



Transcript of Proceedings

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SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

BYRNE J

No 3772 of 2001

LILY ARTHUR

Plaintiff

and

THE STATE OF QUEENSLAND

Defendant

BRISBANE

..DATE 01/11/2004

..DAY 1

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

MR WILSON: Thank you. Your Honour will have seen the plaintiff's claim is a somewhat novel one. On its face it is a claim by the plaintiff for equitable compensation for breach of the defendant's fiduciary duty, and although the evidence of the plaintiff will span quite a lengthy period of time, the plaintiff expects that the contested issues of fact in the case are likely to be in quite short compass.

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The plaintiff alleges that she gave up her newborn son for adoption in September 1967 because of the overbearing conduct of an officer of the Department of Children's Services, a lady then named Jay Whalley - W-H-A-L-L-E-Y. The plaintiff's case is that had she been given appropriate advice and been properly treated, as was her intention she would not have signed a consent form which permitted the adoption to proceed. The plaintiff alleges that in consequence because of the conduct of the Department of Family Services - the Department of Children's Services, as it was then called, she has lost the benefits and the joys of raising her child, overseeing his progress and sharing in his life as it developed, and has lost the pleasures of motherhood and now as she approaches her mid 50s the full joys of grandparenthood, and as a result of evidence that I will turn to shortly the plaintiff herself has suffered considerably emotionally and her case is that she has developed psychiatric illnesses as a result of the forced separation from her child.

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The plaintiff says, your Honour, that there are six issues which arise on this case, assuming your Honour finds the facts to be in accordance with the plaintiff's evidence, and we point out there is no positive case pleaded by the defendant to gainsay those facts.

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HIS HONOUR: I have noticed that. You are simply being put to proof.

MR WILSON: And as well there are two positive matters raised in the pleadings that we have to deal with, the defence of laches and also the assertion that it should be pleaded as a common law claim and is statute barred.

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Your Honour, the issues that we say arise are these: first, was the relationship between the plaintiff and the defendant such that the defendant owed fiduciary duties to the plaintiff. We say the answer to that is yes because of the relationship of effectively guardian and ward between the parties. The plaintiff was under the age of 18 when she had her son. She was under the care and control of the department under the provisions of the Children's Services Act. The second issue is if a fiduciary duty was owed, what was the content of the duty that was owed by the defendant to the plaintiff. The third is that on the facts of the case, in accordance with the plaintiff's evidence, in engaging in the conduct which we say Mrs Whalley or Ms Whalley engaged in, were the duties that were owed breached. Then two really

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legal issues. Would the law permit a claim to be pursued in equity for breach of fiduciary duty if it is more properly characterised as one for which the law of tort provides a remedy. Fifthly, is the plaintiff's claim defeated by the defence of laches raised by the defendant, and, finally, if not, to what compensation is the plaintiff entitled and how is that compensation to be measured, and there may be some argument as to whether one follows, in so far as the plaintiff's psychiatric injuries are concerned, the tariffs in respect of personal injuries cases or whether equitable compensation is to be assessed. It is really at large in your Honour's discretion whether your Honour is guided by those awards of damages or not. In addition to the pure psychiatric illnesses there is of course the loss of the benefit of having the son with her for some 30-odd years which we will be asking your Honour to award compensation in respect of as well.

Your Honour, in the plaintiff's case there will be six principal witnesses. They are the plaintiff herself; Stephan - that is spelt S-T-E-P-H-A-N - Benko - B-E-N-K-O - who is the father of the plaintiff's son; Dr Marilyn Moore, a psychiatrist, who has examined the plaintiff and prepared a report dated 22 December 2000 which will be tendered; Dr John Pickering, the plaintiff's treating psychiatrist, who has prepared a report dated 30 September 2004, and I will also tender his report to the plaintiff's general practitioner dated 1 December 2000; Janette - J-A-N-E-T-T-E - Lord - L-O-R-D and Patricia Large. Your Honour, there will also be some I expect short witnesses. My instructing solicitors have served subpoenas on various government departments with a view to witnesses giving evidence as to what documents are ordinarily kept on government files. Your Honour will have seen that as part of the defence of laches one of the allegations is made that documents have been destroyed and that has caused prejudice to the defendant.

The witnesses that we are hopeful of calling from the Department of Family Services, the Royal Women's Hospital and the Children's Court will give evidence that not too many documents were kept on the files in the 1960s and those documents such as the plaintiff has are probably the vast majority.

HIS HONOUR: Where is this allegation that documents have been destroyed?

MR WILSON: I am sorry, your Honour, it is in some particulars that were provided of the defence.

HIS HONOUR: I don't have those.

MR WILSON: I am sorry.

HIS HONOUR: The only particulars you have drawn my attention to so far-----

MR WILSON: Are ours.

HIS HONOUR: -----are those of your pleading.

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MR WILSON: Yes. Your Honour, the particulars that we were served with are dated 30 June 2004.

HIS HONOUR: Yes.

MR WILSON: Your Honour will see in paragraph 2 subparagraphs B and C refer to the destruction of some files, and in fact D(i) as well.

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HIS HONOUR: Did your reply put in issue the prejudice alleged?

MR WILSON: It didn't put in issue the prejudice, your Honour, it attempted to give an explanation for the delay but it didn't put in issue the prejudice. There is two issues, one is explaining the delay, and then meeting the prejudice. In terms of meeting the prejudice, the defendant says that these files have been lost. It is relevant to know whether they would have assisted them in any way or in any event.

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HIS HONOUR: There is some agreement with the other side that despite the state of the pleadings, you may adduce evidence on this issue?

MR WILSON: There is no such agreement, your Honour, no. It can be done one of two ways, your Honour. I can lead the evidence, as I propose to do, or my learned friend can call someone to say the files have been destroyed and I can cross-examine them about it. We are prepared to lead the evidence.

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Your Honour, the plaintiff herself will give evidence that she was born on 19 March 1950. She was born in England. Her family emigrated to Australia in 1959. She is one of nine children. She will say that she completed her primary school standard of education in Brisbane and left school just before her 14th birthday to care for her siblings. There were at that time family problems which led to the plaintiff's father leaving the family home. She will say that after some time her mother intended to remarry. She didn't get along with her stepfather so she moved out of home when she was 16 in the latter part of 1966.

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At that time the plaintiff was going out with Stephan Benko and eventually they moved in to live together in a flat at Rocklea. The plaintiff was in full-time employment but she lost that employment when her employer discovered that she was pregnant and she was dismissed from her employment. Your Honour, the plaintiff was pregnant - and this is common ground - on the 16th - on the 15th of February 1967 and the father of the child who was born, it is admitted, was Stephan Benko and the child was born on the 1st of September 1967 at the Brisbane Women's Hospital.

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The plaintiff will give evidence that after discovering that she was pregnant it was her intention to get married and have

the baby and live together with Stephan Benko as husband and wife. Stephan Benko will give evidence to similar effect. Both of them wanted to keep the child but significant events intervened.

In the late evening of the 15th of February 1967 the plaintiff was asleep at her home. Stephan Benko and his friend were practising their guitars and for some reason two police arrived at the flat. The plaintiff was roused from her sleep by a policeman and questioned. During the course of the questioning it was ascertained that the plaintiff was pregnant. The police officer took the plaintiff into custody and she was taken to the watchhouse overnight.

On the 16th of February 1967 she was taken before the Children's Court in Brisbane and an interim order was made placing the plaintiff under the care and control of the Director of Children's Services and remanding her into the care of the sister in charge at the Holy Cross Home at Woolloowin.

Your Honour, with a view to shortening - attempting to shorten the factual disputes we have served a notice to admit facts and documents on the defendant and they have responded to that. So a large number of these facts are non-controversial and a number of documents that have been generated are non-controversial. I am in your Honour's hands. The documents are appended to the notices to admit facts and documents, or I can tender them individually if your Honour wants them as separate exhibits. I propose to tender the notices and the response perhaps together as one exhibit, but then for ease of reference it may be advantageous to tender the documents separately.

HIS HONOUR: I am content to leave it to you, Mr Wilson. You will have a much better appreciation of how at the end of the case it is likely that the documents will assume significance and what is the more convenient way of dealing with them.

MR WILSON: Thank you, your Honour. At this stage, then, your Honour, can I tender the notice to admit documents dated 20 October 2004, the notice to admit facts-----

HIS HONOUR: The notice to admit documents will be Exhibit 2.

ADMITTED AND MARKED "EXHIBIT 2"

HIS HONOUR: Yes.

MR WILSON: The notice to admit facts dated the same date.

HIS HONOUR: Exhibit 3.

ADMITTED AND MARKED "EXHIBIT 3"

MR WILSON: And the letter Crown Law to McInnes Wilson 28 October 2004.

HIS HONOUR: Exhibit 4.

ADMITTED AND MARKED "EXHIBIT 4"

MR WILSON: Your Honour will see in those documents there is one headed "Authority to Receive a Child in Care", appended - they are appended to both documents. So if your Honour has one of them.

HIS HONOUR: Yes.

MR WILSON: And your Honour will see it is dated the 16th of February 1967, addressed to the sister in charge at the Holy Cross Home at Woolloowin, and your Honour will see that the plaintiff was on remand until the 20th of February 1967 and your Honour will see towards the bottom of the page the notation that the plaintiff appeared before two Justices on application for care and control and was remanded to 9.30 a.m. on 20 February 1967.

Your Honour, the plaintiff will give evidence that she went back to the Children's Court on the 20th of February 1967 and was placed indefinitely in the care and control of the director. That document no longer survives.

Your Honour will see that there is also a document headed "Register of Children in an Institution".

HIS HONOUR: Yes.

MR WILSON: Your Honour will see that that is the document showing that the plaintiff was placed at the Holy Cross Retreat, it is described there, at Woolloowin, the plaintiff's age, 16 years and 11 months, and your Honour - excuse me, your Honour. Your Honour, and to supplement those two documents that I have taken your Honour to, the Department of Children's Services has provided to the plaintiff what are described as index cards held by the department in respect of the plaintiff. Can I tender the index card in respect of the plaintiff which shows that the plaintiff was - appeared again before the Court on the 20th of February 1967 charged as being exposed to moral danger and committed to the care and control of the department and admitted to the Holy Cross at Woolloowin and she was discharged on the 27th of October 1967? Your Honour will see on the bottom of the two cards on the left-hand side there is the notation that I was just reading

out to your Honour.

HIS HONOUR: Exhibit 5.

ADMITTED AND MARKED "EXHIBIT 5"

MR WILSON: So, your Honour, the position is that - and it is admitted by the defendant that the plaintiff lived at the Holy Cross Home between the 16th of February 1967 and the 26th of October 1967, apart from the period 1 September to 8 September 1967 when she was in the Brisbane Women's Hospital. Her child was born on the 1st of September 1967.

The plaintiff will say that the conditions at the home were pretty atrocious and harsh, and that she felt powerless and frightened whilst she was kept at the home. She cannot recall there being any visits by anyone from the Department of Children's Services to see how she was, although she was taken periodically for prenatal checkups to a medical practitioner. There was no inquiry of her as to what she intended to do with her child.

About two or three weeks after she was taken to the Holy Cross Home the plaintiff recalls being taken into a nun's office and being asked to sign papers being an application for her to marry. Stephan Benko will give evidence that he had arranged to obtain the consent of the plaintiff's mother and his father, both of them - sorry, the plaintiff being under age - for them to marry, and had taken those papers to - had taken those papers to the Holy Cross Home. Those papers were never returned to Mr Benko.

The plaintiff whilst she remained at the home between March and September of 1967 thought that she was going to be married to Mr Benko. She went into labour on the 1st of September 1967 and was taken, as I have said, to the Royal Women's Hospital. She gave birth late in the evening. She named her son Shane Stefan McDonald and in that regard, your Honour, can I tender the extant records of the Brisbane Women's Hospital and the Department of Children's Services? Your Honour, I am just making sure they all form part of the notice to admit for ease of reference. Your Honour should have a report of investigation. Attached to the notice to admit documents, perhaps the easiest way, the first document should be a report of investigation.

HIS HONOUR: Yes.

MR WILSON: And your Honour will see that is a report from the Brisbane Women's Hospital to the department - to the director of the Department of Children's Services dated 4 September 1967. This document was not prepared by the plaintiff. It was prepared by somebody at the hospital. It seems to be signed by somebody named E Robinson. Your Honour will see

that there is reference there both to the plaintiff and to the putative father. One point that your Honour will notice is that the plaintiff's name there is Lillian Josephine McDonald. The plaintiff will say that she has never been known as Lillian. Her name is Lily and, as I have said, there is reference there to the name of the child and also to the name of the father. Your Honour will see towards the bottom under the heading "Remarks (Baby for Adoption?)", and then the child born 9.59 p.m. on 1 September 1967. Your Honour, you then can go over past the next document, I will come back to that, to a document headed "Birth/Death of Illegitimate Child".

HIS HONOUR: Yes.

MR WILSON: And your Honour will see that the director is notified - the director of the department again is notified this time on the 4th of October 1967 and again the signature appears to be of E Robinson of the birth on the 1st of September 1967 of Shane Stefan McDonald, and the address there of 199 Canley Vale Road, Canley Heights was not an address at which the plaintiff was then living. It was or became the address at which the plaintiff's mother was living.

The circumstances, your Honour, briefly were that the plaintiff's mother and the plaintiff's stepfather travelled to Sydney in late 1966 and early 1967. They took a motoring trip to Sydney with a caravan and they eventually ended up at 199 Canley Vale Road, Canley Heights, and as I will come to that is where the plaintiff was discharged to at the end of October 1967.

Your Honour will then have a certificate of birth - I am sorry, your Honour. Your Honour, can I tender the certificate of birth of Shane Stefan McDonald dated 1 September 1967 and your Honour will see when I hand it up the document is recorded as having been registered by the registrar general on the 5th of September 1967? There is a stamp towards the top of the document.

HIS HONOUR: Exhibit 6.

ADMITTED AND MARKED "EXHIBIT 6"

MR WILSON: Your Honour, I asked you to pass over one document. That was the form of general consent. Could I ask your Honour to turn to that? It is the second document in the bundle. Your Honour, this is the document in which the plaintiff consented to the adoption of her child and you will see that the document is - has a number of sections filled in by hand. The plaintiff will say that she filled in none of that. She will say that she signed about two-thirds of the way down the page towards the right-hand side, there is a signature "Lillian Joseph McDonald", she will say that she signed that document and she was told to sign the name

"Lillian Josephine McDonald" by Jay Whalley. Your Honour will see a little towards that to the left the signature of Jay Whalley from the Department of Children's Services and then a certificate of a witness also completed by Jay Whalley.

