parent from whom the child was removed ...

And, in choosing the appropriate option, wrote Justice Cook (at paragraph 40), the court must seek

to balance the rights of parents within the broader and overriding umbrella of what is in a child's best interests.

In selecting the appropriate option, Justice Cook (paragraph 40) cites the example provided by Madam Justice Claire L'Heureux-Dubé of the Supreme Court of Canada in a 1994 decision:

The value of maintaining a family unit intact is evaluated in contemplation of what is best for the child, rather than for the parent.

Among the earliest examples of how a court interpreted and applied the *Act*, adhering to these principles, was filed 28 February 2001 by Madam Justice Mary Noonan, the senior Justice of Unified Family Court.

5: Narration and Summary of Facts

The personality of Dr. Turner, who presented to obtain child services under the *Child, Youth and Family Services Act* commencing February 2002, was comparable to a jigsaw puzzle. Her psychological picture was comprised of irregularly shaped pieces. If all of them were located, accumulated and examined individually, they probably would not have depicted either her delinquent parenting history or her - in my reserved opinion - seriously dysfunctional psyche. All the pieces having been found and collected together, they needed to be assembled to create a picture. And the resulting picture required examination, assessment and analysis to obtain an accurate and complete appreciation of the potential for harm imbedded in Dr. Turner's persona.

Some of the pieces of the puzzle were, I conclude, located and assembled by Child, Youth and Family Services in St. John's. However, there was never a sustained initiative to undertake the perplexing, painstaking exercise of finding and connecting all the pieces to discern the messages that would have emerged from the resulting picture.

It would have portrayed a woman who, throughout her adult life, frequently functioned outside the lines of socially

and legally acceptable behaviour and, consequently, posed a **significant risk to her children's best interests.**

Providing Dr. Turner with family services for one or another of her children under section 10 of the *Act* was one thing; another matter entirely was building a case that satisfied what Justice Cook termed a “heavy onus” of proof to convince a court to declare one or another of Dr. Turner's children as needing protective intervention, and requiring separation from the parent(s) or other caregiver(s). Without a judicial protective intervention order, and without a further judicial order authorizing removal from the parent(s) or other caregiver(s), affected children could not be placed by a Regional Director or social worker in someone else's custody.

The challenges which faced social workers, therefore, in operating under the *Child, Youth and Family Services Act* while they dealt with Dr. Turner were not inconsiderable.

In my Review of Dr. Turner's relationship with social workers delivering services under the *Act*, I agree with the contributors to *Child Welfare [:] Connecting Research, Policy,*

and Practice,⁴⁹ dedicated to child welfare issues in Canada and published in 2003:

The serious questions to ask are: What attention is being paid to parents and their needs and capabilities? To what degree are the children's interests served.

The answers to both questions are not reassuring. Child Welfare, as it is currently practiced, is reactive and crisis driven.

4.12 (b) Community Services

The person who was the younger daughter's professional counsellor at CFYS in St. John's holds a Master's Degree in Social Work and has experience in legal parenting proceedings. She was asked during her testimony about the viability of separating Dr. Turner and Zachary.

David C. Day, Q.C. (Review Legal Counsel):

.... If you have a situation where the caregiver [of a child] is either going to or is likely to die for some other reason isn't, from a practical standpoint, going to be able to have contact with their child for the rest of their lives, ... [should] a plan ... be put in place and the process initiated as soon as possible, to start to have the child develop attachments and a relationship generally

with whoever is going to replace the current caregiver ... ?

Answer:

Always. Yes.

Review Counsel:

.... What [is] the professional thinking ... surrounding a case where you have a caregiver near death, or facing a real prospect of being taken away from the place where they're raising the child with little or no prospect of ever coming back?

Answer:

For ... [a child the age of the younger daughter], in her situation, there would be no obvious benefit. In fact, there could be detriment to removing her from her mother at that point because ... [the younger daughter] would already have her attachments formed for the most [part]. She also had a fall back plan in her father and extended family with whom she had good relationships as far as I know. A younger child, a very young child, in the early stages, your planning would be maybe somewhat different. There's so many factors there, you know, that you'd have to look at the age and the situation of the child, but you definitely plan for the child's future where you can and try to develop secure relationships as early as possible.

Review Counsel:

With whoever is going to look after them?

Answer:

5: Narration and Summary of Facts

For a young, young child, yes. For a young child.

Records of CYFS, while providing community services to the Turner family, do not disclose any consideration ever having been given to separating Dr. Turner and Zachary. Rather, its frontline social workers and their superiors were inclined to provide Dr. Turner supportive services to assist her to put in place a plan for her son's parenting to be implemented by her if she was extradited to the United States; a plan that involved her otherwise retaining custody of Zachary.

Aside from an undocumented telephone call to CYFS within the St. John's Regional Health and Community Services Board on 11 February 2002, inconsequential to my Review, Dr. Turner did not have any notable contact with CYFS until 25 March 2002, about four and one-half months after she returned to Newfoundland from Iowa.

On 25 March 2002, Dr. Turner telephoned the Intake office of CYFS. The Intake office screens requests from the public for services to determine whether the requests are

5: Narration and Summary of Facts

within the CYFS mandate. She told the Intake office employee that she and her second husband were involved in a dispute over custody of their daughter. This, of course, was unknown to the second husband who understood his discussion with Dr. Turner was designed to facilitate Dr. Turner's Easter access to their daughter.

The Intake employee informed Dr. Turner that CYFS did "not provide services in custody matters, unless concerns existed surrounding physical, emotional or sexual abuse." Dr. Turner did not indicate to the Intake employee that she had any concerns in those respects. The Intake employee therefore informed Dr. Turner that no need existed for CYFS to provide any services. CYFS did not open a file.

Dr. Turner, when served with a copy of her second husband's application on 10 April 2002, again telephoned CYFS. She expressed her concern for the "emotional needs" of her younger daughter.

The Intake employee told Dr. Turner, as she had on 25 March 2002, that CYFS did not become involved in custody matters unless the child or children involved had been abused.

5: Narration and Summary of Facts

Dr. Turner responded, as noted by the Intake employee, that the wife of the second (ex-) husband had, on 08 March 2002,

physically assaulted their daughter ... on at least one occasion

on 08 March 2002 in Daniels Harbour. She said she had heard this from her younger daughter.

The Intake employee “screened in” Dr. Turner’s request for emotional support for the younger daughter, not because of the custody proceeding commenced by the daughter’s father but because of the mistreatment allegation. The employee referred the matter for services to St. John’s CYFS. However, St. John’s CYFS decided to defer action on delivery of services until it learned the outcome of the custody application by the younger daughter’s father on 11 April.

A note made by the St. John’s CYFS social worker handling the file stated that if the Court returned the younger daughter to her father, she would request “Western Region” to “action” Dr. Turner’s report of mistreatment.

5: Narration and Summary of Facts

That would have created special challenges for “Western Region” CYFS if contacted by the St. John’s CYFS social worker. This is because the daughter had not been living in Daniels Harbour as Dr. Turner’s mistreatment report indicated. Rather, she had been residing with her father and his second wife in Portland Creek.

On the morning of 11 April 2002, Dr. Turner was back on the telephone with a St. John’s CYFS social worker. She now reported, as noted by the worker, that the father had “kept” the daughter in her bedroom

for 4 hours on 21 March 2002 talking to her about the visit to St. John’s over Easter.

By now, Dr. Turner had ascertained that the daughter had, in fact, been living in Portland Creek.

On 15 April, Dr. Turner informed St. John’s CYFS of the result of the Unified Family Court hearing on 11 April.

That same date, St. John’s CYFS made plans to take action on the referral of Dr. Turner’s matter.

5: Narration and Summary of Facts

Over the following 16 months until August 2003, St. John's CYFS services were provided, first for Dr. Turner's younger daughter and then for Zachary. I question whether St. John's CYFS was: (i) providing the correct services; and (ii) taking the proper steps (investigative and assessment) in deciding what services were appropriate (family services or protective services), or both.

On 16 April, a St. John's CYFS social worker telephoned the Royal Newfoundland Constabulary for assistance in investigating Dr. Turner's mistreatment allegation. The Constabulary referred the worker to the Royal Canadian Mounted Police (RCMP) because Portland Creek was part of the policing responsibility of the RCMP, not the Constabulary. The worker next telephoned the RCMP's Operational Command Centre for Newfoundland and Labrador based at Pleasantville, St. John's. She was referred to Deer Lake which, the worker's file note stated, "were covering for Portland Creek." She left a message for RCMP Deer Lake to call back.

Next, the worker visited [...]. There she spoke with a school guidance counsellor

5: Narration and Summary of Facts

and with the younger daughter. The results were unmistakable.

The daughter was, the social worker noted,

the brightest in her class and has taken on a leadership role in the classroom.

The allegations by Dr. Turner that the daughter was mistreated by her father and his second wife were, by no means, serious. Yes, the father had spoken with his daughter for about four hours about her pending Easter visit with Dr. Turner, but he had not “kept” the daughter in a room. And, yes, his wife’s hand contacted the top of the daughter’s leg as a result of missing an attempted slap to one of her buttocks, but his wife had not “physically assaulted” the daughter except in the most technical, legal interpretation of the term. And this was the only occasion when the second wife slapped the daughter.

As for staying in St. John’s, the daughter, according to a note by the social worker,

enjoys living with her mother.

The daughter was concerned, however,

5: Narration and Summary of Facts

for Zachary as he ‘will grow up without a father.’

When the St. John’s CYFS social worker spoke by telephone with Dr. Turner on 18 April 2002, she informed her that CYFS would provide counselling for her daughter, whether the Court eventually ordered that she continue to reside with Dr. Turner, or return her to father in Portland Creek.

In separate telephone calls on 18 April 2002 to the father and to his wife, the social worker informed them, as she noted, that CYFS as a general policy recommended

non use of physical discipline because of the physical and emotional impact on the child.

The worker recorded the CYFS response to Dr. Turner’s physical mistreatment allegation as “inappropriate discipline.”

The worker, in her telephone conversation with the wife, advised her that the RCMP had been notified of the CYFS concerns that she had contravened CYFS policy governing the use of physical discipline.

5: Narration and Summary of Facts

By 29 April 2002, counselling was arranged for the daughter, primarily to address the stresses she was or was likely experiencing as a result of her mother being subject to Pennsylvania murder charges, and as a result of the court application by her father requesting to have custody of her. Counselling subsequently was provided commencing 23 May 2002.

I note that CYFS never took a position on the future parenting care of the daughter. The reason was that future custody of the daughter was before Unified Family Court. But after 11 April 2002, the Court was not asked to adjudicate the custody issue because her father did not have the financial wherewithal to further pursue his application.

Two days later, on 01 May 2002, St. John's CYFS was first approached by telephone to provide services for Zachary, about two and one-half months before his birth. However, the approach did not come from Dr. Turner. The reason why, I was unable to ascertain. This was not to be the only occasion when services for Zachary were sought by persons other than Dr. Turner.

5: Narration and Summary of Facts

The 01 May 2002 request for services for Zachary came from a woman I will call Dr. Turner's St. John's friend. She is to make several entrances in my narrative.

The St. John's CFYS Intake Assessment employee who received the telephone call included, in a note of the call, that the woman

was calling on behalf of a friend, Shirley Turner. Caller said Ms. Turner is expecting a baby about the middle of July. Caller said that Ms. Turner is concerned that she will be sent to the United States [to be tried in Pennsylvania on murder charges] and she wants to make provisions for her baby. She said Ms. Turner needs to be able to stand up in Court [at the proceeding to extradite her to Pennsylvania] and say that she can place her child in foster care here. Caller said that Ms. Turner needs someone to help her with this situation and caller asked the person who contacts Ms. Turner should be sensitive and non-judgmental as Ms. Turner is very upset.

A potential role for CYFS was discussed with Dr. Turner on 07 May 2002 when a CYFS social worker telephoned her. The social worker's note of her resulting conversation with Dr. Turner records that

I would need to discuss if CYFS would have a role in this situation with my Supervisor and would get back to her I did advise that family members etc. are

5: Narration and Summary of Facts

considered and also addressed whether or not Andrew Bagby's parent[s] would apply for Custody. Ms. Turner alleged that the Bagbys have previously indicated that they would want a paternity test done so she is uncertain whether or not they would play a role. She also questioned if the Bagbys would have temporary custody and if they would be able to take the child to California, where they reside. I suggested that she contact a lawyer re: these questions. I further advised that I would leave her file open with CYFS until I addressed these questions re: placement options for Baby Turner with my Supervisor and also until ... [the second-marriage daughter] was seen by ...[a counsellor]. Ms. Turner was agreeable to the same.

I assume the social worker in writing "her file" in the note was referencing the file opened to provide services for her younger daughter.

In a voicemail message to a St. John's CYFS social worker on 11 June 2002, Dr. Turner said she

may need to discuss Adoption options as well

respecting her expected child.

In the result, the Department of Health and Community Services arranged by mid-June 2002 to enroll Dr. Turner in the Healthy Beginnings Program for expectant and new mothers, a Program in which Dr. Turner began participating.

5: Narration and Summary of Facts

On 17 June 2002, a St. John's CYFS Director received a visit from a St. John's lawyer. She represented David and Kathleen Bagby, parents of the murdered Andrew Bagby. The lawyer informed the Director that the Bagbys were considering an application for custody of Dr. Turner's expected fourth child and, if the application proved unsuccessful, they would want access. In either event, the lawyer indicated the paternity of the child would not be a pertinent consideration. What is more, the lawyer stated the Bagbys, residents of California, were prepared to relocate to Newfoundland or Pennsylvania in order to have a parenting role in the life of Dr. Turner's expected child.

It is hardly necessary to note that Mr. and Mrs. Bagby demonstrated remarkable benevolence in the position they assumed respecting the future care of the expected child.

The Director, because of confidentiality considerations, did not as much as acknowledge that CYFS had any contact with Dr. Turner.

Almost immediately after the meeting with the Bagbys' lawyer, the Director convened a meeting involving herself,

5: Narration and Summary of Facts

another St. John's CYFS Director and the social worker who had been dealing with Dr. Turner respecting her daughter and her expected fourth child. The result of the meeting was that the social worker was tasked to take several largely investigative steps.

First, the social worker was required to interview Dr. Turner's younger child, as well as her two siblings and other relatives of Dr. Turner's. While she did interview the daughter, she did not interview any of the others. The next day, 18 June 2002, she telephoned the guidance counsellor at [...] School where the daughter was attending, and learned that she was an "amazing child" who was "excelling academically." She followed up the telephone conversation with a visit to the school where she interviewed the daughter. The daughter who, the worker noted,

presented as animated and very articulate throughout the interview,

said that she was receiving counselling, earlier arranged by St. John's CYFS, and had visits scheduled with her father in Portland Creek later in June and in August 2002. She added

5: Narration and Summary of Facts

that if her mother was incarcerated, she would return to Portland Creek to reside with her father.

Secondly, the social worker was required to obtain the daughter's consent to speak with her St. John's CYFS counsellor. This consent was secured in writing when the worker made a school visit to the daughter on 18 June 2002. Unclear to me is whether the counsellor was ever interviewed.

Thirdly, the social worker was required to speak with the Royal Newfoundland Constabulary which was functioning in an assistance role to Pennsylvania State Troopers investigating the murder of Dr. Bagby. From one of the constables assigned to the assistance role, she learned the following:

- (i) The Constabulary had gathered no evidence that Dr. Turner had previously abused any children.⁵⁰
- (ii) The Constabulary did not know whether a mental health diagnosis was ever conducted of Dr. Turner.
- (iii) The Constabulary informed the worker that the Commonwealth of Pennsylvania had decided not to pursue the death penalty if Dr. Turner were extradited to

5: Narration and Summary of Facts

Pennsylvania and convicted on either of the charges accusing her of murdering Dr. Bagby.

(iv) As noted by the social worker, the Constabulary constable said that

the children are all that Ms. Turner has left to keep her from being extradited to the States and ... believes that ... [Dr. Turner] could harm herself or the unborn child if she was at risk of losing the child.

Considering how events would unfold, the constable exhibited remarkable insight in offering to the worker this opinion; an opinion the worker did not press the constable to enlarge upon.

Fourthly, the social worker was required to obtain Dr. Turner's consent to enable St. John's CYFS to speak with her psychiatrist. St. John's CYFS was ever only aware of Dr. Turner consulting one psychiatrist who commenced seeing Dr. Turner on 20 November 2002, and who, on 12 December 2002, was among persons who signed as sureties to guarantee performance by Dr. Turner of the conditions of her judicial interim release. Having obtained that consent in writing, St. John's CYFS never interviewed him. When the psychiatrist

5: Narration and Summary of Facts

did not return their phone calls, they gave up after several attempts.

And, finally, the social worker was required to assess Dr. Turner about parenting, especially the impact of her current stress level on her parenting ability. This was done; however, it was impaired by the fact the assessment was founded largely on information provided by Dr. Turner. No significant investigation was otherwise performed.

Apropos the parenting assessment, the social worker spoke by telephone with Dr. Turner on 18 June 2002. During this telephone contact, Dr. Turner told the worker that

she [Dr. Turner] was emotionally drained by the proceeding, currently underway, to extradite her from Newfoundland to Pennsylvania. As noted by the worker, Dr. Turner said that ‘it would be ‘nice for her to not be in Court pregnant because there is so much hate there with Andrew’s parents in the Court. She said that Andrew’s parents ‘are sitting there and even though they do not believe the [expected] baby is Andrew’s - I know the difference of that.’ She said that it ‘is hard to sit there when there is so much hatred.’

My impression, to the contrary, is that the Bagbys never denied that Dr. Turner’s expected child was fathered by their son. Rather, they took the sensible approach that they did not

5: Narration and Summary of Facts

know the paternity of the expected child and wanted a paternity test conducted to ascertain the fact. And whether or not their son had fathered the expected child, they were prepared to participate in raising the child when born, either as custodians or by having access.

During that same telephone conversation Dr. Turner told the social worker that she

had decided to get pregnant

and that when Dr. Bagby died shortly after he caused her pregnancy, she had arranged a two-week leave from her medical employment to visit Canada.

As she continued her telephone conversation with the social worker, Dr. Turner

asked me if I knew who ... [a senior member in the Department of Child, Youth and Family Services] was. She stated that she spoke with [the Newfoundland and Labrador] Human Rights [Commission] who told her to talk to ... [this woman] if she was unable to look after her child. She said she was concerned that the Bagbys do a 'big turnaround and decide that they want to have the baby.'

5: Narration and Summary of Facts

Because she questioned the safety of the child if living in the Bagbys' care, she told the Commission she wished to speak with someone in the Province's government about making arrangements for the child's care by someone other than the Bagbys.

At the time, Dr. Turner apparently believed that the Bagbys were not planning to seek custody of her expected child.

The Commission, Dr. Turner informed her social worker, had advised her to speak with the named executive official.

Returning to the subject of the Bagbys, she told the CYFS social worker, as noted by the worker, that insofar as future care of her expected child Zachary was concerned:

it would not be healthy or in Zachary's best interests to place the child with ... [the Bagbys] if they are so convinced that she (Ms Turner) killed their child (Andrew).

And, stating the obvious,

5: Narration and Summary of Facts

Andrew is not around in any shape or form.

As for her side of the family, she said

there was no one ... that she could recommend to take the baby.

That being the situation, Dr. Turner requested the CYFS social worker to ask her superiors about: (i) state foster care; and (ii) adoption of Zachary if she (Dr. Turner) were incarcerated in Newfoundland during her extradition proceeding or, as a result of being extradited, were returned to Pennsylvania for trial. The social worker agreed to do so. In fact, as noted by the social worker, she undertook to discuss with her superiors,

developing or assisting with the development of a placement plan for the baby if one should be required.

Meantime, Dr. Turner told the social worker she was “going to hold off” on advice from the Human Rights Commission to speak with the Provincial Director of Child Welfare.

5: Narration and Summary of Facts

But Dr. Turner had no intention of waiting for the CYFS social worker to contact her superiors and report back on possible future state-assisted options for Zachary's care.

Later the same date (18 June 2002), 48 days after first contacting the St. John's Regional Board, Dr. Turner managed to negotiate contact with the Provincial Director. When contact was, in short order, made with the Director, Dr. Turner spoke as if she (Dr. Turner) did not have the slightest notion what services were offered by the Department or regional health and community services Boards.

For the purpose of contacting the Provincial Director, Dr. Turner (on 18 June 2002) telephoned her St. John's girlfriend. The girlfriend, in turn, telephoned a co-worker with whom she was employed in St. John's. She asked the co-worker for the residence telephone number of the Director. The request was transmitted to the co-worker, because she is the sister-in-law of the Director. She called the Director at her residence. She asked for, and obtained, permission to pass the phone number to Dr. Turner's St. John's girlfriend.

Later on the same date, that girlfriend telephoned the Provincial Director at her residence. Their conversation was reduced to writing in a detailed note. She [the girlfriend]

reached out to help Shirley Turner because she had no supports. She commented that she did not know if Shirley Turner had or had not committed the crime for which she was charged, but regardless she felt she needed some support at this time especially because she is pregnant.

The girlfriend explained to the Director that she had “stepped in” because she understood from Dr. Turner that “[her] family had turned their back on her ...”

If Dr. Turner conveyed that impression to the girlfriend - a sincere and cautious woman, who was interviewed by my legal counsel and me - my reaction is that Dr. Turner could not have stated anything more opposite to the truth.

This, I conclude, illustrates Dr. Turner’s aversion to truthfulness and her propensity for massaging the truth in dealings with virtually everyone interviewed in both the public and private sectors, not to mention the courts. Her lack of honesty throughout the period she lived in Newfoundland, from 14 November 2001 (when she traveled from Toronto to

5: Narration and Summary of Facts

Deer Lake) to 18 August 2003, seriously encumbered my task in identifying the facts.

To return to the telephone conversation, the St. John's girlfriend informed the Director that

Shirley Turner had seen someone at the Human Rights Commission who had recommended to her that she see only me [the Provincial Director] about her present concerns for her unborn baby.

The Director obtained Dr. Turner's number from the St. John's girlfriend and immediately telephoned her. As noted by a CYFS social worker to whom the official later spoke, the Director

was under the impression that Ms. Turner was very upset and that it was important for her to make contact with Ms. Turner immediately. [the Provincial Director] called Ms. Turner on June 18, 2002. She said that Ms. Turner did not present as upset, but was very calm.

On 21 June 2002, Dr. Turner spoke with a CYFS social worker about a "plan for placement options" for her expected fourth child. "There are so many different possibilities," Dr. Turner remarked (although none of them, to her mind, would involve the families of her or Dr. Bagby). The worker asked

5: Narration and Summary of Facts

Dr. Turner to prepare a list of persons she wished the worker to contact “in order to begin work on the plan for the baby.”

About the same time, her younger daughter met with a Family Services counsellor employed by the Board. She told the counsellor that historically (prior to February 1997)⁵¹ she “went to live with her dad” because her mother found “it was too hard on her. She couldn’t handle it.” She wanted to continue living with her mother because

it is an opportunity to spend time with my mother [until she] goes away [to the United States]

when, she stated, she would be returning to live with her father.

Dr. Turner informed the Director that

she was concerned about her unborn child and was seeking information on the options that may be available to her in planning for her child. She informed me she was having a boy and advised me she intended to call him Zachary. For the remainder of the interview Shirley Turner referred to her son as Zachary.

Turning to the specifics of the information she required, Dr. Turner told the Director that

5: Narration and Summary of Facts

she wanted to be familiar with all services that may assist her in meeting the needs of her son. She told me she intended to breast feed her baby, and she had concerns that at any time during the extradition hearing [presently underway to attempt to send her to Pennsylvania to be tried for murdering the child's father] she could be confined to prison for some period of time and she would need to have a plan in place for Zachary.

The Director informed Dr. Turner that

should the [Regional Director of Child, Youth and Family Services for St. John's and area] assume care of Zachary, the Child, Youth and Family Services Act would require the [Regional] Director to seek a placement with a relative or significant other as the first option for the child.

She asked Dr. Turner

if there would be relatives who would be receptive to providing care to Zachary.

Dr. Turner responded that the paternal grandparents

would be interested, but [that] she would not support the placement with them.

When she asked why, Dr. Turner answered that

she would not be supportive of the grandparents caring for Zachary, ... [for] two reasons. First, Shirley

5: Narration and Summary of Facts

Turner advised me that the grandparents had requested DNA testing to prove the baby was the child of their son. Their refusal to accept that Zachary was Andrew Bagby's son was upsetting to her.

The second reason given the Director by Dr. Turner for her opposition to the Bagbys parenting her expected child, Dr. Turner told her, was that

she feared the grandparents [the Bagbys] would harm Zachary. She explained that ... Mr. and Mrs. Bagby believed that she had killed their son and she feared as a way of getting back at her they would harm Zachary.

I found no evidence to support Dr. Turner's suspicion that David and Kathleen Bagby would harm Zachary. In fact, I find Dr. Turner's suspicion to have been absurd, based both on what Dr. Turner knew about the Bagbys up to the date of this meeting and subsequently.

Dr. Turner was

quick to point out that she was not admitting that she had killed Andrew Bagby. She said [quoting Dr. Turner:] 'it is not up to me to prove my innocence, it is up to the Crown to prove my guilt.

The Director

advised Shirley Turner that the [Regional] Director would consider her concerns but if Mr. and Mrs. Bagby approached the [Regional] Director to provide care for Zachary, the [Regional] Director would be compelled to assess them. I also advised⁵² Shirley Turner that should she continue to have strong feelings against this placement, then the matter would likely end up in Court and a Judge would make the decision about placement.

Dr. Turner informed the Director that

she believed Mr. and Mrs. Bagby intended to seek custody of the baby as soon as he was born.

In response, the Director informed (she wrote “advised” in her note) Dr. Turner that

the decision regarding custody would then be in the hands of the Court, and the [Regional] Director of Child, Youth, and Family Services would have no role in the proceedings.

The Director’s note continues:

Shirley Turner then asked questions about foster placements and if she could have input into the selection of a placement for Zachary. I advised her that this was indeed possible. She advised that she wanted to have a placement in the Eastern Region because if she was sent to prison, it would be in Clarendville. She advised if Zachary was placed in a foster home near the prison, she could continue to breast feed him. I advised her

5: Narration and Summary of Facts

that a foster home placement in that region could be explored. Shirley Turner stated she would like to meet the foster parents before any placement took place.

In addition to her questions to the Director about “short-term” care of Zachary, she had several “long-term” care inquiries:

Shirley Turner Informed me a friend of hers in the United States had agreed to care for Zachary if she [Dr. Turner] was extradited to the United States to stand trial. While she initially thought this was a good plan, she now had reservations about it. She said she did not want Zachary to grow up in the United States. She also said she did not think her friend would be a good mother. She apparently is a single woman who is also a doctor. She felt her lack of experience in caring for children and her hectic work schedule would prohibit her from being a good parent.

Dr. Turner was here referring to a woman she had met (and graduated with) from the Faculty of Medicine at Memorial University in 1998 - her South Dakota girlfriend.

The Director informed Dr. Turner that

if she changed her mind and decided to pursue this placement with this friend, then the Director of Child, Youth, and Family Services in the [St. John’s] Region would have to be involved. An assessment of this woman would be requested from Child Welfare authorities in the State in which she resides. Upon

5: Narration and Summary of Facts

receipt of same, the [Regional] Director would decide on whether or not this was a good option for Zachary.

Dr. Turner next raised questions about the prospect of having Zachary adopted:

She wanted to know if she decided to place Zachary for adoption, could she have input into the adoptive parents selected for him. I advised her that she could have input into the selection of prospective adoptive parents for Zachary and informed her she would be provided with the profiles of three approved adoptive families from whom she could choose. I also advised her that she could provide to the Provincial Director [of Child, Youth and Family Services, who is also the Director of Adoptions] the characteristics she would be looking for in prospective adoptive parents, and we would match these as closely as possible in the profiles provided to her.

At this point, Dr. Turner explained

her present plan was to raise Zachary herself, but should she be extradited to the United States to stand trial for murder, she may consider adoption for her son.

The Director again informed Dr. Turner that

if a relative came forward expressing interest in adoption, then the [Provincial] Director would have to consider the relative adoption application first.

Besides discussing the subject of adoption, she

5: Narration and Summary of Facts

informed Shirley Turner of the time limitations imposed for children in care [“temporary care,” provided for under the *Child, Youth and Family Services Act*, section 36, and “continuous care,” provided for under section 38 of the Act] and pointed out to her that long term foster care [“continuous care”] for Zachary is not an option in this Province. I also informed her that should Zachary be placed in the continuous custody of a [Regional] Director of Child, Youth and Family Services by the Court, then the Director would have the authority to make a permanent plan of care for Zachary which could include adoption.

Having explored all the policies provided by the Department of Health and Community Services which addressed

planning for the baby, I then advised Shirley Turner that she would need to seek services through the Regional Health and Community Services Board [now Eastern Health Integrated Board] in St. John’s. I advised her of the differing roles of the Provincial Director of Child, Youth and Family Services and the Regional Directors of Child, Youth and Family Services. I advised her I would facilitate a referral to ..., Director of Child, Youth and Family Services ... [for the appropriate Region] on her behalf. ... [That person], in turn, would see that her case was assigned to a social worker who could provide the services deemed necessary in her case.

Dr. Turner was receptive to this suggestion. She did not inform the Provincial Director that this had already been done.

5: Narration and Summary of Facts

After this appointment with Dr. Turner, the Provincial Director telephoned the appropriate Regional Director of Child, Youth and Family Services and informed her of the meeting just concluded with Dr. Turner at which Dr. Turner requested services. The Regional Director agreed to assign a social worker to Dr. Turner to follow-up with an assessment and, depending on the assessment results, provide the necessary services for placement of Zachary if Dr. Turner were incarcerated.

On 09 July 2002, Dr. Turner told a CYFS social worker she wished to make a Voluntary Care Agreement for her expected (fourth) child in the event of her incarceration because of her understanding “that she will still have a say in what happens with her baby” because the child would, in that event, be voluntarily coming into the care of the Board’s CYFS Director-in-Region. She wanted to know, however, if the Bagbys had to be “notified at all,” if she were to place the child with the CYFS under the form of agreement she preferred.⁵³

Dr. Turner gave no thought to the Bagbys as temporary caregivers, which would not have required any form of

5: Narration and Summary of Facts

agreement involving CYFS. She was content to rely on a competent state-approved person - unrelated to Zachary - undertaking his care, should she be incarcerated.

With respect to her - near future - admission to hospital to deliver her expected child, she said that her younger daughter, then living with her, would be supervised by her 20-year old son “as well as the neighbours.”

A visit to her rented residence was made by the Turners’ CYFS social worker on 16 July 2002 to introduce the worker replacing her. (The then current social worker who had provided initial, short-term assessment services for the Turner family was being replaced by a long-term protection worker). Dr. Turner spoke at some length about the Pennsylvania criminal charges outstanding against her. In summary, she said,

there is no physical or forensic evidence linking me to the murder; all the evidence is circumstantial and hearsay.

While initiating contact with the Province’s Community and Health Services, Dr. Turner had, by the end of June 2002, used mail, courier and telephone to terminate her Iowa

employment, arrange for disposition of her Toyota and donate to Goodwill Industries her Iowa personal effects, other than those she requested to be shipped to Newfoundland.

4.12 (c) *Investigation*

To the extent CYFS performed an investigation, the steps taken as a result of the 17 June 2002 meeting of CYFS social worker, supervisor and a Regional Director in St. John's, represented the last - perhaps the only - noteworthy investigation by CFYS in the files of the Turner family (Dr. Shirley Turner, her younger daughter and, from 18 July 2002, Zachary) even though CYFS continued to 'follow' the family until 18 August 2003.

What the Board otherwise knew about Dr. Turner and the Bagbys was largely derived from information in the media or from Dr. Turner (regarding her own situation), and legal counsel (regarding the Bagbys). The Bagbys were uniformly transparent in speaking of their backgrounds and personalities to the media and through counsel. The same cannot be said for Dr. Turner.

5: Narration and Summary of Facts

The reasons why considerably more probing into Dr. Turner's past and present life was not performed by CYFS are revealed in interviews conducted with some of the St. John's CYFS social workers, supervisors and a Regional Director who had responsibility for the Turner family file. Excerpts follow from some 2,000 pages of transcript of those interviews.

A CYFS supervisor testified about acquisition of 'child protection' information:

David C. Day, Q.C., Review legal counsel:

Was there ever what used to be called a "social history," or what ... [is] described more recently as a comprehensive written report, done regarding Shirley Turner while the matter was in Region in the hands of a social worker under your supervision?