HIS HONOUR: Yes.

MR WILSON: Signed by her, and your Honour will see that towards the top of the page there is the particulars of the plaintiff's child inserted in handwriting, the date of birth, et cetera.

HIS HONOUR: This is a photocopy. There is probably at least one other photocopy, Mr Wilson, and it may not matter, but on - in subparagraph 4 there is provision made for the insertion of the name of anyone else whose consent is necessary.

MR WILSON: Yes.

HIS HONOUR: And something appears to be written there. What is it? Do you know?

MR WILSON: Your Honour, I can hand up this which is the best copy we have but it seems to be the initials JW and two parallel lines written as if it is to be crossed out, and I can-----

HIS HONOUR: I see, it is an indication that no-one else's consent is required.

MR WILSON: I can tell your Honour that the effect of the legislation was at the time that only the consent of the mother was required. Can I hand your Honour this, which is, I think, the best copy we have?

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I am not sure whether that is any better than the copy your Honour had.

HIS HONOUR: Slightly, but the one I have now looks to be good enough, so I will return this, Mr Wilson.

MR WILSON: Thank you. A number of these documents were taken off microfiche, I understand. Your Honour, the plaintiff as I have said will say that she gave birth to her child on the first of September 1967. She was attended by a doctor and nurse in the labour ward. When the child was born it was immediately taken away and she wasn't able to see it. She will say that following some treatment in the labour ward she was then taken to a ward of the hospital where the unmarried mothers were kept and she was administered drugs, including a drug to suppress her lactation, and she will say that she was also administered other drugs which made her feel woozy or hazy at the time. She will say that nobody from the Department of Children's Services asked her about her intentions of keeping the child until 8 September 1967, and despite asking in the intervening period between the 1st and the 8th to see her child, she was told that she couldn't, and she couldn't see the child until she had seen someone from the Department.

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On a day that the plaintiff can't be more precise about, but between the 1st of September and the 8th of September, that is before Ms Whalley came, Stephan Benko came to the hospital to visit the plaintiff, and the plaintiff remembers going with him to the window of the nursery at the hospital and attempting to identify her son. She will say that she couldn't. Stephan Benko will give evidence that he visited the hospital, he thinks the day or so after the birth. He can't be more precise. He will say that when he visited the plaintiff in the hospital she seemed to be very dazed and confused and did not know which was her baby, and he thought that was a bit odd.

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The plaintiff will say that on the 8th she was approached by Ms Whalley - she didn't ask for Ms Whalley to come in - who was a social worker employed by the Department of Children's Services, and your Honour it is admitted that on 8 September 1967 Jay Whalley was an officer of the Department of Children's Services. The plaintiff will say that Jay Whalley asked her what she intended to do with the child, and the plaintiff indicated that she intended to keep the child. Ms Whalley told her that she couldn't do that, that she couldn't look after the child. She will say that Ms Whalley said to her that she was aware that Mr Benko had been to visit her in the hospital, and that that was not permitted, and that if things like that happened again she would be sent to Karrala - K-a-r-r-a-l-a. Your Honour, that was an infamous home near Ipswich in the 1960s, and it caused the plaintiff concern and fear about being sent to Karrala because she had heard terrible stories about what went on there. It was the subject of extensive evidence and the report of Mrs Forde, your Honour may recall, who conducted an enquiry in the late 1990s.

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The plaintiff will say that Ms Whalley was there for about ten or so minutes. She will say that because she was then in the care and control of the Department, she couldn't keep the baby, the baby would be put into foster care and would be kept in foster care until she, that is she the plaintiff, could prove that she could look after him, which might be a period of four or more years, and if she sought to take the baby away from the foster family that would cause distress to the plaintiff's child and he would hate her for the rest of his life. The plaintiff will say that she told Ms Whalley that she intended to marry Stephan Benko and keep the child. It was at that time that Ms Whalley told the plaintiff that she would get into trouble for seeing Stephan Benko whilst she was under the care and control of the Department. Ms Whalley also told the plaintiff that even if she did get married, it didn't automatically mean she would get her baby back. It might take years to do so.

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She will say that Ms Whalley, as a result of these threats and comments about sending her to Karrala if she continued to see the father of her child, and that the child would have to be placed into foster care, she signed the paper, the consent which I have taken your Honour to. She will say that she told Ms Whalley the name of the father of the child, and doesn't understand why his name didn't appear on the consent form. She will say that all of the documents were completed by Ms Whalley, and all she did was to sign the documents. She will say that at no time was she given any advice or counsel as to her options to keep the child, whether any government or financial benefits were available to help her subsist if she had the child, or whether she was given any alternative other than to adopting out the child.

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The plaintiff will say that Ms Whalley told her that if she didn't sign the papers she would be kept in custody until she turned 18, and at this time, your Honour, that is about another six or seven months, bearing in mind she would turn 18 in March 1968, and that Ms Whalley said well, what is going to happen with the baby whilst she is still in the care of the Department, and the plaintiff will say that she signed the document because she was scared not only of being locked up in Karrala House and kept in custody until she was 18, but also not knowing what would happen to her child in the meantime. The plaintiff will say that she felt frightened and totally confused when she was asked to sign the form. She will say that she did not get to read the form and was just shown where to sign it, and the plaintiff saw Ms Whalley also sign the form.

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Ms Whalley then said as she was walking out of the room, really by way of a throwaway line, that she had 30 days to think about it if she wanted to change her mind. The plaintiff will say that that was really meaningless because on 8 September, the very day she signed the form, she was taken back to the Holy Cross home at Woolloowin and the situation there was that she had little or no communication with the outside world.

Mr Benko will say - although as I have said to your Honour that legally under the statute the consent of the mother only is required, the plaintiff did tell Ms Whalley that she was intending to marry the father of the child. Mr Benko as part of his evidence will say that he was never consulted or asked about his desires or intentions.

The plaintiff will then say that, as I have said, she went back to the Holy Cross home, where she remained until late October 1967 when she was flown to her mother's home in Sydney. She will say that she then lived with her mother and stepfather for a short period of time. After returning to Sydney she will say that relations with her stepfather had not improved, and going back to Sydney rekindled those feelings and emotions that she had previously experienced in not getting on with her stepfather. Her stepfather was very angry towards her for the difficulty she had caused for the family. She will say that she was scared to return to Brisbane to be with Stephan Benko because she thought she would be arrested again. She will say that about six months after returning to Sydney she finally moved out of home and went to live with a gentleman by the name of Jeffrey Fuller - F-u-l-l-e-r - who was to become her first husband. She will say that she and Mr Fuller married in October 1968, on 26 October, and remained married for some 20 odd years.

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The plaintiff will say that she didn't initially tell her husband what had happened to her in Queensland because she felt shameful and upset about it. She will say that having regard to what happened to her, she was desperate to have a child to replace the child that she lost, but after three years of marriage she found that her husband was infertile and they weren't able to have children. That caused her to temporarily leave the marriage and return to Queensland with one of her sisters. She will say that whilst she was in Queensland on that occasion, about 1971, she was 21 years of age and she met and started going out with a young man to whom she fell pregnant, and in 1971 she gave birth to her daughter Amanda - I am sorry, in 1972, April 1972 she gave birth to her daughter Amanda. She will say that her husband pleaded with her to return to the marriage in Sydney, and she will give evidence that she did so, but she did so on the condition that he was told about the reasons for her leaving and the fact that she couldn't continue on going through their married life without having a child, and her husband agreed to look after the child Amanda, but that led to a prolonged situation of emotional abuse in the marriage where the plaintiff and her husband lived with his parents and she was in effect the slave to the family until the parents died in the mid 1980s, and it was always held over her that she had had these children out of wedlock.

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She will say that during this time and really up until 1990 - 1990 is a critical date for the plaintiff. Can I put that in this context, your Honour, up until 1990 the law in Queensland was that the process of the adoption was secret and no information could be found out about the child who had been

adopted out. There were secrecy provisions in the Act. That was changed in the mid 1980s to have a contact register where information could be placed by either the birth parent or the child, and if both wanted to contact each other they could and the Department organised reunions. In 1991 that was significantly further amended so that a birth parent or an adopted child could find out what they called nonidentifying information about the other person, and if there was no contact objection then full details would be obtained. So in 1990 the legislation was passed and it came into effect in 1991, and that was, as I say, a watershed event for the plaintiff because she was then able to try and find her son. So for the period from about 1972 until 1990 the plaintiff was preoccupied, I suppose is as good a word as any, with what had happened to her son. She described it as like a tape player movie going over and over in her head being constantly rewound; where her son was; what had happened to him; the experience of her arrest, detention and treatment continually going around in her head.

She will say that she became overprotective to her daughter, which led to some friction between them. She also suffered from bouts of depression and was at times uncommunicative. She would just want to be by herself to ruminate about things. She will say that on about each anniversary of her son's birthday she became physically unwell and filled with despair and she resorted to taking tranquillizers to endeavour to enable her to get some sleep.

She will say that whilst those feelings were being experienced by herself, at the same time she was being treated badly by her family, her husband and his parents, so she felt very powerless and unable to cope with life's ups and downs. She will say that she felt compelled to stay in the marriage because it provided a roof for her daughter and herself, and some support. She will say that she entertained the idea of suicide but couldn't bear the thought of leaving her daughter with the family which was not really her own. She will say that the thought that one day she would find her son again kept her going.

She will say that she didn't seek any advice during this period till 1990 because she was of the belief that what had been done was lawful, that they were allowed to do those sort of things, and she didn't have any reason to doubt that. She didn't believe that the system, as she describes it, would have acted in an unlawful way. When the legislation was changed in 1990 the plaintiff started seeking copies of documents pertaining to her son and the care that she had received both at the Holy Cross home and at the Royal Women's hospital, and she wrote a number of letters which I will ask her to identify where she was provided with some of the documents that have been put before your Honour and other documents saying that things were lost. For example, the Department of Family Services said their records were lost in the 1974 floods. So that explains the loss of the Department's records. The Royal Women's hospital said that their records were destroyed after 25 years, when the

plaintiff inquired - I think it was after 1992 - so those records were destroyed, other than some index cards and the like.

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The plaintiff will say that she sought to have contact with her son in 1990 and 1991, but unfortunately her son lodged a contact objection and left a note on the file saying "I have parents". That devastated the plaintiff, and she really didn't know what to do at that time. She felt absolutely distraught and it led to her then really embarking on a campaign to try and establish contact with her son. She wrote to the Governor-General, politicians, the Premier, various other organisations in an effort to try and find out how she could meet her son, and she was particularly upset at what she perceived to be another threat by the government in the letter which advised her that the son had lodged a contact objection. It also pointed out the fact that if she attempted to contact her son that was a criminal offence and she would be liable to a period of imprisonment if she attempted do so.

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The events of 1990 and 1991 led the plaintiff to leave her husband in Sydney, and as I have described it set about a campaign in trying to find her son in Queensland. She will say that she was unsuccessful in doing that. The Department told her that documents had been destroyed, information wasn't available, and the like. She went back to Sydney in 1994, told the Department of her new address so that if anything happened they could let her know.

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She then started to do some adult education. The plaintiff up until this time had been working, really, in unskilled work primarily as a cleaner, and she had suffered a rather bad injury to her shoulder which meant she couldn't do that sort of work anymore. In an effort to continue finding work she did what was then and still is a TAFE course in community welfare, a certificate course, with a view to becoming a counsellor or something of that sort, given the experiences that she had been through, and whilst she was doing that course as part of the course she was required to go and observe a community-based group, and she went to observe a group called Origins which was an adoption group and she spoke to one of the conveners of that group and it was then as a result of information she was given by that person that she - she has described it as the light going on and that all that was done might not have been legal to her and that she may have been wronged. She then set about pursuing with renewed vigour not only her son, but details of what had happened at the Holy Cross home through the Department of Children's Services.

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She will say that - that course was done in 1997, as I think I have said. She will say that she then became an active campaigner with Origins and she gave evidence to the Forde Inquiry in Brisbane in 1998. She will say that as a result of investigations which she carried out she was able to contact her son, who had been renamed Tim, in April 1998, and they had a reunion then, and he subsequently lifted his contact objection, which meant that she had access to more complete

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details from the Department's files.

The plaintiff will say that as a consequence of what she had been told by the convener of Origins, and also as a result of her discussions with personnel associated with the Forde Inquiry, she made a formal complaint to the police in 1997 - I am sorry, I will just check the date. The plaintiff's son lifted his contact objection on 13 May 1998. The plaintiff appeared before the Forde Inquiry on 6 October 1998, and on 7 October 1998 reported the matter to the Queensland police regarding the conduct of what had occurred in 1967.

The matter was then investigated by the police, the Queensland Ombudsman and the Criminal Justice Commission, but nothing was done. The plaintiff was told in particular by the Ombudsman that her allegations could only be pursued either through the legal system or the political process. The plaintiff then endeavoured to get solicitors to act for her and had some difficulty doing that in 1998. She eventually obtained solicitors who were prepared to act for her, in 1999, and a letter was written to the Department at about the beginning of 2000 foreshadowing threatened proceedings.

The plaintiff has since April/May of 1998 had contact with her son, but the relationship is still somewhat a distant relationship because the plaintiff's son has close contact with his adoptive parents, or a close relationship with his adoptive parents. The plaintiff is upset about that. She is also upset by the fact that the plaintiff's son is now married and has children, and the plaintiff will say that she doesn't have the sort of relationship with her grandchildren that she would like to have as an ordinary grandparent because the adoptive parents would have filled that role and the plaintiff only sees them irregularly.

Your Honour, the plaintiff after completing the certificate in Community Welfare, which she completed, then enrolled in a law degree at the Macquarie University in the year 2000. She is still undertaking that course. She will say as a result of some of the psychiatric difficulties that she has had she has had difficulty with some aspects of that course, but is - my recollection is in about fourth year at the moment of that course.

The plaintiff went to see a psychiatrist towards the end of 2000 and she - I am sorry, went to see her general practitioner towards the end of 2000 and was referred first to a counsellor and then to a Dr John Pickering, who has been her treating psychiatrist since that time. Your Honour, subject to calling Dr Pickering, can I tender two reports. The first is dated 30 September 2004 addressed to the plaintiff's lawyers.

HIS HONOUR: Exhibit 7.

ADMITTED AND MARKED "EXHIBIT 7"

MR WILSON: The second, your Honour, is dated first of September - sorry, December 2000, addressed to the plaintiff's general practitioner.

HIS HONOUR: Exhibit 8.