Answer:

No it wasn't.

Review Counsel:

What's the reason for that?

Answer:

I guess we based our ongoing work with Shirley on the information that we had, we knew she

was married. We knew she had older children. We knew she hadn't parented her older children for some time. Her history was, I guess, not that unusual based on other families that we work with, with regards to her life's history and growing up ... being married and having kids, get divorced, those kinds of things were a pretty normal thing. We don't have the resources, I guess, to be doing those kinds of really formal background history, social histories on families. We definitely don't.

Review Counsel:

When you say you don't have the resources: either because of time constraints or limits on the number of workers you have?

Answer:

Right.

A CYFS frontline social worker testified regarding establishment of Dr. Turner's background as related to 'child protection' services for her younger daughter and her son, Zachary:

Review Counsel:

Looking back on your dealings with Shirley Turner, is it your impression, now, that you would or would not have gotten her co-operation to elicit from her, by the way of interview or documentation, the types of information you would have needed for ... [an intensive and comprehensive] assessment?

Answer:

My attempts to obtain information from her about her own personal history were not successful in terms of getting any kind of real in depth information about her own background or her own childhood.

Review Counsel:

Did you find her evasive, reluctant, silent? How would you describe her reaction when you made efforts to garner that information?

Answer:

I would say reluctant.

A Regional Director testified with reference to the frontline social work conducting an investigation, from the ‘child protection’ perspective, into Dr. Turner:

Review Counsel:

Was it expected, beyond the specific points of the action plan you have approved [to investigate Dr. Turner], that the front line social worker, ..., would use her discretion as to whether she contacted other potential relevant sources of information, or was it expected that she would limit herself to the particular contacts ... [that had been agreed upon at the 17 June 2002 CYFS meeting]?

Answer:

No, she absolutely, as a professional, would use her own discretion and professional judgment around whether or not there were other contacts that she believed she needed to make in addition to those that I had highlighted.

....

Review Counsel:

Did you, during the course of your Region's handling of the Turner file, receive any specific directions on how the case should be handled from anyone senior to you in the Region or from elsewhere within government?

Answer:

No.

....

Review Counsel:

..., do you know whether your field staff or supervisors read the legal file at the Court The custody access dispute file or any documents from that file?

....

Answer:

I am not aware that that occurred.

....

Review Counsel:

Was there in place in 2002-2003, or is there now, any formal understanding, policy or direction that Child, Youth and Family Services not become too actively involved in any child protection investigation where the criminal justice or police investigation is already underway for fear that the Child, Youth and Family Services' involvement could contaminate their gathering of evidence?

Answer:

I don't think that it is as direct as you have stated. I think that there ..., is some reluctance to share information with Child, Youth and Family Services staff by the Crown and by police agencies where there is a current criminal matter underway.

Review Counsel:

Did the fact there was an investigation underway, both in the United States and Canada relating to Shirley Turner, in any way impede the work of the Region[al Board] in relation to Shirley Turner and Zachary, her son?

Answer:

... we were provided with - some of the information that arose from the investigation, ... what was provided to us was the information which is in our file which was very vague and was no more than what was known through the media. Basically that's what we knew through Child, Youth and Family Services.

Another frontline CYFS social worker testified:

Review Counsel:

..., is there an expectation ... that if persons had information about a particular child who was the subject of a referral [referring a person for services], ..., that they would come forward with that information to you? Or was it your expectation that you'd have to identify, from the parents of the child, for example, that the child or the mother might be under medical care or that the matter already involves police? Would you expect that to be volunteered or is that information you would expect to go looking for?

Answer:

I would expect that that would be information that was volunteered, by the nature of the fact that a client has a right to confidentiality; that I would not necessarily go up to, their family doctor; just by doing that then the assumption is that they are involved with our agency. So in terms of their confidentiality, I wouldn't necessarily do that.

....

Review Counsel:

Was there any effort made, of your knowledge, to attempt to identify the strength of the prospect of extradition and the strength of the murder charges against Ms. Turner?

....

Answer:

5: Narration and Summary of Facts

..., ... as part of my role in assessment [of the Turner file] I had ongoing contact with the police. I might have, ..., in conversation on anything said ‘any updates, what’s happening,’ that kind of thing. Details on the extradition hearing itself I’m sure at the time you know people just sort of [had] a gut feeling ... but nothing that ... people around, like the RNC for example could say for definite that we had something ... [from which] we could ... say, okay, we got enough to remove [Zachary].

....

Review Counsel:

... [was] an effort made to contact ... [Pennsylvania State Troopers investigating Dr. Bagby’s murder] either through approaching your Departmental legal counsel or through counterparts in the State of Pennsylvania, social services agencies in Pennsylvania To identify the particulars of the alleged murder

Answer:

In my mind, that would have been the criminal aspect of things and I would have left that to the police in terms of that being their expertise. And if they had anything that, you know, ... was specific to me in terms of the child protection nature, I would have expected that they would ... share that information with me,

Review Counsel:

Did you contact them?

Answer:

I didn't contact social services in the United States because I didn't believe that she had any other children in her care while she was in the States. I did ask, not through the States because to be honest with you, I wouldn't even know where to begin to get a phone number for them, but I did through my contacts at the RNC say 'can you run a check on her in the States to see if there is any criminal history there.'

Review Counsel:

And there was none indicated?

Answer:

There was none indicated.

A second CYFS supervisor also testified on acquiring 'child protection' information.

Review Counsel:

Would not the fact there was a homicide allegation prompt the worker to, perhaps be somewhat more vigilant and skeptical in accepting information from this person [Dr. Turner] in making a judgment call?

Answer:

I operated from the assumption that ... everyone has certain rights and freedoms, as you all well know, under the Charter and you know one of them is that you're innocent until you're proven guilty. I don't presume guilt and if ... the public thinks that there are no ... [parents] out

there, convicted or charged, who are caring for their children ... then we're in trouble because it happens everyday. I'm not saying that's right or wrong[,] I'm saying that's the way it is and has evolved over time. Did we think about it? Sure we did, ... it's not everyday you get a case like that, although you do get them, ... we got information as we felt we needed to get it.child welfare cannot be the sole protector to children. We can't be the soldiers, ..., of children. So if the Federal Crown's office and the RNC, ..., or ... [Dr. Turner's psychiatrist], or the medical school, which I understand had information on her, or any of her friends, or ... [the second-marriage husband] who was married to her and consented in family court to let her keep ... [the younger daughter], if none of these people contacted our agency, or saw fit to contact us, ..., I'm not saying that we wouldn't contact them if we had [a] concern or issue ... but I also think it's incumbent upon the community, professional and otherwise, to not ... let it only be our job to do that. Not just because of duty to report under the Act but because it's their responsibility as a citizen.

Review Counsel:

Moral, social responsibility?

Answer:

..., yes.

....

Review Counsel:

Were there ever any discussions between ... [the frontline assessment social worker] and yourself,

5: Narration and Summary of Facts

..., surrounding Shirley Turner's mental health, other than whatever discussion you had on the issue of ... [the worker] contacting ... [Dr. Turner's psychiatrist]?

Answer:

..., the file indicates that ... [the worker] had talked to me about the anxiety and the stress that Ms. Turner was undergoing at the time and of course we were concerned about it. we felt that her mental health issues were being managed by her psychiatrist.

....

Review Counsel:

.... Do you experience some loss of faith ... [regards the lack of] the willingness of the public to come forward with information that may be relevant in child-related cases - considering the amount of information that has emerged since Turner's death of which, clearly, the Region wasn't aware?

Answer:

Well it doesn't surprise me based on my own practice experience.

Review Counsel:

Is that so?

Answer:

... I do believe that ... a lot of literature supports what I'm saying ... the public really does think our job is to protect all children, that they don't

have a role to play. Which is really sad, I find, and unfortunate considering that the new legislation [in force from 05 January 2000] was supposed to be about empowerment and engagement, of not only children, youth and families but community as well. So, yeah there is a loss of faith really, ... [that] has just been a reality, I think. People are afraid of it too, you know.

Inquiries of independent sources of information is rudimentary and essential “best practice” for social workers in developing profiles of persons with whom they deal. The scope and extent of the inquiries should depend on the circumstances of each file. If, for example, little is known of the parent and/or children - which was the situation in the matter I am reviewing - I would expect the inquiries to be more intensive and extensive than otherwise, especially if the parent has recently ‘come from away’ and/or is charged with a serious criminal offence.

The dearth of the general public’s willingness to serve as informants about alleged child mistreatment, acknowledged by one of the social worker witnesses, simply reinforces and heightens the onus on ‘child protection’ workers to be vigilant and painstaking in mapping and vigorously performing background inquiries. Those inquiries should and could have

been done, but were not done in handling the Turner file, which may have contributed to tragic consequences for defenceless, dependant Zachary Andrew Turner.

Some of the factual information that follows is also addressed in Chapter 7 where I present my analysis of its significance with respect to protection of Zachary.

What should not be forgotten nor overlooked is that the undisputed and indisputable constitutional rights, under the *Canadian Charter of Rights and Freedoms* of Dr. Turner, in responding to criminal charges against her, are trumped to the extent essential to protect her children; especially her infant son. Charter constitutional rights were never intended to protect a parent at the expense of exposing the parent's children to risk.

5. *Shirley Jane Turner and Zachary Andrew Turner*

5.1 *Birth of Zachary Andrew Turner*

Zachary Andrew Turner (middle-named after his father, Dr. Andrew Bagby) was born at the Health Sciences Centre in

5: Narration and Summary of Facts

St. John's on 18 July 2002. He was born in good health after a difficult delivery (requiring a caesarean section), weighing about eight and one-half pounds.

Among the first arrivals to visit Zachary were his paternal grandparents, the Bagbys. They arrived at the Centre with gifts for the infant. Dr. Turner denied permission for them to view Zachary. They left Zachary's gifts with a Centre staff person and then left.

Dr. Turner, who was admitted to the Centre on 17 July, was discharged with Zachary on 21 July accompanied by Dr. Turner's 12-year old daughter.

5.2 Parenting: 2002-2003

Of Dr. Turner's three children prior to Zachary's birth on 18 July 2003, the older daughter continued to reside in Mississauga, and the son on his own (with friends) in St. John's in 2002 and 2003. The younger daughter continued to live with her father in Portland Creek until April 2002; in St. John's with Dr. Turner from April to November 2002; and on her own (to some extent) from November 2002 until the 2002

Christmas season; in Portland Creek from Christmas 2002 until Easter 2003; and back in St. John's from Easter to August 2003. (Given the extensive commuting undertaken by the younger daughter, I am bound to ask: Who was the parent? Who was the child?)

5.3 *Community and Health Services: Part 2*

(a) *Community Services*

By 22 July 2002 when a CYFS social worker home-visited Dr. Turner, she had given birth to her fourth child, Zachary, and returned home with him. Her main concern in conversation with the worker, aside from the fact she said she felt “emotionally traumatized,” was the Bagbys. First, they had visited the Health Sciences Centre on 19 July 2002, the day after Zachary was born, to see him (for which Dr. Turner refused consent) as a result of which, she said,

the hospital is conducting an investigation into a ‘breach of confidentiality’ because someone obviously ... [said] that she was in hospital

5: Narration and Summary of Facts

Secondly, she threatened to discharge her family law lawyer because he had advised her to permit the Bagbys to have access to Zachary because, the lawyer had told her, the Bagbys were behaving in a “reasonable and rational manner.” And, thirdly, she alleged that

the Bagbys may try and get back at her by harming the baby or that they may take the baby to England or California and not return him.

(For these allegations, I never found any basis in fact.)

She also discussed Dr. Bagby’s “estate,” particularly the prospect of an officer of the Newfoundland Supreme Court being named trustee to receive, or accumulate and hold, Dr. Bagby’s property for Zachary’s benefit. (Dr. Bagby had no significant estate when he died).

Noticing that the younger daughter was preparing meals and helping to care for Zachary, the worker suggested a Board’s Health and Education Services parent coach be arranged for a short period. Dr. Turner agreed. The worker promptly arranged the service, for four hours daily over 14 days.

5: Narration and Summary of Facts

On 27 July 2002, the CYFS social worker, who had been carrying the Turner family file while the file was at the assessment stage, was preparing to pass the file on from assessment to long-term care services. A Case Plan and Transfer Summary had been prepared for this purpose. She telephoned Dr. Turner to discuss transfer arrangements and say ‘good-bye.’ Dr. Turner appeared more concerned about the Bagbys. The concerns she expressed were that either because of a “tap” on her telephone line or because one of her friends was “sharing information,” or because the Bagbys were “stalking her or harassing her,” they “know too much.”⁵⁴

By 31 July 2002, dissatisfied with the lawyer advising her on family law issues - especially his positive attitude toward Zachary having access to the Bagbys - she obtained a new family law lawyer.

Extension of parent coach services for Dr. Turner as a new mother originally approved in July were, at her request, extended by the Board’s Health and Educational Services on 08 August 2002. The service was provided for a reduced period (specified by Dr. Turner) of three hours daily for two weeks.

5: Narration and Summary of Facts

During a CYFS social worker's home visit to Dr. Turner on the same date (08 August 2002), Dr. Turner signed the Case Plan. The Plan was the result of the assessment period during which the Board considered the Turner family file and provided family support community services. The Plan proposed, in effect, continuation of family support services on a longer term protection basis.

(The alternative would have been protective intervention services for the benefit of Dr. Turner's younger daughter and for Zachary. These services could have included removing Zachary from Dr. Turner's care, if approved by the court. CYFS, however, had little evidence to support the alternative. This, in my view, was because little investigation had been done by the Board).

When Dr. Turner telephoned the CFYS social worker on 28 August 2002, she reported accelerating stress for both her and her younger daughter due to the financial requirements of both, as well as Zachary. She needed:

- (i) the Child Benefit Adjustment from the Department of Human Resources, Labour and Employment to

purchase a crib for Zachary and a breast pump for feeding Zachary when she was in Court for the Bagbys' family law proceeding - to which she was the respondent, and the extradition committal proceeding - in which she was the accused;

(ii) money for her younger daughter's supplies for school, which started the following month;

(iii) a bus pass to avoid walking with Zachary to her lawyer, her psychiatrist and to Fort Townsend to report to the Constabulary - a condition of her bail Recognizance;

(iv) a babysitter for Zachary, when Dr. Turner was in the courtroom and Zachary nearby in the court house to be breastfed; and

(v) renewal of Zachary's 'drug-card.'

Dr. Turner's stress, caused by her inadequate financial situation, was the subject of a telephone call on 30 August 2002 from a Board community health nurse who had started

5: Narration and Summary of Facts

visits in July 2002 to Dr. Turner and Zachary. The call was made to the CYFS social worker following the Turner family. The nurse suggested that the social worker “advocate for Dr. Turner in the area of financial support.” For example, a bus pass would be needed if, as the nurse recommended, Dr. Turner was to start attending a weekly breast feeding support group. The worker agreed to do so and added that she had already obtained approval for a babysitter for Zachary on days when Dr. Turner attended court.

On 04 September 2002, a bus pass which, by then had been issued, was delivered by at CYFS social worker to Dr. Turner during a home visit. During that visit (as on several previous visits), Dr. Turner expressed growing appreciation of the Bagbys’ material assistance for Zachary (such as diapers, other baby supplies and toys). But, the social worker noted, that Dr. Turner said,

she would never agree to them having custody of Zachary, regardless of the outcome of the extradition hearing. They are both too old to be making this type of commitment to Zachary. She would look at the option of adoption if she were to be extradited rather than consider giving them custody.

5: Narration and Summary of Facts

Dr. Turner's financial situation was by then much improved. She had resolved her claim for the Child Benefit Adjustment, received a renewed drug-card for Zachary and sufficient funds to clothe the younger daughter to return to school.

Board CYFS delivery management and the social worker met on 12 September 2002. They agreed that if Dr. Turner were incarcerated as a result of the extradition committal proceeding, she could make a Voluntary Care Agreement for Zachary by a Board-approved caregiver, at least for a short period. Were Dr. Turner's incarceration to be lengthy, the social worker noted,

a more permanent plan for Zachary would have to be made once more information was known.

However, Dr. Turner informed a CYFS social worker, during a 17 September 2002 telephone call the worker made to her - as noted by the worker - that

she does not want to proceed any further with a Voluntary Care Agreement at this time.

5: Narration and Summary of Facts

She wished to postpone meeting prospective caregivers under the CYFS-supported proposed agreement until after the extradition committal hearing concluded.

(This, I note, would present a dilemma for both the CYFS and Dr. Turner. If no alternate care arrangement was already in place, in advance of a hearing that could result in Dr. Turner's incarceration, what would happen to Zachary?)

During this telephone conversation (on 17 September 2002), the social worker also noted that

[the younger daughter] seems to be under a lot of stress and is acting more irritable lately. ... [Dr Turner] stated that she would like ... [the daughter] to go back to counselling [earlier provided by CYFS], but that she is refusing to do so. She stated that ... [the daughter] wants to go to court for part of the extradition hearing and that ... [one of Zachary's godparents] has offered to go with her. She stated that she spoke to ... [her psychiatrist], about this and he seems to think that this would be fine.

(Whether Dr. Turner's psychiatrist afforded any support for a 12-year old attending her mother's extradition proceeding is, to my mind, questionable. And, if he did, I expect the Court

5: Narration and Summary of Facts

would have reservations about permitting the child into the courtroom).

As for Zachary, she was displeased with his access visits with the Bagbys provided for under Unified Family Court Consent Order. Following an early July access period, Dr. Turner informed the social worker,

Zachary was very hot and was crying a lot. She stated that he is ‘mauled’ during the visits and that the visits are for the benefit of the Bagbys, not Zachary.

And on 20 September 2002, she told a Board social worker in a telephone conversation that Kathleen Bagby was “obsessive” about seeing Zachary. Yet, on 30 September, in another telephone conversation, she told the social worker that she had instructed her new family law solicitor to

approach the Bagbys’ lawyer to ask if they would provide a crib for him.

(Reports of the person who monitored these access periods rather than confirming that Zachary was being ‘mauled,’ described two exuberant Bagby grandparents displaying an abundance of affection towards Zachary.)

5: Narration and Summary of Facts

To better babysit Zachary, when Dr. Turner was absent from her residence (such as for social activities), the younger daughter reported to a CYFS social worker, who home-visited on 18 September 2002, that she was attending a ‘babysitting’ course.

On 02 October 2002, Dr. Turner continued to hold the view that a Board-approved caregiver, rather than a member of her or Dr. Bagby’s family, should look after Zachary should she again be incarcerated. Grudgingly she was prepared, if incarcerated, to continue to honour the Consent Order made by Unified Family Court so that

visits between the Bagbys and Zachary ... continue, but that they would not need to know his location [in the approved caregiver’s supervision].

Meantime, stress in the Turner family unit was heightening. The stress took an increasing toll on the younger daughter. During a 04 October 2002 telephone conversation, Dr. Turner informed a CYFS social worker that the daughter was agreeable to resumption of counselling by a Board-employed counsellor, to cope with the stressful Turner family circumstances, aggravated by adjustments the daughter faced

5: Narration and Summary of Facts

in relocating from Portland Creek to St. John's. On 08 October, the social worker took the daughter to counselling. (Counselling of the daughter historically had been done at the Mental Health Crisis Centre, St. John's. She disliked that environment. The resumed counselling may have been conducted elsewhere).

With the date looming when the Supreme Court Trial Division would decide on extradition committal which, if adverse to Dr. Turner would result in her incarceration, she discussed on 15 October 2002 with a CYFS social worker the arrangements, in that event, for her younger daughter. If incarceration occurred and was short-term, she wanted her 12-year old daughter to continue to live in Dr. Turner's apartment residence, assisted by her 20-year old son who was residing elsewhere in St. John's, and neighbours in an upstairs apartment. Should her incarceration be long-term, Dr. Turner allowed only that living arrangements for the daughter

will likely have to be reviewed and it may be an option to have ... [the daughter] return to live with her father [in Portland Creek].

5: Narration and Summary of Facts

(This begs the question: In the absence of a pre-arranged care plan for the younger daughter, who would be responsible for her?)

As for Zachary, on 16 October 2002, Dr. Turner (accompanied by her infant son) went with a CYFS social worker to meet a candidate for caregiving Zachary, should she be incarcerated. Dr. Turner told the caregiving candidate, she

desire[d] to have information regarding Zachary's location kept from the Bagbys if Zachary is placed in care.

Reference the entire extradition proceeding against her, Dr. Turner's take, as expressed during an 18 October 2002 telephone call to a CYFS social worker, was that

the case ... [is] very 'political' since the [committal] decision made on this case will have an impact on other ongoing extradition hearings.

By the end of October 2002, Dr. Turner's attitude toward the Bagbys began to change. There appeared to be at least two reasons. First, she had convinced herself that the Bagbys would not be unfavourable to her if they testified at trial of the murder charges in Pennsylvania, were she to be

extradited. And, secondly, the Bagbys continued to be materially generous to Zachary (having recently purchased a crib for him). Her changing perception of the Bagbys impacted her position on Zachary's care if she were incarcerated. She told a Board social worker during a 30 October home visit - at which Zachary was "bright, smiling and laughing at times" - that she

is beginning to question whether placing Zachary with caregivers if she goes into custody is the best thing. ... [I am] wondering about the kind of impact this will have on him as he gets older. ... [I believe] it will be important for him to be able to look back when he gets older and understand why certain decisions about his care were made. ... [I wonder] if the Bagbys might be better able to care for him.

She did worry, however, that the Bagbys would leave Canada if she placed Zachary with them, were she to be incarcerated. (She appears not to have known about the provisions, strictly enforced by Newfoundland Courts, my legal counsel informs me, of the Convention On the Civil Aspects of International Child Abduction in force in Newfoundland under section 54 of the *Children's Law Act*.)⁵⁵

5: Narration and Summary of Facts

If the Bagbys undertook Zachary's care in the event of Dr. Turner's incarceration, a CYFS social worker informed Dr. Turner on 06 November 2002,

CYFS would not provide a formal assessment of the Bagbys' parenting abilities since there are no known child protection concerns in relation to them at this time. I explained that CYFS would be able to provide a supportive role in the form of phone calls and home visits if this was the desire of both Dr. Turner and the Bagbys.

And, the worker added,

CYFS could follow-up with ... [the younger daughter].

13 November 2002 was the eve of the Supreme Court Trial Division's decision on extradition committal of Dr. Turner (to await the decision, in turn, of Canada's Justice Minister on her extradition). During a home visit to Dr. Turner, a CYFS social worker discovered the younger daughter taking the day off from school. The worker noted that

She stayed home from school today in order to spend some time with her mother. She stated she was feeling a little nervous about her mother's hearing on the next day.

5: Narration and Summary of Facts

The daughter also planned to remain at home the following afternoon in company with Zachary, supported by an upstairs apartment tenant, while her mother attended Court.

Dr. Turner announced to the worker during this home visit that she and the Bagbys had reached an agreement. If the next day Dr. Turner were to be taken into custody, the Bagbys would provide care for Zachary. (The agreement was memorialized in a Consent Order at Unified Family Court).

When Dr. Turner was committed for extradition the following afternoon - 14 November 2002 - the Bagbys came to Dr. Turner's apartment and collected Zachary. The younger daughter continued to live in the apartment. On 19 November, a Board social worker initiated arrangements for further counselling of the daughter.

From 14 November 2002 to 10 January 2003, Dr. Turner was incarcerated at holding facilities in St. John's or, for the most part, at the Newfoundland and Labrador Correctional Centre for Women in Clarenville.

5: Narration and Summary of Facts

During this interlude, infant Zachary was constantly in the proficient care of the Bagbys in St. John's. Until 18 December 2002, Dr. Turner's 12-year old daughter was in nobody's care. (From 18 December 2002 until 24 December, she was joined by her visiting half-sister, Dr. Turner's older daughter, in St. John's and afterwards was in the custody of her father in Portland Creek).

I have some appreciation of the probable mind-set of CYFS social workers and their superiors (including their management) in dealing with the younger daughter during the period 14 November to 18 December 2002 while the daughter continued to reside, sometimes alone, in Dr. Turner's apartment in St. John's.

During the 15 and one-half month period (from September 2001 to 14 November 2002), the younger daughter had attended four different schools: one in Deer Lake; another in Portland Creek; and two in St. John's. She was currently attending the second of the two St. John's schools. Her mid-year school examinations were approaching. She had developed rapport with children and adults, both at and outside the school - persons who had become her close friends. She

was anxious to maintain contact with her mother in Clarenville who faced the prospect of being escorted permanently from Newfoundland (contact frequently achieved by prison visits), and her half-brother Zachary living with the Bagbys in St. John's. Her neighbours in the upstairs apartment were supportive of her. Her 20-year old half-brother lived in St. John's and had frequent contact with her, sometimes staying with her in Dr. Turner's apartment and, at other times, taking the daughter to his apartment. And, under section 14(k) of the *Child, Youth and Family Services Act*⁵⁶ - remarkably, to my mind - a child 12 years of age and up to 16 years old, who has

been left without adequate supervision

is not a child in need, under the *Act*, of “protective intervention” by CYFS social workers. (Although a ‘child’ under the *Act* means a person up to, although not including, 16 years old, some special provisions apply to children 12 years and older (including sections 21(1); 26(1); 28(3)(b); 39(3)(b) and 68(1)).

Whatever may be the social policy for exempting from the legal definition of a “child,” persons who are children 12

5: Narration and Summary of Facts

years of age and older, it is, I must state, inconsistent with reality. Some 12-year olds, including Dr. Turner's younger daughter, may have thought they were ready to choose and travel their own highways. Adult life experience dictates otherwise.

However, another route to protective intervention by CYFS was section 14(i) of the *Act* where a child up to 16 years old is the son or daughter of a parent who is "unavailable to care for the child and has not made adequate provision for the child's care."

CYFS social workers by no means lacked opportunities to bear witness to the adequacy of the younger daughter's living arrangements from 14 November to 18 December 2002. A Board social worker who visited the daughter and obtained her agreement to attend counselling on 19 November 2002 learned on 20 November that Kathleen Bagby was periodically taking her on outings and providing her with meals; spoke with the daughter's older half-brother on 21 November; spoke with the daughter's neighbour on 21 November; visited the daughter again on 26 November; brought her to counselling on 29 November; attempted a home visit to her on 03 December

5: Narration and Summary of Facts

(the daughter was not at home); made a successful home visit on 04 December; spoke with her half-brother and checked with the daughter's neighbour on 05 December; took her to counselling again on 11 December; and spoke with her on 18 December.

The CYFS social worker was also in contact about the younger daughter's welfare with her mother in the Correctional Centre on 20 and 26 November and 02, 04 and 12 December, and with her father in Portland Creek on 22 November and 04 and 05 December 2002.

Although in conversation with Dr. Turner, the worker received the impression Dr. Turner was concerned for the daughter's welfare (she reported that the Bagbys had been "wonderful" to both Zachary and the daughter), Dr. Turner appears to me to have had a more pressing agenda.

On 20 November 2002, Dr. Turner informed the Board worker that

**everyone was misled by the police who had tunnel vision
- one year wasted, not looking for the one who did this.**

5: Narration and Summary of Facts

And, in the worker's 26 November conversation with her, Dr. Turner expressed fear

that if ... [the daughter] went back to Portland Creek [to her father], her father would not allow her to call or visit [the Correctional Centre].

For his part, the younger daughter's father wanted the daughter to return immediately to Portland Creek. He requested her by telephone on 19 November to do so. But the daughter had other ideas. She told her father,

not [to] waste your time coming in [to St. John's] cause I won't go with you.

(This attitude may have been influenced by Dr. Turner. In a 26 November 2002 telephone conversation with a CYFS social worker, Dr. Turner acknowledged that, at least then, the daughter had told her she wanted to return to her father. But Dr. Turner, as I have just reported, was concerned that the return of the daughter to her father might be interfering with the daughter's access to her).

After informing the father by telephone on 04 December 2002 that she

was concerned about ...[the daughter's] emotional well-being,

a CYFS social worker noted having told the father that

... the situation with ... [Dr. Turner] is very stressful and it would be beneficial if he or his [second] wife could come to St. John's for a week or two to be with ... [the daughter].

This proposal, the father said, was impossible to fulfil. He was building a house; his wife was employed and looking after children of her prior marriage.

On the other hand, a Board-employed counsellor saw no need for therapy sessions with the younger daughter after 11 December 2002. As noted by a CYFS social worker with whom she spoke, the counsellor

believes ... [the younger daughter] has very good coping skills and a good understanding of the issues/challenges facing her and her family, as well as the strengths that they possess.

In my view, the younger daughter should have gone home to her father. The alternative of staying, at times alone, in Dr. Turner's St. John's apartment - at 12 years of age - was

5: Narration and Summary of Facts

not acceptable. And, the situation became even less acceptable as the days of Dr. Turner's incarceration went by. The telephone service for Dr. Turner's apartment was terminated. Dr. Turner's income support from the Department of Human Resources, Labour and Employment had ended, leaving the daughter for a short period with no funds for groceries (until that Department issued a further income support cheque); the daughter missed some school time; during several days she was alone in the apartment because her half-brother was unable to have contact with her due to his university studies; the daughter was labouring under the stress of knowing her mother was imprisoned and facing the possibility of extradition to the United States; she appeared unkempt and was using foul language during an end of November visit to her mother in Clarendville; and her school work went unsupervised.

There was an alternative to the procedural and practical challenges of physically removing the younger daughter from Dr. Turner's residence, which I appreciate is for CYFS a recourse of last resort. They could have made multiple, daily home visits, both day and night, to Dr. Turner's residence to better ensure the daughter's safety (although, they could not

5: Narration and Summary of Facts

guarantee it). Meantime, they could have been much more forceful in endeavouring to persuade the daughter to return to her father in Portland Creek. They could have liaised with the daughter's school to determine if she could take her mid-year exams in Portland Creek. And, they could have attempted to prevail on the father by personal, instead of telephone contact to come and get her. These would have been difficult tasks. Yet, not so difficult as the accounting required of them - publicly and privately - had the child been harmed in any way while alone at night in her mother's apartment.

Meantime, at the Correctional Centre for Women, Dr. Turner appeared to be largely detached from this issue. A more pressing concern for her was the Correctional Centre's requirement that the Bagbys be physically present at all times Zachary was accessing her in the Centre. Access occurred during the weekly occasions that the Bagbys brought Zachary from St. John's to Clarendville for several visits. To address this concern, she consulted a lawyer, the Child Advocate's Office, and CYFS, and murmured that she might seek support from politicians. Her efforts were not entirely in vain. The position of a CYFS social worker in a 29 November telephone conversation with a Centre representative was that CYFS

5: Narration and Summary of Facts

did not have any concerns for the care and protection of Zachary when he is alone with his mother.

The Centre, nonetheless - and wisely, I think - insisted the Bagbys be present throughout each visit.

CYFS had additional involvement in access to Dr. Turner at the Centre in Clarendville by her children. It furnished modest funds to defray the cost of the younger daughter traveling there from St. John's.

On 18 December 2002, the 17-year old daughter arrived in St. John's from Ontario and stayed in Dr. Turner's apartment with her younger half-sister. On 23 December they joined their older brother in his vehicle and traveled to Clarendville. After visiting with Dr. Turner and Zachary on 24 December, they went to the Peninsula for Christmas.

During and immediately after the Yuletide season, the younger daughter resided with her father in Portland Creek and resumed school there in January 2003 (the fifth school in which she had been registered since September 2001, and which involved returning to the school she had attended for

part of 2001). She maintained telephone contact with her mother incarcerated in Clarendville.

5.3 (b) *Health Services*

A Board-employed community health nurse (sometimes referred to as a public health nurse) with 32 years frontline experience, provided health services to Dr. Turner, her younger daughter and her son, Zachary. The services commenced 23 July 2002 (after Zachary's birth on 18 July 2002) while the Turner family was living in a rented flat on Patrick Street, St. John's. The services continued, as required, until the deaths of Dr. Turner and Zachary.

The health services intake of Dr. Turner's family had been performed by another community health nurse and passed on to her.

The primary mandate of the community health nurse was to provide health support services to the Turner family. The services included a short-term (six weeks) followed by a longer term Healthy Beginnings Program. The nurse could, as well, provide health support services to Dr. Turner as parenting

5: Narration and Summary of Facts

mother of the younger daughter and Zachary, should the nurse identify a need for them.