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ADMITTED AND MARKED "EXHIBIT 8"

MR WILSON: While that is being dug out at the moment, can I again subject to calling her, tender a report from Dr Marilyn Moore, psychiatrist, who provided a medico-legal report dated 22 December 2000.

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HIS HONOUR: Exhibit 9.

ADMITTED AND MARKED "EXHIBIT 9"

MR WILSON: Your Honour, the report of Dr Pickering of September 2004 really formulates what I might call the pecuniary aspect of the plaintiff's claim - that is, the need for future psychiatric treatment and the likely cost of it and the likely cost of medication. The plaintiff has been on antidepressant medication for a number of years and continues to take it on a daily basis.

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Your Honour, the other two witnesses who I outlined at the start were Janette Lord and Patricia Large. Your Honour, the plaintiff will seek to lead their evidence, which is perhaps to use a shorthand expression similar fact evidence, in this respect, they were both women who in 1968 underwent the same modus operandi by Ms Whalley as the plaintiff did. In the case of Ms Large, she was also at the Royal Women's hospital, and Ms Lord was at a hospital named Boothville, which your Honour may have heard of, at Herston, I think it was or Annerley, a Salvation Army home. They can both give evidence that they were teenage pregnant mothers, pregnant women, unmarried who were wanting to keep their child, and said that to Ms Whalley who approached each of them - they didn't approach her - in the hospital, and Ms Whalley through the process of coercion persuaded each of them to give up their child for adoption.

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Your Honour, we say that evidence is relevant in two respects, first being highly probative of the fact in the plaintiff's case that she was approached by Whalley and coerced into giving her child up for adoption as one basis.

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HIS HONOUR: Is there an issue about that?

MR WILSON: I am not sure, your Honour. I anticipated there would be. That is why I was addressing it.

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HIS HONOUR: Well, which paragraph of the defendant's pleading makes an issue of this? You are being put to proof, aren't you?

MR WILSON: Yes. No, I appreciate that, your Honour. There is a dispute in response to the - going back a step, in response to the pleading and the defence, your Honour, is quite right, it is a non-admission as to what Whalley did. In respect of a request to admit that Whalley approached the plaintiff and asked her to adopt her child, that was not admitted so we thought there would be a factual contest about that, one of the issues in the plaintiff's case being that it was Whalley who approached the plaintiff and forced her to give up her child. In support of that we wanted to call the evidence of these two other witnesses.

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HIS HONOUR: The defence of the only continuing defendant is that filed on the 2nd of September 2003.

MR WILSON: Yes. That's so, your Honour. Your Honour will see in paragraphs - paragraph 3 is the non-admission of which I spoke and that hasn't been changed, and paragraphs 11, 12 and 13 are the critical paragraphs in the pleading.

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HIS HONOUR: Well, I just raised the question given the extent of the opposition foreshadowed by the defendant's pleading. It simply says, as I read it, "We neither admit nor deny these allegations", which presumably means you are being invited to adduce some evidence-in-chief to establish the proposition.

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MR WILSON: Your Honour, we would certainly be content. We thought it was slightly more vigorous opposition than that, and that is why we proposed to call that evidence to really support the plaintiff's case and I was going to say before, your Honour, also to meet in part the - one of the particulars of the defence of laches which is the death of Ms Whalley. Your Honour, unless there is anything further, I propose to call the plaintiff.

HIS HONOUR: Well, Mr Wilson, you seem to be of a view that you have to anticipate more opposition than that which the pleading would suggest. It prompts me to ask Mr Daubney whether he wouldn't mind telling me what on his case the issues in the proceedings are said to be. Do you mind if I do that?

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MR WILSON: Certainly not, no.

HIS HONOUR: Do you mind telling me at this stage, Mr Daubney, or would you prefer - and I can understand that you might - not to say?

MR DAUBNEY: Well, what I can say, your Honour, at the moment is that the plaintiff's evidence will be challenged as best we can. As our learned friend has pointed out the State is demonstrably hamstrung because the case that is sought to be made against the State turns on specific allegations of fact about dealings between the plaintiff and Ms Whalley who is dead. We can't lead any evidence from Ms Whalley. Hence the non-admission to the paragraph in the pleading. But, with respect, that is not to say that in defending the case, resisting the plaintiff's case, putting the plaintiff to proof, the defendant may not then seek to lead evidence - sorry, may not firstly cross-examine the only source of the evidence relied on to support the allegation made in the statement of claim, so Ms Arthur's evidence will be challenged as best we can, and, secondly, it does not necessarily mean that the State in due course may not lead evidence again from which your Honour may draw the inference that the version of events in terms of the dealings between the plaintiff and Ms Whalley are unlikely, if not most unlikely, to have occurred in the way in which she says. The significant - at the risk of repeating ourselves, the significant aspect, of course, is that a specific incident involving a specific discussion between two specified people, one of whom is dead, is the sole basis on which this claim is brought. That is the basis of the claim. We hope that assists your Honour.

HIS HONOUR: Thank you. Now, Mr Wilson, on what principle is the claim for compensation constructed that you are - more accurately, that your client is entitled to be put in the same position so far as money can do it as if the duty you alleged had been performed?

MR WILSON: That is one way of putting it, your Honour, in terms of whether the measure of damages for equitable compensation is the same as in tort. The way your Honour has put it is more contractually framed than probably tortiously framed. Your Honour, we put it rather more generally, that is, what measure of - if the Court finds that there was a breach of fiduciary duty, what measure of damages does the Court think is just to compensate this plaintiff, and I put it in those general terms because how does one value what has occurred? It is not like a loss of earnings claim or something such as that, and whether the texts on equitable compensation are equally as general in the way in which the damages are - the compensation to be assessed, because I said at the outset this is a novel type of case. The ordinary breach of fiduciary duty where profit has been obtained or benefit lost, it is easy to quantify often what that is. This is not one of those situations, but in an effort to guide your Honour in terms of what is an appropriate figure at least in part, we would say that your Honour can have guide - if your Honour accepts the evidence say of Dr Moore and Dr Pickering, that the plaintiff has a chronic post-traumatic stress disorder, your Honour may find some assistance in comparable

awards to like age people who have suffered those sort of injuries in other circumstances.

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HIS HONOUR: Is any of the medical evidence controversial?

MR WILSON: The Crown does have some evidence from a psychiatrist which does put in issue causation, but I am not - I am sorry, it does put in issue the precise diagnosis, not that there is a psychiatric illness, but the diagnosis of post-traumatic stress disorder is put in issue. I don't think there is any issue about depression, but there is an issue about causation in light of other events that have happened in the plaintiff's life and another issue which your Honour will have to consider is whether in any event causation is a necessary element to be proved in a claim for equitable compensation, causation in the tortious sense.

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HIS HONOUR: Yes.

MR WILSON: Could I call the plaintiff?

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MR DAUBNEY: Before - sorry, before our learned friend does so, in case it wasn't clear from what I said before, your Honour, we will be objecting to the evidence of Ms Lord and Ms Large. I didn't want it thought that we were letting that go through.

HIS HONOUR: One matter that may require investigation in that context is the extent to which their evidence if adduced would involve collateral inquiries and investigations. Have you got their statements?

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MR DAUBNEY: No.

HIS HONOUR: Yes, Mr Wilson.

MR WILSON: Your Honour's comment assumes that there are statements. Your Honour's comment assumes that there are statements. I can certainly provide my learned friend with an outline of what they hopefully will say.

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HIS HONOUR: Well, the reason I ask is that historically evidence of the kind you propose to adduce has been resisted on the footing that to admit it often simply results in collateral inquiries which mean that the litigation cannot sensibly be confined. Now, if the rationale for that traditional approach applies in this case, that might suggest, if there be any residual discretion available, one result.

MR WILSON: Yes. Yes, I take on board that and I will discuss it with my learned friend, your Honour.

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MR DAUBNEY: Well, there is, with respect, adopting from what has fallen from your Honour, there is a further issue, of course, which is that it is not pleaded against us and it is no part from what we have heard of our learned friend's case

that there was a system in the department of inducing adoptions such as is alleged to have occurred in this case, and in the absence of any such allegation, with the greatest respect, it is very difficult to see how - what this evidence is probative of. 1

HIS HONOUR: Similar fact evidence on the footing that it is more likely that what the plaintiff alleges here occurred because much the same thing happened with other similarly circumstanced women at the hands of Ms Whalley at about the same time. 10

MR DAUBNEY: And at the risk of saying something that your Honour will hear on many occasions over the next few days, Ms Whalley is dead, she can't answer any of these allegations, and that is the first difficulty. The second difficulty is the question of the opening of collateral inquiries that your Honour has already referred to.

HIS HONOUR: Mr Wilson, it is apparent that you will need to form a view about how important this evidence is to you, because if, as has been acknowledged, your opponents have no prior knowledge of the content of the evidence, it will be at least a challenge for Mr Daubney to embark upon the cross-examination of them this week, one would think. 20

MR WILSON: Yes.

HIS HONOUR: What its implications will be for the trial if you succeeded in adducing the evidence is something that might well be fit for consideration. 30

MR WILSON: And we will. Your Honour, I indicated that I would hand up that report of Dr Pickering of the 1st of December 2000 when it was extracted and I will do so.

HIS HONOUR: As I said, it will be Exhibit 8.

MR WILSON: I call the plaintiff, your Honour. 40

HIS HONOUR: I will take the morning break at 11.30 or thereabouts.

LILY JOSEPHINE ARTHUR, ON AFFIRMATION, EXAMINED:

MR WILSON: Thank you, your Honour. Your name is Lily Josephine Arthur?-- Yes. 50

Mrs Arthur, what is your present residential address?-- 33 Chadwick Crescent, Fairfield West, New South Wales.

Are you employed at the moment, Mrs Arthur?-- Employed part-time as a coordinator of an adoption support agency.

And what is the name of that?-- Origins.

1

Mrs Arthur, your name at birth was Lily Josephine McDonald?--
Yes.

McDonald is spelt M-C-D-O-N-A-L-D?-- Yes.

Would you have a look at this document, please, and identify
it as a certified copy of your birth certificate?-- Yes.

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Your Honour, I tender that.

HIS HONOUR: Exhibit 10.

ADMITTED AND MARKED "EXHIBIT 10"

MR WILSON: Mrs Arthur, did you continue to go by the name
Lily McDonald until relevantly to this case February 1967?--
Yes.

20

Did you ever call yourself Lillian McDonald?-- No.

When were you born?-- The 19th of March 1950.

Were you born in Australia?-- No, I was born in London,
England.

30

And when did you come to Australia?-- Approximately April of
1959.

And did you come to Australia with your parents?-- Yes.

They were then married?-- Yes.

And how many children were in the family?-- There were seven
children, and I was the second oldest.

40

Yes. And after you came to Australia did your mother and
father have any more children?-- They had two more when they
arrived.

So that as at 1967, how many brothers and sisters did you
have?-- I had seven sisters and one brother.

When you came to Australia you were perhaps about nine years
old?-- Yes.

50

Did you then embark on any education?-- I went to various
schools, most of them were Catholic convent schools.

Yes. You say various schools. Was there some nature of
itinerant work that your father was involved in or did you
move around a lot?-- We first landed in - we first moved when
we first landed - we ended up in Townsville and we lived there

for two years, and we went to a Catholic school in Townsville and then we ended up moving down to Brisbane.

Yes?-- And moved around a few times down there.

Right. And what grade did you reach at school before you left?-- Grade 7.

Did you complete grade 7?-- Yes.

And at about what age did you leave school?-- I was about 13 years and 10 or 11 months.

So shortly before your 14th birthday?-- Yes.

In - perhaps at the end of the school year 1963?-- I went back after Christmas and did a month or two before I left.

Why did you leave school?-- Because my mother needed help. My father had left.

When did your father leave?-- He left in 1961.

And so you left school to, what, help your mother with your brothers and sisters?-- Yes.

And how long did that continue for?-- Me helping my mother and-----

Yes?-- Continued on till I left home.

And when did you do that?-- In 1966.

And what were the circumstances in which you left home?-- My father had gone back to England in 1961 and he returned in 1966 and he - he came out to where my mother was living and - because my mother was going to divorce him and he tried to stab my stepfather.

Yes?-- And it was after that incident my father was gaoled.

Yes?-- And between the time that he was arrested and the time he was to be released my mother decided that she was going to sell up the house and move to Sydney.

Were you invited to move to Sydney with the rest of the family?-- They asked me if I wanted to go but I didn't want to go.

And why didn't you want to go?-- Because I didn't - I didn't feel like I wanted to go down there to live. I didn't know anyone in Sydney and I didn't get along with my stepfather and I had a job. I was emancipated. I had been working for nearly three years. I was very mature for my age.

When you say you had a job, you mean a job other than looking after your brothers and sisters?-- Yes.

You were in paid employment?-- Yes.

1

What sort of work did you have?-- I was a sewing machinist in a mattress factory.

So your mother and your stepfather decide to leave for Sydney?-- Yes.

You decide not to go with them?-- Yes.

10

What did you do?-- I rented a room. I was going with Steve at the time.

Who is Steve?-- Stephan Benko.

Yes?-- I was going with him at the time. He was my boyfriend and he found me a room to live in a house that he knew the people that lived there and they rented a room out so I rented a room there.

20

And where was that?-- It was in Rocklea somewhere. I can't think of the name.

Now, when you say this happened in 1966, are you talking about the first half of the year or the second half? Are you able to be more precise?-- It was about the second half of the year.

Now, subsequently did the relationship between you and Mr Benko progress?-- Yes.

30

What happened?-- What happened?

Did you move in together?-- I was in that - I was in the room for about two weeks.

Yes?-- And there was a little like - one of those glass holes in the door, and I heard some shuffling out there one day and I saw this person looking through the hole and I said to Steve, "I'm scared there because somebody keeps looking through the door hole", and I felt like I didn't have any privacy.

40

Right?-- Particularly when I was dressing and undressing. So I said I had to move out of there.

So up until that time you were just renting a room?-- Yes.

In a house?-- Yes.

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Where did you move to?-- I moved into a half a house, it was divided up into two flats, and Steve was in one half, and I don't know who was in the other. I think there were some people there, but they moved out or something, and him and I moved in together.

And where was that?-- That was in Lillian Avenue, I think, or Street, Rocklea.

And can you recall approximately when you moved into this flat with Mr Benko?-- I think it was around about mid to late October.

And at that time you were still in employment?-- Yes.

At the mattress - as a sewing machine person; is that right?-- Yes, I had worked there for two years.

10

Now, did something happen - did you find out in the beginning of 1967 that you were pregnant?-- Yes.

Do you recall roughly when you discovered that you were pregnant?-- I think it was about mid to late January.

And did the fact that you were pregnant have any effect on your employment?-- I started getting morning sickness and they called me into the office and the employer asked me was I pregnant and I said that I was and then he said, "Well, we've just got to let you go", and they put me off.

20

Now, at that time to your knowledge was Mr Benko working?-- Yes.

And the two of you lived in this flat together?-- Yes.

And was he supporting you?-- Yes.

Now, can you recall some events which occurred on the evening of the 15th of February 1967?-- Steve and his friend were out in the kitchen, I think, and they were practising because they were joining a new band and he was playing his guitar. I had gone to bed. I just went to sleep because I could hear them - they weren't loud. I just fell asleep.

30

About what time did you go to bed, do you remember?-- Wasn't that late, probably about 9, 10 o'clock.

Sorry, I interrupted you, continue on?-- And the next thing that happened was somebody was shaking and telling me to wake up and I just could see these legs next to the bed, thought, what is going on, and the next minute I looked up and there was two policemen there in my bedroom.

40

Yes?-- And they told me to get out of bed and they - one of them took me into the kitchen and started questioning me.

And you answered their questions?-- Yes.

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And as a result of that questioning did something happen?-- He said - he asked me was I pregnant. He didn't ask me that many questions. He just asked me was I living there and I said, "Yes", and was I pregnant and I said, "Yes", and he said he is going to have to take me in.

Mmm?-- And he said to me, "If you had been a month older I couldn't have done anything."

And as a result of them saying they would have to take you in, were you taken somewhere?-- I was taken down to the -- what I know now was the Brisbane Watchhouse. I thought they were taking me to Boggo Road Gaol.

Yes. And did you stay at the watchhouse or were you allowed to go home? What happened?-- When I went to the desk there was the two policemen there and the sergeant behind the desk said, "What did you bring her here for? You could get hung for bringing her here", and they said, "Well, it's too late to take her anywhere else", and then he says to me to take off my jewellery and I had a belt around - holding up my skirt, I had to take that off, and then he said that I was going to get the deluxe cell because it had sheets on, and they took me up to a cell and locked me in there.

And you stayed there overnight?-- Yes.

And how did that make you feel?-- I was terrified. I didn't know what was happening. One minute I was in bed, next minute I was in a cell. I was sick.

Physically sick?-- Physically sick.

And what happened the next morning?-- The next morning they - they just came along and took me to the Children's Court.

Yes. When you say "they", to whom are you referring?-- I think one of them was the policeman that arrested me the night before.

Mmm. So you went before the Children's Court?-- Yes.

And as a result of that you were sent to the Holy Cross Home at Woolloowin?-- Yes.

Did you know where your mother was then living?-- I thought that she was living in a caravan park at Bankstown. That's what I had heard.

In Sydney?-- Yes.

Right. Perhaps just to go back a little bit, you said before that your mother and your stepfather left to move to Sydney. Did they - how were they going to get to Sydney?-- They took a car with a caravan, but they had only been gone a couple of weeks.

Right. After they left did you have an occasion to see them again?-- I saw them on the - I went down to the Gold Coast and we spent a week with them down there. That was the last time I saw my mother.

Are you able to place that week in terms of-----?-- It was over Christmas.

Christmas 1966?-- Yes.

10

And at that time your mother and stepfather met Mr Benko?-- Yes.

Stephan?-- Yes.

And did you tell them that you were living - or were you in fact living with him at that time?-- Yes.

And you told them that?-- I can't remember.

20

But so far as you were aware, your mother and stepfather were heading towards a caravan park at Bankstown, did you say, in Sydney?-- Yes.

Did you tell that to the Children's Court or to the police?-- Yes.

Were you allowed to make contact with your mother?-- No.

30

What about with Mr Benko?-- No.

Did you tell anyone that Mr Benko was supporting you - that is, you were living with him?-- Yes.

He was working and supporting you?-- Yes.

Who did you tell that to?-- To anyone that asked me.

Do you recall whether you told that to either the Children's Court or the police that you spoke to?-- I told the police, but in the Children's Court I wasn't asked anything. All they asked me was where was my mother and father. That's the only question they asked me.

40

Do you recall what you told them in respect of where your mother was?-- I said that she has just moved to a caravan park in Bankstown.

And you knew where your father then was?-- My father was in Boggo Road.

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Is that a convenient time, your Honour?

HIS HONOUR: Ten to twelve.

THE COURT ADJOURNED AT 11.30 A.M.

THE COURT RESUMED AT 11.50 A.M.

LILY JOSEPHINE ARTHUR, CONTINUING IN EXAMINATION-IN-CHIEF:

MR WILSON: Mrs Arthur, we had reached the point before about the Children's Court on 16 February 1967. Where did you go after you attended at the Children's Court?-- I was taken to this home that I found out was Holy Cross industrial school.

Yes. Do you remember where that was located?-- It was at Woolloowin.

In Brisbane?-- Yes.

And who took you there?-- The policeman that took me to the Court.

And what happened when you - when you arrived at the home or the school, did you know why you were going there?-- I was going there because they were looking for my mother and stepfather.

Yes?-- And I had to go back again to Court in a few days time.

Right. You said before that you would have told people who asked your knowledge of where your mother was?-- Yes.

And also where Stephan Benko was?-- Yes.

Okay. So you went to the Holy Cross home?-- Yes.

Were you going to stay there?-- No.

Sorry, you described it as a school. Were you going to reside there until you went back to Court?-- Yes.

And did you do that?-- They put me upstairs in the dormitory and locked me up in there for four days.

During those four days were you allowed to contact Stephan?-- No.

Or your mother?-- No.

Did anyone ask - I am sorry, did anyone from the Department of Children's Services visit you?-- No.

And when you say you were locked in the dormitory, do you mean for the entire four days, or just at night, or what

happened?-- I was locked up in there for the whole four days. 1

Did they give you food to eat?-- Yes.

Then did that continue until 20 February?-- Yes.

1967?-- Yes.

And then did you go back before the Children's Court?-- Yes. 10

When you went back before the Children's Court were you provided with any representation or did you have to act for yourself?-- I wasn't provided with anyone. I just stood there.

Do you recall who was in the Court other than the presiding members of the Children's Court?-- No.

Was there a police officer or someone from the Department?-- No. I don't know. 20

What happened on that occasion?-- The Magistrate or the Judge asked the policeman did they find my parents, and he said no.

Yes?-- And then the Magistrate said to the - he just said that we are going to put her in Holy Cross.

Were you asked any questions?-- No.

Were you asked if you knew where your mother was?-- No. 30

Or where Mr Benko was?-- No.

Do you know what complaint or charge was brought against you?-- I was told that I was exposed to moral danger.

And were you told for how long you were to be sent to the Holy Cross home?-- No.

Now, you went back there?-- Yes. 40

How did you feel at this stage being sent to the Holy Cross home without knowing for how long?-- I felt sick.

Did you make any attempt to contact anyone?-- I couldn't.

Why not?-- Because I couldn't. I was - had people around me. There was no telephone, no friends, no letters, no nothing.

You weren't allowed to use a telephone?-- No. 50

Or write letters?-- We had letter-writing every Sunday.

Yes, and did you use that opportunity to write letters?-- We were allowed to write one letter.

Yes. Did you use that opportunity to write letters, or a letter?-- I wrote to my mother, yes.

How did you know where to write to her?-- I can't remember. I don't know whether my sister may have told me, or what. I just can't remember.

Do you know whether before you wrote your first letter to your mother you had been visited by your sister?-- Yes, but they didn't - I can't remember whether they allowed her to see me or not. Steve had come to the home a couple of times and the girls in the home told me that they saw him there. They allowed - I think it was either when I got first put in there they allowed him to see me for a few minutes, along with my sister, but that was it.

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Do you think that was during that initial four day period, or after 20 February?-- I can't really remember.

Do you remember a short visit by Stephan Benko?-- Yes.

And a visit by your sister?-- Yes.

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It may have been during the visit by your sister that you found out where your mother was?-- It could have been, but I wasn't allowed to see them. I only was allowed to see them once, but they came more than once.

You subsequently found that out?-- No, because I was there and my friend said "Your sister and your boyfriend are going out the gate", and I just rushed to the window just in time to see them walking around the corner. So they had been there.

30

They had been there but you weren't told that they were there?-- Yes.

Sorry, Mrs Arthur, I think that was a "yes" to my question. Yes, you weren't told they were there?-- Yes, I wasn't told that they were there.

After you were returned to the Holy Cross home in February 1967 were you again put in one of these dormitories and locked up, or did something different happen?-- When I came back from the Court I was taken into the nun's office. She cut my hair. She gave me two dresses and a pair of thongs and told me that my name was going to be Leanne. I was not to tell anybody my name, and then I was sent straight to work in the laundry.

40

Was that a laundry that was on the premises?-- Yes.

And did you continue to work in the laundry until you were discharged from that home?-- I was forced to work in the laundry until the day I left the home.

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Was that up to - sorry, I will rephrase. As your pregnancy advanced were you still required to work in the laundry?-- I was forced to work in the laundry every day from Monday to Friday, and apart from that I had to clean the recreation hall and my part of the dormitory where I was working before I went

down and worked in the laundry. I worked there for the duration of my pregnancy, standing up all day folding sheets.

1

Now, I will come back to a specific event during your stay at the home. Can I ask you over the course of your time from February through to October of 1967 were you visited at all by any representative of the Department of Children's Services?-- Not one.

Now, can I ask you then whether you ever went out of the home, for example, for medical checkups in the course of your pregnancy?-- They took - a woman came along in a van and took me to the hospital once a month up until I had to go more frequently.

10

Yes. Do you know whether that lady was from the Department, or not?-- I don't know who she was.

During the period up until you went into labour on first of September did anyone from the Department contact you to ask you what you intended to do with the baby?-- No.

20

Now, after you had been at the home for a little while were you asked to sign some papers?-- I was. I had only been there a little while and the nun came and told me to come down to the office, she had something for me to sign.

Yes?-- And when I saw them it was the papers applying for - to get married.

30

Yes?-- And I saw my mother's signature on there and Steve's father's signature on there, and I signed them papers.

Do you know whether Stephan Benko had signed them?-- No, I didn't. I didn't look.

You were asked to sign these papers?-- Yes.

And you said you did so?-- Yes.

40

Are you able to estimate approximately how long it was after 20 February that you did this?-- It wasn't long. Maybe a week or two.

Were you given a copy of the papers?-- No.

You don't personally know what happened to them?-- No.

This may seem obvious, but did you ever marry Stephan Benko?-- No.

50

Now, throughout your time at the Holy Cross home you kept working in the laundry?-- Yes.

Doing the cleaning work that you have referred to?-- Yes.

And apart from these visits to a medical practitioner on a periodic basis, did you have any contact with the outside

world?-- I had a couple of ladies from my work come to visit me about once a month or something. There is a list that I have given that reports the dates that people came to see me, but they were the only contact that I had with anyone from - that I knew.

Do you recall receiving any correspondence from Mr Benko?-- No.

Do you recall being given any correspondence from your mother?-- I received letters from her, but not very often.

You were there for, say, eight months. Are you able to estimate in that period of time approximately how many letters you would have received?-- Not very many because I used to get angry there wasn't any letters.

Are you talking a couple, or ten, or how many are you talking about?-- No. I don't think there would have been as many as ten.

Are you able to put any estimate on the number of letters over eight months in the home?-- Not really, no.

Are you able to estimate or do you recall how many other residents there were at the time you were there?-- I think there was about 20 odd girls.

Yes?-- State wards, but I was the only one that was pregnant.

Right. And the other girls were there for other reasons, obviously?-- Yes.

Now-----?-- I was the oldest one there.

Yes. You celebrated your 17th birthday there?-- Yes.

Now, you then - jumping forward - went into labour on first of September?-- Yes.

And you were taken to the Brisbane Women's hospital, as it was then called?-- Yes.

At Herston?-- Yes.

Who took you there?-- The ambulance.

Right. When you went to the hospital did you go straight into the labour ward?-- I went into a, sort of like a ward that only had a bed in it. I don't think it was the labour ward.

Now, when you went to the hospital were you - I will ask you in two stages. Firstly, did you ask to contact anybody?-- No.

And were you permitted to contact anybody?-- No.

Now, you went into this room with the bed, and your labour -

did you subsequently - were you subsequently attended by a nurse or a doctor?-- I was just laying there on the bed. Nothing was happening and I was there for quite sometime.

1

Do you recall now whether you recall going to the hospital early in the morning, late at night, middle of the night?-- I went to the hospital about 6.30 or seven o'clock in the morning.

Yes?-- Because we were at Mass and that is when I had a show, and the nun saw it and rang the ambulance straightaway and they took me in early in the morning.

10

And you gave birth to your son a little before ten at night?-- Yes.

When you say that you were taken to this room with the bed, was that for the period between seven o'clock odd in the morning?-- Yes.

20

And ten o'clock at night?-- Yes.

In the same room?-- No. They moved me later on into another room.

All right. Did you - sorry, did anyone from the Department visit you at that stage?-- No.

Did anyone from the hospital ask you what you intended to do with the child?-- No.

30

Did you tell anyone at the hospital at that stage before you gave birth that you intended to put the baby up for adoption?-- No.

Can I ask you this, and forgive me if I have already asked, when you found out that you were pregnant were you living with Mr Benko?-- Yes.

He was working and supporting you. What was your intention at that time?-- We intended to get married.

40

Was that something you discussed between yourselves?-- No, it was a foregone conclusion.

Why do you say that?-- Because we loved each other.

You said that a short while after you went into the Holy Cross home these application to marry papers were brought for your signature?-- Yes.

50

Sorry, I jumped back there. Now, nobody asked you what you intended to do with the baby?-- No.

You gave birth to the baby?-- Yes.

Immediately after the birth were you able to - were you shown the baby?-- No.

What happened?-- What happened during the birthing process?

No, immediately you had given birth. What sort of child was it, a boy or a girl?-- They said it was a boy.

Somebody told you that?-- They had me tied down to the bed. I couldn't move to find out what was going on.

Right. Was that painful?-- They nearly broke my back. They had me pushed face first into the mattress and I gave birth with my leg tied up in the air.

10

Somebody told you you had had a boy?-- Yes, after I had - I felt the baby and then I said, "What is it? What is it?", and somebody said, "It is a boy".

Were you then given the baby to nurse?-- No.

What happened?-- They took him straight out of the nursery.

20

And this is at ten o'clock at night?-- Yes.

Did you see the baby again that evening?-- No.

Now, after you had given birth were you taken to a bed in the hospital?-- I was taken to another ward.

Yes?-- Yes.

30

And?-- That was after they finished stitching me up.

Yes. When you were in that ward was your baby brought to you?-- No.