In her testimony, she was asked about her knowledge of Dr. Turner when the nurse first visited her on 23 July 2002 and subsequently, especially relating to her mental condition:

Review Counsel:

My recollection is that the hospital discharge summary [following Zachary's birth on 18 July 2002] indicated that the public health nurse was aware that Shirley Turner had a previous history of depression. Is that correct?

Answer:

That's correct. That was on the discharge.

Review Counsel:

So that you would have learned of Shirley Turner's previous history of depression from the summary?

Answer:

Right. That's right.

Review Counsel:

... did the summary indicate whether the previous history of depression was exclusively related to a post-partum condition or whether it was related to something else, or both?

Answer:

It didn't really specify. It said, you know, history of depression but it doesn't say if it was either post-partum or it was just, you know, and I considered it to be just a history of depression.

....

Review Counsel:

Either then or subsequently up to the death of Shirley and Zachary, did you determine the nature and causes of the depression that was indicated ..., in very general terms, on the discharge summary, either by interviewing Shirley Turner or by interviewing others?

Answer:

No.

Review Counsel:

Was there a reason for not delving into the nature of, and contributing events with regard to, the depression?

Answer:

Shirley did not show signs to me that she was depressed early on, and so I didn't really see the need to phone anyone to see why she was depressed because it wasn't an issue at the time. If the client shows signs of depression at the time of my visits, like if I know that she's not following her drugs or she's not taking her medication properly and she's showing signs that she is depressed then, yes, I immediately

5: Narration and Summary of Facts

would call either if she was being followed by child protection, or the psychiatrist.

Review Counsel:

Typically, you would have to rely on the information from the client on the subject of whether or not they were faithfully taking their prescriptions?

Answer:

Yes and of course observation.

....

Review Counsel:

.... When you undertook carriage of this matter, you indicated that you had a discussion with ... [the community health nurse] who had done the intake [of Dr. Turner and referred the matter to you]. Did she bring to your attention any special concerns related to this ... case?

Answer:

.... She did indicate to me that Shirley had a high priority score and that she was showing a lot of needs that I should, ..., follow-up on. Nothing specific as to 'well she's really depressed or - ' because she wasn't at the time.

....

Review Counsel:

Did the issue of focusing on her depression ever arise while you carried the file?

Answer:

No it didn't. I want to make clear that the main focus is on the child and parental issues are secondary. However, if anything significant arose, it would have been in my power to make a referral [to someone to provide the necessary help].

....

Review Counsel:

... you became aware of ... [the fact Dr. Turner was, at the time, being treated by a St. John's psychiatrist] from the discharge record, ..., or [from] what she told you?

Answer:

Not from the discharge, what she told me.

Review Counsel:

And what did you understand from her was the reason for her consulting him?

Answer:

She never spoke a lot about her interviews ..., with ...[the psychiatrist], only to say that she was seeing him and that he was helping her.

Review Counsel:

Did she ever indicate to you that, ... [the psychiatrist] was following her for depression?

Answer:

Yes she did.

Review Counsel:

Would that have indicated to you that it was a continuing problem for her?

....

Answer:

No, on the contrary. If I know that she's being followed by ... [the psychiatrist] on a regular basis and that she's taking her medication, to me that's a positive thing.

....

Review Counsel:

Did you look into the underlying causes that may have contributed to Shirley Turner's depression, hence her ongoing treatment by ... [the psychiatrist], to ensure that you were providing her with the support she needed?

Answer:

Underlying?

Review Counsel:

Underlying causes of her depression. Would you have looked for the underlying causes of her depression for which ... [the psychiatrist] was treating her, in order that you could provide her with the kinds of support that she needed?

Answer:

I was under the assumption that her depression was due to all the stress that she was on. And, if ... she had shown some symptoms of being depressed at the time, probably I would have dug into her history more or asked for more information on it. But, no, technically I didn't look for any deeper than that.

....

Review Counsel:

Did you have any discussions with Dr. Turner surrounding mental health issues or how her psychiatric counselling was going?

Answer:

Yes. We discussed it on a few occasions.

Review Counsel:

And how was it going? How was her treatment going?

Answer:

According to her, her treatment, especially with ... [the psychiatrist], was going really well and she found him to be quite helpful and felt that she could call him whenever she needed him

Review Counsel:

Now, information you learned from Shirley Turner regarding the course of her psychiatric treatment was or was not integrated into your ongoing assessment?

Answer:

5: Narration and Summary of Facts

Yes they were.

....

Review Counsel:

Did you feel that, under your policy or in practice, you had any obligation to investigate beyond the information that came to you from Child Protection and from the client?

Answer:

No.

[I note, here, that information from ‘Child Protection’ (that is, CYFS) would largely have been information it, in turn, had received from Dr. Turner].

Review Counsel:

Did you have, for example, any contacts by telephone or in writing with ... [the psychiatrist]?

Answer:

No I didn’t.

Review Counsel:

So that your knowledge of the course of the treatment that ... [the psychiatrist] was providing to Shirley Turner was based on information that she had provided to you?

Answer:

Yes.

Review Counsel:

In your clinical judgment, did you think it was necessary or unnecessary to speak with ... [the psychiatrist], specifically bearing in mind that Shirley Turner was experiencing considerable stress because of events, especially surrounding justice issues?

Answer:

No.

In this regard, I asked the witness:

Did you have access or did you look at Shirley's medical chart ...?

to which she replied

No, I didn't have any access to it.

Asked by me if she could have had access to the chart if she wanted to examine its contents, the witness answered

I'm not sure that they would give us access

(referring to the Health Sciences Centre where the chart was located; a chart that included historical documentation of Dr. Turner's treatment by a neurologist on 22 July 1999 as well as more recent data relating to Zachary's birth on 18 July 2002).

5: Narration and Summary of Facts

The community health nurse was asked about her acquisition of information generally about Dr. Turner, parent of a young teenager and an infant, who was receiving psychiatric care and under substantial legal, economic, social and personal stresses.

Review Counsel:

We have learned that on June 18, 2002, a member of the RNC, in a communication with Child Protection - not Community health but Child Protection - expressed the concern that Shirley Turner had the potential “to harm herself and her child.” Of your recollection, was that information, or at least concern - whether it was fact-based or an opinion - ever communicated to you?

Answer:

No, I wasn’t aware.

Review Counsel:

... had it been communicated to you, would you as a community health nurse have regarded that as of relevance in a significant way to your service delivery to Shirley and Zachary?

Answer:

Yes, I think, yes it would

....

Review Counsel:

Did you know anything about the incident, were you told anything about the incident, self-reported by Shirley Turner to [C]hild [P]rotection, that on June 4, 2003, she had “lost control” and “slapped ... [the younger daughter].” Were you ever brought into the picture on that matter?

Answer:

No I wasn’t.

Review Counsel:

Were there ever any case conferences involving one or more representatives of CYFS and yourself to discuss the case?

Answer:

No, there was no case conference.

Review Counsel:

Was there a reason why no case conference was held?

Answer:

It’s not common for that to happen unless there are real concerns and that’s usually at the request of myself or at the request of the Child Protection worker if they have concerns and we can help.

Review Counsel:

I take it that CYFS did not suggest to you that there was need for a case conference?

5: Narration and Summary of Facts

Answer:

And not me to them.

....

Review Counsel:

On reflection, having the benefit of hindsight, do you now feel that a case conference may have been beneficial in terms of assessing the risk involving Shirley Turner as a parent and in developing or revising the course of treatment or approach to service delivery to her?

Answer:

On reflection it probably would have been beneficial to share more information.

....

Review Counsel:

[As for the] ... types of information that might usefully have been shared: would they have included information such as I told you about today as having been expressed by the ... [Constabulary] to Child Protection?

Answer:

Yes, or even that she had attempted suicide.

Review Counsel:

Or that she attempted suicide? Yes.

Answer:

5: Narration and Summary of Facts

You know, those would have been valuable.

To place the last two questions and answers in context, Dr. Turner had, a couple of months after commencing to see the St. John's psychiatrist, disclosed to him that she had previously attempted suicide. And, while Dr. Turner was incarcerated at the Correctional Centre for Women in Clarendville, she had admitted to a Duty Lieutenant at the Centre, of having attempted suicide more than once. CYFS was never aware of this information.

As a result of repeated contacts by Dr. Turner with the community health nurse, the nurse observed a change in Dr. Turner's emotional health.

Review Counsel:

Given the fact ... [Dr. Turner] came into the type of professional service you provide as high risk, and you followed her for an extended period ..., did you find that ... [the] high risk client situation deteriorated because of issues beyond your control while you were following her. In other words, did she become a higher risk in your professional judgment?

Answer:

Yes, when her anxiety increased, then she was a higher risk and I would have had probably,

probably would have liked more time to visit her.

Review Counsel:

But couldn't because of what?

Answer:

Caseload.

....

Review Counsel:

In hindsight, thinking of the Turner case, and other cases you've done, do you feel it could be extremely beneficial, especially in the high risk situation, to have open access, between the programs, to information of each other?

Answer:

I think it would.

5.4 Parenting Proceedings: Part 1

On 31 May 2002, about six weeks before Zachary's birth, legal counsel - instructed by the Bagbys - commenced a legal proceeding in Unified Family Court. In the proceeding they applied for a judicial order under the Province's *Children's Law Act*,⁵⁷ for (i) "sole physical and legal custody"⁵⁸ and primary care of the unborn child of [Shirley Jane Turner];"

or, alternatively, (ii) “reasonable and ample access to the unborn child ... ” (in other words, a custody or access order).

The factual basis on which the Bagbys started the proceeding is, for the most part, contained in paragraphs 7 to 9 of the Bagbys’ sworn Affidavit:

[7] ... we are concerned for the well being of our unborn grandchild given the current difficulty ... [Dr. Turner] is facing and the uncertainty it creates for both ... [Dr. Turner’s] and her unborn child’s future.

[8] ... we would like to provide a stable home for our grandchild.

[9] ... we are cognizant of the unusual and potentially harmful effects that may be occasioned on ... [Dr. Turner’s] unborn child due to the fact that the child’s father has been murdered before his or her birth and that whatever the outcome may be, the child’s mother has been charged with the murder.

The Bagbys further stated that they
would prefer to raise ... [the expected child] at our home in California

(their Affidavit, paragraph 11), although

are prepared and willing to relocate to Newfoundland to raise our grandchild if that is found to be in our grandchild’s best interest.

(their Affidavit, paragraph 13).

Although Dr. Turner had been periodically suggesting to the contrary, the Bagbys were not denying that their son fathered the expected child. Quite the opposite. Paragraph 5 of their Affidavit stated:

...we believe that we are the grandparents of ... [Dr. Turner's] unborn child.

Speaking of which, on the same date, 31 May 2002, the Bagbys, by a second Affidavit they filed in Unified Family Court in their proceeding, applied for an additional order that DNA paternity testing be authorized

to confirm ... [our] belief [that our son is the father of Dr. Turner's unborn child]

(that is, a paternity testing order).

On 19 July 2002, the Bagbys filed a third Affidavit in Unified Family Court in support of their application for yet a third judicial order. Paragraph 12 of this Affidavit stated that

given the current difficulties ... [Dr. Turner] is facing and given that [Dr. Turner] has no notice of our intentions, we fear that there is a real risk that ... [Dr. Turner] may attempt to flee the jurisdiction, or in the alternative, she may cause the child to be removed from the jurisdiction.

The order requested was that

[Dr. Turner], upon the birth of ... [her] child, be prevented from removing her newborn child from the jurisdiction of the City of St. John's in the Province of Newfoundland, without an Order of this ... Court or the consent of the [Bagbys]

(that is, a custody restraining order).

The application for the third judicial order was filed on 19 July 2002 because, the day before, Zachary Andrew Turner had been born to Dr. Turner.

Until Dr. Turner was served with notice of the three applications for judicial orders by the Bagbys, the Unified Family Court could not hear or decide on them. This is because the three orders requested were made in three “inter partes” applications (meaning, applications to be heard after notice of the applications were given to Dr. Turner).

5: Narration and Summary of Facts

Service of Notice on Dr. Turner was not necessary for the Bagbys' application for a fourth judicial order also filed on 19 July 2002. This request was in the personality of an "ex parte" application - meaning an application to be heard without notice to Dr. Turner. The effect of this application was that the Bagbys requested the Court to take the infrequently granted step of issuing an interim custody restraining order to continue in force until the Bagbys' application for a custody restraining order (filed 19 July 2002) had been tried before the Court.

The interim remedy was granted. The presiding Justice of the Court, being convinced of the merit of the Bagbys' application, authorized and issued an interim custody restraining order on 19 July 2002.

When Dr. Turner was served the interim custody restraining order, she apparently countered that the Bagbys should be similarly restrained. However, Dr. Turner, not the Bagbys, had physical care and control of Zachary. And no order had as yet been made granting the Bagbys as much as an hour of access to the infant.

5: Narration and Summary of Facts

Perhaps in anticipation that the time would shortly arrive when they would have contact with Zachary, the Bagbys consented on 23 July 2002 to an order being made by a Justice at Unified Family Court that they, too, be subject to the dictates of a custody restraining order.

On the same date - 23 July 2002 - another consent order was filed in Unified Family Court. This was to determine the paternity of Zachary.

On 06 August 2002, a hearing on the application by the Bagbys in their proceeding for custody of access to Zachary came before Unified Family Court.

My legal counsel informs me that some family disputes which come before Newfoundland courts, particularly the Unified Family Court, are comparable to Rubik's Cubes, without solutions.

Unified Family Court was about to be threatened with such a dispute. And presiding over the dispute was the most senior of the sitting Justices from the Trial Division of

5: Narration and Summary of Facts

Newfoundland Supreme Court. His patience, tact and diplomacy were about to be sorely tested.

The hearing on 06 August 2002 was called what the Court's procedure describes as a Case Management Meeting. And, as a general rule, an order cannot be made at such a Meeting unless the parties consent.

The essence of the request made at the Meeting by the Bagbys' legal counsel was that the Bagbys wanted two, one-hour access periods with Zachary each week. Dr. Turner objected. She was only agreeable to them spending one, one-hour period each week with Zachary, at least during the near future.

As Dr. Turner's legal counsel put the problem,

we have two polar positions right now" because Dr. Turner "is adamant on the one hour per week.

In attempting to justify Dr. Turner's position, her counsel explained that Dr. Turner

has had a c-section and has been told, you know, not to do anything strenuous during the first six weeks after the pregnancy [which ended with Zachary's birth on 18

July 2002]. Ms. Turner is breast feeding the child. She indicates to me that ... she would [also] find it physically difficult to come into Unified Family Court to have two one[-]hour visits. Because we're not just looking at one hour,

(The parties had arrived in Court in agreement that whatever access was ordered, it be exercised by the Bagbys in a facility at the Court).

Dr. Turner's counsel continued:

... if we look at it from a practical sense, how many grandparents do you know who see a baby that's less than three weeks old for more than one hour a week. I think that's asking a bit much at this stage.

In this context, the presiding Justice found himself confronted with a second issue - an issue raised by Dr. Turner.

As explained by Dr. Turner's counsel,

the maternal grandmother, ..., resides in Corner Brook. She was recently [re-]married in January of this year. She has yet to see the child, Zachary [because of the provision of the 19 July 2002 custody restraining order that prohibits Dr. Turner taking Zachary outside St. John's]. And it's not fair, why should the paternal grandmother [and paternal grandfather] see the child and not the maternal grandmother.

The Bagbys' counsel had an answer for that:

... one of the reasons, ..., that was put before you as to why a second visit can't take place is because of the physical stress that it would place on Dr. Turner. I would suggest to the court that traveling to Corner Brook ..., either by car or by airline would be just as physically demanding and difficult for someone who's just had a c-section, so I guess I'm at a loss as to why ... [an additional hour of access per week for the Bagbys is] such a big issue before you here today.

Further, the Bagbys' counsel pointed out that

[t]here's been no affidavit filed by Dr. Turner stating that she had any concern or any reason to believe that my clients will harm that child or abscond from this jurisdiction.

However, the result of that submission unintentionally was a further deterioration of relations between the parties during the Court hearing.

Dr. Turner appears, at this point in the hearing, to have “gown tugged” her counsel and whispered fresh instructions to her. Evidently Dr. Turner did have an affidavit because Dr. Turner's counsel announced to the Court:

My client has just indicated, and I do have a copy of a sworn affidavit from a doctor who has indicated that Ms. [Kathleen Bagby], the grandmother, maternal grandmother has threatened to kill my client.

5: Narration and Summary of Facts

(I found no evidence of Kathleen Bagby ever expressing or, what is more, ever harbouring a homicidal intent toward anyone).

The presiding Justice cautioned the parties that if they continued along

this route, all there is going to be at the end of it is grief, trouble, agony.

I digress to report that I have concluded that the affidavit of which Dr. Turner's counsel was speaking was provided by a close friend of Dr. Turner's, another graduate of Memorial University's Faculty of Medicine. The Bagbys' counsel objected to the affidavit being filed, unless the author of the affidavit was produced in Court to be cross-examined on its accuracy and truthfulness. That did not happen. The Affidavit had no impact on the outcome of the Case Management Meeting.

The Justice presiding on the application took a more active role in the remainder of the hearing which produced a consent order to which the Bagbys agreed, their counsel informed the court, because they were

desperate ... to see their grandson.

The consent order approved by the Court provided the Bagbys with one hour of weekly access to Zachary at Unified Family Court, subject to supervision by a person designated under the Order, to be paid by the Bagbys, who were also required to pay for the taxi transportation of Dr. Turner and Zachary between their residence and the Court, and to submit to a search of their persons and bags by a Sheriff's Officer at the Court before each weekly access period. Dr. Turner would not be in the room where access occurred. The Order contemplated a review of the matter on 17 September 2002.

Supervised access by the Bagbys to Zachary went very well. Paternal grandparents and child interacted positively. To most, if not all the visits, they graciously brought products and clothing for Dr. Turner to use in Zachary's physical care including a "little suit," a car seat and toys.

Dr. Turner's cold attitude toward the Bagbys began to thaw during these access occasions.

5: Narration and Summary of Facts

The Consent Order was not reviewed on 17 September 2002 as that Order had contemplated. This, however, appears not to have been a concern for the Bagbys or Dr. Turner.

When the Consent Order was eventually reviewed on 31 October 2002, the Bagbys asked for a separate additional hour of weekly access to Zachary.

Dr. Turner again objected. In an Affidavit she made on 15 October 2002, she stated that an additional one-hour access period “would be difficult to schedule” and “burdensome” because Zachary had been diagnosed as “colic” as a result of which he had “fussed” during some of the weekly one-hour visits with the Bagbys since the 06 August 2002 Consent Order, and had numerous doctor visits to attend because of urinary tract infections. Further, she stated, each visit required

a commitment from me of three hours when the preparation, transportation and feeding time during the visit are all taken into account.

And in paragraph 12(D) of her Affidavit, Dr. Turner stated:

Zachary is exclusively breastfed and is fed on demand. As a result, I have to remain at court during access in order to feed him and/or comfort him as the need arises. I find this uncomfortable as I am always cognizant of my [12 December 2001] Recognizance conditions [in the extradition proceeding, which prevent] ... direct contact between myself and the Bagbys. As well, the Bagbys have applied for custody of Zachary and this, in my view, serves to increase the divide between us. Stress can hinder or even interrupt the production of breast milk and I fear that increased access would increase my own stress levels and same could interfere with my milk production. Zachary has not responded well when milk formula was tried and I want to continue to breast feed as long as possible.

However, the result of the 31 October 2002 Court hearing was a Consent Order, approved by a Justice of Unified Family Court, which provided that the Bagbys' access increase from one to two one-hour periods weekly, to take place at Dr. Turner's residence. The visits would continue to be supervised by a third party designated under the Order, who would be paid by the Bagbys. Dr. Turner was required to vacate her residence during the visits. The Bagbys had to provide her with a cell phone at which the access supervisor could reach Dr. Turner if Zachary needed her, and to inform her when the Bagbys left her residence after each visit.

5: Narration and Summary of Facts

As occurred under the 06 August 2002 Consent Order, access by the Bagbys to Zachary under the 31 October 2002 Consent Order proceeded positively and without incident.

5.5 *Financial Services*

Although Dr. Turner arrived in Newfoundland (Deer Lake) on 14 November 2001 and in St. John's on 16 November 2001, and was unemployed for the duration of her residency in the Province up to her death on 18 August 2003, she was self-supporting from November 2001 to January 2002.

About the time she left her son's apartment on 05 January 2002 (where she resided from 16 November 2001) and, for ten days, lived in a Campbell Avenue 'bachelor' apartment, she first applied to an employee of the Department of Human Resources, Labour and Employment (HRLE) for financial assistance.

Dr. Turner inquired on 09 January 2002 about her eligibility for assistance (such as rent and income support). On 14 January she provided HRLE with a formal, financial assistance application.

5: Narration and Summary of Facts

While HRLE continued, until 17 January 2002, to obtain necessary information from Dr. Turner, the Department (in accordance with its legal requirements and obligations) issued a “short-term” financial assistance payment to her (as a single person) on 14 January 2002 for \$806 for herself.

From 14 January until her death, HRLE was her sole means of support. After the first cheque, payments were made as “long-term” assistance. Payments were made to her for shelter, food, clothing and the other necessities covered by HRLE obligations. From time to time, HRLE payments were also made to support her two daughters and her younger son Zachary. The payments were made in accordance with HRLE legal requirements, based on information supplied by Dr. Turner.

Financial assistance for her shelter enabled her to rent a one-bedroom O’Reilly Street apartment from 15 January to 31 March 2002; a larger Pleasant Street apartment from 01 April until incarcerated on 14 November 2002; a different one-bedroom O’Reilly Street apartment from 15 January 2002 (five days following her release on ‘bail’ from incarceration in

5: Narration and Summary of Facts

Clareville) to 31 July 2003; and a two-storey row-housing unit at 18 Brophy Place from 01 August 2003.

(For about five days - from 10 to 15 January - following release from incarceration on 10 January 2003, she stayed with her St. John's girlfriend and the girlfriend's husband).

The only irregularity in HRLE payments to her related to the younger daughter - payments made by HRLE acting faithfully within its mandate. The irregularity resulted briefly in overpayment of assistance to Dr. Turner which, when discovered by the Department, was being "clawed back" in installments from Dr. Turner's subsequent assistance payments, until she died.

The overpayments resulted from Dr. Turner's misrepresentation to the Department that her older daughter was living with her from 25 March to 01 May 2002 when, in fact, that daughter had only resided with her for a couple of days commencing 29 March (after which she left, because her mother slapped her face).

Further, in mid-April 2002, HRLE also made a special \$400 payment to Dr. Turner to purchase beds for each of her two daughters. When the payment was made, the older daughter had already left Dr. Turner's residence (although the younger daughter who had arrived there with her sister on 29 March 2002 continued to live there with Dr. Turner until her 14 November 2002 incarceration, and beyond that date until 23 December 2002).

5.6 Extradition Proceeding: Part 2

(a) Background

While Dr. Turner was litigating in Unified Family Court with her second ex-husband and with the Bagbys, the proceeding in the Trial Division to attempt to extradite her from Canada to the United States was pending. The next judicial steps in the extradition proceeding were the filing and hearing of the extradition committal application.

Those steps did not proceed immediately.

5: Narration and Summary of Facts

Although the Westmoreland County District Attorney's Office responsible for prosecution of Dr. Turner on the murder charges were she to be surrendered to the United States - and some members of the public in Pennsylvania and Newfoundland expressed dismay at the apparent lack of expedition in commencing, scheduling and conducting the extradition application - there were several reasons for the delay in doing so.

First, the *Extradition Act* under which the application to extradite Dr. Turner was eventually made, was a relatively new law. The *Act* had not come into force until 17 June 1999.

Secondly, extradition proceedings in Canada are infrequent. Therefore, Canada's Department of Justice (including the Attorney General of Canada) and their legal counsel in Ottawa did not have extensive experience in extradition proceedings under the new *Act*. And the Department's legal counsel in Newfoundland, where extradition proceedings are rare, had little history in handling extradition files.

5: Narration and Summary of Facts

Thirdly, the murder charges against Dr. Turner were founded on circumstantial evidence. In the absence of direct evidence - no one had actually observed Dr. Turner shoot Dr. Bagby and she had not confessed - the task of Pennsylvania State Troopers, who were building a case that Dr. Turner had murdered Dr. Bagby, was more complex.

Fourthly, the *Extradition Act* required Canada's Minister of Justice to take several procedural steps after Dr. Turner's arrest and before hearing of an extradition application.

Fifthly, once the written extradition record was received from the United States, Canada's Minister of Justice and his legal counsel in St. John's needed time to examine and analyze the record.

Sixthly, the subject of the extradition proceeding, Dr. Turner, was pregnant. Her child, Zachary Andrew Turner, was born on 18 July 2002. Some time had to be allowed for her confinement before the child's birth and her physical and emotional condition immediately following the birth.

5: Narration and Summary of Facts

And, finally, the Trial Division of Newfoundland Supreme Court, which was required to hear the extradition application, is a busy Court. Despite efforts of its Chief Justice, in tandem with the Court's other Judges and its staff to render the Court more efficient, thus making access by the public to the Court more readily available, proceedings that pre-dated Dr. Bagby's murder and the resulting extradition case were backlogged.

An "early date" for hearing the extradition committed application required by *Extradition Act* section 21(3)⁵⁹ could therefore not be set immediately after Dr. Turner's arrest.

Had Dr. Turner not been granted release, extraordinary efforts would have had to be undertaken by police, counsel and the Court to expedite the extradition hearing (such as postponing other proceedings already scheduled in the Court).

After Dr. Turner's arrest and release hearing, Canada's Minister of Justice had to be satisfied that the conditions existed for issuing, under *Extradition Act* section 15(1), an authority for the extradition application to proceed.

5: Narration and Summary of Facts

In doing so, *The Practical Guide To Canadian Extradition* points out,⁶⁰

[t]he loose structure that existed under the former Act has been replaced in the new Act by a highly formalized process.

The principle elements of the new formalized process are prescribed in subsections 15(1), (3) and (4) of the 1999 *Act*. And to discharge these requirements, the Minister of Justice must first receive the United States' request for, and case documentation supporting extradition. The case documentation would be based on the Pennsylvania State Troopers' investigation and the preparation in writing of a record of that investigation.

At Dr. Turner's second extradition committal hearing on 05 February 2002, the counsel for Canada and the United States informed the Court that the United States had 60 days from 12 December 2002 - the date Dr. Turner was arrested - to request extradition under *Extradition Act* section 3(1). That time period expired 10 February 2002.

On 29 January 2002, two months after the criminal Complaint was signed against Dr. Turner, Diplomatic Note

5: Narration and Summary of Facts

086 was signed by the Department of State of the United States of America (by Colin Powell, then Secretary of State), requesting the extradition from Canada of dual Canadian-American citizen Shirley Jane Turner to the United States to be tried in the Commonwealth of Pennsylvania on charges of murder in the first degree and criminal homicide resulting from Dr. Bagby's death. The Note was supported by: (i) the Request for Provisional Arrest; and (ii) a Legal Statements/Record of the Case against Shirley Jane Turner (which had been prepared by the Westmoreland County's Office of the District Attorney).

Although the United States' request for extradition of Dr. Turner had met the *Extradition Act's* deadline for doing so, a further issue remained to be resolved.

On 12 June 2003, in anticipation of a request from Canada on this issue, Westmoreland County District Attorney Peck provided the Office of International Affairs, Washington, to be passed on for the United States Government's Department of State, a letter which stated (in part), that Pennsylvania

5: Narration and Summary of Facts

will not impose or carry out the death penalty against Shirley Jane Turner for the murder of Dr. Andrew Bagby, which occurred on November 5 - November 6, 2001, in Westmoreland County

The request from Canada came the next day. On 13 June 2002, a Diplomatic Note from the Canadian Embassy in Washington, on behalf of the Government of Canada, stated that

[i]n order for the Minister of Justice of Canada to render his decision on the surrender of Ms. Turner to the Commonwealth of Pennsylvania [that is, Dr. Turner's extradition from Canada to the United States], the Government of Canada requests that assurances pursuant to Article 6 of the *Treaty on Extradition between Canada and the United States of America* be given by the Government of the United States that the State of Pennsylvania shall not seek or impose the death penalty

for the murder charges against Dr. Turner. The State Department of the United States agreed and wrote to Canada accordingly.

By the time Dr. Turner made her third extradition committal appearance on 15 February 2002, the counsel for Canada and the United States informed the Court that the United States had made the request for Dr. Turner's

5: Narration and Summary of Facts

extradition. He further apprised the court that, having received the extradition request - supported by the record of the Pennsylvania State Troopers' investigation under cover of correspondence from the Westmoreland District Attorney and the State Department in Washington - the Minister had to decide whether to issue an authority to proceed with the extradition application. He added that, legally, the Minister had 30 days from 11 February 2002 to make that decision and issue the authority to proceed under *Extradition Act* sections 15(1), (3) and (4); in other words, until and including 12 March 2002.

On 11 March 2002 at Dr. Turner's fourth extradition committal appearance, Canada/United States counsel informed the Court that the Minister of Justice had issued authority to proceed and filed the document signed for that purpose by the Minister, together with the Record Of The Case supporting the extradition application. Counsel for Dr. Turner asked for "a couple of weeks" to review the filed documents. The Court granted the request. The next extradition hearing was set by the court for 25 March 2002.

5: Narration and Summary of Facts

When the matter returned to Court for Dr. Turner's fifth extradition committal appearance on 25 March 2002, dates for hearing of the extradition application were fixed for 27 to 29 May 2002, to be preceded by a pre-hearing conference of the Justice assigned to the hearing with counsel for Canada/United States and counsel for Dr. Turner.

However, after 25 March 2002, the United States decided it needed to file additional written evidence which, in due course, was done in the form of a Supplemental Record. That decision, and the pregnancy of Dr. Turner which resulted in Zachary's birth on 18 July 2002, meant that the hearing did not commence on 27 May.

5.6 (b) *Extradition surrender application*

Hearing of the extradition committal application began on 19 September 2002 under *Extradition Act* section 24 before the Chief Justice of the Supreme Court's Trial Division.

The role of an extradition committal hearing judge is, in the view of the Supreme Court of Canada, a "modest one."⁶¹

In *United States v. Dynar*,⁶² the Supreme Court of Canada described that “modest” function:

Procedures at the extradition hearing are of necessity less complex and extensive than those in domestic preliminary inquiries [held to determine if sufficient evidence exists to commit an accused person to trial] or trials.

The statutory powers [under the *Extradition Act*] of an extradition judge are limited. The hearing judge may receive sworn evidence offered to show the truth of the charge [in the foreign state] ..., receive evidence to show that the particular crime [charged in the foreign state] is not an extradition crime ..., and take into account sworn, duly authenticated depositions or statements taken in the foreign stateThe obligation of the ... [foreign state] is simply to establish a *prima*⁶³ *facie* case for the surrender of the fugitive and it is not required to go further than this.

The extradition committal hearing judge is not required to weigh or to make decisions on the reliability of verbal or written evidence presented in support of extradition. The evidence does not have to prove the outstanding charges of the foreign state beyond a reasonable doubt because the extradition proceeding is not a trial. However, the fugitive is entitled to the protections afforded by the *Canadian Charter of Rights and Freedoms*.

5: Narration and Summary of Facts

The hearing of the United States' application for an extradition committal order to enable Canada's Justice Minister to decide whether to surrender (extradite) Dr. Turner to Pennsylvania consisted of consideration of the Record of the Case, the Supplemental Record, very brief oral evidence, argument of procedural points (unsurprising, given that the *Extradition Act* was slightly more than three years old when this hearing occurred), and argument on the adequacy of the United States' evidence supporting extradition.

The brief oral evidence came from Dr. Bagby's former fiancé, who was called as a witness on behalf of Dr. Turner. The essence of her testimony is apparent in the following excerpt from the transcript of the extradition surrender hearing:

Defence counsel:

.... Now they have then prepared a document which they filed with the court and in that document they say, in one of them [t]his is in the supplemental record of the case my lord: "Ms. ... will testify that Shirley Turner had told her that she drove to Pennsylvania with her .22 caliber pistol to discuss the miscarriage with Dr. Bagby." And in the one they filed earlier, called the "Record Of The Case" [paragraph 15]: "Ms. ... will testify that Shirley Turner ... had told her that she drove to Pennsylvania with the .22 caliber pistol to discuss the miscarriage with Dr.

Bagby.” I took that to mean that this was all sort of, [“I’m taking my gun down to discuss this with Dr. Bagby[’]. Was that the way you meant these words to come out?