Did you ask to see your baby?-- Yes.

40

50

From when did you ask to see your baby?-- From the day that I woke up.

1

Do you recall whether that was the next morning?-- Yes.

Were you shown the baby?-- No.

Was an explanation given to you as to why not?-- They just said, "You are not allowed to."

10

Did you demand to see your baby?-- I said, "I want to see the baby", and they said, "You are not allowed to."

Did they say why you weren't allowed to?-- No.

Did you take any steps yourself to try and find your baby?-- I thought there was something wrong with him.

Right. And how did that make you feel?-- I was scared.

What, were you scared there was something wrong with your baby?-- Yes.

20

Did you ask-----?-- No.

-----if that was the reason why you weren't allowed to see the baby?-- I didn't ask was there any reason.

You accepted what you were told?-- I was - I was in such a state that I just accepted it.

30

Now, why were you in such a state?-- Because I was in a stupor.

Why?-- Because I couldn't hardly walk and everything was just going around. I felt like my head was in another place.
I-----

And how long did that feeling last for?-- Most of the time that I was in hospital.

40

Do you know or do you recall being administered any drugs while you were in hospital?-- Yes.

Do you recall the type of drugs that you were administered?-- I was - I was given tablets, injections, and some medicine.

Do you know the type of medicine that you were given?-- I don't know what it was but it was a pink sort of - I never took tablets or medicine in my life. It used to make me vomit. But I was forced - she stood over there watching me while I got it down.

50

Do you recall what injections you were given?-- No. They said it was to dry up the milk. That's all I know.

This is to stop you lactating?-- Yes.

Now, do you recall whether or not you had any visitors in hospital?-- The only visitor I recall vaguely was Steve coming to see me.

Now, bearing in mind the evidence you have just given about your state, are you able to say when in relation to your stay in hospital Stephan came to visit you?-- I think that he came a few days after the birth, because I was panicking that I couldn't see him before I was sent back to the home.

Now, when Stephan came up to the hospital, did you make any effort to see your baby?-- Not after I was told that I wasn't allowed to.

Did he ask you to take him to see the baby?-- Yes.

Did you go down to the nursery?-- Yes.

What happened?-- We just stood there.

All right?-- We were looking at all these babies. There was - they were all lined up along the back wall.

Yes?-- And we were just looking for which one of our - which one of them was ours.

Did you ask someone?-- No.

Why not?-- Because you had to get a card.

Did you try and get a card?-- No, they wouldn't give me one.

Did you ask for one?-- No, because they said that I wasn't allowed to see the baby.

Now, you recall Stephan coming up. Approximately - do you remember how long he was there for?-- I can't remember. I think it was through most of the visiting hour.

And that was within the days or so after you had given birth?-- Yes.

Now, apart from Stephan, were you visited by anyone else at the hospital?-- No.

Your sister that you spoke about before didn't come to see you?-- No, I don't remember her being there.

So you're in hospital having given birth but not seeing your baby. How did you feel?-- How did I feel? I felt like I wasn't even there, I could hardly walk around. I hid under the bed clothes most of the time I was in the hospital.

Were you frightened?-- I was terrified. I didn't know what they were going to do. Nobody had said anything to me at all about what they were going to do to me. Not even in the labour ward. I had no idea what I was in for.

Did you know, for example, where you were going to go when you were released from hospital?-- No.

1

Did you know whether or not you would be able to take your baby wherever you were going?-- Well, I - I was labouring under the thing that there wasn't any reason to keep me in the home any more when the baby was born.

Yes. So did you expect to be discharged to go and resume your life with Stephan?-- Yes.

10

Now, subsequently did you receive a visit from a person from the department in the hospital?-- Yes.

And do you recall whether that was - do you recall when that was?-- It was-----

To make it easier for you, do you recall whether it was - when it was in relation to when you were admitted or when you were released?-- It was eight days after I had the baby.

20

Right. So the 8th of September?-- Yes. I went in on a Friday and that was the Friday that she came.

When you say she came, to whom are you referring there?-- The woman that took my consent.

Did you then know her name?-- No.

Can you describe to his Honour the circumstances in which you and this lady met?-- She just turned up at my bed and she said something, I can't remember what she said, where she was from, I don't - I didn't know her name until I saw the consent.

30

Right?-- I had no idea who she was, and she just said something about being from the department.

So she came to your bedside?-- Yes.

40

On the 8th of September?-- Yes.

She identified herself as someone from the department?-- Yes.

Go on?-- And then she - I am in a bit of a thing because I just get flash, flash.

Yes. Take your time. Did you ask to see this lady?-- No.

Did you tell anyone at the hospital that you wished to put your baby up for adoption?-- Absolutely not.

50

When this lady arrived and introduced herself, did she say why she was there?-- She was there to find out what I was going to do with the baby.

Did you tell her what you were going to do with the baby?-- I said - I said that I wanted to get married and we were going

to have the baby.

Yes. And was there any response?-- Because I had seen Steve. He had only been there a couple of nights before.

Yes?-- And that was what was going to happen. We still thought we were going to get married and have the baby.

Yes. Had you discussed that with Steve when he had come to visit you?-- I can't remember what we discussed. All I know was it was still a foregone conclusion that we were going to be married.

Yes. Now, returning to your meeting with this lady, you told her that you were going to get married and have the baby?-- Yes.

Do you recall her making any response to that?-- She told me that I had no right to get in contact with Steve while I was out and she said that, "You - by doing that you could end up in Karrala House for getting in contact with him." I wasn't allowed to see him.

Now, just dealing with what you have said, you weren't allowed to contact him while you were out?-- Yes.

Out from where?-- Out from the home.

Right. And she said if you were caught doing that you could be sent - you just mentioned a place called Karrala?-- Yes.

For those of us who aren't familiar with it, what was your knowledge of Karrala?-- It was a place that some of these girls came back from when they were sent back to Holy Crosst and it was like a maximum security girls home.

You had heard disturbing stories about it?-- Yes.

How did you feel when this lady said to you there was a possibility you could be sent to Karrala?-- I was scared.

So you got into trouble for seeing the father of your child?-- I don't know who reported me.

Right?-- I don't know how she knew that he had been there.

Right. But after you had that discussion with her about not supposed to see the father of the child, what happened then?-- She asked me what I was going to do with the baby and I said well, I wanted him put into foster care until I got out of the home.

Yes?-- And then she said, "We can't put him in foster care until you get out of the home because we don't know how long he is going to stay in foster care for. He could be there for years. He could be there for four years. You can't leave your baby sitting on the fence for four years until you can take care of him." I said that we were going to get married

and she says to me, "There is no saying that even if you do get married that you are going to be able to get the baby if he is in foster care. It could take you a long time to prove that you are capable of looking after your child." She said, "If you put him in foster care and leave him sitting in there for years when you take him away from the only people that he has ever known he will hate you."

1

Now, just going back to the start of the answer you gave me there, did you know at the time that you were speaking to this lady whether or not you were going back to the Holy Cross Home?-- I had no idea what was going to happen.

10

So when you said that you wanted the child put into foster care until you got out of the home, that is if you went back to the home?-- Yes.

Did this lady tell you whether or not you would be going back to the home?-- She said that she could keep me locked up till I turned 18 and what was I going to do with the baby.

20

She said that to you?-- Yes.

And at that stage you were, what, six months away from your 18th birthday, five months?-- Six months, yes.

So she told you she could keep you locked up until you were 18?-- Yes.

And you were looking for a way to - for interim care for your son until you got out of the home?-- Yes.

30

Did you ask whether or not it was possible to take your son with you back to the home?-- No.

You didn't ask that?-- There was no babies in the home.

No facilities for them?-- No.

When you mentioned this idea of some temporary arrangements for your son, she then spoke to you the words that you have just described about the problems that would create?-- Yes.

40

Did she say anything else?-- No.

How did the idea of adoption come up?-- It came up I think when she said that - that he needed to have a permanent home.

Yes?-- I remember very little about the adoption stuff.

50

Do the best you can. You had this discussion where you have-----?-- All she said was that he needed a permanent home. "You can't take him away from people that he would have known."

Yes?-- And there was no - look, I didn't even understand the concept of adoption. I come from a large family. We don't just give away our children. I had no idea what adoption

involved.

Did the lady explain to you-----?-- No.

-----what adoption involved?-- No.

Did you understand that it meant that you - the baby would be taken away from you and given to somebody else?-- Yes.

So you understood that premise?-- I understood that he was going to be looked after.

10

Yes. Now, you had the discussion about not being allowed to see Mr Benko, about her ability to keep you locked up until you were 18. When in the course of the conversation - I should ask you to say approximately how long you spoke to her for - did this idea of adoption come up, something at the start, at the end?-- No, it was at the end.

Right. Do you recall roughly, not to the precise second, for how long you spoke to this woman?-- 15 minutes.

20

And during that time did you explain to her that you and Mr Benko intended to be married?-- Yes.

And that you and he had been living together before you were put in the Holy Cross Home?-- I said that I was in love with him and we were going to get married.

And that he had been supporting you, did you tell her that?-- We didn't go into - I have - you know, like, I can't remember every single thing of what was said. All I could just feel was this thing around my head like pushing.

30

Some pressure in your head?-- Yes.

And what was causing that, do you know?-- It was just this person, you know, like, pounding at me with this - I couldn't think.

40

I am just asking you to explain to his Honour who wasn't there when this conversation took place what she was doing?-- She was throwing things at me like not asking but demanding to know what was happening, and I couldn't think.

Was her manner - how was her manner? Was she friendly towards you or angry or shouting at you?-- She wasn't friendly. She was dominating-----

And-----?-- -----me.

50

You have described a couple of times with your hands being bombarded with information or requests or statements. Is that what happened?-- Yes.

And did this lady tell you - sorry, I will withdraw that. Who introduced the topic of adoption to the conversation?-- She did.

1
Do you recall in what circumstances?-- I don't recall. I don't recall the circumstances. She - it was basically, "If you sign this, he will be looked after."

Right. Could I show you, please, Exhibit 2, if your Honour pleases? I ask you, Mrs Arthur, to turn to a document there which is described as the consent form. Do you have that?-- Yes.

10
Do you have that? Can I ask you the circumstances that this document came to be completed? Can I ask you first, you see in the document - the copy document there is various sections where there is some handwriting that has been put in?-- Yes.

Do you see that?-- Yes.

Are you able to see whether any of that is your handwriting?-- No.

20
You will see in the document that there is a signature towards the right-hand side about two-thirds of the way down?-- Yes.

Is that your signature?-- Yes.

Now, you gave evidence a little earlier that your name is Lily?-- Yes.

It seems to me that that reads "Lillian"?-- Yes.

30
"Josephine McDonald"?-- Yes.

Can you explain to his Honour the circumstances in which that signature came to be put there?-- I was told to write the same name as what was on the form and I said, "My name is not Lillian, it is Lily." She said, "Sign what is on the form."

Now, what form are you referring to there?-- The consent form.

40
Right. Now, where does the name "Lillian" appear on that? Is it towards the top?-- Yes.

About six or seven lines from the top, "I, Lillian Josephine McDonald"?-- Yes.

Do you know who filled that in?-- No.

But you were told to sign the name "Lillian Josephine McDonald"?-- Yes.

50
Did you ask why?-- No.

You just did what you were told?-- Yes.

Did you know the lady's name at this stage?-- No.

What were the circumstances in which this document came to be



prepared, that is, was it a simple piece of paper that she had or did she have a clipboard or a folder or a pad of these? Do you remember?-- I can't remember.

1

When you signed the document do you recall whether or not the handwritten sections had been completed or not?-- I don't think the - I don't think all of it was filled in. I can't remember.

Well-----?-- I just remember the name on the top.

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Do you remember this lady writing anything on the form before you signed it?-- No. 1

Dealing with the information on the form, the name of the child, Shane Stefan McDonald, had you named the baby?-- Had I named the baby?

Yes?-- Yes.

Is that the name that you had given to the baby?-- Yes. 10

When did you do that?-- Right from the word go.

So you had given your baby a name?-- Yes.

There it has an address of 99 Canley Vale Road, Canley Heights. Is that an address that you lived at to that point in time?-- I didn't know where it was. I had never lived there. 20

Right. Do you know anyone that did live there at that time?-- I think I might have known that my mother lived there.

Right?-- I don't remember the address being on there.

Do you remember giving that information to this lady?-- No, because she knew I was in a home.

And do you recall having found out from your mother by that point in time that that was her address?-- Yes. 30

Now, that means that you knew where your mother was living?-- Yes.

Did you tell this lady that?-- I can't remember.

It was your-----?-- I didn't tell her that. I didn't tell her where my mother was living. 40

But you knew?-- I knew where my mother was living. My mother never even was mentioned during the conversation with her.

I am just wondering, what I was asking was whether you provided her with the information which led her to put in the address of 99 Canley Vale Road, Canley Heights?-- No.

The space a little bit further down the form under the paragraph numbered 5, "I desire the said child to be brought up in any Christian faith", do you recall having any discussion with this lady about that?-- I wanted my son to be brought up as a Catholic. My father was an Irish Catholic and we were brought up in the Catholic faith. I wouldn't even think of any other Christian faith. 50

Yes?-- My son was to be brought up as a Catholic.

Did you tell this lady that?-- Yes.

What was her response?-- She didn't say anything.

Did you note when you told her that that she made any notation on the form?-- No.

Were you given a copy of this form?-- No.

Were you given any documentation?-- Nothing.

10

Can I just ask you, please, to turn back in that bundle to the document headed "Report of investigation"; do you see that?-- Yes.

Is any of the handwriting on that document yours?-- No.

On 4 September 1967 had you stated to anyone at the Brisbane Women's hospital that you intended to or were thinking of giving your baby up for adoption?-- Absolutely not.

20

Did you tell this lady who came to see you to have the consent signed that you knew who the father of the child was?-- Yes.

Did you tell her that?-- They all knew who the father was.

When you say "They all knew"; who do you mean?-- Everyone knew who the father was.

You mean at the hospital?-- At the hospital, the home, everywhere.

30

Now, if you could close up that bundle, please. You have signed that form in a name that she has told you to sign?-- Yes.

What did you think was going to happen?-- I don't know. I didn't know what was going to happen.

Did you realise that your child would be taken from you and would be brought up by other people?-- The concept that I was going to lose him forever, it just didn't register with me.

40

You had earlier been talking to this lady about someone looking after your child until you got out of the home?-- Yes.

Is that what you thought was going to happen?-- Yes. I didn't ever, ever think that I was going to lose my son permanently. The concept of that just didn't ever happen.

50

Given your age at the time-----?-- Yes.

-----your circumstances, you had no employment, do you say that you still wouldn't have agreed to put up your son for adoption?-- No.

Did this lady tell you her name before she left?-- No.

When did you learn her name?-- When I first saw this consent form. 1

Do you recall when that was?-- That was in Christmas, around about Christmas of 1997.

So for 30 odd years you didn't know who this lady was?-- No. I don't even remember what she looks like.

The form is signed. She takes it away with her?-- Yes. 10

What happened to you then?-- She - when I signed the form she said to me, "Do you want to see the baby?"

Mmm?-- And it was, like, did I want to see the baby? I didn't think I was ever going to see the baby.

Yes?-- I said, "Of course I want to see the baby.", so she gave me a card - she got the nurse to give me a card to take up to the nursery window with my name on it. 20

Yes?-- And I just held it up to the window.

What happened?-- The nurse wheeled the baby over on the other side of the window.

So you never got to actually hold your baby?-- No. No.

You saw him through a glass window?-- Yes, and it had "not to be shown" on his bed. 30

What was that?-- There was a card on the top of it saying "baby McDonald. Not to be shown".

You saw that?-- Yes.

When you were speaking to this lady at the hospital was there any discussion about any alternatives to adoption?-- No, there was never any discussion about any alternatives. 40

Was there any discussion about you seeking advice from anyone?-- No.

Whether it be a family friend or a counsellor or-----?-- There was nothing.

Did you ask to see anyone?-- No.

Why was that?-- Because I wasn't allowed to see anybody without permission. 50

Permission of who?-- Permission from the nuns.

This is at the home?-- And from - the girls, like, in the ward, they weren't allowed to have any visitors, and I was the only one that had a visitor when Steve came.

This is at the ward at the hospital?-- Yes. We were told

that no-one was allowed to come there.

Right. When you spoke to this lady at the hospital, the lady that you signed this form for, did you make it clear to her during the conversation that you wanted to keep the baby?-- Yes.

Did she give you any information about any payments that you might be entitled to from the government-----?-- No.

-----if you did keep your baby?-- No. I didn't need any payments from the government.

Why was that?-- Because I was going to get married.

But, in any event, she didn't explain anything like that to you?-- Well, the whole intention throughout the whole of my incarceration and everything else and after the birth of the baby was that we were to be married.

Yes. And did she also discuss with you how long - you gave evidence a little earlier that she threatened that you could be kept locked up until you were 18?-- Yes.

And you thought there were no facilities for you to have your baby with you until you were 18?-- I knew there was no facilities at the home.

Did she say what would happen to the baby during that intervening period?-- She just said - actually, she didn't say anything about what was going to happen to the baby. She said, "What are you going to do with him? You can't have him sitting on the fence until you make up your mind what you are going to do with him", and I asked about foster care until I got out of the home.

When she said "until you make up your mind", were you in an uncertain mind about what was going to happen with the baby?-- I was in an uncertain mind as to what was going to happen to me, whether I was going to get out of the hospital or whether I was going to get out of the home. I didn't know what was going to happen to me.

Your concern was what would happen to the baby in the intervening period?-- Yes.

Was it in that context that you spoke about foster care?-- Yes.

Now, when you were discharged from hospital - I am sorry, before I ask you that, did this lady when she took the form away say anything about you changing your mind or-----?-- She said something about 30 days. I didn't understand what she meant by the 30 days. She said something about changing my mind. I had 30 days to change my mind.

Change your mind from what?-- From signing the form.

Right. And did she say what you had to do if you wanted to change your mind?-- No. 1

Who you had to contact?-- No, never said anything.

You didn't know her name and - you still didn't know her name?-- No.

The question I asked you just before was do you remember what date you were discharged from the hospital?-- As soon as I saw the baby I went back to the bed. They said, "You can pack up your things now and go back to the home.", and that afternoon after they let me out of that hospital I was made to go back and work in that laundry. 10

That very afternoon?-- That very afternoon.

So you went back to the Holy Cross home at Woolloowin?-- Yes.

Did you stay there until 26 October of 1967?-- Yes. 20

And from 8 September to 26 October did you continue to work in the laundry?-- Yes, for a little while, and then they said "Because you are not pregnant anymore you can actually go and work in the convent and you can clean the convent for the nuns, because you are not pregnant anymore".

What, you weren't allowed to go there previously because you were pregnant?-- Yes. 30

The work that you did, the cleaning work that you gave evidence of a little earlier, did you also continue to do that?-- Yes.

The dormitory and things like that?-- Yes, and after I finished at the convent I had to go and finish working the rest of the afternoon in the laundry.

There came a time when you were discharged from the home?-- Yes. 40

In October of 1967?-- Yes.

Can you tell his Honour about the circumstances in which you were discharged?-- They just came up to me and one of the nuns said, "You are going home in a few days time", and I thought, what, going home in a few days time? And then they said that I was being sent back to my mother in Sydney. I was angry because they told me that I was going to be locked up until I turned 18. I didn't want to leave the home. I didn't want to leave the home. 50

Who told you you were going to be locked up until you were 18?-- Jay Whalley did. She said that I was going to be locked up until I turned 18, and that's what I was thinking, I am going to be here until I was 18.

You had resigned yourself to that?-- I was quite happy to

stay there until I was 18. I didn't see any point in going out. There wasn't anything out there for me.

Somebody comes to you and says "You are going in a few days"?-- One of the nuns, yes.

And did you say, "I don't want to"?-- I'd just come down from working in the convent and I was sitting on the back verandah. They had all these lockers there, and she said to me, "Get up and go and work in the laundry", and I said, "Get lost", and then she started whipping me across the legs with the handle of a feather duster. I didn't care. She could have beat me to within an inch of my life. That was the first time that I ever said anything to them.

Why were you angry?-- I was angry because they were throwing me out.

Right. Even though you presumably didn't enjoy staying there?-- Yes.

And was that because you had been told you were going to be kept there until you were 18?-- Yes. They broke the promise, like, you know. I am thinking, you know, this isn't - this just isn't - you know, like, there is something about the 30 days and I thought, like, the 30 days has gone and the next minute they are sending me home, and then they come up and says to me "Sign a withdrawal form for your fare back". That was the money that they gave me for the baby. I had to pay my own fare back to Sydney with that money.

You have given evidence about a few things there. You were given some money for the birth of the baby?-- Yes.

Who gave you that?-- The government.

Do you recall the circumstances? Was it a cheque or money deposited into your account?-- I think it was just money put into my bank account.

Did anyone tell you what it was for?-- They just said it was because you were sick.

Right. And did I also understand you to give evidence there was some account kept for you while at the Holy Cross home?-- There was a savings account kept for me at the Holy Cross home.

How did money get deposited into that?-- I don't know.

Was any money deposited into that?-- I think it was about four dollars a week or something that was put in there.

Did this pay for the work you did in the laundry?-- I was never ever paid for the work I did in the laundry.

Do you know, then, why you would be receiving four dollars a week?-- I was told it was because - it was something like the

dole. It was some sort of sickness benefit.

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Right. Anyway, you then said that you were asked to withdraw that money to pay for your fare back to Sydney?-- Yes.

Did you have contact with your mother to ascertain whether or not you could go back to live with her?-- No. I wasn't going to go back to Sydney. I had no intentions of going back to Sydney.

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What did you want to do when you were released?-- I wanted to stay in Brisbane.

And do what?-- I don't know. Try and find Stephan.

Did you still have hopes of being married?-- I don't know.

You said that you flew back to Sydney?-- Yes.

And did you then go to live with your mother and stepfather?-- Yes.

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And were they at that address in Canley Heights?-- Yes.

How did you get on living there?-- I was very unhappy.

Was that because of - why was that?-- Because I was - I still had no conception of what had happened. I went to bed one night. The next minute all those months disappeared out of my life, and the next minute I was tossed back to my parents again. I didn't know where I was. I just didn't have the head space. I was - when I first went back there I was really upset and I had to go and find a job because my stepfather got onto me, "You have got to find work" and blah blah blah. As soon as I got back when I got off the plane I was sick, physically sick because I was just so frightened about all this space. It was, like, I couldn't deal with all that stuff out there. I was getting lost. It was like getting on a train and ending up miles from where I was going. I had no idea of the concept of free space. I was confined to a back verandah, a laundry and a dormitory at night for nine months, and then to come out and just be thrown out there, I just didn't know where I was. It was just like the whole thing, the whole experience was just an unreality.

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How long did you continue to feel like that for?-- I have continued to feel like that for the past 30 odd years.

Up until now?-- Yes.

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How did you get on with your mother and stepfather when you moved back to live with them?-- I wasn't very happy. I was just - my stepfather blamed me for causing so much worry to my mother.

Yes?-- And it was just this thing about, you know, like being slung into gaol. I hadn't done anything.

Did he say words to you which conveyed that he was upset with what you had done?-- Yes. I was the fault. I was the blame. You know, like I caused my mother all this heartache.

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Did that lead to any friction in the family?-- I just wanted to get out.

Did you?-- Yes.

How long after you moved back did you do that?-- I think it was about - I left on my - just around my 18th birthday. It was about five months I stayed with them.

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March 1968?-- Yes. I met my first husband around that period.

Yes. What was his name?-- Jeffrey Fuller.

And did you start - did you form a relationship with him?-- He more or less chased me and I ended up - I suppose I ended up allowing myself to be caught.

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And that was from about March 1968 onwards?-- Yes.

When did you get married to him?-- On October 26, 1968.

So seven months later?-- Yes.

And during those seven months where did you live?-- I moved in with him and his family.

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When you say "his family", to whom are you referring there?-- My future in-laws - my future in-laws, my first husband's older brother, two sisters, a cousin and a younger brother were all living in the same house.

What about his parents?-- With his parents, yes.

Parents as well?-- Yes.

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So you moved in to live in that household?-- Yes.

You eventually got married in October '68, you said?-- Yes.

Where did you live after you got married?-- I lived there.

Right. At this time - if we can take it from when you were discharged from the home, October '67 through to October '68 - how did you feel about the loss of your son?-- I just couldn't come to terms with it. It was like I was two people walking around in the same body. It was like something happened back there. I can't fathom it. You know, it was - it is hard to explain. Like, I just had this flash, flash, flash, flash and I couldn't put any sense to it; like I went to bed one night and woke up nine months later, like, with this - it was like a dream. The whole experience was like a dream. I just can't describe it.

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Did you make any attempt during that first 12 months to find this lady, find your son, see what had happened?-- I didn't know myself what had happened. I just couldn't put anything together. I am thinking, "What the hell happened there?" Like, "Shit, this is big". I don't know what happened.

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Did you tell Jeffrey Fuller that you had a son?-- No.

Why not?-- Because I didn't want to have to explain to somebody how I had been arrested and thrown into a - locked up for nine months and had a baby taken off me.

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Now, once you became married in October 1968 how was your relationship with your husband?-- He was very, very possessive and used to get quite jealous about me doing anything.

Was it your intention to have children?-- Yes.

I take it it was his as well?-- Well, we always thought that we were going to have kids, but you know like it wasn't really spoken about. We just waited for it to happen.

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Did it happen?-- No.

Did you find out why it didn't happen?-- I never found out till years later why it didn't happen. It just came to me, because he had - he had been a telegram boy delivering telegrams in the Cross and he had been assaulted and ended up, like, getting ruptured and that, and they would say "Maybe he has got a little problem there.", you know, like, because of the damage that he had, and it was a case of, you know, like we are just waiting to see, you know, if I got pregnant, and then it was, I don't know, three years or something and then it just dawned on me one day, because I used to sit at home waiting for this baby to happen. I used to take days off work and I would be sitting there sewing miles and miles of baby clothes and I had piles of them, all for a girl, none for a boy, and then one day it just - my sister was staying with me and, you know, like, I don't know, something happened and I just thought "I am never going to have a baby with this man".

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How did that make you feel?-- I had to go and find the one that I had lost. I just thought, I have got to go back to Brisbane.

Did you?-- Yes.

Can I ask you, up to that point in time when you left, how were you treated by your husband and his family?-- We eventually moved out. I think we were living in our own flat for about six months or something. I had got a job with the public service and we just had all new furniture and a really nice flat and everything, and I was really proud of the fact that I had passed this exam and got this job, and he was very jealous about that. He was quite upset that I used to go into town looking nice and working in an office, because up until that point I had been working in factories, and I'd come home

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every night and he would keep me awake nearly every night going on about "You think you are too good for me now you have got this job in an office. You are getting yourself all dressed up. What, are you hoping to meet somebody to have an affair with?" I put up with that, and my sister was living in the next bedroom. She was sleeping in the next bedroom and she said to me, "I can hear him going on at you all night. What are you putting up with that for?"

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So relations weren't that good?-- No, because he was very, very possessive.

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You said that you then left the family home?-- I just packed up my bags. I decided-----

Do you recall when that was? You said it was after about three years?-- It was just after my 21st birthday.

So that's 1971?-- Yes.

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In, what, March or April - perhaps March or April of '71?-- Would have been about towards the end of March and the beginning of April.

Okay. Where did you go? Back to Brisbane?-- Yes.

With the stated intention of finding Mr Benko, was it?-- Yes.

Did you?-- No.

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Do you know where he was?-- No.

I take it from that answer that you hadn't been in contact with him since the birth of your son?-- No. I had heard - because we were heading back to Sydney and this car that we - my daughter's father and I were driving back and needed a gearbox and we went - the last night that we were in Brisbane we went to this fellow's place. I don't know who he was, but somebody was going to put in a gearbox cheaply anyway. I sat in the house with this fellow's wife and we started talking. We were there for about four hours or something and I mentioned, you know, that I used to go with this fellow named Stephan, and she said, "That's funny, because I know him. He has just married my best friend", so I found out the night that I was going back to Sydney that he had just got married.

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When you were released from hospital and up until that time had you tried to correspond or find Mr Benko?-- I sent him a letter when I got back to where my mother was living, but I didn't tell my parents that I had wrote to him. I didn't even know where to write to. I think I must have wrote to somewhere where he was working or something, because I had no idea where he was living.

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You wrote a letter but you don't know whether it was ever received?-- Yes.

You have left Sydney to - would that be a convenient time?

HIS HONOUR: 2.30.

THE COURT ADJOURNED AT 1.00 P.M. TILL 2.30 P.M.

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THE COURT RESUMED AT 2.30 P.M.

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LILY JOSEPHINE ARTHUR, CONTINUING EXAMINATION-IN-CHIEF:

MR WILSON: Mrs Arthur, I was asking you just before we rose for lunch about the time you spent in Queensland. You said it was just before your 21st birthday in 1971-----?-- Yes.