A.

No, what I’m pretty sure I told them and what I, what she had told me was that she was going to take the gun down to him because he wanted to borrow it, that’s what she said. And that she also, and I don’t know, it was sort of within the same, it was within the same conversation but it definitely wasn’t in the same sentence –

Q.

Okay.

A.

that she said she was going, or had gone down to be consoled or whatnot with each other about the miscarriage.

Q.

All right. So the first thing was[,] she’d taken the gun down because he wanted to borrow it?

A.

Yeah.

Q.

And then secondly was to discuss the miscarriage but the two weren’t related?

A.

Not directly in a sentence like that, no.

(I note that Dr. Turner's communications with Andrew's former fiancé about miscarriage after Dr. Bagby's death - the subject of the transcript excerpt quoted above - were not based on fact. Before 20 October 2001, Dr. Turner claims to have informed Dr. Bagby that she was pregnant - a pregnancy she intended to have terminated when she visited him in Pittsburg on 20 October. On arrival in Pittsburg, she announced to Dr. Bagby that she had decided against aborting. On 20 October 2001 in Pittsburg, she conceived Zachary who was born 18 July 2002. Dr. Turner next visited Dr. Bagby in Pennsylvania from 26 October to 03 November 2001. Immediately after that visit, she asserts, Dr. Bagby asked by telephone to borrow her gun. So that when she drove almost 1,000 miles from Iowa to visit Dr. Bagby in Pennsylvania on 05 November - the day Dr. Bagby was murdered - to loan Dr. Bagby her gun, as she claims, she couldn't have also been going to discuss a recent miscarriage. And, she couldn't have been making, what proved to be, that last visit to Dr. Bagby in Pennsylvania to discuss her pregnancy because she was unlikely to have yet known she had conceived on 20 October).

5: Narration and Summary of Facts

After ruling on 21 October 2002 on procedural arguments on Dr. Turner's behalf that the Authority To Proceed from Canada's Justice Minister was either a nullity or at least defective in a material way, the Chief Justice turned his attention to whether an order should issue committing Dr. Turner into custody to await decision by Canada's Justice Minister on extraditing Dr. Turner to the United States.

Counsel for Canada/United States commenced summarizing the circumstances detailed in the written record in support of extradition.

The presiding Supreme Court Trial Division Chief Justice expressed the view that

[n]one of these items [of evidence], in themselves, of course clearly identifies Dr. Turner as the killer of Dr. Bagby.

However, Canada/United States counsel argued, as summarized in the Chief Justice's committal decision,

that taken together ... [these circumstances] lead inexorably to the inference that Dr. Turner was present in Latrobe [Pennsylvania] and at the murder scene at the time of death and was the one who caused the death. He also points to a possible motive for Dr. Turner to kill

Dr. Bagby, namely, ... [jealousy] or revenge flowing from the breakup of her relationship with Dr. Bagby and her knowledge of the fact that Dr. Bagby was going to date another woman on the evening after Dr. Turner left Latrobe [by air] to return to Iowa on November 3 [before she returned to Latrobe by motor vehicle]. He also relies on the post-offence conduct of Dr. Turner relating to the inconsistencies and contradictions in the various statements and stories she gave or made to various people she talked to in the days following Dr. Bagby's death. In addition to inconsistencies in her statements as to her whereabouts after November 3 and the status of her gun [which was never found], there were also other inconsistent statements made to various individuals which variously indicated that she had been pregnant with Dr. Bagby's child but she had miscarried or, alternatively, to the effect that she was still carrying his child.

On Dr. Turner's behalf, her counsel submitted to the Court again as summarized in the Chief Justice's committal decision,

... [the] evidence is all too flimsy to justify a committal. He says that at best, circumstantial evidence might lead to an inference that Dr. Turner was present in Latrobe after November 3 and possibly had a motive and the opportunity to commit the murder. He points out that the autopsy did not establish a time of death so the whereabouts of Dr. Turner in the Latrobe area, assuming an inference to that effect can be drawn, cannot be pinpointed in such a way as to place her at Dr. Bagby's side at the time of death. Furthermore, he says, the fact that Dr. Turner's gun had a habit of ejecting live ammunition is in itself very unreliable evidence to link her with the live ammunition found at the murder scene, in the absence of any evidence as to

how usual or unusual it is for a .22 calibre gun of this type to have this malfunction. To that might be added the fact that there could be other explanations of why Dr. Turner might have had a box of condoms bought apparently from a Latrobe drugstore, in her possession in Iowa.

In reality,

Dr. Turner's counsel argued, as summarized in the Chief Justice's committal decision:

the key ingredient which the requesting state [the United States] is relying upon is the inconsistency and contradiction in some of Dr. Turner's statements. In other words, because she may have had a motive and opportunity and possibly lied about it, the court is being asked to draw the inference that she was the murderer. Relying upon ... [three judicial decisions], he argues that the inconsistencies and contradictions in Dr. Turner's statements and stories may have other reasonable explanations such as her being confused and distraught over hearing [of] the death of Dr. Bagby and of being accused of being involved. As well, he says, the other pieces of circumstantial evidence from which an inference could be drawn as to her presence in Latrobe after November 3 are all capable of other innocent interpretations. Relying on a broad interpretation of [one of the judicial decisions cited by Dr. Turner's counsel, he] ... submits that if the evidence is susceptible to other innocent explanations, the court should not commit.

Under *Extradition Act* section 29(1)(a), as relates to this extradition proceeding, a judge

shall order the committal of the person [who is the subject of the extradition proceeding] into custody to await surrender if: there is evidence admissible under [the *Extradition Act*] of conduct that, had it occurred in Canada, would justify committal for trial in Canada on the offence[s] set out in the authority to proceed [issued by Canada's Minister of Justice] and the judge is satisfied that the person [subject to the extradition proceeding] is the person sought by the extradition partner [the United States].

On 14 November 2001, the Chief Justice of the Supreme Court's Trial Division, in his 80-paragraph decision, concluded that:

..., I am satisfied that, taken together, ... [the circumstantial evidence introduced on behalf of the United States] creates a web of circumstances that, if unanswered, could lead a properly instructed jury, acting reasonably to draw the inference that the person who caused the death of Dr. Andrew Bagby was Shirley Jane Turner. In making this determination, I stress that this is not a trial. Whether a jury, applying the proper standard of proof in a criminal trial would in fact come to the conclusion that the person causing the death was Dr. Turner is, of course, quite another matter.

Consequently, the Chief Justice, under *Extradition Act* section 29(1), ordered the committal into custody of Dr. Turner, to await the decision of Canada's Justice Minister whether to surrender her to the United States. This result obligated the Chief Justice to transmit to Canada's Justice

Minister under *Extradition Act* section 38(1), copies of the evidence introduced at, and the committal order resulting from, hearing of the extradition application.

The Chief Justice also could, although was not obliged to, transmit under *Extradition Act* section 38(1) “any report that the judge thinks fit.” And he did so including his earlier decision on 22 October 2002, and

my observation that Dr. Turner, in July of this year, gave birth to a child which she has been caring for since that time. The surrender of Dr. Turner to the requesting state [the United States] may well have incidental consequences to the child with respect to its continued care and upbringing by Dr. Turner.

Although the Chief Justice did not articulate the reason for adding this observation, I infer he was quite understandably concerned for the welfare of Dr. Turner’s infant child and wanted to bring that concern to the attention of Canada’s Justice Minister to better ensure that the child’s welfare would be served should the Justice Minister decide to issue an order to surrender Dr. Turner to the United States as a result of the Chief Justice’s extradition committal order.

5: Narration and Summary of Facts

Responsibility for the child's welfare would rest with the St. John's Health and Community Services Board in whose geographic area of responsibility the child was residing.

On 14 November 2002, as a result of the extradition committal order, Dr. Turner's judicial interim release granted 12 December 2001 was cancelled and she was taken in custody.

Dr. Turner was escorted in custody from the Court House housing the Trial Division of the Newfoundland Supreme Court and held in custody overnight in St. John's.

The next day, 15 November 2002, she was conveyed by the Royal Newfoundland Constabulary to the Newfoundland and Labrador Correctional Centre for Women, a two-hour drive away in Clarenville. She would be imprisoned there until 07 January 2003 among an inmate population which usually ranged from five to seven women.

Dr. Turner had 30 days to appeal the extradition committal order. She was also entitled to apply for judicial interim release pending hearing of the appeal.

5.7 Parenting Proceedings: Part 2

Now that Dr. Turner was back in custody as a result of the extradition committal order of the Trial Division Chief Justice, the most pressing resulting issue was Zachary's future care.

To address this issue, the Bagbys made a further application in their parenting proceeding before Unified Family Court. The result was a further Consent Order approved 21 November 2002. The Consent Order reflected alternate arrangements negotiated between counsel for the Bagbys and counsel for Dr. Turner, and implemented on 14 November 2002.

Under the further Consent Order, the Bagbys assumed "primary care" of Zachary at their St. John's residence for so long as Dr. Turner was incarcerated. The Order also provided for a range of matters including the following:

- (a) Paragraph 2 required the Bagbys to

accept one collect daily phone call from ... [Dr. Turner] to discuss Zachary's well-being;

a daily call that would last ten minutes unless the parties otherwise agreed.

(b) Paragraph 3 required Dr. Turner to

provide to ... [the Bagbys] all necessary items in her possession required for Zachary's care, including, but not exclusively, a crib, bottles, clothing, car seat, playpen and any toys that he enjoys.

(c) Paragraph 7 required the Bagbys to

travel to Clarendville once per week, weather permitting, for one overnight visit. During that visit, ... [Dr. Turner] shall have as much access with Zachary over the two-day period as the institution authorities will permit. In keeping with the institution's regulations, ... [the Bagbys] shall bring Zachary to the institution and will deliver the child to ... [Dr. Turner]. Should ... [Dr. Turner] be placed in temporary custody in St. John's, all efforts shall be made to facilitate daily contact between ... [Dr. Turner] and Zachary at such locations as may be permitted.

- (d) Paragraph 8 required that

[w]hile Zachary is in the [primary] care of ... [the Bagbys], ... [a designated person], shall visit with ... [the Bagbys] and Zachary for one hour per week. Subsequent to that visit, ... [the designated person] shall provide an oral report to ... Dr. Turner's] counsel and a written report to ... [the Bagbys' counsel] and ... [Dr. Turner's counsel] regarding Zachary's well-being. [The Bagbys] ... will be responsible for ... [the designated person's] fee during ... [these] visits and related reporting.

- (e) Paragraph 5 prohibited the Bagbys from removing Zachary beyond Clarendville without Dr. Turner's consent or a Court order.

5.8 *Incarceration at Correctional Centre for Women*

Her incarceration at the Centre generated a trove of documents, not previously examined by anyone, until accessed for my Review. Creating and maintaining these documents are required by the *Prisons Act*⁶⁴ and, on authority of the *Act*, under the *Prisons Regulations*.⁶⁵ Some of them are required by Policy Directives authored by the Corrections and Community Services division of the Province's Department of

5: Narration and Summary of Facts

Justice - Policy Directives which provide instruction on implementing and enforcing the *Act* and Regulations.

The documents include administrative papers, the Centre's daily diary, medical records, a daily log identifying persons having telephone and visiting contact with inmates, Offender Contact Notes and electronic database documents prepared at the Centre. No doubt, virtually everything relating to Dr. Turner while lodged at the Centre was faithfully and comprehensively recorded by the Centre's staff.

Perhaps the most significant documents obtained from the Provincial Director of Corrections and Community Services, whose responsibilities include the Centre, and from the Centre's Assistant Superintendent, were the portion of Centre records pertaining to: (i) medical treatment of Dr. Turner from 15 November 2002 to and including 07 January 2003; and (ii) a record of suicide checks conducted on Dr. Turner during most of the same period.

The suicide watch was not commenced or continued as a matter of routine practice under the *Prisons Act* or *Prisons Regulations*. Rather, it resulted from contact of the staff with

5: Narration and Summary of Facts

and on advice of the two physicians who examined Dr. Turner at the Centre.

These contacts occurred within the context of detailed Policy Directives which govern day-to-day operation of the facility - Policy Directives the staff at the Centre evidently followed carefully during Dr. Turner's stay there.

Under paragraph 6 of Policy Directive 16.25.06,

[a] Suicide Risk Assessment form will be completed by a designated officer on behalf of each inmate at the time of the admission interview. The assessment must be completed within four (4) hours of admission.

The Assessment conducted on 15 November 2002, shortly after Dr. Turner was brought to the Centre in the course of her admission interview, yielded the following information:

- (i) she had previously attempted suicide in 1999 (the Westtown-Goshen, Pennsylvania, suicide attempt);
- (ii) she had been treated by one psychiatrist at St. John's in 1998 and 1999, and by another since 2001;

(iii) she responded to a question whether she had “experienced significant loss within the last six months” by stating that she had suffered the “loss of a good friend who died,” although never identified that person (and no one interviewed by my legal counsel or me was aware of Dr. Turner experiencing loss of a friend by death during the six months before she entered the Centre);

(iv) although she did not think that she was contemplating or had expressed the intention to commit suicide, she was, the Centre interviewer noted, “currently very distraught;” and

(v) denied having a plan for suicide.

The Centre interviewer obviously concluded from his meeting with Dr. Turner that procedure 7 of Policy Directive 16.25.06 should be invoked. That paragraph reads:

In the event that the [suicide risk assessment] interview reveals certain Risk Factors or other designated stressors are apparent, ... the assessment [shall be referred] to the Officer-in-Charge [at the Centre].

5: Narration and Summary of Facts

The interviewer wrote on the form resulting from his assessment of Dr. Turner that she appeared “emotionally upset over current situation.” And, evidently, he referred the assessment document to the Officer-in-Charge. In the result:

(i) Dr. Turner was placed in a cell where she could be observed, the interviewer wrote, “as precaution;”

(ii) the Centre contacted a general medical practitioner in Clarendville who ordered by telephone she continue her use of Ativan (previously prescribed by Dr. Doucet, but as all other medications, including her antidepressants, ordered to be discontinued by the attending psychiatrist) and agreed to visit the Centre to examine her if necessary; and

(iii) she was designated for a “Mental Health Referral.”

Policy Directive 16.20.02 requires that

[a] preliminary reception examination ... be conducted by a licensed physician on behalf of all new inmate admissions within seven (7) days after being admitted to a correctional centre.

5: Narration and Summary of Facts

In the case of Dr. Turner, that was arranged by the Centre on 15 November 2002, the day of her admission. The Clarendville physician, who met with her, was the same doctor who had been contacted about Dr. Turner by telephone earlier the same date. As mentioned above, one of the steps he took was to advise the Centre to resume the medications she was then taking, including Ativan, albeit at a reduced dose.

The same physician again met with her at the Centre on 22 November 2002.

Under Policy Directive 16.25.01, access to “psychiatric and other mental health care programs” shall be provided for an inmate of the Centre “where there is a demonstrated need for such intervention.” And Policy Directive 16.25.02 requires that

[a]ny information identifying inmates as having mental health issues must be communicated as soon as possible to those professionals responsible for providing mental health services.

Steps were taken to adhere to these Policy Directives in respect of Dr. Turner. The Centre scheduled a consultation for Dr.

5: Narration and Summary of Facts

Turner with a psychiatrist from St. John's to take place on 28 November 2002.

The day before this psychiatric consultation, however, the Centre concluded that Dr. Turner should be placed on a suicide watch and the suicide watch was implemented.

A series of events on 27 November appear to have precipitated this action.

At 7:00 p.m. that day, Centre staff identified “tension on the floor” referring to the area of the Centre where inmates mingle. Another of the seven inmates then at the Centre complained to staff about Dr. Turner's behaviour. A Centre staff member spoke to Dr. Turner about the complaint. Staff generally were directed to “please keep an eye on the situation.”

At 10:30 p.m. that day, Centre staff identified a “disturbance in the multipurpose room” involving Dr. Turner and another inmate. Following investigation in which Dr. Turner stated that she “didn't mean” what she had said to other inmates that evening, she was escorted to and locked in her

5: Narration and Summary of Facts

cell. Other inmates were interviewed. A Centre Incident Report about the disturbance stated that “most [other] inmates were very upset, and some were afraid.”

In her cell, the Report noted, “Turner was upset and crying.”

On considering the disturbance and information gleaned from and about Dr. Turner on earlier dates since her admission to the Centre on 15 November 2002, the Centre decided to place Dr. Turner on a precautionary suicide watch.

This precaution was taken under Policy Directive 16.25.06, which provides for the Centre

to implement a comprehensive strategy for the prevention of suicide, based on the fundamental principle that the ultimate sanctity of life must be safeguarded by all reasonable means available.

And procedure 1 of that Policy Directive imposes on all Centre staff

a collective responsibility to ensure that the senior Officer-in-Charge is advised whenever there is reason to believe that an inmate is a potential suicide risk.

5: Narration and Summary of Facts

Procedure 11 of that Policy Directive provides for two levels of “suicide risk classification.” They are: (i) “At Risk;” and (ii) “Not At Risk.”

An inmate is regarded as being “At Risk” where there is evidence of the

[p]resence of suicide ideation requiring constant observation by staff.

An inmate is regarded as being “Not At Risk” in the “[a]bsence of suicidal risk factors.” In the event an inmate is regarded by the Centre as being “At Risk,” the inmate is isolated from other inmates fulltime and intense surveillance is conducted on her. Even where an inmate is “Not At Risk,” she will be allowed back into the general population of the Centre although may nonetheless be checked every 30 minutes

to see how they are coping in the Living Unit with the general population

of the Centre, or

have the inmate return under surveillance during the night time, and return to the unit the following day.

5: Narration and Summary of Facts

The Centre, evidently concerned that Dr. Turner was “At Risk,” isolated her briefly from the general population, although did not implement constant surveillance. Instead, she was placed on a 15-minute suicide watch.

The effect of isolating Dr. Turner from the remainder of the Centre’s inmates was, however, to disadvantage all the inmates. A “lock down” was enforced at the Centre, from the evening of 27 November until the morning of 29 November, in the sense described in these entries from the Centre daily diary on 28 November:

8:15 Inmate Turner was kept locked down while the other inmates had their breakfast. 09:15 Inmates out for breakfast. 9:45 Inmate[s] back to their cells and inmate Turner out for breakfast. Inmate Turner did not eat her breakfast. Medication issued. 10:05 Inmate Turner placed back in her cell Rest of the inmate population out of their cells. 11:45 Lunch served. Inmate Turner in her cell until other inmates eat their lunch. 12:15 Inmates locked in their cells and I/M Turner out for lunch. 14:00 I/M Turner returned to her cell and the other inmates out of their cells. Medication issued.

At 2:20 p.m. on 28 November, the Assistant Superintendent and a Classification Officer met with Dr. Turner. The Assistant Superintendent’s resulting entry to

5: Narration and Summary of Facts

Offender Contact Notes at 3:00 p.m. on 28 November reads as follows:

Due to the reports that were submitted to me ... concerning the behaviour of Remand Turner yesterday, ... [we] had a discussion with ... [the Superintendent]. The following are the results of that discussion: I told Remand Turner that her behaviour was unacceptable and in the future any more problems from her would result in her losing all or some of her privileges. The separation from the other inmates would continue until 0800 tomorrow. If, when she was with the other inmates she caused any problems, then she would remain separated from them until further notice.

The lockdown, which I gather is an extraordinary measure at the Centre, infrequently implemented, ended on 29 November 2002.

Meantime, as I have reported, Dr. Turner was subjected to a 15-minute “suicide watch” at the Centre. This began at 11:00 a.m. on 28 November, the day she had her first consultation with a psychiatrist, and continued until 7:00 p.m. the next day when the “suicide watch” observations of her were reduced to every 30 minutes. Her cell lights were kept on day and night for 41 days. This lasted until Dr. Turner was escorted from the Centre about 8:00 a.m. on 07 January 2003.

5: Narration and Summary of Facts

In total, 1,978 “suicide watch” observations were made of Dr. Turner by Centre staff.

The psychiatrist from the Health Sciences Centre, St. John’s, consulted with Dr. Turner on 28 November 2002. He had not previously treated her. In a Clinic Note dated 29 November, which the psychiatrist placed on Dr. Turner’s Centre file, he wrote that Dr. Turner

reported some on-going suicidal thoughts but claims no fixed plans or intent to commit suicide.

He agreed with Dr. Doucet’s diagnosis that she was

suffering from an adjustment disorder.

He concluded that

[s]he has mild suicide ideation. She does not appear otherwise mentally ill. There were no indications for medications. Accordingly, we will stop both citalopram [an anti-depression medication sold under trade names such as Celexa, the brand Dr. Turner was taking] and lorazepam [sold under the trade name Ativan, which Dr. Turner also was ingesting].

The psychiatrist confirmed that he had

5: Narration and Summary of Facts

asked that she be kept on ‘code yellow’ suicide precautions;

that is precautions for dealing with a person who presents a moderate risk of committing suicide.

The day after the psychiatrist saw her, Dr. Turner spoke with a Centre staff person. She discussed her depression, stress and

previous suicide attempts

(underlining added for emphasis). This was the only recorded evidence I encountered that Dr. Turner had attempted suicide on one or more occasions, other than in 1999 at Westtown-Goshen, Pennsylvania.

On 06 December 2002, a Centre staff person was approached by an inmate who reported that on the evening of the previous day, in the presence of her and another inmate, Dr. Turner told them she “felt like” hanging herself in her cell. Out of concern for Dr. Turner, the inmate stated, she had decided to report the incident. The staff member addressed this report with Dr. Turner who apparently confirmed the

5: Narration and Summary of Facts

accuracy of the report. In a Centre daily diary entry for 06 December, the staff member wrote:

... she told me that she was down at the time. She said she realized that she can come to staff about this.

The staff member added:

Keep a close watch on her.

The report of another incident involving Dr. Turner reached a Centre classification officer on 07 December. An inmate informed the officer that a couple of days previously, she had witnessed Dr. Turner threaten to “stab” another inmate “with a fork” if that inmate did not stop singing Christmas carols. The recipient of the threat, when approached by the officer, said she regarded Dr. Turner as “only joking around” when she made the remark. She agreed, however, with the officer to make Centre staff aware of “any of these types of comments” in future.

Under Centre Policy Directive 16.25.01 mentioned earlier, Dr. Turner was referred to the Mental Health Services program provided by Department of Justice to inmates. The

5: Narration and Summary of Facts

referral was specifically for supportive counselling with reference to her incarceration and other related stressors in her life. On 13 December 2002, the first and only counselling session took place at the Centre. During this session, as recorded by the professional counsellor,

Shirley explained that she is on suicide watch, but she claims that she is not suicidal. She didn't have a plan for suicide and she wasn't suicidal. She wouldn't commit suicide because of her four children.

The counsellor concluded that Dr. Turner “is highly stressed.” Stress management techniques were discussed by the counsellor with her. Because of ongoing Court proceedings, the alleged criminal offences were not introduced by the counsellor into her meeting with Dr. Turner. But Dr. Turner informed the counsellor that she was innocent.

Before another counselling session could be arranged for her, Dr. Turner had left the Centre on 07 January 2003 and been returned to St. John's.

By 17 December 2002, Dr. Turner's conduct at the Centre prompted a staff member to speak with her about her

5: Narration and Summary of Facts

“attention-seeking, disruptive behaviour,” and issue a direction:

Staff, if she continues to disrupt while you are speaking to her, escort her to her cell for time out. She needs attitude adjustment.

No other untoward conduct by Dr. Turner was reported or detected for the duration of her incarceration at the Centre.

The Clarendville physician who had first seen Dr. Turner on 15 November subsequently met with her during his clinics at the Centre on 22 and 29 November; 05, 14 and 28 December; and 03 January 2003. The physician appears not to have identified any basis for providing Dr. Turner special medical treatment during or as a result of any of these visits.

On 02 January 2003, the St. John’s psychiatrist met with Dr. Turner for a second occasion. Although, as he recorded in a Clinic Note of the meeting, Dr. Turner then reported

she has become more optimistic about her legal situation (without details as to why) and appears to be doing well,

he cautioned:

5: Narration and Summary of Facts

... I fear she may be setting herself up for a fall. From a safety perspective, I feel it best to continue suicidal precautions.

The twice-hourly suicide checks on Dr. Turner continued 24 hours daily.

On 07 January 2003, Dr. Turner was escorted by the Royal Newfoundland Constabulary from the Centre back to St. John's for her next Court appearance on 08 January. The suicide checks ended.

Nothing replaced the suicide surveillance or counselling of Dr. Turner that was provided by the Centre. And legally, without Dr. Turner's consent - which was unlikely to be forthcoming - no means obtained to do so outside the Centre.

As for the protection of her son Zachary, who returned to her care and control after she left the Centre, that is an entirely different matter. The capacity for parenting of any mother who required the imposition of a "suicide watch" and mental health services while in custody is, to say the least, suspect.

5: Narration and Summary of Facts

Speaking of Zachary, there is another dimension of Dr. Turner's stay at the Correctional Centre for Women here that deserves to be mentioned. That involves the role of David and Kathleen Bagby.

When Dr. Turner was committed for extradition to the United States on 14 November 2002 (as a result of which her bail was revoked), and she was held for escort to the Centre the next day, the Bagbys agreed with Dr. Turner to undertake care and control of Zachary. They did so with the understanding that they would facilitate Dr. Turner's access to the child, then four months old.

(This arrangement for Zachary's parenting was confirmed, on 21 November 2002, by Consent Order made by Unified Family Court). From 14 November 2002 to 07 January 2003, while Dr. Turner resided at the Centre, Zachary lived with his grandparents in their rented premises in St. John's. By all accounts, they deported themselves exemplary in parenting Zachary.

And from St. John's they faithfully conveyed Zachary weekly the 180 kilometres to Clarenville to see his mother.

5: Narration and Summary of Facts

They overnighted with Zachary at a Clarendville area hotel. All this at their own expense, on their own time, in the understandably sterile prison environment, far from their California home and friends.

Typical of the Bagbys' good faith in providing for weekly contact between Zachary and Dr. Turner was the initial contact between mother and child after Dr. Turner was admitted to the Centre. Witness these entries in the Centre's daily diary.

20 November 2002, 10:15 AM: Shirley Turner had a visit with the Bagbys and her son Zachary until 11:30 AM. [And a few hours later:] Shirley Turner had visit again this afternoon with Bagbys and child ... [Brought] in a coffee for themselves - to keep them awake for the 2 hour stint in the Visitors Room. No coffee for Shirley. [And later in the afternoon:] Bagbys back at 5:30 pm - 7 pm with child - visit Shirley Turner. They will be here 9 AM tomorrow.

21 November 2002, 9 AM: The Bagbys were at centre for visit with inmate Turner. [And at 4 PM:] Inmate Turner's visit ended.

On these occasions, as always, the Centre required the Bagbys who, in any event, insisted that they be present, to remain with Zachary and Dr. Turner. The Centre staff also monitored the visits.

5: Narration and Summary of Facts

The daily diary of the Centre records visits (usually multiple visits) by the Bagbys, in company with Zachary, to the Centre on 14 dates including Christmas Eve and New Year's Eve during the 42-day period from 20 November 2002 to 31 December 2002 (both dates inclusive).

The Bagbys' attention to facilitate generous access by Dr. Turner to Zachary was in sharp contrast to the access Dr. Turner had historically permitted Zachary with the Bagbys - access measured initially in weekly one-hour periods approved by a Court, when Dr. Turner was at large and caring for Zachary in St. John's.

Dr. Turner was also visited, while incarcerated at the Centre, by her older son and younger daughter. The visits were infrequent because, the son was attending Memorial University in St. John's and performing a part-time job or jobs, and the daughter was attending school. Both came together; at least once under the financial auspices of the John Howard Society. Because Dr. Turner's older daughter was living and working in Mississauga, Ontario, she did not, for the most part, participate in visits.

5: Narration and Summary of Facts

Arrangements were made by Dr. Turner to have all her children visit her on 23 and 24 December. She pressed Centre staff to permit her to visit simultaneously with all four children. This was denied. Approval was given for two-hour visits by the Bagbys with Zachary, followed by the three older children on 23 December, and for one-hour visits by the three older children, followed by the Bagbys and Zachary, on 24 December.

For this purpose, the Bagbys drove from St. John's to Clarendville with Zachary. The three older children traveled separately the same route in the older son's vehicle. Although Dr. Turner received a visit from the Bagbys and Zachary on 23 December, she did not see her three older children on that date. Because a Centre staff person scheduled for duty on 23 December was required to perform a prisoner escort, the visit with the three older children was cancelled. This was just as well, because a quarter hour's drive east of Clarendville, the vehicle being driven by her son "broke down." The 24 December visits, however, went as planned.

Dr. Turner never re-entered the Correctional Centre for Women in Clarendville. She would inform one of her daughters

shortly after departing Clarenville on 07 January 2003 that she had no intention of ever returning to the Correctional Centre. Moreover, she added,

she had no intention of ever leaving Newfoundland.

5.9 Extradition Proceeding: Part 3

(a) Administrative action by Dr. Turner and Canada's Justice Minister

The extradition process did not end with the Chief Justice's extradition committal order on 14 November 2002. This is because, under the *Extradition Act* section 40(1),⁶⁶ Canada's Justice Minister must, after a committal order is issued, personally make the final decision whether or not to surrender the committed person - in this instance Dr. Turner - to the United States for trial in Pennsylvania.

The Justice Minister may, under section 40(1),⁶⁷ decide whether or not to surrender a person, where the person has been judicially ordered to be committed into custody, within 90 days after the date of the order unless the Minister extends the time for doing so. The Minister may, under *Extradition Act* section 40(5)(b),⁶⁸ extend the 90 days for one additional

period of 60 days. And, in certain circumstances prescribed by the *Act*, the Minister may extend for longer periods the time for making the ‘surrender decision.’

There are specific legal reasons under the *Extradition Act* for permitting the Justice Minister time, after a person has been ordered to be committed into custody, to decide whether to extradite the committed person. The reasons are provided for principally in sections 40 to 47 of the *Act*.⁶⁹

Some of those sections impose mandatory duties on the Minister; others provide the Minister with discretion. They also provided an opportunity for steps to be taken by Dr. Turner.

I will address only the portions of those sections which were or could have been accessed, both while Dr. Turner was in custody from 15 November 2002 to 10 January 2003, and after she was granted judicial interim release a second time.

First, under *Extradition Act* section 44(1),⁷⁰ the Minister shall refuse to make a surrender order

if satisfied that

- (a) the surrender would be unjust or oppressive having regard to all the relevant circumstances; or
- (b) the request for extradition is made for the purpose of prosecuting or punishing the person by reason of their race, religion, nationality, ethnic origin, language, colour, political opinion, sex, sexual orientation, age, mental or physical disability or status or that the person's position may be prejudiced for any of those reasons.

For example, the term “unjust or oppressive” which also appeared in section 16 of an earlier extradition statute, the *Fugitive Offenders Act*, was interpreted under the former *Act* by the General Division of the Ontario Supreme Court on 17 December 1992.⁷¹ The Court interpreted the term to preclude extradition from Canada of a fugitive whose spouse was suicidal because surrender would adversely affect the care of the couple's eight-year old son.

And, the authors of *A Practical Guide To Canadian Extradition*⁷² suggest that

[i]t would appear to be open to defence counsel to argue that mental illness would constitute unjust or oppressive circumstances under ... [*Extradition Act* section] 44(1)(a).

Neither Dr. Turner nor her legal counsel resorted to this provision of the *Extradition Act*, perhaps because counsel was not aware of, or at least not made fully cognizant of Dr. Turner's mental fragility, and Dr. Turner herself appears to have been in denial about the gravity of her mental dysfunction.

Secondly, under *Extradition Act* section 43(1),⁷³ a person committed into custody to await a ministerial surrender decision,

may, at any time before the expiry of 30 days after the date of committal, make submissions to the Minister in respect of any ground that would be relevant to the Minister in making a decision in respect of the surrender of the person.

The Minister may, under section 43(2) of the *Act*,⁷⁴

accept submissions even after the expiry of those 30 days in circumstances that the Minister considers appropriate.

Dr. Turner's counsel availed of this provision of the *Act*. Twice, in fact. Supplementing that effort was correspondence from other persons.