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-----when you found out Mr Benko had become recently married?-- Yes.

Whilst you were in Queensland did you again fall pregnant?-- No. I fell pregnant on my return to Sydney.

Yes. What were the circumstances of that?-- I had met a young man up here in Queensland and we formed a relationship.

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Yes?-- And I decided that I was going to go back to Sydney so we went back to Sydney together and we lived in Darling Street in Darlinghurst.

And for how long did you live together?-- I think we lived together for about four months.

Right. And during that time you discovered you were pregnant?-- Yes.

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During that time did you have any contact with your husband?-- No.

Did you subsequently have contact with your husband?-- I contacted him not long after I found out that I was pregnant.

Yes?-- I felt that I had to resolve something with the marriage because I thought that, you know, he might want to have a divorce, so I contacted him to sort of like find out where he wanted to go with the marriage.

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Yes. And was anything resolved?-- He - I wrote him a letter and he wrote back to me asking me to meet him in town and then as soon as he saw me he started crying and telling me how upset he was when I left and then we were talking with each other for quite some time and he actually got down on his knees and begged me to come back to him.

And did you do that?-- I said before - before I went back with him he had to know the reasons why I left, because I had never told him about what had happened to me in Queensland, and I couldn't go on with the marriage because I hadn't resolved that with him.

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And did you subsequently explain to him what had happened to you?-- I told him what had happened and he sort of like - he just said - oh, you know, he accepted it, and I think by that

time he may have had an awareness that he may not have children.

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Yes?-- And then he just said to me, you know, like, "If you come back with me I'll raise your daughter - your baby as if it was my own." It was under that-----

I take it from that answer then he knew that you were pregnant again?-- Yes.

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And did you subsequently go back and resume your married life?-- I went back and it was the most humiliating experience to have to go back to my in-laws after I had snuck away. I snuck away. I didn't even tell him that I was going. I had left a note and told him that I was going to Queensland, and he came home and found the flat empty.

Yes?-- And I had to go back and face these people pregnant, and face them again. It was very humiliating.

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At that stage had your husband left the flat that you previously occupied or was he still-----?-- He had been living with his parents and my ex-sister-in-law and her husband and child were living in our flat.

And when you resumed your married relationship with him, did you return to the flat or did you live with his parents?-- We returned to the flat and we still had his sister living there, but I wanted to leave again. I just - I just knew it wasn't going to - I just knew it wasn't going to happen because, you know, like he was - he wasn't going to work. He was sitting there watching me all the time and he wouldn't work. So when he - when he decided he was going to work one day, I thought I - because my brother-in-law was in the flat with us, and I had put on a couple of sets of clothes and I was going to escape, and a friend of mine was coming to meet me and help me get away, and then when he came to the door my brother-in-law punched him and knocked him down the stairs, and when my husband come home he told him that I was trying to escape again.

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Now, do you recall whether this is before or after the birth of your daughter?-- It was well before. It was just after - a week or two after I went back with him, and it was after that - after that day that he just packed up our clothes and moved us back in with his mother and father so that I could have somebody watching me all the time.

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Just to put these events in sequence, when was your daughter born?-- She was born on the 7th of April 1972.

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So you went to Queensland, you have given evidence, about March or April of '71?-- Yes.

When did you return to New South Wales and start the four month relationship with this other man?-- I was only about two months' pregnant with my daughter when I resumed the relationship with my ex-husband.

Right. And from that time until your daughter was born you lived with your ex-husband?-- And his parents, yes.

And his parents. And you have just given evidence that you moved from the flat back to the house where his parents lived?-- Yes.

Now, in terms of - if we can deal with the period up until you resumed your marriage. Did you have any feelings concerning the loss of your son?-- Was it something that entered your mind at all?-- It was constantly in my mind about his whereabouts. I just couldn't grasp - it was like where is the baby, where is the baby, where is the baby, where is the baby, where is the baby? It was like flash, flash, flash, flash, Steve, the baby, Steve, the baby.

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And was that something that was a regular occurrence?-- It was all the time. Even while I was talking there was this thing - this continual like thing ricocheting off my mind all the time, where's the baby, this constant thing of, where's the baby, where's Steve, what happened?

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Now, when you returned to Queensland in 1971, did you make any effort to - you said you tried to find Steve. Did you make any effort to locate anyone from the department to find out what had happened to the child?-- No.

Why didn't you do that?-- Because I didn't know - it is like the baby went into a big hole. I never saw anyone from the department, only that woman. I had no idea that - basically that the department even existed. I never saw a face of the department. I had no concept of what this department was, let alone, you know, like what sort of function that it had going there.

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Now, you have given evidence that your daughter was born in 1972. From the time that your daughter was born did that alleviate the recollections that you had had with your - of your son?-- Did my daughter ever replace my son in my mind?

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No, did those feelings that you have described in your mind of your son and Steve, did they go away once you had had your daughter or did they continue?-- No, they continued.

And has that continued up until the present time?-- They continued - this thing about where was the baby continued up until I found my son, and then it was like - other things like trying to - not so much as the whereabouts of - where the baby was, but trying to adjust my concept that this young man was actually the baby that I lost. I had to try and - I had photos of him up all over the place thinking to myself that's Tim, that's the baby, you know, like trying to adjust that, because I lost a baby, I didn't lose a 30 year old man, and trying to integrate that, you know, like this was the baby that I lost.

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Yes. I will come back to you reuniting with your son, but

just for present purposes that was in 1998?-- Yes, after I found him.

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So from 1967 through to 1998 you had these feelings of - thoughts bombarding you, where is the baby, where is Steve, those matters?-- I had - it was like - like a tape with one thing - piece of material going around and around in my head constantly, from the minute that I opened my eyes till the minute I went to sleep. I could never ever integrate what had happened to me. It was just like one minute think, one minute think, the next minute the baby, then the hospital, then where's the baby, then where's Steve. Just flash, flash, flash, flash.

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And you had your daughter in 1972. Did you then remain living with your first husband, Mr Fuller?-- Yes.

And you took his name Lily Fuller until your marriage ended?-- Yes.

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I am going to take you to some correspondence which is addressed to a Lily Fuller shortly?-- Right, yes.

You took his name?-- Yes.

Was there any particular - you have given evidence about these feelings that you had. Were there any particular events that made things worse than others any particular times of the year?-- Well, always on my son's birthday I would be thinking, he must be three, he must be four, you know.

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And how did you feel yourself on those anniversary occasions?-- I felt sick.

Physically sick or-----?-- Physically sick.

And did you seek any medical treatment or take any drugs to help you?-- No.

Now, when you gave birth to your daughter, where was that?-- It was at Crown Street Hospital.

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And did something happen there which caused you some distress?-- They - they took her away and I didn't see her for two days.

Yes?-- She had jaundice and I thought, oh - I started panicking again because I hadn't seen her. I only saw her straight after the birth and then after they put her into the nursery, they didn't let me see her.

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Yes?-- And I thought this is going to happen again, and then my husband came to the hospital to visit and he said, "Where's the baby?", and I said, "She's still in the nursery", and he said, "Well, why haven't you got her?", and I said, "I don't know." So he went down to the doctor and - or the nurse and said, "Why hasn't she got the baby?", and they said, "She has got jaundice, under the light", or whatever, and they

eventually brought my daughter to me, and that was about - must have been easy two days after I gave birth to her.

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That separation caused you to become anxious?-- It was just like - I was frightened, just went into trauma.

Now, after you left hospital with your daughter, you continued to live with your former husband?-- Yes.

And when did that marriage end?-- It ended in 199 - I think the divorce was about 1994.

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Right. Now, without sort of going into too much graphic details can you describe to his Honour over the next 18 odd years that you remained married to Mr Fuller, was it a happy marriage?-- No.

Were you treated badly?-- Yes.

Can you describe how that occurred?-- When I - when I came home from the hospital after I had my daughter I basically more or less handed her over to my mother-in-law because I was living there and she sort of like - she was invalid. So she would sit there and nurse the baby while I did all the housework and the cooking and the - and whatever needed to be done around the house. I think I put myself into the position of being like a servant in the place because everyone was still living there, you know, like all my brother-in-laws and sister-in-laws and they had boarders or lodgers there and I used to just do all their washing and their ironing and cooking for them and dressing - getting their clothes ready for them to go out. So my mother-in-law basically took over the bonding, I suppose, and attachment to my daughter.

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Did you yourself feel some difficulty in bonding with your daughter?-- Oh, yes.

And-----?-- I couldn't feed her. I tried breastfeeding her when I first come home from the hospital, and she was waking up, you know, like every 15 minutes, all night, and I was just trying to feed her. She wasn't getting satisfied or something like that and I am thinking, you know, like I don't know what happened to my breasts, I don't know why I couldn't feed her, and I thought that, you know, like I don't know, I was starving her, you know.

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In terms of the work that you did around the house, was that your full-time work or did you have paid employment as well?-- No, I - I think my daughter was about two or three months old and I went back to work for a short time. I think it was about 10 months and my daughter started calling my mother-in-law mummy or mum, you know, like, and I thought, no, this is not right, you know, I am her mother, and I stopped work and I stayed at home after that.

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And how long did you stay at home for?-- I stayed at home then till my daughter turned 12.

1984?-- Yes.

And did you then re-enter the workforce?-- I got a part-time job as a cleaner in the school across the road.

Now, between 1972 and 1984 was life pretty much as you have described to his Honour with you undertaking all of the domestic tasks around this large household?-- Yes.

And apart from that workload how did your husband treat you?-- He treated me pretty badly.

In what way?-- He used to go out quite a lot, just about every night of the week, and play darts. He started competition darts and he started going up on a State level and he would drink quite a bit and then when he came home it would be like I would start to get this constant haranguing about my dirty past.

And how did that make you feel?-- It made me feel very worthless. I had been constantly reminded about - about "this kid that you had and then you had another one to somebody else" and all that sort of thing, about how I left him, how much pain I caused him. You know, like constant reinforcement of how dirty I was.

And did those occasions when he did that to you reactivate any memories of what had happened to you in 1967 in Queensland?-- It made me - it made me ashamed that - I thought to myself is there something wrong here? You know, like I don't remember my relationship with Steve being something to be ashamed of. I just don't - I couldn't understand how something that I thought was so wonderful could be turned into something so filthy.

And how often did this emotional abuse occur?-- I would honestly say that there wouldn't have been much more than a - a day would pass without me getting some snide remark. I had to go back to that house with my in-laws, and my father-in-law, because he knew all about my dirty past, I was constantly being sexually harassed by my father-in-law because he thought that I was open slather, and I endured that every day. He couldn't walk past me without touching me and trying to do dirty things because I was the dirty woman that had had two kids to these men.

Why did you stay there?-- Because I didn't have anywhere else to go.

Did you seek any treatment at that time for how you were feeling?-- No.

You just put up with it?-- Well, I thought to myself, you know, I must have done something pretty bad, you know, I mean, that people could do that. I don't know - and this is why I think - you know, I think - I asked myself today why I put up with that. I can't integrate why I allowed myself to be treated like that. I still don't know why I allowed myself to

be treated like that.

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Now, in 19 - was it 1992, I think, or '93 you said you were divorced-----

HIS HONOUR: 1994.

WITNESS: I can't remember. '94.

MR WILSON: '94?-- I am not exactly sure. All I know was when I came back to Sydney the first thing I did was - he wanted to go back with me.

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I am going to come back to the circumstances, but you were divorced in the early 1990s?-- Yes.

About 1994. Now, before that happened was there an occasion where you started to again look for your son, trying to get into contact with him?-- In the early 90s.

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Yes?-- I had heard somewhere, I think it might have been on the TV or in the papers somewhere, that the laws were changing and they were allowing people to find out where their adopted children were.

Yes?-- And then I don't know how I found out the information, you know, like who to write to, I think I must have done some investigating, that I had to write to the Department of Families or whatever it was called at the time.

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So you had heard from some public source that the laws in Queensland were changing?-- Yes.

And you found out who to write to?-- Yes.

With what purpose?-- Well, I needed to find out what happened to me.

Yes?-- Because if I was going to find my son, I needed to be able to tell him what happened. I didn't know what happened.

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And did you subsequently write to the Department of Families, as you have described it?-- I wrote to the department because I thought when I find my son I need to tell him what had happened and why he became adopted.

And at the time that you initially made inquiries with the department, did you also ask for information about your time at the Holy Cross Home?-- Yes.

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And did you receive responses from the department and responses to your letters?-- Yes, I did.

And initially did you write to the department in early 1991 asking them for information?-- Yes.

And can I ask you to look, please, at this letter? Your Honour, I am conscious of not destroying Mrs Arthur's book of

correspondence. I wondered if it would be a convenient course for me to take her through the correspondence and at the end of today to photocopy those letters and put copies before your Honour. I am happy to put the originals before your Honour if you would prefer.

HIS HONOUR: I don't need originals, Mr Wilson. But if the examination takes place in circumstances where the two of you have the letter and I do not, it may be difficult for me to follow.

MR WILSON: Yes, I appreciate that, your Honour. I am sorry, I only have one copy of some of these letters.

MR DAUBNEY: We can probably help, your Honour.

MR WILSON: Could you have a look at this letter, please, Mrs Arthur? Is that a copy of the letter that you wrote asking for information pertaining to your son?-- Yes.

And you wrote to a Mrs Jenny - or Jenny Brown?-- Yes.

And so far as you understood she was at the Department of Families?-- Yes.

And you set out there the circumstances in which you had come to be in the care of the department, and also the circumstances in which you gave birth and set out the details where she could contact you?-- Yes.

I will tender that letter. Do you recall whether that was delivered shortly before you received a response from the department?-- It was while I was waiting for identifying information about my son.

Yes.

HIS HONOUR: Exhibit 11.

ADMITTED AND MARKED "EXHIBIT 11"

MR WILSON: And subsequently did you receive a response from the Department of Family Services and Aboriginal and Islander Affairs dated 15 July 1991? I can show you this letter.

HIS HONOUR: Yes.

WITNESS: Yes.

MR WILSON: Did you receive that letter?-- Yes.

Yes, I tender that, your Honour.

HIS HONOUR: Exhibit 12.

ADMITTED AND MARKED "EXHIBIT 12"

MR WILSON: Did you subsequently receive a further letter from the Department in response to your application for identifying information regarding your son?-- Yes.

If I can ask you to have a look, please, at this - and this is a copy for his Honour?-- Yes.

Your Honour, I will tender that letter.

HIS HONOUR: Exhibit 13.