5: Narration and Summary of Facts

On 09 and 12 May 2003, Dr. Turner's counsel wrote to Canada's Justice Minister. He submitted that the Minister should not exercise his discretion to surrender Dr. Turner to the United States because, essentially:

- (a) the evidence presented by the Americans against Dr. Turner is “entirely circumstantial.”
- (b) Dr. Turner will not receive a fair trial in the United States, both because of her forced reliance on the public defender system [the equivalent of legal aid in Canada] and the unfavourable media attention this case has received in Canada and the United States;
- (c) Dr. Turner, who is the mother of “four children, two of whom, age thirteen years and ten months live with her and are dependant upon her,” will not receive judicial interim release in Pennsylvania and, consequently, will be away from her children for a lengthy period of time; and

- (d) Dr. Turner is a Canadian citizen who has contributed greatly to her community where she is highly regarded and could make a valuable contribution to Canadian society as a doctor, teacher and human being if her surrender were refused.

An eight page reply, dated 09 June 2003, over the signature of the Justice Minister, explained why he was not persuaded by the submissions on Dr. Turner's behalf. The following passage from the letter amply represents the reasons for the Justice Minister's position:

Dr. Turner is stated to be the mother of four children, one of whom is ten months old [Zachary]. There is evidence from her son ..., and the other individuals who wrote in her support, that she is a good mother and has made valuable contributions to Canadian society. It is certainly tragic when children, through no fault of their own, are separated from their mother. It is also noted that Dr. Turner has apparently been an excellent member of Canadian society. However, ..., and even if Dr. Turner has suffered due to the extradition proceedings taken against her here and negative media reports, I have concluded that surrendering her to face a trial in the United States for the offences alleged against her would not "shock the conscience" or be unjust or oppressive in the circumstances for the following reasons:

The offences alleged against her are extremely serious;

5: Narration and Summary of Facts

Dr. Turner should not, like any individual in Canada with dependent children, avoid prosecution for that reason;

In Canada, parents, like Dr. Turner, with dependent children are refused bail or convicted of a criminal offence and sentenced to a period of incarceration;

If Dr. Turner were convicted of first degree murder in Canada, she would be sentenced to imprisonment for life without eligibility for parole until she had served twenty-five years of the sentence (section 745(a) *Criminal Code of Canada*);

Dr. Turner will have the opportunity to present her personal circumstances to the Pennsylvania courts during her bail hearing and to the trial judge upon sentencing if convicted;

It is important that Canada not be a safe haven to fugitives from justice, including its citizens. Dr. Turner chose to reside in the United States and only returned to Canada following the death of Dr. Bagby;

Canada's treaty commitment and the ... basic tenets of our legal system should be respected: ..., individuals including Canadian citizens, who choose to leave Canada leave behind Canadian law and procedures and must generally accept the local law, procedure, and punishments which the foreign states applies to its own residents; justice is best served by a trial in the jurisdiction where the crime was allegedly committed and the harmful impact felt;

Overall, the Justice Minister wrote that his

discretion to refuse surrender is justifiable only on compelling grounds related to specific provisions of the

5: Narration and Summary of Facts

Extradition Act, the *Treaty on Extradition between Canada and the United States of America*, or where surrender would be contrary to the principles of fundamental justice as guaranteed by the *Canadian Charter of Rights and Freedoms*. I have ... concluded that to surrender Dr. Turner would be neither inconsistent with the *Extradition Act*, the *Treaty*, nor the *Charter*.

Thirdly, *Extradition Act* section 44(2)⁷⁵ provides that

The Minister may refuse to make a surrender order if the Minister is satisfied that the conduct in respect of which the request for extradition is made is punishable by death under the laws that apply to the extradition partner.

Although discretionary in nature, this statutory ministerial authority has been interpreted by the Supreme Court of Canada as being impacted by the *Canadian Charter of Rights and Freedoms*.⁷⁶ As a result, the Court decided in the 2001 decision of *United States v. Burns*⁷⁷ that

[t]he arguments against extradition without assurances have grown stronger since ... [two decisions of the Court] in 1991. Canada is now abolitionist for all crimes, even those in the military field. The international trend against the death penalty has become clearer. The death penalty controversies in the requesting state - the United States - are based on pragmatic, hard-headed concerns about wrongful convictions. None of these factors is conclusive, but taken together they tilt the ... balance [under section 7

**of the Canadian Charter of Rights and Freedoms]
against extradition without assurances.**

(Section 7 of the *Charter* provides that

[e]veryone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice).

The Justice Minister in his 09 June 2003 letter to Dr. Turner's legal counsel addressed this issue:

In this case, I consider it appropriate to subject the surrender order [which the Minister decided to make] to a condition that Dr. Turner only be surrendered upon formal assurances being received from the United States pursuant to Article 6 of the *Treaty [on Extradition between Canada and the United States]* that the death penalty will not be sought or imposed against her. Given that sentencing law in the Commonwealth of Pennsylvania provides for the death penalty for a conviction of first degree murder and that our *Treaty* has been concluded with the United States, I assessed the circumstances of the case against Dr. Turner and her personal circumstances in light of the Supreme Court of Canada decision in *United States v. Burns* ... and concluded that death penalty assurances are warranted.

Canada's Justice Minister having fulfilled the obligations required of him by the *Extradition Act* (including those under sections 44(1), 43(1), and 44(2)) after the 14

5: Narration and Summary of Facts

November 2002 extradition committal order had been made, issued a conditional surrender order.

The surrender order made 09 June 2003 was conditional in the sense that it was⁷⁸

subject to the receipt [by Canada] of sufficient assurances pursuant to article 6 of the *Treaty on Extradition between Canada and the United States of America* that the death penalty shall not be imposed or carried out against Dr. Turner.

5.9 (b) Appeal

While administrative actions were being taken by Canada's Justice Minister and Dr. Turner in the wake of the extradition committal order, Dr. Turner made several decisions to attempt to challenge that order. She made the decisions during the period she was incarcerated at the Correctional Centre for Women.

She filed in the Court of Appeal an appeal from both the Minister's Authority To Proceed and the 14 November 2002 extradition committal order.

Pending resolution of the appeal, she filed an application for judicial interim release in the Court of Appeal.

5.9 (c) *Judicial interim release: Part 2*

On 07 January 2003, she was escorted in custody from the Correctional Centre to St. John's, and the following day appeared in the Court of Appeal to apply for release pending appeal.

She was not represented by legal counsel. Her financial resources to continue funding of privately chosen counsel were exhausted and, evidently, she had been refused publicly funded counsel by the Newfoundland and Labrador Legal Aid Commission - a refusal she had appealed to the Appeal Board of the Commission. In the result, Dr. Turner represented herself throughout the release hearing from 08 to 10 January 2003.

Criminal Code subsection 679(3), which applies to release applications pending appeal in an extradition proceeding, permits an appeal court Justice to grant release if

- (a) the appeal or application for leave to appeal is not frivolous,
- (b) [the person sought to be extradited] will surrender [himself or herself] ... into custody in accordance with the terms of the [release] order, and
- (c) ... detention is not necessary in the public interest.

Because of language in *Extradition Act* section 20 and *Canadian Charter of Rights and Freedoms* subparagraphs 11(d) and 11(e), the Justice of the Court of Appeal decided that (a) quoted above did not apply. Whether the appeal was frivolous was not considered.

Charter section 11(d) provides that

Any person charged with an offence has the right ... to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal.

The legal effort of these and *Charter* section 11(e) provides that a person

not ... be denied reasonable bail without just cause.

5: Narration and Summary of Facts

Extradition Act and *Charter* provisions were not raised or considered in a 2002 extradition decision of another Justice of the Court of Appeal, on release pending an extradition appeal, which considers whether the appeal grounds were frivolous.⁷⁹

Before the Court of Appeal on Dr. Turner's release application was the record of the extradition committal hearing in 2002 conducted in the Trial Division and an affidavit filed by Dr. Turner with her release application.

No witnesses were called by Dr. Turner or by Canada/United States counsel.

On this occasion, unlike the 12 December 2001 application by Dr. Turner to the Trial Division before the extradition committal hearing, the United States opposed Dr. Turner's release.

Dr. Turner had the burden of convincing the Court of Appeal Justice to grant her release.

5: Narration and Summary of Facts

Although the Court of Appeal Justice cautioned Dr. Turner that

I'm assuming that you understand the seriousness with which the affidavit was prepared and sworn by you,

to which Dr. Turner replied

Yes,

unknown to the Justice was that her affidavit, in some respects, was untrue (specifically, her description of the circumstances surrounding her departure from the United States). Canada/United States' counsel did not cross-examine her on the sworn document.

During argument in support of Dr. Turner's release application, the following exchange between her and the Justice took place:

Dr. Turner:

.... I realize that the alleged crime is horrible and has been described as a violent crime. I also know I'm innocent of the crime that I had been accused of, and that makes a difference in my mind. There has never been any evidence given in court of any violent behaviour on my part or

any psychological disorder and I don't think ... [counsel for Canada/United States] has argued that at any of the hearings or judicial interim release hearings back in December [2001, when Dr. Turner previously applied for and was granted release]. I don't agree with his statement in paragraph 10 on page 5 of his Respondent's Factum that there's an abundance of evidence, and my appeal is based mainly on my ... ground of appeal which is that it's flimsy circumstantial evidence and there will be some new presentations given in the appeal on that. The other thing I think did mention in my affidavit and I just wanted to point out again, when you're considering whether or not, I guess, I'm a danger to the public or it would not be in the public's interest to have me released, in late October I was granted approval for a medical license to practice medicine in this province, and again I can give that as evidence if you want the letter that I received from the Newfoundland Medical Board [now the College of Physicians and Surgeons]. I can get more information from the Newfoundland Medical Board. They had a hearing some time in October. Again I don't have these letters in Clarendville [from which she was transported in custody to St. John's for her release hearing], but I can get them, and they did a thorough investigation of my medical competence and background before they would approve a license for me and it was approved. I just had to pay for it, find a job, and start work, and I think that has a lot to say about whether or not I'm a danger to anybody in the public.

The Court:

So you're saying this was in the past October, so you would be now in a position if you were granted release to obtain your license?

Dr. Turner:

I hope so. I would have to approach the Medical Board again, and the wording of their letter did say, you know, based on my legal status as of then. Of course, since then we've had the ruling on the extradition hearing [on 14 November 2002] and I was committed into custody. Whether that changes or not, I may have to get legal representation to represent myself even to the Medical Board if they again, you know, try to refuse the license. It took a long time to get that approval. It was from January until October, and a lot of it was due to inaccuracies that were reported in the media about the case that had to be cleared before I could have my license.

The Newfoundland Medical Board (now the College of Physicians and Surgeons) had, by 17 October 2002 letter to Dr. Turner,

confirm[ed] that your application for registration and full licensure under the Medical Act is acceptable at this time, subject to payment of the registration and licensing fees and your provision of satisfactory proof of CMPA [Canadian Medical Protective Association professional liability] coverage.⁸⁰

However, the Board's letter to Dr. Turner pointed out that

[a]s you are aware, the Newfoundland Medical Board does have notice of your being charged with murder under the laws of the United States of America, but

5: Narration and Summary of Facts

understands that you have denied the charge and are resisting extradition. We trust you will understand that this charge will be a matter of continuing concern for the Medical Board, and that your licensure may be subject to review by the Medical Board as circumstances and developments in respect of the charge may warrant.

In addition to providing the Court of Appeal Justice with information on the prospect of her returning to medical practice in Newfoundland if released, Dr. Turner also told the Court - reference the release criteria involving whether she would surrender under a release order, if and when required - that she had surrendered herself to police when the extradition proceeding was commenced in the Supreme Court Trial Division, had faithfully adhered to the terms and conditions of the previous (12 December 2001) release order granted her, and stated, although not under oath or affirmation,

I can be trusted to surrender myself into custody in accordance with the terms of any order for my judicial interim release.

In response, Canada/United States counsel submitted the strength of Dr. Turner's appeal, which it challenged, was a relevant consideration.

While the Court of Appeal Justice acknowledged,

it may well be that the grounds of appeal of the committal order are tenuous at best, and do not meet even the low threshold of constituting an arguable case,

the issue of the strength of Dr. Turner's appeal grounds was not, in law, an appropriate consideration.

The Canada/United States counsel further submitted that, unlike the situation that existed when Dr. Turner was released on commencement of the extradition proceeding, she had since been committed to await the Canada Justice Minister's extradition decision. The implication of course was that having being committed, Dr. Turner had greater incentive to flee.

On 09 January 2003, the Court of Appeal Justice ordered the release of Dr. Turner subject to her complying with the release order terms. Quoting from a portion of the Justice's 40-paragraph written decision filed 16 January 2003:⁸¹

[31] I turn, ..., to a consideration of the two relevant criteria, that is, whether Dr. Turner has established, first, that she will surrender herself into custody,

according to the terms of the judicial interim release order, and second, that her detention is not necessary in the public interest.

[32] First, the question of surrendering herself into custody according to the order. Dr. Turner provided an affidavit which amply supports the conclusion that she would comply with the order. Crown counsel took issue with only one element of the affidavit which he said was inconsistent with earlier statements by Dr. Turner. He did not otherwise challenge the affidavit, and did not submit that the Court should not rely on the remainder of the affidavit. No additional evidence was presented at the hearing before this Court.⁸²

[33] Dr. Turner was, in fact, with the consent of the Crown, granted judicial interim release pending the committal hearing. She complied fully with that order. Nonetheless, Crown counsel argued that, because a committal order has been made, there is a greater incentive for Dr. Turner not to comply with the judicial interim release order.

[34] I reject this as a rationale for denying interim release in this case. The issue of incentive after[,] as opposed to prior to a committal order would presumably apply in most, if not all, cases. Crown counsel agreed that there is nothing specific to Dr. Turner that would raise unusual concerns. I am not satisfied the risk that Dr. Turner will not comply with the order is any greater or different from the risk associated with her release prior to the committal hearing. Further, the factors set out in the affidavit filed by Dr. Turner demonstrate a basis on which I would conclude that she will comply with a judicial interim release order, subject to appropriate conditions.

[35] Finally, I am satisfied that Dr. Turner's detention is not necessary in the public interest. The question of public interest involves an assessment of public

protection, in the sense of whether public safety would be compromised if Dr. Turner is released from custody, and public perception, in the sense of public confidence in the administration of justice. This includes the public interest in Canada complying with its international treaty obligations regarding extradition.

[36] Regarding the public safety issue, while the offence with which she is charged is a violent and serious one, it was not directed at the public at large. There is no indications of a psychological disorder that would give concern about potential harm to the public generally.

The Court of Appeal Justice had no evidence before her which, to my mind, significantly indicated otherwise.

[37] Further, there is no basis on which to conclude that public confidence in the administration of justice would be detrimentally affected if Dr. Turner was granted judicial interim release. Indeed, the contrary is the more likely perception given her fundamental right [under the *Canadian Charter of Rights and Freedoms*] to be presumed innocent until proven guilty, the fact she has established that she will surrender herself into custody according to the terms of the judicial interim release order, and her right [under the *Charter*] not to be denied reasonable bail without just cause.

The terms of Dr. Turner's release determined on the third day of the release hearing on 10 January 2003 were that she enter into a Recognizance on the term that she provide sureties totaling \$75,000. The conditions of her release as stated in the release order and in the Recognizance were:

5: Narration and Summary of Facts

1. to appear in court as required;
2. to report to the Royal Newfoundland Constabulary at Fort Townshend, St. John's, NL on Wednesdays between the hours of 9:00 a.m. and 5:00 p.m. and sign the register;
3. to reside at 21 Foran Street, St. John's, NL;
4. to notify Constable Glen Noseworthy, phone #729-8136, of the Royal Newfoundland Constabulary, of any change of residence 24 hours in advance;
5. not to conceal on her any knife, and not to handle, possess, or be in a dwelling where there is storage of any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance;
6. not to contact or communicate directly or indirectly in any manner with members of the victim's family except David and Kathleen Bagby and then only in accordance with any subsequent order of the Unified Family Court; and not to contact or communicate directly or indirectly with ... [seven named persons]; and not to contact or communicate directly or indirectly in any manner with ... [one named person, a practicing physician and member of Memorial University's Faculty of Medicine] except for purposes of attending employment or medical appointments; and to remain away from any place of residence, employment or schooling she knows to be frequented by any of the above named individuals;
7. not to leave the Province of Newfoundland and Labrador; and

8. to surrender any and all passports.

The named persons in the Court of Appeal release order were the same as those named in the 12 December 2001 Trial Division release order.

On 10 January 2003, Dr. Turner and five sureties signed the Recognizance and she was again released.

Three of the five sureties signed for \$20,000, one of them for \$10,000 and one for \$5,000. The surety, who signed to guarantee - to the extent of \$10,000 - performance by Dr. Turner of the conditions of the Recognizance, was in no position to pay that amount if Dr. Turner breached the Recognizance. He was a student who supported himself with student loans and part-time employment, and who had no significant assets. The financial qualifications of the other four sureties to sign the Recognizance are not known.

A Court of Appeal staff person, authorized to serve as a justice of the peace, verbally informed the sureties of their obligations under the Recognizance. And, further, in reliance on their integrity, she made verbal inquiries of each surety of

his/her financial means and social insurance number. Her performance of these steps [long established practices of the Supreme Court (both Court of Appeal and Trial Division) when formalizing a bail Recognizance] is neither required by law nor governed by directive from the Province's Department of Justice which appoints justices of the peace.

5.9 (d) *Provision of legal counsel*

On 18 February 2003 and 03 March 2003, Dr. Turner next appeared in the Court of Appeal, unrepresented, to be heard on her application for an order that the Court appoint counsel to represent her, at state expense, on her extradition appeal.

She was unable to privately underwrite the cost of legal counsel. The Newfoundland and Labrador Legal Aid Commission had denied her application for state funding of legal counsel as had the Legal Aid Appeal Board.

Criminal Code subsections 684(1) and (2) governed her application. Under these statutory provisions, the Court of Appeal could “assign counsel to act” on her behalf “where, in

the opinion of the court or a judge, it appears desirable in the interests of justice” that she “should have legal assistance” where she “has not sufficient means to obtain that assistance.”

An affidavit filed in the Court in support of her application stated that she was financially unable to pay for legal counsel for her extradition appeal to the Court.

Canada/United States counsel opposed the application on the grounds the application was premature (for reasons counsel stated to a Justice of the Court of Appeal).

In allowing Dr. Turner’s application on 03 March 2003, a Court of Appeal Justice wrote that:⁸³

[12] Dr. Turner is a well-educated, articulate woman. However, she has no legal training. The issues raised on appeal involved statutory interpretation and subtle legal distinctions. If she is surrendered to the extradition partner [the United States] she will face an extremely serious charge. I conclude she needs the assistance of counsel to effectively present her appeal.

In due course, Dr. Turner again retained the legal counsel who had represented her on the extradition committal hearing. On this occasion she was not required to pay for his

services; in fact, was financially unable to do so. Instead, under the *Criminal Code* section 684(3), that expense would be paid by Canada.

When Dr. Turner again appeared in the Court of Appeal on 09 July 2003, this time represented by legal counsel, the hearing of her extradition appeal was set for 25 and 26 September 2003.

5.10 Parenting Proceedings: Part 3

On 10 January 2003, very shortly after Dr. Turner regained her liberty, the Bagbys returned custody of Zachary to her. Dr. Turner resumed primary care of Zachary at St. John's.

This development was confirmed by a further Consent Order of Unified Family Court, judicially approved on 30 January 2003.

Under the terms of this Consent Order, the Bagbys' access to Zachary increased materially compared to provisions of two earlier consent orders. They were permitted access to

5: Narration and Summary of Facts

Zachary away from Dr. Turner's residence, fortnightly, as follows:

- (i) in one week, from 9:00 a.m. to noon on Tuesday; from 1:00 p.m. to 5:00 p.m. on Thursday; and from 7:00 p.m. Saturday, overnight to 2:00 p.m. Sunday; and
- (ii) in the next week, from 1:00 p.m. to 5:00 p.m. on Monday; 9:00 a.m. to noon on Wednesday; and from 1:00 p.m. to 5:00 p.m. on Friday.

As well, the Bagbys were allowed to

attend, with ... [Dr. Turner's] consent and in ... [Dr. Turner's] presence, any special occasions and/or health related appointments involving Zachary.

Provision was also made in the 30 January 2003 Consent Order for the Bagbys to have access at other times, to compensate for a one-week period when Dr. Turner proposed taking Zachary to the west coast of the Island. And the Order also provided that

[i]n the event that ... [Dr. Turner] is again placed into custody [in the extradition proceeding], ... [the Bagbys] will again become Zachary's primary caregivers during such period as ... [Dr. Turner] remains in custody.

5: Narration and Summary of Facts

One more Consent Order was made in the Bagbys' parenting proceeding in Unified Family Court. On 04 March 2003, a Justice of the Court approved a Consent Order providing that

[p]ursuant to Section 7 the Children's Law Act, R.S.N. 1990, C-13, the late Dr. Andrew Bagby is the father of Zachary Andrew Turner.

The basis for this Consent Order was a report dated 23 December 2002 from Paternity Testing Services, part of TNB Laboratories Inc., St. John's. The report resulting from testing of samples of Dr. Turner's blood and buccal swab samples collected from Dr. Turner and Zachary at the Health Sciences Centre, St. John's, on 28 October 2002, and of post-autopsy samples (blood and tissues) from the remains of Dr. Bagby which had been stored in two United States laboratories.

The report did not state with absolute certainty that Dr. Bagby fathered Zachary. As Dr. Charles T. Ladoulis, MD, CSO, who conducted the paternity testing, wrote,

[a]lthough it is often possible to exclude paternity with certainty, it is never possible to prove paternity absolutely.

5: Narration and Summary of Facts

From his testing, however, Dr. Ladoulis concluded and stated in his report that

we estimated the probability that ... [Dr. Bagby] is the father of this child ... [that is, the] Relative Chance of Paternity is 99.9941% in favor. These are clearly high odds in favor of paternity.

The 04 March 2003 Consent Order did not, however, mark the end of legal disagreements affecting Zachary.

On 14 April 2003, the Bagbys' counsel in a letter to Dr. Turner's counsel wrote:

Because more than two months have now passed since the most recent Interim Consent Order was agreed to, our clients request more scheduled time with Zachary. Specifically, they request one overnight visit ... [in the second week of the fortnightly arrangements for access provided for under the 30 January 2003 Consent Order] and are flexible as to what night that can be. They also ask that one hour be added to each [day] visit as presently outlined in ... [the 30 January 2003 Consent Order]. If we do not receive a satisfactory response to our request by Tuesday, April 22, 2003, we have clear instructions from our clients [the Bagbys] to make an Application to Unified Family Court for increased access.

As discussed in our recent meeting, the Bagbys are most perplexed by your client's recent questioning of their trust and honesty. We request clarification as to why

this is an issue, some five months since they initially began caring for Zachary.

The letter also noted that Dr. Turner

recently advised Mr. and Mrs. Bagby that she intends to move to the west coast of the province. Please advise of her specific intentions. We assume Dr. Turner is aware that any such move would require a change to the present [30 January 2003] Order.

Dr. Turner never moved to western Newfoundland and no further hearing or judicial order was made in the Bagbys' parenting proceeding.

Relations between the Bagbys and Dr. Turner subsequently improved, respecting the Bagbys' access to Zachary.

In a letter dated 06 June 2003 to the Bagbys' counsel, the lawyer for Dr. Turner wrote that

Dr. Turner advises that access has been going quite well since the situation has stabilized between the parties and that there has been a great deal of flexibility enjoyed by the parties.

The letter continued:

We understand that your clients [the Bagbys] wish to have clarification as to why my client was questioning their trust and honesty as the relationship was deteriorating in March-April month. Dr. Turner advises that she was having difficulty reconciling the content of the statements attributed to the Bagbys in the Extradition documents with her own position. Dr. Turner continues to maintain her innocence and specifically disputes the notion that she attempted to flee the jurisdiction in the U.S. The Bagbys' statements are contrary to Dr. Turner's position and she was having difficulty foreseeing Zachary having a stable relationship with both sides in light of their opposing views.

And, on 02 July 2003, in the final correspondence between counsel for the Bagbys and Dr. Turner, the Bagbys' lawyer wrote that

Zachary is thriving despite the incredible circumstances into which he has been born. All sides are to be commended for this fact. The Bagbys are quite confident that Zachary will continue to thrive if he continues to see a stable relationship among his caregivers. Given the unknown outcome of the criminal justice process and his young age, it seems premature for the parties to seek joint counselling at this point (i) [as to how best to present Zachary's unique reality to him, presently and as he grows; (ii) how the parties can strive to act in Zachary's best interests and in a spirit of mutual cooperation; and (iii) as to what nature of access would be in keeping with Zachary's best interests should Dr. Turner be returned to custody either in Newfoundland or in the United States].

5.11 Life after Correctional Centre for Women

5: Narration and Summary of Facts

When Dr. Turner was, again, granted judicial interim release on 10 January 2003, the Bagbys returned Zachary to her.

She resided with her St. John's friend and spouse for five days; then, with financial assistance from the Department of Human Resources, Labour and Employment, moved into a rented flat on O'Reilly Street, St. John's, where she lived with Zachary.

Much of the period from 10 January to 11 June 2003 was spent by Dr. Turner making submissions to, and waiting and worrying about the decision to be made by Canada's Justice Minister. That decision involved the issue whether to extradite her to the United States on the Pennsylvania charges accusing her of murdering Dr. Bagby (subject, of course, to the outcome of her appeal to the Court of Appeal).

By 22 May 2003, she learned that Canada's Justice Minister would decide on 09 June 2003 whether to extradite her. She told a CYFS social worker who home-visited her on 22 May that she intended to appeal that decision as well, if unfavourable for her.

5: Narration and Summary of Facts

An appeal of that decision became necessary when, on 11 June 2003, she learned that Canada's Justice Minister had on 09 June 2003 decided to extradite her to the United States.

Her younger daughter visited her from Portland Creek for a week in March 2003.

Dr. Turner also resumed her visits to Dr. Doucet.

Dr. Turner made the last of her visits to her psychiatrist on 15 July 2003. He prescribed 30 tablets of Lorazepam (the generic name for a medication marketed under several brand names, including Ativan) - 0.5 milligrams each - to be taken twice daily, if needed. She did not immediately fill that prescription. When she eventually obtained the 30 tablets from a St. John's pharmacy, the day before her death, her intention in doing so was at odds with the purpose for which her psychiatrist had written the prescription.

Her next appointment with Dr. Doucet was to have occurred on 18 August 2003 at 9:30 a.m.

Within three days of Dr. Turner's release by the Court of Appeal on 10 January 2003, she resumed contact with CYFS and other services providers at the St. John's Regional Health and Community Services Board.

5.12 Community and Health Services: Part 3

In a telephone conversation with the younger daughter's father on 13 January 2003, a CYFS social worker learned that she

is doing well and seems to be settling back into school in Portland Creek. He stated that she has been talking to her mother since her mother was released from custody last week. He stated that there are no plans for ... [the daughter] to return to St. John's to live with her mother. He stated that she and her mother decided that it was important for her to finish the school year while living in Portland Creek.

But by Easter 2003 (in the third week of April), the younger daughter was, again, in St. John's residing with Dr. Turner. On 25 April 2003, a CYFS social worker, during a home visit, noted that the daughter did not want to return to her father in Portland Creek after she spent Easter holidays

5: Narration and Summary of Facts

with Dr. Turner in St. John's and had decided, in concert with Dr. Turner,

will finish school in St. John's.

[This was the sixth school the daughter had entered since September 2001 (in fact, the second time in the same St. John's school). On 26 June 2006, a CYFS social worker was informed that the daughter's historically fine report cards had taken a turn for the worse. A report card received that day by the daughter disclosed she had failed two subjects].

The Board was not directly involved in subsequent negotiations between Dr. Turner and the Bagbys about the issue of Zachary's future care were Dr. Turner to be again incarcerated, if Canada's Justice Minister decided, on the strength of the Supreme Court Trial Division's 14 November 2002 extradition committal order, to surrender Dr. Turner to the United States. Just the same, CYFS was kept abreast by Dr. Turner of developments on this front.

On 06 March 2003 Dr. Turner, during a CYFS social worker's home visit, informed her that she and the Bagbys had

5: Narration and Summary of Facts

agreed to counselling with a private service provider. She stated that

[t]hey all agreed there is a need for them to work on some emotional issues in relation to Andrew's death, how to deal with his death in relation to Zachary and how to mediate possible care/custody issues.

However, Dr. Turner telephoned the worker later the same date and reported that

things have gone off the rails with the Bagbys.

Further details of the reason for this turn of events surfaced when a CYFS social worker made a home visit to Dr. Turner on 25 April 2002:

... [Dr. Turner] explained that she found out that the Bagbys are still planning to testify against her during her trial if she is extradited to the United States. Dr. Turner stated that she was beginning to trust the Bagbys over the past few months because they were good to her, Zachary and ... [the younger daughter]. She stated that she now realizes that their kindness was mostly based on the fact that they want Zachary in their care and it is beneficial therefore for them to be as close as possible to Zachary at this time. Dr. Turner stated that she is now questioning the motives of the Bagbys. She believes they want her in prison and they want Zachary in their care. She stated that she is also

5: Narration and Summary of Facts

noticing how possessive the Bagbys are of Zachary. She stated that she has heard them call themselves ‘mom’ and ‘dad’ to Zachary. Dr. Turner stated that as Zachary gets older she worries more about the impact of this situation on him. She stated that she worries about what the Bagbys may say to Zachary about her and about his father. Dr. Turner stated that she would like to have counselling for this and that she would still be willing to attend counselling with the Bagbys.

On 22 May 2003, during a home visit to Dr. Turner, a CYFS social worker learned that Canada’s Justice Minister intended to announce in the near future whether he would surrender Dr. Turner to the United States. As the worker noted,

[Dr. Turner] stated that she is hoping that this will not happen and that she and her lawyer have letters from various people involved stating the negative impact that this would have on her and her children.

One of the letters, I learned elsewhere, was written by a Board-employed professional providing services to Dr. Turner, her younger daughter and Zachary. The letter was written in the person’s private capacity.

From the professional’s testimony during my Review:

Review Counsel:

And in substance, what did you say to the federal Minister [of Justice] in your letter?

Witness:

... the gist of that is that Shirley would be better for her if the trial was here, she didn't have to be extradited. It would relieve a lot of stress on her part. She was a Canadian and that our laws and their laws are different. We didn't have the death penalty and that sort of thing.

....

Review Counsel:

You weren't making an appeal asserting her innocence?

Witness:

No, not at all. I mean that was done to help her more to cope with the stress that she was under.

Review Counsel:

Do you know whether your guidelines contain any direction to you or your fellow professionals about writing a letter, or otherwise giving a hand-up or giving an assistance to a client in your private capacity, based on your knowledge of them as a professional?

Answer:

I don't think there is any guidelines or policies stating that you can't do or, you know, you can't write a letter. But I don't think it's recommended that you do.

5: Narration and Summary of Facts

Legal Counsel:

It's not specifically prohibited?

Answer:

No, I don't think so.

Legal Counsel:

Did you know Shirley Turner at all, other than what you might have read in the paper prior to her coming into contact with ... [St. John's Health and Community Services Board]?

Answer:

No.

Legal Counsel:

And while she was part of your Program caseload, did you have any involvement with her outside the requirements, the demanding requirements I might say, of ... [the Program you offered her]?

Answer:

No, the only thing that I can remember is that she asked me about my Yoga classes. She knew I taught Yoga. And she asked me when they were and I said you can come. But that's about it.

This is not unlike the situation of Dr. Turner's psychiatrist - while treating her - entering into a Recognizance to assist her obtain her release on 12 December 2001. The

5: Narration and Summary of Facts

was written by the Board professional with the best of intentions. Nonetheless, the person should not have written the letter. First, based on what my Review has uncovered about Dr. Turner's background that wasn't known to the counsellor or, for that matter, anyone at the Board, the letter was written in support of someone the counsellor was not qualified to write about. And, secondly, the letter was written on behalf of a person to whom the professional was providing Board services. Doing so in these factual circumstances may have resulted in, or been perceived as creating a conflict of loyalty, interest or duty for the professional.

No doubt, CYFS social workers are approached from time-to-time by clients and their families for letters, such as to provide references for employment. A CYFS social worker, approached by Dr. Turner, declined to write a letter on her behalf to Canada's Justice Minister to attempt to influence the Minister's extradition decision.

This development is a microcosm of the much larger and complex issue of conflict of interest involving Provincial Government employees - well beyond my mandate. While I therefore do not make any recommendation on the issue, I urge

5: Narration and Summary of Facts

responsible Ministers of the Province to enunciate a policy, or revise existing policy to address situations such as is evidenced by the letter writing occurrence I have chronicled here.

Again the issue of the younger daughter's care, if Dr. Turner were again incarcerated after the extradition decision by Canada's Justice Minister, came to the fore. The issue was discussed, on 09 June 2003, with Dr. Turner when home-visited by a CYFS social worker. The worker noted:

Dr. Turner stated that ... [her daughter, now 13 years old] will stay with family friend ... [the St. John's girlfriend], for the first little while if she [Dr. Turner] has to go into custody. She stated that ... [her son] and his girlfriend have agreed to care for ... [the daughter] if her time in custody continues for longer than a few days. I discussed my concern about ... [the daughter] spending too much time alone again as was the situation last December. Dr. Turner stated that she agreed that ... [the daughter] should not be alone as much as she was in December [2002].

In the result, the need for an arrangement for the daughter's care did not arise. Dr. Turner was not taken into custody after Canada's Justice Minister decided on 09 June 2003 that Dr. Turner should be surrendered to the United States. This was because she had already appealed aspects of the underlying extradition committal proceeding which

5: Narration and Summary of Facts

occurred in 2002 and had been released on ‘bail’ pending argument on 25 and 26 September 2003 of the appeal.

In June 2003, a development in the Turner family cast light on a significant policy of the Board, in fact, all Boards in the Province. This is the policy on parental discipline of their children.

The factual context of the development is provided by a note to the Board’s computer data system written by a CYFS social worker following a home visit on 04 June 2006 to Dr. Turner:

When I arrived Dr. Turner appeared to have been crying and she stated that she was feeling very overwhelmed. She stated that ... [the younger daughter’s] behaviour over the past several days has been very bad and that she and ... [the daughter] had an argument this morning that resulted in her slapping ... [the daughter] in the face twice. She stated that ... [the daughter’s] behaviour has included yelling, name-calling and refusing to follow the rules at home. She stated that she hit ... [the daughter] this morning after ... [the daughter] called her an ‘idiot.’

Further along in the note, the CYFS worker recorded that she

[s]poke with ... [the daughter] privately and she confirmed that her mother had slapped her twice in the face this morning with an open hand. There were no obvious marks on ... [the daughter's] face. ... [The daughter] stated that her mother then locked her out of the house for approximately 10 minutes and she went into the back garden. ... [The daughter] stated that her mother was upset with her for calling her an 'idiot.' She said that her mother is feeling very stressed.

The worker, as recorded in her note, then

[m]et with Dr. Turner and ... [the daughter] together. I discussed physical discipline, such as slapping, and the impact that this can have on children.

The position taken by Dr. Turner was that

she was not going to tolerate ... [the daughter] treating her with disrespect and she stated that she believed that physical discipline was appropriate in some situations.

The Board worker responded by

... [discussing] the stress facing the family and the impact that this is having on family functioning.

While protocols between the Royal Newfoundland Constabulary and RCMP operating in Newfoundland, on the one hand, and representatives of the Province, on the other,

5: Narration and Summary of Facts

were written under the child welfare legislation in force before the new *Act* took effect on 05 January 2000 (and are currently undergoing review and revision), clear to me is that the zero tolerance policy embedded in the existing protocols - investigate and report to police all child mistreatment allegations - is unlikely to change.

An illustration of the respect of CYFS for zero tolerance is close at hand. When Dr. Turner on 10 April 2002 informed a St. John's CYFS social worker of her understanding from her younger daughter that she had once been hand-smacked (more accurately, hand-clipped) on the back of one of her thighs by her stepmother, the allegation had been both investigated (by CYFS at the St. John's and Western Regional Health and Community Services Boards) and reported by CYFS in St. John's to the appropriate western Newfoundland office of the RCMP. (The same process was employed by St. John's CYFS in response to a further allegation by Dr. Turner to CYFS that her daughter's father had kept the child in her bedroom talking to her for several hours about moving from Portland Creek, where the father resided, to live with Dr. Turner in St. John's).

5: Narration and Summary of Facts

Considering the zero tolerance policy of the Board on reporting alleged child mistreatment, this incident should have been immediately reported by CYFS to the Royal Newfoundland Constabulary. The principal reasons for not reporting, I gather from evidence given before me by the involved CYFS social worker, were that Dr. Turner self-reported that she had twice slapped the younger daughter. The daughter did not sustain any physical marks or other injuries and the incident occurred in a stressful situation. Those reasons, if I correctly understand them, did not, in my view, amount to justification for suspending the zero tolerance policy in these circumstances. Perhaps the Constabulary would not have concluded that any criminal charge was warranted. That, however, is not the point. Zero tolerance means just that. The incident was not an occasion of accidental, trifling physical contact between mother and daughter. And, one more point. Dr. Turner seemed unphased by the CYFS social worker's counselling to her not to use physical discipline. Rather, as I reported above, Dr. Turner's position was that physical discipline, in her view, was appropriate in some situations. (In contrast, her second ex-husband and his spouse acknowledged the discipline of the daughter at their Portland Creek home should not have occurred).

5: Narration and Summary of Facts

By 22 July 2003 when a CYFS social worker home-visited Dr. Turner, she was preparing to move to 18 Brophy Place with Zachary and her younger daughter. The worker's note of the visit includes reference to future plans for both Zachary and the daughter. She said she needed counselling (which she wanted the Bagbys to attend) to assist her decide what future care was best for Zachary if she were extradited to the United States. And, in any event, she expressed her preference for her daughter to return to Portland Creek to reside with her father and attend school there in September 2003 to avoid the past "instability" the daughter had experienced while residing in St. John's.

The social worker as well as a Regional Director spoke by telephone, on 23 July 2003, with the Janeway Family Centre and the Office of the Child and Youth Advocate pertaining primarily to counselling arrangements for Dr. Turner.

5.13 Office of the Child and Youth Advocate

Four months to the day - 18 July 2002 - after Zachary Turner's birth, the Office of the Child Youth Advocate opened

5: Narration and Summary of Facts

in St. John's for business. On that date - 18 November 2002 - Dr. Turner was incarcerated at the Correctional Centre for Women in Clarendville (having been judicially committed to await the Canada Justice Minister's decision whether to extradite her). And her son Zachary was living with his paternal grandparents, David and Kathleen Bagby, in St. John's. Nine months later to the day - 18 August 2003 - Zachary was murdered.

During those nine months, the Advocate's Office made no inquiries about his "rights and interests," to quote from the statutory mandate of the Advocate in section 3 of the *Child and Youth Advocate Act*.⁸⁴

The Advocate's Office knew from media reports that Zachary's mother, Dr. Turner, was unemployed, living in a sole parent family unit with Zachary, and incarcerated temporarily pending executive decision by Canada's Justice Minister whether to extradite her to the United States to be tried for the murder of Zachary's father. Perfunctory inquiries, for example, to the facility where she was incarcerated would have informed the Office that Dr. Turner had more than once

5: Narration and Summary of Facts

attempted suicide, was there subject to suicide watch and was under psychiatric care of a St. John's psychiatrist.

Nothing the Office knew promoted a need to know more or raised concern for Zachary.

In fact, no effort was made by the Office to ascertain whether any advocacy role beckoned - for example, whether the mother's mental health enabled her to ensure Zachary's rights and interests as an infant boy; whether state services were being provided to ensure Zachary's mother possessed the capacity to parent him; whether all available information touching on Zachary's welfare was in possession of community, health and financial state service providers; whether, in fact, state service providers had any involvement with the child.

When, eventually, Dr. Turner contacted the Advocate's Office about Zachary's future custody, the Office's response was simply reactive.

She made her contacts with the Office in December 2002, and in June and July 2003.

5: Narration and Summary of Facts

In December 2002, while incarcerated at the Clarendville Correctional Centre for Women, Dr. Turner wanted to meet with her four children (two from her first marriage, the sole child from the second marriage, and Zachary) simultaneously at the Centre on 23 and 24 December 2002. Staff at the Centre declined her request. They did so because of the resulting crowded conditions this would produce in the visiting room or for security reasons; perhaps both. Dr. Turner telephoned her St. John's girlfriend who, in turn, contacted the Advocate's Office. The Office responded by contacting a Director in Region at the St. John's Regional Health and Community Services Board about Dr. Turner's concern. The Director in Region replied that arrangements for 'staggered' visits by the four children with Dr. Turner had been made.

On 02 June 2003, Dr. Turner approached the intake worker at the Advocate's Office in person. She was referred there by a counsellor employed with the Board in St. John's. On an Intake Form of that date which stated Zachary's name phonetically - sometimes as "Sacarey" and at other times as "Sacrey" (later changed to "Zachary") - the worker recorded:

Ms. Turner has been charged with murdering her husband [in fact, her former boyfriend] in the United

5: Narration and Summary of Facts

States and is fearful that she will be extradited next week [based on the decision of Canada's Justice Minister which she anticipated on 09 June 2003]. She has been informed by legal aid [the Newfoundland and Labrador Legal Aid Commission] that they will not represent her in a custody matter should she be returned to the U.S.

A computer entry at the Advocate's Office on the same date fleshes out Dr. Turner's concern:

Ms. Turner is seeking assistance from our office in relation to a custody matter concerning her son. Upon being charged with murdering Sacarey's father the paternal grandparents [the Bagbys] came to Newfoundland and they have been involved in numerous custody applications[s] since that time. In November while Shirley was in the Correctional Facility in Clarenville she agreed to the grandparents caring for Sacarey.

This action was based on a consent order and she has also consented to them seeing Sacarey every second day. She is concerned with what will happen to Sacarey in the event she is incarcerated again. She indicates she has no family or friends who are able to care for Sacarey and she does not believe it would be in his best interest to be with the grandparents in the long term. She believes they love her son but given the circumstances she does not trust them and is concerned about what they will tell him about her.

The "custody matter" to which Dr. Turner was referring was an application for custody of, or access to, Zachary

5: Narration and Summary of Facts

commenced by the Bagbys in Unified Family Court in July 2002.

The computer entry continues (in part):

She [Dr. Turner] is currently being represented by ... at Legal Aid ... in the family court matter but is concerned that it has been indicated that should she be extradited that they will not represent her because they do not have jurisdiction. She advised she would not be able to pay for a lawyer on her own behalf. She also believes that there needs to be an independent assessment to determine what would be in Sacarey's best interest. [The Legal Aid lawyer] is following up on this as is ... her child protection worker.

The response of the intake worker, which concludes the computer entry, states:

Advised Shirley that I was not sure what if any role this office could play given the circumstances but that I would call ... [her child protection worker] and ... [the Legal Aid lawyer] and get back to her.

Contacted the same date, the Legal Aid Commission lawyer representing Dr. Turner informed the Advocate's Office the issue of an assessment related to the Bagbys' Unified Family Court custody proceeding was already being discussed with the Bagbys' lawyer. She was unable to say or do anything, at least for the present, to allay Dr. Turner's

5: Narration and Summary of Facts

concern about becoming ineligible for legal aid representation in the proceeding.

And, Dr. Turner's child protection worker reported, as recorded by the Advocate's Office, that

there was a debate in November [2002] regarding [Child, Youth and Family Services] doing the assessment as it was felt that it was more appropriately addressed by the court.

The debate occurred in November 2002, in advance of the decision of the Supreme Court Trial Division Chief Justice on 14 November 2002, which committed Dr. Turner into custody to await determination by Canada's Justice Minister whether she should be extradited to the United States. As the Advocate's Office intake worker noted, based on her continuing telephone conversation with the child protection worker:

There was a caregiver [a person unrelated to the Turner family] identified at that time in the event that Shirley was incarcerated and did not agree with Sacrey being placed with the grandparents. [However] [s]he did agree to placement with the Bagbys at that time.

"[A]t that time" refers to when Dr. Turner was incarcerated on 14 November 2002.

5: Narration and Summary of Facts

Dr. Turner was now raising again the need for an independent assessment to assist her decide who would best serve as caregiver to Zachary if she were imprisoned a second time.

The Advocate's Office record of the conversation with the child protection worker continues on another related subject - the attachment between Dr. Turner and Zachary.

[In earlier discussion with the child protection worker] Shirley felt and ... [the protection worker] agreed that she [Dr. Turner] needed counselling by someone experienced in the area of attachment [the protection worker] requested approval from her superior to cover the cost but it was not approved.

When, on 12 June 2006, the Advocate's Office spoke with her, the supervisor of the child protection worker assigned to Zachary candidly put the issue of an assessment in perspective: Zachary's future parenting was before the Unified Family Court in the Bagbys' application (the implication being that the Court could order the assessment, if necessary, if evidence properly admitted by the Court supported the need for an assessment). Besides, the supervisor pointed out, Child, Youth and Family Services felt that Zachary was

5: Narration and Summary of Facts

well cared for by the Bagbys in his mother's absence [from November 2002 to January 2003 while she was in the Correctional Centre for Women].

Of the accuracy of that opinion, I haven't the slightest doubt.

... [W]hile this may be the case,

the Advocate's Office replied,

Shirley is struggling with what is in her son's best interest and given the circumstances of this case it would seem that an assessment would be helpful and could be supported through ... [the Board's] funding.

As for funding of an assessment which the Board was not inclined to undertake, the Board supervisor reported to the Advocate's Office that

... until quite recently it was the intention of the Bagbys to pay for an assessment by [a named professional person practicing privately in St. John's]. However since that time the [Pennsylvania] police have contac[ed] them to confirm that they are standing by their statement [in the Pennsylvania State Troopers' investigation of Dr. Bagby's murder] and when they confirmed that they were doing so the situation deteriorated between Shirley and them. It was at this time that they decided that they should wait.

5: Narration and Summary of Facts

(Dr. Turner learned of the Bagbys' position respecting their police statements from correspondence between their lawyer and Dr. Turner's counsel).

That the Bagbys in their custody/access application to Unified Family Court, to which the supervisor was referring, would have even contemplated consenting to, much less paying for, an assessment that could (although unlikely) recommend against them having future custody of Zachary if his mother was again incarcerated, is no small indication of the unselfish concern they harboured for their grandson.

Later the same date, the Advocate's Office spoke with a Director in Region of the Board's Child, Youth and Family Services. She was prepared to discuss the assessment issue with the supervisor. Then she turned to the related issue of the attachment between Zachary and Dr. Turner and suggested a person who could address this question with Dr. Turner. Funding would not be an issue in provision of attachment counselling to Dr. Turner because this person was employed by Janeway Family Services, an organization that provides the service without charge, and the person at Janeway Family

5: Narration and Summary of Facts

Services had considerable experience dealing with attachment issues between parent and child.

There was to be no more talk about an assessment. However, the attachment issue persisted. On 07 July 2003, Dr. Turner's child protection worker, in response to a telephone call from the Advocate's Office, stated that she had commenced discussions with an attachment counsellor at the Janeway Family Centre which provided its services without charge. She promised to inform the Advocate's Office of the result. Although no record exists at the Advocate's Office, the Board promptly finalized arrangements for Dr. Turner to be seen at the Janeway Family Centre and informed the Advocate's Office accordingly.

On 18 July 2003, the Advocate's Office briefed Dr. Turner on its conversations with the Legal Aid Commission lawyer and with Child, Youth and Family Services. With that, the contact of the Advocate's Office with Dr. Turner and Zachary concluded.

By the time of Dr. Turner's contact with the Advocate's Office in June and July 2003, the St. John's girlfriend had

5: Narration and Summary of Facts

started to weary of her self-appointed role in Dr. Turner's life. Sometime in the first trimester of 2003, she telephoned the Advocate's Office. She reached the person with whom she had spoken at the Advocate's Office in December 2002, on behalf of Dr. Turner about Christmas access to her children at the Correctional Centre for Women. (She was, likewise the same person who had helped facilitate Dr. Turner speaking with the Provincial Director of Child Welfare in June 2002. Except that on this occasion, in 2003, she was seeking guidance for herself).

As noted by the Advocate Office's employee:

The call related to the impact that her involvement with Shirley Turner was having on her family. She advised me that while she was trying to be a friend to Shirley Turner and assist her with ongoing problems, she was finding it stressful in maintaining the role. She talked of conflict between herself and her husband because of her involvement with Shirley Turner. She also felt a lot of decisions being made about Shirley Turner were out of her control. I advised ... [the St. John's girlfriend] that she would need to evaluate if she could continue her involvement in Shirley Turner's life in lieu of the impact it was having on her and her family. ... [The St. John's girlfriend] indicated she felt guilty about not being able to respond to Shirley Turner's needs but recognized now that she needed to do something to improve her own family circumstances.

5.14 Attachment Therapy

Returning to Dr. Turner's need for professional assistance with her attachment to Zachary, the child protection worker at the Board arranged on 22 July 2002 for Dr. Turner to be seen by Janeway Family Services, and informed Dr. Turner and the Advocate's Office the next day. What is more, Janeway Family Services agreed to meet with Dr. Turner the following week.

As a result of Dr. Turner's call to the organization, her first appointment was fixed for 30 July 2003.

The most daunting relational problems affecting parents and their children pass through Janeway Family Services. Not least of them involve children of parents imprisoned at Her Majesty's Penitentiary which the organization's offices overlook.

Driven there by the Bagbys who waited outside, Dr. Turner arrived early for her appointment, circled nearby Quidi Vid Lake on foot, then returned to Janeway Family Services to be met by its two professionals, both social workers and

5: Narration and Summary of Facts

counsellors. They did not take long to identify Dr. Turner's abiding concern. Zachary was not adequately attached to her; certainly, not in the way he responded to the Bagbys. Although not prepared to make a definitive diagnosis at an initial interview, one possibility they considered, based on their observations of, and interview with, Dr. Turner, was that the bonding between Dr. Turner and Zachary might have been "conditional."⁸⁵

Dr. Turner's concern about attachment between her and Zachary was based, at least in part, on several incidents in which Zachary had demonstrated preference for the company of persons other than his mother. The largest number of witnesses to these incidents were guests at Zachary's first birthday party held at a MacDonald's outlet in St. John's on 21 July 2003. On that occasion, several guests reported that Zachary insisted on being with the Bagbys throughout the party, prompting Dr. Turner to say to them:

You take him, he obviously loves you more than me, so why don't you take him.

She then retired to the back of the rented party room to cry and make cell phone calls. This incident recorded by a

5: Narration and Summary of Facts

video/audio camera duplicated prior occasions. Other evidence indicated Dr. Turner's detachment from Zachary commencing at birth which witnesses regarded as unusual, especially considering Zachary's very young age.

The counsellors ended their initial meeting with Dr. Turner by setting eight weekly appointments, from 10 September to 29 October 2003, to which they asked, and Dr. Turner agreed, that Zachary accompany her. Dr. Turner appeared to the counsellors "very happy" with this arrangement.

The counsellors would never again see or hear from Dr. Turner. They would never meet Zachary.

After returning to the Bagbys, parked outside Southcott Hall, Dr. Turner was asked for her opinion of her first meeting at the Janeway Family Centre. She replied to the effect that

at last, I've found someone who understands me as a mother whose child's father has left him.

After the meeting, Dr. Turner started making arrangements for what proved to be her last residential move.

On 18 July 2003 she had signed a lease with Newfoundland and Labrador Housing Corporation to rent 18 Brophy Place on a monthly basis, beginning 01 August 2003, for occupancy by her, her son Zachary and her younger daughter. She moved to the two-storey row-housing unit as scheduled.

5.15 Community and Health Services: Part 4

After Dr. Turner's visit to Janeway Family Services, she had one further contact with the St. John's Regional Health and Community Services Board, CYFS. The contact was a home visit on 05 August 2003 made by a CFYS social worker to 18 Brophy Place which Dr. Turner occupied on 01 August.

She wanted the worker to contact the Bagbys to attempt to persuade them to participate with her at future scheduled counselling sessions, which Dr. Turner had scheduled at Janeway Family Services.

Her younger daughter was present. She told the worker she was leaving St. John's this week to travel to Portland Creek to visit her father and "may stay with him for a while."

Most of Dr. Turner's conversation during the visit, however, focused on a media project in which she had agreed to become involved. The worker's home visit note read:

Dr. Turner stated that she is going to be interviewed for a television show called '48 Hours' which will be shown on the CBS Network. She stated that the reporter will be coming to Newfoundland to meet with her before the end of the month. She also stated that the television network are going to pay for her [Pennsylvania] lawyer to come to Newfoundland as well. I asked Dr. Turner about the purpose of this interview for her and she explained that she would like an opportunity to talk about this experience and explain the situation from her point of view. She stated that she would like to talk about her innocence and how Legal Aid has refused to represent her. Dr. Turner stated that the television show cannot be aired until after a [further] decision [by Canada's Justice Minister] regarding her extradition is given [after her appeal to the Court of Appeal] or a trial is completed. Dr. Turner stated that CBS does not give her any financial compensation for this interview but other television shows or other media companies may pay her for her story if she is found not guilty after a trial.

(The next entry in the Turner family file reported the deaths of Zachary and Dr. Turner on 18 August 2003).

5.16 Unmarried relationship: Young man met in bar

On the night of 24 July 2003, Constable [...] was on duty with the Royal Newfoundland Constabulary.

During his shift that night he received a telephone call from a young male. The caller would not provide his name to Constable [...] or make a formal complaint, although was invited to do so, if he wished. The caller reported that he had a couple of days earlier been sexually intimate with an older woman. He had since learned that she stood charged for Dr. Andrew Bagby's murder in the Commonwealth of Pennsylvania. As a result, he decided he wanted no further contact with her. However, he reported to Constable [...], he could not "get rid of her." He stated that the woman, who he identified as Dr. Turner, was persisting in efforts, by telephone, to make contact with him. Constable [...] advised the caller to keep a record of Dr. Turner's behaviour in relation to him should the caller wish in future to make a criminal harassment complaint against her. If he decided to make a complaint, Constable [...] informed the caller he should contact Constabulary members carrying the extradition file on Dr. Turner. The caller thanked Constable [...] for the information and hung up.

There are several forms of criminal harassment offence created by the *Criminal Code*.⁸⁶ Among them is the offence of harassing telephone calls under section 372(3). A breach of

this offence provision of the *Criminal Code* would have been likely to amount to a violation of the condition of Dr. Turner's 10 January 2003 Recognizance that she keep the peace and be of good behaviour. It would, in my opinion, have provided probable grounds for arresting Dr. Turner under *Criminal Code* section 524(1) or (2) and charging Dr. Turner with the offence of breaching a Recognizance under *Criminal Code* section 145(3); and would provide grounds for applications by the Attorney General of Canada, under *Criminal Code* sections 524(3) and (4), to have Dr. Turner detained in custody; and under *Criminal Code* sections 770 and following, for an order to forfeit Dr. Turner's Recognizance.

None of these steps were taken because the male caller to Constable [...] did not identify himself and did not, either on 24 July 2003 or at any other time, make a complaint against Dr. Turner.

Constable [...] informed my counsel that without the name of the caller or a complaint from him, he had no basis on which to open a file or commence an investigation.

5: Narration and Summary of Facts

The male caller had met Dr. Turner on 04 July 2003 at a licensed George Street, St. John's, establishment. They talked, danced and exchanged telephone numbers. The next day this man called Dr. Turner and made a 'date.' The 'date' was on 06 July when they dined together in St. John's and afterwards they were intimate. There was a second 'date' in the week of 07 July at Dooley's in St. John's, apparently at Dr. Turner's urging, although reluctantly on his part. On this 'date,' during which they were again intimate, he informed Dr. Turner he wanted their relationship to end. "I just thought," he told Dr. Turner, "we gonna be friends and nothing else besides that." At the time, he would later inform the Constabulary, Dr. Turner was "fine" with that.

But after the second 'date,' Dr. Turner continued the habit which she had already established of telephoning this man. From about 12 July 2003 to 13 August 2003 (both dates inclusive), Dr. Turner telephoned him about 200 times. Some of the calls were made at about 3:00 a.m. and 4:00 a.m. Not a few of the calls were "hang ups;" others resulted in conversations that a witness observed caused him to be "upset and irritated." The witness stated that during some of the calls, he yelled at her to stop telephoning him. An employment

5: Narration and Summary of Facts

associate of the man reported that he was “strung out” by Dr. Turner’s telephone calls.

During one or some of the calls, Dr. Turner denied having killed Dr. Bagby who, she alleged, was “obsessed” with her and had telephoned her “an awful lot of times.” She did not, she said, think of Dr. Bagby as “an intimate relationship, more as a friend.”

After the man, anonymously, telephoned Constable [...] on 24 July 2003, Dr. Turner’s telephone calls to him continued. Whether he told Dr. Turner that he contacted the Constabulary, he could not recall. During the continuing telephone calls from Dr. Turner, he told her,

**I really don’t want anything to do with you anymore ...
you’re not acting rational right now.**

But Dr. Turner told him she had a reason to phone him, because of something she learned since he ended their relationship. The reason, she explained, was that she was pregnant by him. In a subsequent call, Dr. Turner told him she had an appointment at an abortion clinic and wanted to meet to discuss the proposed abortion with him. About 3:00 a.m. on

5: Narration and Summary of Facts

12 August 2003, Dr. Turner telephoned and told him her abortion clinic appointment was for later that date. On the other hand, she said he was a

fucking immature asshole,

because he refused to meet with her to make plans for their expected child. An hour later, she again telephoned. He did not answer. She left a recorded message, saying

you're so fucking immature and acting this way. Grow up and be a fucking man

and such like.

The man decided he needed to take action. About 4:30 p.m. the same day, 12 August 2003, he again telephoned the Constabulary. On this occasion, the call was received by Constable [...] of the Constabulary's Major Crimes Unit in St. John's. As on 24 July 2003, 19 days earlier, he did not identify himself. Constable [...]’s notes of the telephone call include the following:

recently had stopped the relationship [with Dr. Turner]. Since the relationship ended, he has been harassed by

5: Narration and Summary of Facts

Turner with telephone calls in an attempt to rekindle the relationship. He stated Turner had told him she was pregnant with his child and threatened to have an abortion. Advised caller I would contact Turner's lawyer - Randy Piercey about his complaint.

Constable [...] telephoned Mr. Piercey who agreed to speak with Dr. Turner.

However, without the man's name or a complaint from him, Constable [...], like Constable [...] on 24 July, did not open a file or undertake an investigation.

The same day, Mr. Piercey contacted Dr. Turner and reported to her the call he had received from Constable [...].⁸⁷

That was, apparently, the last time Mr. Piercey spoke with his client, Dr. Turner.

Later on 12 August, Constable [...] again telephoned Mr. Piercey. Mr. Piercey reported that Dr. Turner had denied making harassing calls, denied she was pregnant, and said she was

concerned that somebody would try to get ... [me] into trouble.

In the third of the three volumes of her diary, on 13 August Dr. Turner referred to this man telling her that he was considering contact with police about her calls to him; that she had received a call from her lawyer; and that she believed the young male had been responsible for the police action.

Those notifications comprised the last entry in her diary.

However, Dr. Turner's telephone calls to this man continued.

At 2:12 a.m. on 13 August, Dr. Turner telephoned him and said she had attended her appointment at a hospital abortion clinic and learned that she had miscarried. She described the biological and mechanical aspects of what had happened during the appointment as a result of which, she said, she did not have to abort. She asked the man to meet with her to discuss what had occurred at the hospital. She added that she had received a telephone call from her lawyer during which he spoke to her about the call he received from Constable [...].

5: Narration and Summary of Facts

The man again contacted Constable [...] and reported to him the further call he had received from Dr. Turner early on 13 August. However, still no name and still no complaints were provided to the Constabulary.

The calls from Dr. Turner to the man continued on 14 and 15 August 2003. During the call on 15 August between 10:00 a.m. and 10:30 a.m, Dr. Turner informed the young male that, in fact, she “may still be pregnant” as a result of receiving the results of an ultrasound. He asked that any information she wished to convey to him about her pregnancy should be communicated through her lawyer. He told her that he was not turning his back on her. He said he would contribute to financial support of the child and if she were extradited to Pennsylvania, he wanted custody of the child.

He never heard from Dr. Turner’s lawyer. He could not say the same for Dr. Turner.

5.17 Saying Goodbye

Sometime during the period 11 to 15 August 2003, Dr. Turner traveled with Zachary and her eldest son to Corner

5: Narration and Summary of Facts

Brook. The contact she had with her mother during this journey was a rare event. It was to be their last meeting.

On 15 August, Dr. Turner spoke by telephone with one of her two brothers. He would later state that during the call she gave no indication of being depressed or suicidal.

On Saturday, 16 August 2003, Dr. Turner and Zachary went swimming at Bowring Park. With them were David and Kathleen Bagby, who provided transportation for the outing. They noticed nothing “unusual about ... [Dr. Turner’s] demeanour.” The Bagbys drove Dr. Turner and Zachary back to their residence at 18 Brophy Place, St. John’s, leaving them there about 4:45 p.m.

The Bagbys would never again see Dr. Turner or Zachary alive.

Meanwhile, the man who had anonymously alleged harassment by Dr. Turner in telephone calls he made to the Constabulary, had started a new relationship. The relationship

5: Narration and Summary of Facts

with a 27-year old woman began on 15 August, the day he had received the most recent telephone call from Dr. Turner.

On Saturday, 16 August, this young man had a ‘date’ with the new girlfriend which started about 6:30 p.m. They “partied” until 5:30 a.m. Sunday, 17 August, and he drove her home at 10:30 a.m. He returned to his residence and slept until 2:00 p.m.

5.18 The Last Day

On Sunday, 17 August, this man called for his new girlfriend shortly after 5:00 p.m. (her recollection was 6:30 p.m.) and brought her to his Kelligrews residence. They walked on the nearby beach road in Kelligrews and, at his home, shared a barbecue and watched a movie. He remarked to her during the ‘date’ that Dr. Turner was “obsessed” with him. Between 1:00 a.m. and 1:30 a.m. (the girlfriend recalled the departure time from the man’s residence being about 1:15 a.m.) on Monday, 18 August, he brought her home, returned to his residence, used facilities in the adjoining duplex to launder his clothes, and then retired for the night.

5: Narration and Summary of Facts

Unbeknownst to him, two other persons also walked the Kelligrews beach road and visited his residence on 17 or 18 August 2003. They were Dr. Shirley Turner and her younger son, Zachary.

Sunday, 17 August 2003, began for Dr. Turner and son Zachary in the bedroom they shared on the second floor of 18 Brophy Place.

Besides meeting Zachary's requirements, Dr. Turner spent the day writing letters, making telephone calls, visiting a friend and running errands.

Dr. Turner wrote several letters on (and during the three weeks before) 17 August: (i) dated 30 July to her older son, who was living with her at 18 Brophy Place; (ii) dated 07 August, to his girlfriend, who was also living with her at 18 Brophy Place; (iii) an undated letter to her younger daughter who had left 18 Brophy Place to visit her father in Portland Creek; (iv) dated 16 August, to one of her brothers who was living outside Newfoundland; (v) an undated letter to her older daughter who was then living in Mississauga, Ontario; and (vi) dated 30 June, also to this same daughter.

5: Narration and Summary of Facts

Half of the letters contained nothing material to my Review. However, the letters to her son and older daughter considered the prospect of Dr. Turner eventually being extradited to Pennsylvania. The letter, dated 30 June, from Dr. Turner to her older daughter, not mailed, was found in 18 Brophy Place after Dr. Turner's death. Yet, during a telephone conversation with that daughter on 17 August, a conversation repeatedly punctuated with "Mom loves you," Dr. Turner said she had mailed the letter.

Dr. Turner told her daughter during that conversation that she had been writing all day, and that when the daughter received the letter she would know why. She read the daughter the letter, dated July 30, that she had written to her older son. She then referred to the contents of her 30 June unmailed letter to her older daughter which asked that daughter to look after Zachary if Dr. Turner were extradited. The daughter asked her why she was not as chatty as she customarily was. Dr. Turner replied that she was troubled over the fact the young man she had met at the bar was not being nice to her and was upsetting her. She informed the daughter she planned that day to go out driving with Zachary and that she would be fine, because Zachary would be with her. She

5: Narration and Summary of Facts

had, in prior telephone conversations, told the daughter that she did not know if she could trust the Bagbys. In the 17 August telephone conversation, she told her daughter she planned to try to get along with them because they loved Zachary.

Shortly before noon that day, Dr. Turner left 18 Brophy Place in company with Zachary. She drove her son's vehicle. First, she went to a take-out restaurant where she bought french fries and chicken nuggets for Zachary. Then she went with Zachary to the St. John's address of an older married couple, arriving there between 11:30 a.m. and approximately 12:30 p.m. The couple had themselves just arrived home from attending a church service.

(The wife was her St. John's friend who had often advocated for Dr. Turner to ensure that she and Zachary received all the services they needed).

The visit was unannounced; not unusual for Dr. Turner. Dr. Turner talked, as usual,

like water running out of the tap,

5: Narration and Summary of Facts

recalled the woman. What was unusual, however, was that Dr. Turner was driving her son's car. Her son was concerned about his mother driving his vehicle because she did not have a Newfoundland driver's license.

She told the couple she needed a respite from 18 Brophy Place because her son had two cats and a dog. She said she planned to fill a prescription that consisted of Ativan, detailing that it consisted of 30 pills of which she was supposed to take two daily, but that she planned to try to "get by" taking only one. She mentioned that she planned to pick up a Child Tax Credit cheque the next day, which she intended to spend in Corner Brook. She reported that the Bagbys intended to drive Zachary and her to Corner Brook, and wondered aloud whether she should use the occasion to visit her mother in Corner Brook, whom she said she had not seen in about a year (although she had recently returned from visiting her in Corner Brook). She told the couple that the Bagbys were very evident and active in her life, taking her anywhere she wished to go and doing whatever they could to lessen her stress and thus enable her to care very well for Zachary. She said the young man she had met at the bar knew of information about her that had not been published. The couple encouraged her to spend

5: Narration and Summary of Facts

the afternoon with them. When Dr. Turner declined that invitation, the woman suggested Dr. Turner visit the couple's daughter later in the day. Dr. Turner agreed she would (although she did not do so). She said she planned on leaving the couple to go to her previous address to obtain any mail which may be there for her.

Then (or perhaps shortly before 17 August), Dr. Turner told the woman - her St. John's girlfriend - that Pittsburg attorney, Tony Mariani (a former assistant United States Attorney and subsequently a criminal defense lawyer), was

negotiating with a team in the US to come to Newfoundland and do a Stay on Dr. Turner (presumably, an application to stay the criminal charges for which the Commonwealth of Pennsylvania was seeking to have Dr. Turner extradited back to the United States for trial).

She told her St. John's girlfriend that her younger daughter, at age 13 years "did it all," in reference to the house work. The girlfriend wondered, in response, about the "awful lot of responsibility" this meant for the daughter. To which, she said, Dr. Turner replied

no, all youngsters should be able to pull their weight.

5: Narration and Summary of Facts

During the visit the woman said Dr. Turner displayed no indication of depression.

She was no different than any [other] time she came.

Viewing her objectively,

I felt quite comfortable letting her leave the house that day.

But Dr. Turner had a major concern; a concern she often talked about with this couple, although not on this Sunday in August 2003. Referring to a meeting with Dr. Turner earlier in 2003, the husband stated that, in his opinion,

where the child was going to go was a major concern.

The root of this concern, said the wife, was that if the Bagbys undertook future custody of Zachary,

she was afraid he would grow up warped because they wouldn't be able to hide from him their ... hatred, ..., of her. ... [S]he was really afraid ... [of] the child growing up hating her. She thought that maybe she might get the death penalty But she also thought it was possible that she would get a life term and be out when the child was about 25 years old, ... and she thought that then, if the Bagbys did things the way she

would have liked them to be done, she could have picked up a relationship with her child because they [the Bagbys] would be going back and forth to jail ... [with Zachary]. [But] she realized that that very likely may not happen. And she was very concerned.

Nonetheless, at this Sunday afternoon visit the wife quoted Dr. Turner as having said that, other than her and her husband, Dr. Turner regarded the Bagbys and the woman, who lived in Mount Pearl, as her only friends.

When she left the house [that Sunday],

the wife recalled,

she was as happy as could be. Strange thing, though, that she did do, was [she] brought me a candle ... a yellow candle. I really think that she was saying that we were good friends, and good bye.

During the period the wife and her husband had known Dr. Turner, since she came to Newfoundland on 14 November 2001, she said Dr. Turner never indicated that she contemplated suicide. She once told her that she had a friend who committed suicide⁸⁸ and that she knew other persons who had also done so.

5: Narration and Summary of Facts

On leaving the couple's home on 17 August at about 1:10 p.m., Dr. Turner drove with Zachary to her previous residence, where she had lived before moving to 18 Brophy Place. She told a person living there that she was expecting a cheque, for which she would come back to the house the following day.

From there Dr. Turner went to a pharmacy which filled the Ativan prescription her psychiatrist had written for her on 15 July 2003.

Then, Dr. Turner and Zachary returned to 18 Brophy Place.

About 1:30 p.m., Dr. Turner spoke with her Mount Pearl girlfriend. In the girlfriend's estimation, Dr. Turner seemed "fine" and asked the girlfriend to telephone her later in the day.

For much of the rest of the daylight hours of 17 August, Dr. Turner was observed to be writing at 18 Brophy Place. However, as I noted earlier, the fruits of her writing have not surfaced. A letter from Dr. Turner to one of her brothers addressed to him at his Edmonton residence, and a package

5: Narration and Summary of Facts

from Dr. Turner addressed to a resident of Daniels Harbour were found in 18 Brophy Place the next day; however, the date or dates when they were prepared is not known to me.

On the night of 17 August, at about 10:30 p.m., Dr. Turner's Mount Pearl girlfriend telephoned her. The girlfriend of Dr. Turner's son took a message from her requesting Dr. Turner to call back.

By 11:00 p.m. on 17 August 2003, Dr. Turner and Zachary were both in their bedroom on the top floor of 18 Brophy Place. Her son was preparing for bed. He was scheduled to work early the following day at a downtown St. John's café. The son's girlfriend was watching television.

About 11:00 p.m. on 17 August, her son spoke with her. She was, he observed,

fine, and didn't mention having to go anywhere.

The son's girlfriend apparently also spoke to Dr. Turner because, at 11:38 p.m., Dr. Turner returned her Mount Pearl girlfriend's telephone call of about an hour earlier. The call,

established by the Constabulary to have been made from a land line telephone at 18 Brophy Place, was quite extraordinary.

When Dr. Turner made the telephone call, her Mount Pearl girlfriend was not at home. However, the girlfriend's voice message manager recorded the call. In speaking to the message manager, Dr. Turner said she was in Kelligrews at the residence of the man she had met at the bar. He was, she said, in the bathroom as she spoke. She said Zachary was with her and presently sleeping. She said she planned to stay there overnight. She and the man, she reported, were "working things out and talking." She said she had "some interesting, surprising things to tell" the girlfriend. She couldn't talk now, she added, but would call again the next day.

This message from Dr. Turner was a tissue of invention.

Shortly before or after the call to her Mount Pearl girlfriend, Dr. Turner telephoned her younger daughter. She called from 18 Brophy Place. Being unable to reach her, Dr. Turner also left a voice message for her. The details I did not ascertain.

A third telephone call made by Dr. Turner that night followed her call to her Mount Pearl girlfriend. The call was to the wife of the couple whom she had visited earlier that day. Being unable to reach her, Dr. Turner also left a voice message at her residence. I could not determine the details of the call.

Around 11:30 p.m. Dr. Turner's son was preparing for bed, he recalled, when

I heard the car leave the driveway, she left with my brother [Zachary]. I thought she was going to the store but found it strange taking my brother at this late time.

A Scene Report prepared later by the Office of the Medical Examiner would report that the son's girlfriend at 18 Brophy Place was the last person to see Dr. Turner and Zachary alive. She was watching television when mother and son departed 18 Brophy Place. However, information not available to the Examiner's Office when that Report was prepared, proved otherwise.

5.19 Deaths of Zachary Andrew Turner and Shirley Jane Turner

5: Narration and Summary of Facts

Dr. Turner's departure time from 18 Brophy Place was about midnight.

Taking Zachary late at night with her for a drive was not altogether unusual. When he was fussy, Dr. Turner drove about with Zachary to settle him down. This night, however, Zachary was calm. When Dr. Turner awakened him from his comfortable bed, he began to cry.

Taking Zachary in these circumstances, her son's girlfriend also thought was strange. She witnessed the departure of Dr. Turner and Zachary without explanation from Dr. Turner. Shortly afterwards, the son's girlfriend retired.

The next person known to have seen Dr. Turner alive was an employee of Perrin's Guest Home, a private care facility for older persons on Perrin's Road in Long Pond, at 12:45 p.m.

Considering the distance from 18 Brophy Place, St. John's to Long Pond (about 40.3 kilometres), Dr. Turner in company with Zachary probably reached this Conception Bay, Newfoundland, community by travelling west on the Trans

5: Narration and Summary of Facts

Canada Highway, then north from the Highway along the Foxtrap Access Road to the Conception Bay Highway, and then from the Foxtrap Access Road easterly along the Highway through Foxtrap to Long Pond where Perrin's Road is situated.

If Dr. Turner took this route from 18 Brophy Place, St. John's to Perrin's Road, Long Pond, the time required to drive the approximately 40.3 kilometres involved was about 30 minutes. Other routes from St. John's to Long Pond would have required considerably longer.

At 12:45 a.m. on Monday, 18 August, about 45 minutes after Dr. Turner drove away from 18 Brophy Place, the private care worker was standing outdoors on the balcony of Perrin's Guest Home when, she recalled,

a green Tempo or Topaz drove north on Perrin's Road past the ... [facility] and turned around in a driveway. The vehicle came back towards ... [the facility] and pulled into our driveway. I stood up and the lady asked me 'where is Joe's Road or Job's Road off of Fagan's Road located.' I gave her directions and asked her who she knew on Fagan's Road. She told me she was looking for the man [she had met in the bar]. I asked her where he lived to up there and she ... [mentioned the name of a homeowner]. I said that must be [mentioning the name of a homeowner's] house and I

5: Narration and Summary of Facts

gave her the directions to that house. The lady kept looking behind her while talking to me and I could see a car seat in the backseat but I didn't see anybody else in the car. After I gave her directions, she said 'thank you' and drove away.

The woman driver was wearing a beige or off-white shirt or jacket.

The private care worker did not then know the identity of the woman. When she saw a televised report of the death of a woman near Manuel's a day or two later, she realized the woman who sought directions from her early on 18 August was Dr. Turner.

Sometime in the very early morning of Monday, 18 August, the man she had dated previously was to receive one more telephone call from Dr. Turner. As best I can determine, the call was made after he returned his new girlfriend to her home at 1:15 a.m. or perhaps while he was doing so. In any event, the call to his Kelligrews residence was not answered in person. Dr. Turner left a voice message.

Environment Canada's Atlantic Climate Centre in Fredericton reported that the weather along the coast from

Foxtrap to Long Pond (in the Manuels area) on the early morning of 18 August 2003 was

overcast with thunder showers in the area of Long Pond. Thunderstorms were reported in the area between 4 and 5 AM. There was a break in the precipitation from approximately 6 AM to noon, then rain resumed. Visibility varied from 2 to 15 km in rain, haze and fog. The temperature was essentially steady at about 20 degrees [Celsius] night and day. Winds were generally from the southwest at speeds varying from 5 to 15 knots. This would be an offshore direction for the coastal area. Therefore the wave height over Conception Bay would have been zero along the coast increasing to about 0.5 metres away from the shore.

Overnight from 17 to 18 August, the tide was outward-going. Data from records of the Canadian Coast Guard indicate the tide along the coast from Foxtrap to Long Pond, Manuels, was 1.1 meters high at about 11:30 p.m. on 17 August; 0.6 meters at 3:00 a.m. on 18 August; 0.5 meters at 4:00 a.m.; and 0.4 meters for several hours afterwards. Then the tide began to come in.

The coastline facing the Ocean proceeding easterly from Kelligrews winds past Foxtrap to Long Pond, Manuels. Along the part of the coast from Kelligrews to Foxtrap is a dirt road, portions of which once formed part of the Newfoundland

Railway track. Tracking easterly from Kelligrews to Foxtrap along this road, fenced farmland is to one's right and the ocean is to the left. Where the road meets the ocean, the land continuously slopes at angles of up to about 45 to 60 degrees down to the water. The terrain on this slope is severe, covered without relief by boulders. Only fearless, agile youngsters or adults equipped with sturdy footwear and moving adroitly in the dark could be expected to negotiate the sloping coastline. Even then, attempting to traverse the slope without stumbling and falling appeared to me to be pointless and only feasible in daylight.

Access to the ocean at Kelligrews and Foxtrap (adjoining communities in the Town of Conception Bay South) can be gained by a number of routes. In the context of this narrative, the route to gaining access to the coastal road and ocean from the Conception Bay Highway (which runs parallel to the coastal road and the ocean) was by leaving the Highway at Fagan's Road in Kelligrews or one-tenth of a kilometre away along the Highway at Pine Tree Road in Foxtrap.

Fagan's Road runs north from the Highway toward the ocean and ends at the Foxtrap Marina beside the ocean. About

halfway along this route, Job's Road branches off to the left (that is, to the west).

About one-tenth of a kilometre further west along the Conception Bay Highway, Pine Tree Road also runs from the Highway (where Hickey's Funeral Parlour and, behind it, Hickey's Ambulance Service are located) northerly toward, but not extending all the way to the ocean. Rather, it ends about half way between the highway and the ocean. At the end of Pine Tree Road, Job's Road branches off to the right (that is to the east) and straight ahead is a largely grassy walking path which winds its way northerly to the coastal road beside the ocean. The coastal road in turn runs along the ocean both east and west. To the east it ends at the Foxtrap Marina. (Photographs of the area are in Appendix B).

The walking path from the end of Pine Tree Road to the coastal road beside the ocean is about two-tenths of a kilometre long.

The coastal road at the end of the walking path is rough scrubble. The distance along this road from the end of the walking path to the Foxtrap Marina is half a kilometre.

5: Narration and Summary of Facts

In other words, the distance from the end of Pine Tree Road north via the walking path to the ocean and then east along the coastal road to the Foxtrap Marina is a total of seven-tenths of a kilometre.

Who would chance this path and the ocean side road at the end of the path (both the path and the road being devoid of ambient artificial or natural light) in the middle of an overcast night of intermittent heavy rain such as on 18 August 2003?

Having obtained directions to the residence of the young man on Job's Road via Fagan's Road, Kelligrews, Dr. Turner headed there. She drove back along the Conception Bay Highway in a westerly direction, past the entrance to the Foxtrap Access Road to her left, for a short distance to Fagan's Road to her right, or a tenth of a kilometre further along the Highway to Pine Tree Road, also to her right. The distance involved from Perrin's Road was less than three and one-half kilometres.

From the Highway, she turned right onto Fagan's Road or Pine Tree Road. By one Road or the other, she reached Job's Road.

5: Narration and Summary of Facts

The time, as best I can infer from known facts, was now about 1:15 to 1:30 a.m.

Of course, no one can be certain of all of her movements during the next little while. This much, at least, is certain.

She walked or drove from the area of the man's residence, along Job's Road to Pine Tree Road, made a 90 degree left turn onto Pine Tree Road and traveled along Pine Tree Road to its intersection with the Conception Bay Highway. There she stopped on or beside the parking lot of Hickey's Ambulance which faces onto Pine Tree Road. The parking lot is tucked in behind Hickey's Funeral Home which fronts on the Conception Bay Highway at its intersection with Pine Tree Road.

She exited the vehicle with a photograph. She walked over to one of the parked ambulances on the parking lot and secured the photograph between the rear door and door frame. (Only six days later would the proprietor of Hickey's Ambulance Service discover the photo, while having the vehicle serviced at a nearby garage).

5: Narration and Summary of Facts

She then retraced - in her vehicle or on foot - her route from the Hickey's Ambulance Service parking lot along Pine Tree Road to the end of the Road and made the 90 degree right turn onto Job's Road. Less than 100 yards beyond the turn, she pulled to the right side of Job's Road. From the driver's seat she could observe through a patch of trees and bushes the front door of the man's rented duplex unit. In parking her vehicle, the front passenger side wheel slipped over the edge of the road and into a ditch. Indentations in the road and shoulder indicated she attempted but was unable to extricate the vehicle wheel from the ditch.

Then, if not earlier when she initially arrived in the area of the man's residence, she walked into the driveway of his residence. Under his personal vehicle beside an ambulance also parked there, she placed two photographs: one, a snap of her and Zachary; the other, a photo of herself in brief attire. On the ground beside the two photographs she laid a used tampon.

(One school of thought, considered by the RNC, was that, by leaving a photograph at the workplace and photographs and the tampon at the residence driveway of the

young man, Dr. Turner may have intended to frame him for the murder of Zachary and her own death that she was about to bring about).

Most probably, using the contents of the formula bottle she took out of a baby bag on the vehicle's front seat, she administered to Zachary some or all of the 30 Ativan tablets she had obtained that Sunday afternoon.⁸⁹

Dr. Turner placed the vehicle keys and the keys to 18 Brophy Place in the baby bag on the front seat, gathered up Zachary and exited the vehicle for the final time. When examined much later on Monday by the Constabulary, the vehicle doors were locked.

Into this inhospitable night, carrying Zachary, Dr. Turner walked westerly back along Job's Road to where the Road meets "the low path." She went northerly along the path to the coastal road. She then headed easterly along the coastal road beside the Ocean to Foxtrap Marina. The distance, as previously stated, was about seven-tenths of a kilometre (Appendix B.145: Maps and Photographs).

5: Narration and Summary of Facts

Walking this distance on harsh terrain was not a comfortable or efficient undertaking. Dr. Turner was wearing 9.5 centimeter high platform shoes.

For about one and one-half to one and three-quarter hours (from about 1:15 a.m. or 1:30 a.m. to about 3:00 a.m.), Dr. Turner was on foot carrying an infant on the paths and trails between Kelligrews and Foxtrap.

To say what Dr. Turner was thinking, as she made her lonely journey with Zachary in her arms, would be conjecture other than to state that, in all reasonable probability, she was seeking a negotiable entrance to the Atlantic Ocean. The first access to the sea along the coastal road negotiable for her and Zachary was at the Foxtrap Marina.

In Foxtrap, where the community of that name meets the North Atlantic Ocean and where the coastal road ends, there is a small craft marina. Around the mouth of the main wharf forming part of the basin is a collection of buildings. One of them is a small cabin-type structure, headquarters of the Foxtrap Marina. The cabin-like structure is situated beside an

5: Narration and Summary of Facts

even smaller building bearing the sign of an enterprise trading as “Ocean Quest” (Appendix B.145: Maps and Photographs).

At 10:45 p.m. on Sunday, 17 August 2003, a gentleman entered the Marina headquarters to start a five and three-quarter shift. His appointed duty was to watch over pleasure and commercial craft moored to the network of jetties in the Marina basin.

His shift was scheduled to end at 4:00 a.m. on Monday, 18 August 2003.

When not engaged in monitoring the small craft in the Marina, he passed the night listening to compact disc music and the radio. Evidently he was listening to both simultaneously. Between 2:30 a.m. and 3:00 a.m., late in his shift, rain started to fall heavily. (Rain, in the form of heavy mist, had been falling constantly during the night). Then from inside the shed he thought he heard something extraordinary,

crying like a baby crying.

At the same time he heard footsteps close by. The crying and footsteps originated from behind the shed which was windowless.

I will here permit him to speak for himself:

If ... [the sounds] had come from [outside] the front of the shed, I would have seen what it was from the front window. I paused my CD [player] to go check around. I did not have the CD playing too loudly because I wanted to be sure to hear anything outside the shed on my shift. I also went and turned down my radio - a commercial radio station - which, again I didn't have on high. I turned them down to make sure what I heard. I went toward the back of the shed, and left the shed by the side door [closer to the back], and I looked around. I was standing near the shed. It was very dark and raining very heavily.

Just after exiting the shed,

I thought I again heard the sound like a baby crying, and footsteps. I looked right, over in the direction that I had again heard the crying. The crying stopped. The crying came from an area behind the shed, where I saw a person - one person, who was short, I think - walking near the picnic tables located on a grassy area behind the shed. The person appeared to be on the path which used to be the old railway track [bed], which runs beside the picnic tables. I could still hear the person's footsteps. All I could pick out about what the person was wearing was something like a white T-shirt.

As he watched, the rain stopped. He

called out: “Is anyone there.” No one answered. As close as I ever was to the person was a couple of metres, which was at the time I first came out of the shed. I watched the person walk away - from where I stood close to the outside of the shed - along the old railway track path, out of sight into the pitch black. The old railway track path runs behind the shed and the area where you go onto the main wharf [of the Marina], as the path curves away from the Marina. I couldn’t tell if the person was male or female because the person was back-on to me and it was very dark.

He did not see them again. He did not hear any more crying;

not a single thing.

Was this man the last person to see or hear Dr. Turner and Zachary alive?

From Kelligrews to Foxtrap there was only one place where a person could be certain to gain access to the ocean on foot, especially in the middle of a dark, overcast, wet night, wearing high platform shoes. That was the end of the main wharf of the Foxtrap Marina. Not to the left of the wharf lined with the same large boulders which run along the coastal road from Kelligrews to Foxtrap; not to the right of the wharf lined with boats; but at the end of the wharf which protrudes two-tenths of a kilometre into the ocean.

5: Narration and Summary of Facts

Most probably, from the end of the main wharf of the Foxtrap Marina at or about 3:00 a.m. on Monday, 18 August 2003, Dr. Shirley Jane Turner, clutching her 13-month old son Zachary to her bosom, jumped into the North Atlantic Ocean murdering him and killing herself.

The Media has reported that Dr. Turner walked, cradling Zachary, into the ocean. That, in my carefully considered view, was very unlikely. Walking into the sea on a dark night wearing 9.5-centimeter platform shoes while carrying a child, without stumbling or falling, is improbable. The autopsy conducted on Dr. Turner's remains did not show any evidence of injuries such as bruises or scrapes to her lower limbs, ankles or feet, likely present if she had maneuvered large boulders and rocks, which line the coast from Kelligrews to the Foxtrap Marina.

When Dr. Charles Hutton, on behalf of the Chief Medical Examiner, performed a forensic autopsy on the remains of Zachary Turner on 19 August 2003, which I shall address later in more detail, he removed tissue and fluids including blood from the child's remains. A portion of the blood was tested for the presence of alcohol in the Department

5: Narration and Summary of Facts

of Laboratory Medicine of the Health Care Corporation of St. John's. Testing for the presence of Ativan was performed about 19 months later by Dr. Edward W. Randell, Ph.D., DCC, FCACB, Clinical Biochemist.⁹⁰ He had not been asked by the Office of the Medical Examiner or expected to do so earlier.

Dr. Randell reported the results of the testing in his toxicology report. The report, dated 04 March 2005, stated that whole blood from Zachary's body was found "positive" for Benzodiazepines. The concentration was 1.2 milligrams per litre (that is, 1.2 mg/L). The particular Benzodiazepine discovered was Lorazepam. A trade name under which Lorazepam is sold to the public by authority of a physician's prescription is Ativan.

On the afternoon of 17 August 2003, Dr. Turner arranged to have a prescription filled for Ativan. This prescription was given to her for her personal use, on 15 July 2003, 33 days earlier, by Dr. Doucet. The container for the prescription was found empty by the Constabulary after the deaths of Dr. Turner and Zachary.

5: Narration and Summary of Facts

Dr. Randell's toxicology report stated the following Interpretative Comments:

Levels of Lorazepam are consistent with those found in drug related deaths. Insufficient experience with Lorazepam to establish fatal levels.

Dr. Randell, employing the tests he chose, found “[n]o [other] identifiable drugs”

However, Zachary did not die from having been administered Lorazepam [Ativan]. The Autopsy Report of Dr. Hutton concluded that the cause of Zachary's death was drowning. Still, the Ativan administered by Dr. Turner to Zachary did serve, ironically, a function in Zachary's death. Which leads to the question often asked: “Did Zachary suffer?”

I arranged for the Toxicology Report of Dr. Randell to be reviewed by Dr. Milton Tenenbein, MD, FRCPC, FAAP, FACCT, FACMT. On 12 January 2006, he provided to me the following written report:

You have asked me to comment upon a serum lorazepam concentration of 1.2/mg./L found in ‘a 13-months boy, otherwise healthy, is found in the sea,

murdered by his mother - with no signs of violence on the body.'

Lorazepam, like all benzodiazepines, is an incredibly safe drug. There are no well-documented examples of death due to the ingestion of lorazepam. All of the lorazepam-associated deaths in the literature have other more hazardous drugs ingested in combination [which was not here the case].

A serum concentration of 1.2 mg/L is very high. It is approximately 100 fold greater than the therapeutic concentration. I would expect a child with such a finding to be severely obtunded [a condition in which the nerves are dulled or deadened] and in marked coma. As there are no precedents of fatalities from the ingestion of lorazepam in the absence of other drugs, it would seem that this child was a victim of drowning. At the very least [considering the concentration of Ativan in his body], he did not suffer [emphasis mine].

5.20 Investigation of Deaths of Zachary Andrew Turner and Shirley Jane Turner

About 4:30 a.m. on Monday, 18 August 2003, a male guest at the residence of the man Dr. Turner's had dated noticed a blue Topaz vehicle parked on Job's Road, Kelligrews, around the corner from that residence. He had no reason to be concerned. He had not noticed the vehicle there earlier and had no knowledge of its owner or operator. He saw no activity in or around the vehicle.

5: Narration and Summary of Facts

When Dr. Turner's son got up the next morning to prepare for work, his car together with his mother and Zachary, were missing. He telephoned his employer to report his inability to get to work because he had no transportation. He began phoning his mother's friends in St. John's in an attempt to discover her whereabouts.

About 6:30 a.m., he telephoned his mother's St. John's girlfriend. He asked if his mother was there. His mother's girlfriend replied that Dr. Turner was not at her home; she had not seen Dr. Turner since Dr. Turner had visited her the previous afternoon. He informed her that not only was his mother missing, so was Zachary and his vehicle, which he required to drive to work that morning.

Out on Job's Road between 7:30 a.m. and 8:00 a.m. that Monday morning, Dr. Turner's former date left for work. A female co-worker had gone to his residence and accompanied him to Hickey's Ambulance Service. He drove from his residence along Job's Road to Pine Tree Road, turned left and headed to his place of employment near the road's intersection with the Conception Bay Highway. As he drove along Job's Road, he saw to his left a blue Topaz with one wheel in the

5: Narration and Summary of Facts

ditch. He thought nothing of this. He had not previously seen a vehicle driven by Dr. Turner. In fact, he did not know she operated a vehicle. He continued his drive to work.

About 8:15 a.m., a man living in a house on Job's Road also noticed the blue Topaz parked across the street and partially off the road. He recalled a vehicle which he thought fitted the description of the Topaz having been in the area of his residence on previous occasions.

I believe it may be the car that parks in a low path just west of my house,

he later informed the Constabulary. The "low path" is the path that runs from the end of Pine Tree Road where the road meets Pine Tree Road, northerly toward the coastal road beside the ocean. His wife informed him she had seen the vehicle's occupant on earlier occasions.

It is usually a lady,

his wife told him.

5: Narration and Summary of Facts

At 11:00 a.m., Dr. Turner's Mount Pearl girlfriend arrived home from an overnight elsewhere. Shortly after arriving home, she played the peculiar telephone message left by Dr. Turner at 11:38 p.m. the previous evening. Accepting at face value the message, in which Dr. Turner said that she was overnighing at the Kelligrews' residence of her male friend, the girlfriend telephoned him. He told her Dr. Turner had not been there overnight and he did not know her whereabouts.

Shortly after 11:00 a.m., he reached his mother's Mount Pearl girlfriend. She, too, did not know Dr. Turner's whereabouts. Contrary to the telephone message left the previous evening by Dr. Turner at 11:38 p.m., she said she had just been told by Dr. Turner's former date that his mother did not stay over night at his residence.

Unsuccessful in locating Dr. Turner, her son telephoned the Royal Newfoundland Constabulary at 11:27 a.m. and reported his mother and Zachary missing.

At about 11:34 a.m., the Constabulary opened a Missing Persons Report investigation.

5: Narration and Summary of Facts

The spokesperson for the group of Constabulary investigators that began to assemble immediately after the Constabulary's receipt of the missing persons' report, on 18 August 2003, was Acting Superintendent Sean Ryan.

The investigation was led by Constable Noel C. Stanford, then a member of the Constabulary's Major Crime Section, and involved 33 other uniformed or civilian Constabulary members or consultants.

By 11:58 a.m., a Constabulary member was at 18 Brophy Place where he interviewed the missing persons complainant, Dr. Turner's son. He related that his mother's Mount Pearl girlfriend had, when he spoke to her earlier in the day, reported receiving a telephone call the previous night at 11:38 p.m. (which Dr. Turner made from 18 Brophy Place, although claimed, in the call, to have made it from the residence of her former date). The Constabulary misunderstood him to say the call had been made to Dr. Turner's St. John's girlfriend.

5: Narration and Summary of Facts

At 12:50 p.m., the Constabulary interviewed the St. John's girlfriend from whom they apparently learned the identity of the girlfriend from Mount Pearl.

At 12:55 p.m., the Mount Pearl girlfriend was contacted. She reported on Dr. Turner's telephone message. This interview revealed the identity of the man with whom Dr. Turner (falsely) claimed to have been overnight.

Meantime, the Constabulary again contacted Dr. Turner's son. By now, he had reached the downtown St. John's café where he was employed, having arrived late, after finding an alternate means of transportation.

At 1:15 p.m., the Constabulary reached Dr. Turner's former date by telephone. He stated that, irrespective of what Dr. Turner claimed in the previous evening's phone call to her girlfriend, Dr. Turner had not spent the night before at his residence.

At 2:35 p.m. the man telephoned the Constabulary. He stated he last had contact with Dr. Turner on 14 August 2003.

5: Narration and Summary of Facts

Because, he said, Dr. Turner who had called him “over 200 times” was harassing him and left messages for him, he was

possibly in process of filing a report to the Police.

Asked about whether he knew the whereabouts of a Mercury Topaz, he informed the Constabulary a vehicle fitting that description was “off the road” on Job’s Road near his residence. He agreed to meet Constabulary members there.

In a telephone conversation with Dr. Turner’s psychiatrist, Dr. John Doucet, at 3:05 p.m., the Constabulary learned of her missed appointment scheduled for that morning. A Constabulary member noted that the psychiatrist told him

she rarely misses an appointment but if she does, always calls. [S]he’s coping well, she’s very realistic about the charges and the situation. She wants to get it all settled so she could concentrate on being a mother first and a physician.

He asked to be notified if Dr. Turner was located.

By 3:10 p.m., Constabulary members had met Dr. Turner’s former date at the Topaz vehicle’s location on Job’s Road, 150 yards from his residence, and concluded that this

5: Narration and Summary of Facts

was the vehicle operated by Dr. Turner when she left 18 Brophy Place the night before. The vehicle was locked. Zachary's baby bag was on the front seat containing his bottle, his mother's purse and identification, and the vehicle keys.

When this man at about 3:45 p.m. again departed his residence that Monday, he left behind in his driveway the ambulance he used for work during the day, again parked where it had been overnight. He drove away, this time in his personal vehicle which had been parked there overnight and during most of Monday. After he left, the Constabulary found near where one of that vehicle's wheels had been located, the two photos and the used tampon, placed there the night before by Dr. Turner.

By then the Constabulary's missing persons' inquiries had gained considerable momentum. In fact, I gather from the myriad of strategies employed by a mounting number of Constabulary members that their investigation rapidly accelerated to a considerable pace.

The vehicle was examined revealing in the baby bag on the front seat, the car keys as well as Dr. Turner's clutch purse

5: Narration and Summary of Facts

and identification documents, and a partially filled bottle of baby's milk. The bottle was emptied before recording it in an exhibit report. The correct course would have been to retain the bottle's contents. This is a standard procedure in the investigation of an infant's death. Analysis of the contents would at least have determined for certain, whether it was the instrument Dr. Turner used to administer Ativan to Zachary before murdering him in the ocean nearby.

Neighbourhood interviews were conducted. A search of 18 Brophy Place was undertaken. Hospitals and ports of exit were checked. A media release was issued requesting the public's assistance. Known relatives and acquaintances of Dr. Turner's throughout Canada were interviewed by telephone or personally. A police dog search was undertaken. The Scouts Canada Rovers Ground Search unit, 13 members strong, was mobilized to search the area terrain. Canadian Coast Guard was requested to search the nearby sea. Dr. Turner's lawyer was contacted.

About 6:40 p.m., Dr. Turner's former date confirmed to the Constabulary that he was the person who had twice called the Constabulary without identifying himself or making a

formal complaint about alleged harassment by her earlier in August. He promised to contact the Constabulary if she called him again.

Constabulary inquiries about the vanished doctor and her infant son were soon to be decisively assisted by a telephone call from an Ontario resident, then vacationing in Newfoundland.

Despite the continuing inclement August weather, a married couple on holiday from Manotick, Ontario, had set out from their rented cabin on an evening walk with their dog on 18 August 2003. Their chosen route, by chance, was along the Conception Bay shoreline which eventually led them to Manuels Beach, a short distance beyond the end of Cherry Lane.⁹¹

As the husband recalled, his wife

**saw something on the shore and said ‘what is that.’ I
looked down and it appeared to be a body.**

The couple was evidently then standing at or near the end of the embankment looking ahead and downward onto the Beach.

5: Narration and Summary of Facts

What they saw was on the Beach about 100 yards from the edge of the embankment. The husband recalled:

I told my wife to stay where she was and I walked towards it. I got about 2 feet away. It was a young woman's body. [Within a minute] I ... called 911 from my cell phone. I asked my wife to walk up to the end of the South Pl. [in Manuels, near the beach] and wait for police. I stayed near the body till the first officer arrived.

The Constabulary logged the cell phone call having been made at 7:13 p.m.

From the ocean about four minutes later, Canadian Coast Guard sighted the same body, face down. And three minutes afterwards, about 50 to 70 yards further along Manuels Beach, sighted the body, face up, of an infant.

They proved to be the remains of Dr. Turner and her son Zachary.

On Dr. Turner's feet were the platform-heeled shoes she had been wearing early on Monday morning. And, about 20 feet away was her jacket, the jacket arms still knotted together in the manner Dr. Turner had tied them to support Zachary

5: Narration and Summary of Facts

while she carried him about in their final hours that early Monday morning.

The Constabulary inquiries about two missing persons ended. An investigation into two fatalities commenced.

By 7:30 p.m., a Constabulary member contacted the Bagbys' lawyer, Jacqueline Brazil, who met him at Constabulary Headquarters, St. John's. Together they went to the Bagbys' temporary St. John's residence. (The Constabulary member had been there about 90 minutes earlier and informed the Bagbys that Dr. Turner and Zachary were missing). Upon arrival for this visit, they found the Bagbys and an Anglican priest from St. Michaels Parish where the Bagbys had been accustomed to attending church while in Newfoundland. The Constabulary member and lawyer conveyed to the Bagbys the fact two bodies had been discovered at Manuels Beach, although positive identification had not yet been made. David Bagby immediately experienced anger. His wife Kathleen collapsed to the floor.

5: Narration and Summary of Facts

Under section 5 of Newfoundland's *Fatalities Investigations Act* anyone, including a member of the Constabulary, who has

knowledge of or reason to believe that a person has died ...[in circumstances “(d) where the cause of death is undetermined; ...] shall immediately notify a medical examiner or an investigator.

The Ontario tourist immediately contacted the police, who are the medical examiner's investigators.⁹²

The Constabulary, contrary to the *Fatality Investigations Act*, did not immediately contact the Office of the Medical Examiner. Its members on site first secured the scene - Manuels Beach - where the bodies of Dr. Turner and her son were found. Ensuring that the scene was secure and thereby preserved as found by the Constabulary was - always is - essential to an adequate fatalities investigation. Having done that, the Constabulary then notified the Office of the Medical Examiner of its discovery. At 7:54 p.m., Constable Stanford reached Dr. Charles Hutton, the Medical Examiner then on duty in St. John's, by telephone.

5: Narration and Summary of Facts

Dr. Hutton could have, under section 11 of the *Fatalities Investigation Act*, authorized Constabulary members to serve in his stead as Medical Examiner's Investigators to exercise his powers and perform his duties under the *Act*. Instead, he decided wisely, in my view, to attend the scene in person. Arriving there at 8:50 p.m., he authorized the Constabulary members present to assist him under section 11 of the *Act*.

In his Scene Report, Dr. Hutton recorded that

approximately 100 yards east of the path leading to the beach [a path which ends at the edge of the bank overlooking the beach] [t] bodies were approximately 50 yards apart and approximately 20 feet from the water. The tide was coming in. The current and [earlier] low tide had deposited the bodies on the beach" Dr. Turner was "wedged between large smooth stones and face down with the left side of the face against the stones. The body was in full rigor. [Full rigor was also present in Zachary's body which] was face up.

Dr. Hutton instructed the Constabulary to move and transport the bodies to the Health Sciences Centre morgue, a process the Constabulary completed by 10:00 p.m.

There, at the request of the Constabulary, after 10:00 p.m. on 18 August, Dr. Turner's St. John's lawyer, Randy

5: Narration and Summary of Facts

Piercey, identified Dr. Turner and David Bagby identified their grandson, Zachary.

The next day Mr. Piercey wrote to Constable Stanford that,

I have never had cause to believe she was suicidal.

Dr. Hutton conducted his Medical Examiner's forensic autopsies of Dr. Turner, then of Zachary, on 19 August. He concluded, under section 10(1) of the *Fatalities Investigations Act*, that the cause of death of each of them was drowning and that the manner of death for Dr. Turner was 'suicide' and, for Zachary, "homicide."

He documented these conclusions under section 10(4) of the *Fatalities Investigations Act* in a Registration of Death form prescribed by the *Vital Statistics Act* for both Dr. Turner and Zachary.

Dr. Hutton further concluded that Dr. Turner was not pregnant when she died and that the remains of both her and Zachary were "negative" for alcohol. As stated before, no

5: Narration and Summary of Facts

testing to determine whether any other drugs were present in either body was done until much later.

At no time was a “suicide note” or similar document discovered.

At no time was any other evidence detected by the Constabulary or Office of the Medical Examiner that definitively forewarned of the deaths or explained why they occurred.

The autopsies completed, the remains of Dr. Turner were claimed from the morgue by the Parsons Pond mother-in-law, and those of Zachary by his grandparents, David and Kathleen Bagby.

On 19 August the Constabulary commenced federal criminal law and provincial penal law investigations to ascertain whether and, if so, what offences may have been committed. In doing so, they drew on information gained from the two earlier investigations on 18 and 19 August 2003 (that is, the missing persons and Medical Examiner investigations).

5: Narration and Summary of Facts

And while undertaking the federal and provincial law investigations, Constabulary members also served in an assistance role to the Pennsylvania State Troopers who were, of course, anxious to determine what had happened to their fugitive, Dr. Turner.⁹³

At 3:35 p.m. on 19 August, a Constabulary member spoke with a Director of the St. John's Health and Community Services Board responsible for the file on Zachary Turner. The Director offered, through the Constabulary, whatever assistance may be needed by either the Turner or Bagby families. This Director had already started a review of the Zachary Turner file, as well as a separate file on Dr. Turner's younger daughter, and informed the Constabulary the file reviews disclosed no indication that Dr. Shirley Turner had threatened harm to anyone or presented any suicidal tendencies.

By 4:38 p.m. on 19 August, a Constabulary Identification Section member wrote, respecting the path from the end of Pine Tree Road to the coastal road along Conception Bay, that

5: Narration and Summary of Facts

[t]his path led directly to the beach and would logically have been ... [Dr. Turner's] route[,] as next to it were thorny bushes and a cornfield, no sign of either being disturbed.

Pennsylvania State Trooper McElfresh received news of the deaths of Dr. Turner and Zachary at 5:30 p.m. on 19 August from Constabulary Constable Noel Stanford.

The Constabulary had completed its federal and provincial law investigations by 01 September 2003 when it issued a media release that, in part, stated:

[t]he investigative team from the Major Crime Unit are satisfied of no third party involvement in this tragedy. Accidental cause has been ruled out as the evidence indicates that Shirley Jane Turner was responsible for her own death as well as the death of her son Zachary Turner.

Next day the Chief Medical Examiner, Dr. Simon Avis, completed his review of the tragedy and reached the same conclusion as the Constabulary.

The Constabulary's report of its investigation, dated 02 September, stated;

5: Narration and Summary of Facts

All evidence supports the conclusion that Shirley Turner was responsible for the homicide of Zachary Turner and took her own life by suicide.

Dr. Turner, in conversations with her children, her other family and her extended family, claimed to the end that she was innocent of Dr. Bagby's murder. In reply to one family member, Dr. Turner stated:

"how could you even ask that question?"

5.21 At Rest

When Dr. Turner's remains were released following the forensic autopsy by the Office of the Medical Examiner in August 2003, records I examined disclose that the former Parsons Pond mother-in-law claimed them. Dr. Turner was twice divorced and one of her last three noteworthy partners was murdered, another was living in fear of her in Pennsylvania, and the third was complaining to police that Dr. Turner had harassed him. Her older daughter was in Toronto and the young daughter was in Portland Creek. Her only immediate family in St. John's was her son and he was emotionally unable to make the arrangements.

5: Narration and Summary of Facts

Dr. Turner's funeral was at the Anglican Church in Parsons Pond.

Following a memorial service for Zachary at the Anglican Cathedral in St. John's, Zachary's ashes had been taken back to California where they have been secured by the Bagbys. From there they sent half the ashes to the Parsons Pond mother-in-law.

At the graveside service just before burial, the Turner family's "share" of the ashes of Zachary was placed by a family member in the coffin with Shirley Jane Turner.

5.22 Extradition Proceedings: Part 4

On 09 September 2003, legal counsel for Dr. Turner appeared in the Court of Appeal. He told the Court:

I thought I should formally notify the court of the death of my client.

The Chief Justice of Newfoundland who is Chief Justice of the Court of Appeal, stated for the record that

5: Narration and Summary of Facts

counsel have agreed to appear here this morning to properly dispose of this matter.

Counsel for Canada/United States responded:

Chief Justice, my understanding from what [counsel for Dr. Turner] has said and from what the court has said is that there is an inability to proceed.

The Chief Justice ‘struck’ Dr. Turner’s appeal.

6.0 *Reviews*

In August and September 2003, the then Minister of Health and Community Services directed that a review be conducted into the performance of the St. John’s Regional Health and Community Services Board in its dealings with Zachary Turner and his mother, Dr. Shirley Jane Turner. The result was two reports (Appendices A.70 and A.87).

On 10 October 2003, a note made by the Office of the Child and Youth Advocate, the last entry in the slim file opened by the Office when contacted by Dr. Turner, recorded that:

5: Narration and Summary of Facts

The Minister of Health and Community Services referred to the Advocate for a review of the actions of Child, Youth and Family Services. On this date the Advocate served Notice indicating that a death review would be undertaken which would examine all systems who were involved with this family. This file is now considered closed and the child death review process has begun [underlining added for emphasis].

What followed was a review by the Office of the Child and Youth Advocate (see Chapter 11) not completed, because of the retirement - due to illness - of the then Advocate.

On 17 May 2005, I was appointed Delegate of the Child and Youth Advocate to conduct this Review and Investigation.

[Notes to Chapter 5]

¹ *Child, Youth and Family Services Act*, Statutes of Newfoundland and Labrador, 1998, Chapter C-12.1, section 9, Appendix 5, p.A.25.

² Statutes of Newfoundland and Labrador, 2001, Chapter C-12.01, Appendix 4, p.A.9.

³ *Ibid.*, p.A.7.

⁴ Chapter 5 is based principally on documents obtained from, and/or interviews with, persons employed at Department of Health and Community Services, Government of Newfoundland and Labrador; (the former) St. John's and Western Regional Health and Community

5: Narration and Summary of Facts

Services Boards; Department of Human Resources, Labour and Employment, Government of Newfoundland and Labrador; Office of the Child and Youth Advocate for Newfoundland and Labrador; the incomplete review conducted by the Advocate's Office and an Advisory Council appointed by the first Advocate; Royal Newfoundland Constabulary; offices of the Deputy Minister of Justice and Deputy Attorney General, and of the Corrections and Community Services Division of Department of Justice, Government of Newfoundland and Labrador; Office of the Medical Examiner; Health Care Corporation of St. John's (Medical Records; Laboratory Medicine; Psychiatry); College of Physicians and Surgeons; Janeway Family Services (Southcott Hall); Syracuse Police Department; Pennsylvania State Troopers (Greensburg Barracks); Office of the District Attorney of Westmoreland County, Pennsylvania; Council Bluffs, Iowa Police Department; and approximately with 70 private citizens in Newfoundland, Nova Scotia, Quebec, Alberta and the States of Pennsylvania, Iowa and California.

⁵ When Shirley did made contact with the Department of Child, Youth and Family Services on 11 February 2002, about three months after returning from Iowa to Newfoundland, the Department had little chance of identifying her as the subject of an abuse complaint in 1993. The reason? In 1993, she used the surname of her second husband. By 2001 she was divorced and had reverted to her maiden surname. Recording protocols in the Department did not, in opening files, specifically require inclusion of all surnames - or, for that matter, all given names - by which a person was known historically and currently.

⁶ Emotionally troubled medical students and residents in Newfoundland are, by no means, without access to assistance. Available to them are: (i) the Office of Student Affairs in the Faculty of Medicine; (ii) a Family Practice physician who changes from time-to-time; (iii) the Employee Assistance Program; and (iv) the Professional Association of Interns and Residents of Ontario (PAIRO) which, informally, has invited medical students and residents in Newfoundland to avail of its services. PAIRO's services include a 24-Hour Helpline, partnered with Distress Centres of Toronto. The 24-Hour Helpline provides referrals of callers to professionals for treatment of such issues as stress management; eating disorders; sexual, emotional or physical abuse; anxiety; anger management; depression; gender issues; intimidation or harassment;

5: Narration and Summary of Facts

substance abuse; relationship counselling; career- or work-related crisis, as well as sexual issues.

⁷ This information verified and explained information given by Dr. Turner in 1998 to her second former husband during a telephone conversation. She had then told him that she was undergoing psychiatric treatment in Nova Scotia.

⁸ Dr. Carol Ross.

⁹ A copy of the 1999 police report on the incident found among Dr. Turner's belongings after she eventually committed suicide in 2003 includes the endorsement "SUICIDE FAKE" in handwriting remarkably similar to that of Dr. Turner.

If genuine, a psychiatrist would evaluate Dr. Turner's suicide attempt manifested a grave emotional instability or significant mental illness; if disingenuous, whether Dr. Turner's behaviour evidenced at least the capacity for profound, premeditated deceit and recklessness, if not a psychological dysfunction or mental disorder.

This is not the first suicide attempt by Dr. Turner which I identified. In circumstances that I could not ascertain, she earlier sought to kill herself in 1998; a suicide attempt she reported in November 2002 to a psychiatrist then monitoring her while she was incarcerated at the Newfoundland Correctional Centre for Women in Clarenville.

¹⁰ Her compensation included a US\$15,575 contribution to a pension plan, a US\$3,000 education allowance and US\$4,000 moving costs allowance. In addition, she was to be paid a signing bonus, over time, of US\$25,000 (including US\$7,500 immediately) for making the Trimark agreement and a separate agreement with Loring Hospital, Sac City, to provide medical services at the hospital as part of her employment by Trimark. For that purpose, she was to be granted active medical staff privileges including practice in Family Medicine and Obstetrical Care at the hospital. By a third agreement, Trinity Health Systems (under which Loring Hospital operates as part of a seven state integrated health care delivery system) agreed to repay Dr. Turner's medical education loans to

5: Narration and Summary of Facts

a maximum of US\$100,000 (at the rate of US\$10,000 annually over 10 years, commencing after she had practiced in Sac City for one year).

In fact, Dr. Turner's loans were paid for her within two months of her starting medical practice in Sac City. And the amounts of the loans paid, on account of her loans, considerably exceeded the contractually agreed US\$100,000. Trinity Health Systems paid one loan - the equivalent of US\$73,664.81 - on 24 October 2000 (to CIBC, Kenmount Road, St. John's), and another loan - the equivalent of US\$51,231.79 - on the same date (to the Health Labrador Corporation, Happy Valley-Goose Bay, reimbursing the Corporation for a "bursary" it had advanced to Dr. Turner). In turn, Dr. Turner signed a promissory note on 26 October 2000 to repay Trinity Health Care Systems a large portion - US\$100,542.40 - of the Systems' repayments of her two loans. Repayment over 10 years was to commence 01 May 2001.

¹¹ One wonders what Dr. Turner's family - especially her son who entered university on a student loan, and the Parsons Pond mother-in-law who received scant financial help from Dr. Turner while supporting Dr. Turner's two older children - would have thought had they known her Sac City, Iowa, employment arrangements. Or how they might have reacted had they learned that when Dr. Turner began earning substantial income from her Iowa medical practice, her early financial decisions included: (i) purchase of a Toyota Rav 4; and (ii) negotiating toward an agreement with a Florida Limited Partnership to purchase, for US \$30,609.54, a time-share interest in an apartment building.

¹² Because she had left her professional contractual obligations there, the indebtedness was charged back to her. It included: (i) the \$25,000 services contract signing bonus which, by now, had been paid in full to her by Trimark (US\$12,500) and by Loring Hospital, Sac City (US\$12,500); (ii) the promissory note of US\$100,542.42 on which no payments (due to commence 01 May 2001) had been made; (iii) her US\$4,000 costs of moving from Newfoundland to Sac City which Trimark had paid; (iv) the US\$18,000 fees Trimark had paid to a St. Louis, Missouri, medical professionals recruiter through whom Trimark had employed her; and (v) an early exit penalty of US\$9,048.82.

5: Narration and Summary of Facts

¹³ After 05 November 2001, known recordings of Dr. Turner's voice were played by United States police to the radiology clerk. She stated the known voice being played was of the same woman who had telephoned her twice on 29 October 2000. Further, Dr. Turner would later write in her personal journal that the 29 October 2001 recorded telephone message to the clerk's residence had been erased by the clerk before known samples of Dr. Turner's voice were played to the clerk by police. In the same personal journal, Dr. Turner wrote that the blonde woman referred to in the recorded telephone call was a "fellow employee" of Dr. Bagby at the Latrobe hospital where he worked, and that Dr. Bagby "had already hurt people in Latrobe."

¹⁴ Dr. Wecht has been consulted on many widely publicized fatalities including the deaths of former United States President John F. Kennedy, Elvis Presley, Jon Benet Ramsay, and Laci Petersen and her unborn child. The equivalent in Newfoundland to a chief coroner is the Chief Medical Examiner.

¹⁵ Necessary to note, the term "homicide" as employed by a forensic pathologist refers to the killing of a person by one or more other persons. It is a legally neutral term. Only a court may decide - and then only beyond a reasonable doubt - that homicide is a death resulting from the commission of the criminal offence of, for example, murder; or death resulting, for example, from self-defence in which event the criminal offence of murder has not been committed.

¹⁶ The main elements of the caution are: the right to say nothing; the expectation that anything said can be used as evidence in court; and the right to consult legal counsel (or, if not affordable, the right to have counsel provided by the state).

¹⁷ Dr. Carol Ross.

¹⁸ Whether or not Dr. Turner ever paid the friend \$20.00, I was unable to learn. However I have examined a written receipt for \$20.00, signed by the friend, which was among Dr. Turner's possessions. Her friend could only avoid testifying about what Dr. Turner had told her regarding Dr. Bagby's homicidal death if she were professionally qualified to act as Dr. Turner's lawyer, not her doctor.

5: Narration and Summary of Facts

¹⁹ From one point of view [Dr. Turner's] this was significant legal advice. The penalty for first degree murder in the State of Pennsylvania where Dr. Bagby was killed could be death. That was a prospect she would avoid by coming to Canada because Canada will almost never return to the United States a fugitive from that country, to stand trial, without an undertaking from the United States government that the death sentence would not be imposed if the fugitive returned, was tried for, and convicted of murder.

²⁰ Dr. Turner certainly didn't check into a hotel on the night of, or after, Dr. Bagby's murder because, by her own eventual admissions, she drove half way across the United States from Pennsylvania to Iowa on the murder date and was interviewed by United States police in her Iowa apartment the next evening.

²¹ *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed. (Washington, D.C.: The American Psychiatric Association, 1994) at pp. 623, 624, 625, 626.

²² The American Psychiatric Association website 2006.

²³ The National Centre for Post-Traumatic Stress Disorder website, 2006.

²⁴ *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed. (Washington, D.C.: The American Psychiatric Association, 1994) at p. 626.

²⁵ Dr. Carol Ross who was studying psychiatry and who committed suicide in 2003. Dr. Turner did not additionally inform him that she consulted this graduate professionally the date she arrived back in Iowa from Pennsylvania (06 November 2001) after she murdered Dr. Bagby.

²⁶ Taking a sworn statement from a citizen, my legal counsel advises me, is unusual even if police are conducting a criminal investigation. Because the Constabulary was not presently conducting a criminal investigation, my counsel, who has carried numerous files of the Government of Canada seeking extradition of persons from the United States, Caribbean states and Great Britain, discerns that the Constabulary felt the former California fiancé's information may be relevant to

5: Narration and Summary of Facts

Pennsylvania State Troopers should Dr. Turner be charged for Dr. Bagby's murder and proceedings commenced to extradite her from Canada to the United States for trial on the charges.

²⁷ This card confirming Dr. Turner's pregnancy for Zachary resulted from ultrasound technology, an indispensable obstetric tool in the care of pregnant women. The technology, considered medically to be a safe, non-invasive, accurate and cost-effective way of investigating a fetus, and usually first employed when a woman is about seven weeks pregnant, enables a scan to be conducted of a woman's abdomen. The scan produces a picture of the embryo or fetus forming in the abdomen. A full bladder is often required for the ultrasound procedure where, as here, scanning was done early in the pregnancy. The technology also assists to determine conception date. The acronym "EDC" means the "estimated date of confinement" on or after which date a child's delivery occurs (usually described by the acronym "EDD."

²⁸ In the United States criminal law is enacted by the states. In Canada, criminal law is enacted by the federal Parliament.

²⁹ Circumstantial evidence - sometimes described as indirect evidence - may be introduced in a court to prove a killing where, as here, no direct evidence existed such as a confession by Dr. Turner or the testimony of a witness to the killing of Dr. Bagby.

³⁰ An "extradition partner" is defined by section 2 of the *Extradition Act* to include "a State or entity with which Canada is party to an extradition agreement" Canada is party to an extradition agreement with the United States of America.

³¹ Statutes of Canada, 1999, Chapter 18.

³² Simply stated, "bail" means an order in a proceeding to free an arrested person on terms and conditions. Dr. Turner was legally entitled to apply for bail under section 18 of the *Extradition Act*. The term "bail," however, has not been used in the *Criminal Code* since 1972. The technical term for "bail" under the current *Criminal Code* is "judicial interim release."

5: Narration and Summary of Facts

The procedure governing bail in an extradition proceeding is, under section 19 of the *Extradition Act*, the “bail” provisions of the *Criminal Code* that customarily apply to “bail” of persons charged for offences enacted by the Parliament of Canada which, allegedly, have been committed in Canada.

³³ Revised Statutes of Canada, 1985, Chapter C-46.

³⁴ Ibid.

³⁵ *Criminal Code* section 522(1) applies to release applications where the accused person, applying for release, has been charged with serious criminal offences such as murder: see, for example, *Canada v. Owens* [(1987), 35 C.C.C. (3d) 574)], a decision of Ontario Court of Appeal, and *Thailand (Kingdom) v. Saxena* [(1998), 129 C.C.C. (3d) 528], a decision of British Columbia Court of Appeal.

³⁶ Revised Statutes of Canada, 1985, Chapter C-46.

³⁷ (1996), 108 C.C.C. (3d) 474.

³⁸ Ibid.

³⁹ Revised Statutes of Canada, 1985, Chapter C-46.

⁴⁰ Revised Statutes of Canada, 1999, Chapter 18.

⁴¹ Revised Statutes of Canada, 1985, Chapter C-46.

⁴² My legal counsel advises me that the probable reason, although not stated during Dr. Turner’s release hearing, why she was not required by the release order to sign for any amount under the Recognizance - by no means out of the ordinary - is that she had no assets or income. To have required her to sign the Recognizance for any amount would therefore have been meaningless and would, more importantly, have in effect, denied her release because she would be unable to qualify financially to sign the Recognizance. That would legally and constitutionally mean that if a person charged for a criminal offence otherwise qualified for release, s/he would or would not obtain release depending on financial means.

5: Narration and Summary of Facts

⁴³ Because the physician who signed as surety for Dr. Turner was, at the time, providing her with psychiatric services, Dr. Bagby's parents took exception. They complained to the Newfoundland Medical Board (now the College of Physicians and Surgeons) by letter dated 09 December 2003. The letter "question[ed] the physician's ability to objectively evaluate his patient's mental and emotional state while acting as her surety in a legal proceeding." In a Decision dated 16 March 2006, an Adjudication Tribunal of the College concluded that the physician engaged in professional misconduct by signing as surety for Dr. Turner while he was her treating psychiatrist, for which the physician was sanctioned by further Decision of the Tribunal dated 10 April 2006.

⁴⁴ Statutes of Newfoundland and Labrador, 1998, Chapter C-12.1 (as amended in 1999, 2000, 2001 and 2004), Appendix 5.

⁴⁵ Except for Part VIII - Confidentiality And Disclosure Of Information, which took effect on 03 December 2004.

⁴⁶ *Regional Integrated Health Authorities Order*, Newfoundland and Labrador Regulation 18/05, in force: 01 April 2005.

⁴⁷ *Child, Youth and Family Services Act*, Statutes of Newfoundland and Labrador, 1998, Chapter C-12.1, section 2(1)(d), p.A.29.

⁴⁸ *Ibid.*, section 2(1)(o), Appendix 5, p.A.31.

⁴⁹ *Child Welfare [:] Connecting Research, Policy and Practice*, Kufeldt, Kathleen and McKenzie, Brad, eds. (Waterloo, ON: Wilfrid Laurier University Press, 2003), p.399.

⁵⁰ Evidently the Constabulary was unaware of the 1993 report, investigation of which was never completed by the then Department of Social Services because the Department was unsuccessful in contacting Dr. Turner. And the Constabulary was also unaware of the fact Dr. Turner had, in April 2002, struck the older daughter while she visited from Ontario with Dr. Turner in St. John's, and had promptly left Dr. Turner's residence.

5: Narration and Summary of Facts

⁵¹ Some computer entries on the Board's Turner file contain three dates: "Service Date;" "Added [to computer] Date;" and a different date of service delivery than the "Service Date" which occasionally has made it difficult to establish the chronology of events.

⁵² There exists, my counsel points out, a practice among social workers, including this official who had extensive social work experience, of employing the term "advise" in documenting their services delivery. What the social workers often mean by "advise" is, in fact, "inform" because frequently the social workers are reporting on information they have furnished a citizen, not advice. The point is significant, as my counsel explained to me, because the legal consequences of giving "advice" instead of simply "informing" a citizen can be far reaching.

⁵³ Other forms of care agreement are the temporary and continuous care agreements which involve less input from parents of the affected child or children.

⁵⁴ Taped telephone conversations.

⁵⁵ Revised Statutes of Newfoundland and Labrador, 1990, Chapter C-13, Schedule.

⁵⁶ Statutes of Newfoundland and Labrador, 1998, Chapter C-12.1, Appendix 5, p.A.38.

⁵⁷ Revised Statutes of Newfoundland and Labrador, 1990, Chapter C-13.

⁵⁸ "Physical custody" means what it says. "Legal custody" usually means the right to make decisions involved in upbringing a child.

⁵⁹ Statutes of Canada, 1999, Chapter 18.

⁶⁰ Scarborough, ON: Carswell, 2002), p.78.

⁶¹ *Argentina (Republic) v. Mellino* (1987), 33 C.C.C. (3d) 334, at p. 349

⁶² (1997), 115 C.C.C. (3d) 481, at pp.524-525.

5: Narration and Summary of Facts

⁶³ *Prima facie* is from the Latin meaning “on the surface” of the case. In the context of an extradition hearing, the term means that the direct evidence (for example, eye-witness testimony) presented on behalf of the foreign state need only be such that, if believed at a trial in the foreign state, could (not would) result in conviction of the fugitive on the charge(s) outstanding in the foreign state. Or, if circumstantial, the evidence could (not would) support an inference of guilt.

And, to the extent the foreign state’s evidence is documentary (e.g., sworn written statements), the witnesses who provided that evidence cannot even be cross-examined unless, of course, the defence calls them as witnesses to give oral evidence.

⁶⁴ Revised Statutes of Newfoundland and Labrador, 1990, Chapter P-21.

⁶⁵ Consolidated Newfoundland and Labrador Regulations 993/96.

⁶⁶ Statutes of Canada, 1999, Chapter 18.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ *Cheng v. Hong Kong, Ont. Gen. Div.*, 17 December 1992; appeal to Ont. C.A. dismissed (1996), 109 C.C.C. (3d) 384 (Ont. C.A.).

⁷² Krivel, Elaine F.; Beveridge, Thomas and Hayward, John W. (Scarborough, On: 2002).

⁷³ Statutes of Canada, 1999, Chapter 18.

⁷⁴ Ibid.

⁷⁵ Ibid.

5: Narration and Summary of Facts

⁷⁶ *Constitution Act, 1982*, Parts I; VII.

⁷⁷ (2001), 151 C.C.C. (3d) 97.

⁷⁸ 09 June 2003 (letter), from Minister of Justice and Attorney General of Canada to Randolp J. Piercey (solicitor and counsel for Dr. Shirley Jane Turner), p.7.

⁷⁹ *Sagara v. United States of America* (2002), 225 Nfld. & P.E.I.R. 350.

⁸⁰ The Board, which ordinarily would not have disclosed this information due to privacy considerations, here made an exception because information about Dr. Turner's licensure approval had already been publicly stated in the Court of Appeal by Dr. Turner herself. And, important to note, the Board's licensure approval letter to Dr. Turner was written before she was ordered committed for extradition on 14 November 2002 by the Trial Division Chief Justice of Newfoundland Supreme Court. Whether the Board would have, in fact, maintained its approval of licensure or issued licensure to Dr. Turner upon learning of her extradition committal is another matter entirely. In the result, the Board informed my counsel that no licensure was ever issued to Dr. Turner subsequent to the Board's 17 October 2002 letter to her.

⁸¹ (2003), 220 Nfld. & P.E.I.R. 312.

⁸² And, as my legal counsel advises me, the Court of Appeal Justice as a matter of law could not be expected and would not be permitted to go into the community and determine if any relevant evidence was available which militated against granting release to Dr. Turner.

⁸³ (2003), 223 Nfld. & P.E.I.R. 108.

⁸⁴ Statutes of Newfoundland and Labrador, 2001, Chapter C-12.01, Appendix 4, p.A.9.

⁸⁵ Briefly and unambiguously defined, "conditional bonding" means bonding that is dependant on the child meeting the parent's needs.

⁸⁶ Revised Statutes of Canada, 1985, Chapter C-46.

5: Narration and Summary of Facts

⁸⁷ I did not interview Mr. Piercey out of respect for solicitor-client privilege which prohibits a lawyer from disclosing communications from a client while representing the client, after representing the client, and even after the client's death, except in limited circumstances not applicable here.

⁸⁸ Dr. Turner once mentioned the friend by name to the couple. The friend was a woman whose acquaintance Dr. Turner had made while both were students in the Faculty of Medicine at Memorial University. On graduating from the Faculty, Dr. Turner's friend had, like Dr. Turner, gone to the United States and commenced practicing medicine. Dr. Turner had met with her (and obtained a receipt for having paid her for medical services the woman provided to Dr. Turner) on 06 November 2001, after Dr. Turner returned to Council Bluffs, Iowa from Latrobe, Pennsylvania. Dr. Turner's friend committed suicide in her apartment in a State of South Dakota community in April 2003.

⁸⁹ I am reasonably certain, from the subsequent toxicological investigation, that Zachary consumed some or all of the Ativan tablets. I am still uncertain whether Dr. Turner swallowed any of them.

⁹⁰ Toxicology is a science that includes testing for chemicals, drugs and poisons in the human body. A biochemist is a scientist whose qualifications include the study of bio-chemical processes in the human body.

⁹¹ The Beach may be reached by driving to the end of Cherry Lane, crossing a field which brings a pedestrian to the Conception Bay coast, turning right and walking along a path on top of an embankment which overlooks the Bay, to the end of the bank. Below is the Beach accessible by a steep path.

⁹² In law under Canada's *Criminal Code*, a citizen is not required to report to police the death of a child or other person, or any other circumstance that may involve commission of a criminal offence other than under *Criminal Code* section 50 (failing to report knowledge that high treason or treason is about to be committed).

5: Narration and Summary of Facts

There is in Newfoundland under the *Fatalities Investigation Act* the obligation to do so.

⁹³ The Troopers would eventually characterize the Constabulary's assistance to them as professionally outstanding.