ADMITTED AND MARKED "EXHIBIT 13"

MR WILSON: Subsequently on 15 August 1991 did you receive from the Department again of Family Services a letter advising you that your son had placed a contact objection regarding your attempts to ascertain identifying information?-- Yes, I actually had to ring that lady on that number-----

Yes?-- ----on the previous letter.

Yes?-- And she wanted to talk to me about the release of the identifying information, and she told me - she explained to me - I was on the phone to her for about two hours. She explained to me about the contact objection section of the Act and she informed me that my son had placed an objection and she needed to speak to me because she felt that when I got the letter back that I would be upset about the message that my son had left, and the letter followed a couple of days later.

Could I ask you to identify the letter that you received - and a copy for his Honour? Is that the letter you received from the Department advising you of the contact objection?-- Yes.

Together with the notation that your son had asked to be placed on the file?-- Yes.

I tender that, your Honour.

HIS HONOUR: Exhibit 14.

ADMITTED AND MARKED "EXHIBIT 14"

MR WILSON: Can I ask you, Mrs Arthur, at that time how did you feel when you received that information from the Department?-- I thought when I first got the - when I first talked to the woman on the phone that it must have been a mistake; that, like, I was really upset and I thought, well, they have probably made a mistake. We will see what happens

when the letter comes, and then when the letter came I lost the plot. I felt like - I felt like somebody had hit me over the head with an axe. I just, like, lost it completely. I just - everything just went black and white. I could only see everything in black and white and I had this major headache for about three days, and I thought - and then, you know, like to add insult to injury they threatened to put me into gaol again if I tried finding him. It was like "They are threatening to throw me into gaol because I asked about where is my son".

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When you were making these enquiries about your son were you still living with your husband in Sydney?-- Yes, yes.

Did you come to Queensland at all in an effort to locate him?-- Yes, I did.

I am talking now about this time in 1991?-- I wanted to try and come up here. What the hell? I thought I was going to find him standing on a street corner, I think. I don't know why I came. I just knew I had to be in Queensland.

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Yes. So you travelled to Queensland?-- Yes.

And apart from corresponding with the Department did you try and do anything else to locate your son?-- Not at that time, no. I didn't even know where to start. I didn't even have his name.

Did you subsequently receive the nonidentifying information about your son?-- I received that in December, I think, 1997.

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Right. Dealing then at the moment still with 1991. You have been told there was a contact objection?-- Yes.

You have described how you felt as a result of that?-- Yes.

Did you make any other - I am sorry, you had also been told what had happened to some records of the Holy Cross home. Did you make any other enquiries while you were in Brisbane? Did you try and meet Steve Benko, for example?-- Yes, yes.

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What happened there?-- Well, I wanted to know what happened. I hadn't heard anything at all from anyone about what had happened while I was in the home. I had no idea what was going on outside of the home while I was locked up, and I thought, I need to find out what happened; why didn't we get married; what were people doing outside. You know, like, I was completely oblivious to what was going on outside of that home.

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Why did it take till 1990 or 1991 for you to want to know that information?-- I think it was - it was just the shame of dragging everything up again and trying to deal with it. I never spoke to anyone about - other than my husband, and that, of what had happened. There didn't seem - in one sense I couldn't do anything about it. I couldn't find my son. I couldn't do anything. I didn't know where he was or what had

happened to him. I didn't want to come out and tell everybody what a dirty whore I was that had had a baby beforehand. I didn't want to expose the shame that I had had over all those years, to bring out and broadcast just what a rotten, filthy thing I was that had dumped kids around all over the place and-----

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Right?-- It was only when I thought to - when I heard that the laws were going to change that I could actually say that I have another child. I want to find my son.

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You made those attempts, which were unsuccessful?-- Yes.

After you were told that there was a contact objection did you stay in Queensland or did you return to Sydney?-- No, I got the contact objection while I was still in the marriage. It was about - it was about October that year that I just - I had had enough. I couldn't cope anymore and I just walked out of my life. I had seen Steve at the time when I was looking for my son. I came up here to Queensland and I had to find him. This was just after I got the contact objection. I had to find him and ask him what happened; what the hell happened; I don't understand it, you know, like, and then I got the contact objection just before that. It must have been only - I don't know, a week or so. I have to find out what happened. I don't understand this, and then after I came up and saw Steve and he told me and I thought what had I done that was so bad, you know, like that I had to pay for the rest of my life, and that was why I had to come up and find him. Was our relationship so dirty that everybody around me could make my life miserable about it? When I came back and I saw him and I met him again after all those years, that was it. I thought to myself, we didn't have something that we needed to be ashamed of, you know. Like, I loved him and we had a baby, and then I went back to Brisbane and I sort of, like, I don't need all this. I mean, I went back to Sydney after I came up here. I was up here for a week when I saw Steve and sort of found out what was happening after all these years, and I went back to Sydney and as soon as I got back my husband met me off the plane and his face looked like he was ready to kill me, and I thought, "I can't - I am coming back here to put up with this?", and he abused me all that night, the next day and then that night was the October weekend. It was three or four o'clock in the morning and he was going on and on and on because this was all, like, after the contact objection business. I lost the plot and he went like that to me. I had to get up for work at half past five in the morning and I just exploded. I said - I just, like, "I am leaving you. You are never going to touch me again. You are never going to make my life miserable over this again", and my daughter did not know all those years that this man was not her father, and he said to me, "Well, get Mandy out of bed and we will tell her that you had another baby and you had her", you know, like, "I am not her father", and I said, "Okay, well, let's just get the truth out there".

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This is in October 1991?-- It was the October weekend and this was about three or four o'clock in the morning. He

dragged my daughter out of bed and he was going to, you know, like, tell her what was the story, and I said to him, "Come on, we will tell her the truth, that you are not her father", and, like, we have held this from her all these years, and he said "No. Don't tell her", and I said to him, "You get your bags out of this house and you leave until I leave", and then four days later I threw everything that I could possibly carry in my car and I went to Queensland.

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Where did you go when you came to Queensland?-- I came and stayed with my sister Francis at Burpengary.

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That was in October '91. How long did you stay in Queensland for?-- I stayed here for about two years.

And during - towards the end of that time did you again try and get information from the Department as to your records, in terms of the Department of Family Services and other places that you had been taken?-- Yes.

20

And did you subsequently receive as a result of your correspondence a letter from the Department in June 1993 advising that your file was no longer in existence and many files had been destroyed in the 1974 floods?-- Yes.

Can I just ask you to look at this. Is that the letter you received?-- Yes, it was in response to the letter, this letter that I wrote.

Can I hand up a copy for your Honour. Just on the copy that you have before you, Mrs Arthur, is there a notation towards the bottom of a date received?-- Yes.

30

Is it a date in 1993? Can you read that or do you need some glasses?-- I can see it, yes, "1993, 3/5", or was it "31/5".

'93?-- Yes.

That's a letter you wrote to the Department?-- Yes.

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Their response was sent to you in June 1993?-- Yes.

I tender those two documents, your Honour.

HIS HONOUR: The plaintiff's letter will be exhibit 15.

ADMITTED AND MARKED "EXHIBIT 15"

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HIS HONOUR: The response, Exhibit 16.

ADMITTED AND MARKED "EXHIBIT 16"

MR WILSON: Thank you, your Honour. Whilst you were in Queensland, apart from again trying to get letters - records from the Department, were you able to take any other steps to try and locate your son?-- No.

Did you?-- I had the fear of them throwing me into gaol. They had already told me earlier that if I tried to find my son that they would put me into gaol for two years. That paralysed me. I had already been gaoled by them once. I wasn't keen to get gaoled by them again.

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Yes?-- They inflicted that much fear into me for trying to find my own child that I was too scared. I didn't know how to go about it. I didn't have a name or anything.

Did you then subsequently return to Sydney?-- Yes.

When you made these moves did you notify the Department of your change of address?-- Yes.

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So that if anything-----?-- I kept changing my address in the Department so that if my son wanted to find me, that he could.

Then moving ahead a little, you have returned to Sydney. Can I ask you, after your marriage ended when you came to Queensland did you do some work - paid work, I mean?-- I worked for two years at Morayfield high school as a cleaner.

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When you returned to Sydney did you obtain any work?-- Yes, I got a job doing housework and personal care for disabled people.

How long did you have that work for?-- I think all-up I had that work for about five years.

Did you subsequently suffer an injury to your shoulder?-- Yes. I used to carry a young disabled girl around and I felt my tendons snap there, and I later learned that I had cut the tendon in my arm with the spur that I had on my shoulder.

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Do you recall when that occurred?-- I think it happened about March in 1997.

As a result of suffering that injury what happened to your ability to work as a carer?-- I couldn't work. I couldn't do any lifting. I couldn't even lift my arm to put my clothes on.

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Were you living by yourself at that time?-- No, at the time I was living with my husband.

I am sorry, you moved ahead to 1997. Your present husband and you married when?-- In 1998.

Right. Now, dealing with those events where you were injured and you weren't able to return to work as a carer?-- No.

Did you look at doing some sort of further education to enable you to move into another field of employment?-- I was - I started the TAFE course because I thought that if I could get a promotion within home care I could probably get a job in the office instead of working in the - out in the field, and that was the reason for doing the TAFE course.

And what course did you enrol to do?-- Certificate 4 in Community Welfare.

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Where did you undertake that course?-- At Granville TAFE.

And you were able to do that notwithstanding your level of education. Did you have to do an entrance exam?-- No.

The course - when did you start that course?-- I started it in 1997.

In the course of undertaking studies did you have to do some practical work?-- Yes.

20

What was that?-- I had to go out into the community. I had to do volunteer work and I had to go out and study different organisations and agencies and things like that, and I had to go out and study how groups operate.

Did you do that?-- Yes.

Which group did you choose to have a look at?-- I thought that I would choose an adoption group.

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Yes?-- Because I didn't know - I actually started off with a domestic violence group and I started the adoption group about the same time as well.

Yes. What did that involve? Going to their meetings and things like that?-- It was basically just to start going to a support meeting and observe what happened there with the way that, like, meetings, support meetings and that were conducted and who, you know, like, what parts they played within a group setting.

40

And do you recall what the adoption group was called?-- It was called Origins.

What is the group you are now involved with yourself?-- Yes.

I don't want you to tell us what this lady said to you, but during the course of those meetings did you meet a lady who was the convener of the Origins group?-- I did, but I had made telephone enquiries first.

50

Did you discuss your personal circumstances with her?-- Not at first. At first I wanted to find out if they were associated with any religious organisations or with any government departments, and when they said that they were a completely independent group I thought I would ask more

questions about, you know, like what sort of support meetings they had and all that.

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Yes?-- And then I disclosed that I had lost the child to adoption.

And as a result of speaking to the convener of the group did you feel that what had occurred was in some way wrong, what had occurred to you was in some way wrong? I don't want you to say what this lady told you?-- I felt after I had spoken to her that something wasn't quite right. It was, like, a penny dropping. It was like, "Bang. Hang on just a minute. I think" - you know, like stuff rolling around in my head, thinking "hang on just a minute. I have got to think about this".

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As a result of that conversation did you decide to pursue further information from the Department of Children's Services?-- Not at first.

20

What action did you take as a result of this change of feeling that you had about what had been done to you?-- I went along to a couple of support group meetings, started like learning a bit more about what this adoption business was all about and it is like bits and pieces started falling into a picture.

Yes?-- Of what was actually going on and I had a lot of problems dealing with the fact that I was actually speaking to other women who had a similar experience, because I thought, you know, like I was some sort of freak that everything happened to, you know, like, I was something out of the box that only you in the whole world had that experience.

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You discovered that wasn't the case?-- I was quite ill. I was ill. I just couldn't believe it. It is, like, I felt - words could not describe how I felt, that it wasn't like I was singled out. It was like I was part of something that was really big and I had to deal with the fact that, you know, like my experience wasn't much different to everybody else but yet I alone felt that, you know, like I was some sort of a freak, that I was singled out for this sort of treatment.

40

And as a result of your experiences with those people in that support group did you then set about trying to ascertain what had happened with respect to the adoption of your son?-- I had to know more. I had - the first thing that I thought to myself was I can't believe, you know, I have got to find my son and tell him, you know, like what had happened.

Yes?-- And that's-----

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Did you enlist the support or try to enlist the support or help of other people?-- Yes.

Who did you try and enlist?-- I went to my local member and I had heard - because I was with the labour party and I was - went to her and told her about it and asked her to ask the Department to please do an outreach to my son. I went to all

the media. I went to the Governor-General Sir William Deane because it was a stolen Aboriginal generation he was involved with that at the time, and I thought, you know, he would feel sympathetic and help me. I went to the British High Commissioner because at that point I was still a British citizen. I went to the rabbi because I have a Jewish background. I went to the Ombudsman. I appealed to the Department, "Please tell - please contact my son. Please tell him that I am trying to outreach to him. Please tell him that I need to speak to him. Please help me".

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How were those requests received?-- It was just like, "too bad. He's placed an objection." Like, total indifference.

Did you also at the same time try and get a copy of your records from the women's hospital?-- Yes.

Would you have a look at this document, please. Is that the response that you received from the Royal Women's hospital advising you about the destruction of records?-- Yes.

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In your case?-- Yes.

I tender that, your Honour.

HIS HONOUR: Exhibit 17.

ADMITTED AND MARKED "EXHIBIT 17"

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MR WILSON: You mentioned a little earlier, Mrs Arthur, when I was asking you some questions that you received some information about your son towards the end of 1997?-- Yes.

The nonidentifying information?-- Yes.

Can you just describe how that came about?-- His - up until that point I didn't know that I could get my son's first name and somebody said to me, "If you ask them for nonidentifying information you can get his first name", and that is what I did.

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Yes. Did you receive that nonidentifying information?-- Yes.

Would you have a look at this document, please. Can you identify that, please, as the information you were given?-- Yes.

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Could you hand a copy of that to his Honour and I will tender that as an exhibit.

HIS HONOUR: Exhibit 18.

ADMITTED AND MARKED "EXHIBIT 18"

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MR WILSON: You are familiar with that document are you, Mrs Arthur?-- Yes.

I can ask you some questions about it?-- Yes.

You ascertained that your son had been given a different Christian name?-- Yes.

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The name Tim?-- Yes.

And what did you do as a result of finding out that nonidentifying information?-- As soon as I found out his first name - when I first opened the envelope I thought, who is this Tim, and then it sort of, like it dawned on me that that was my son and then I thought, well now we have got his first name. We are going to go searching through the electoral rolls. So we went - my husband and my daughter and I went to the State library in Sydney and we got the whole - just about the whole electoral roll for Queensland and we looked through every Tim, Timothy in the roll.

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Must have taken ages?-- We were at it for quite some weeks.

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Did you eventually narrow down possibilities of people who might be your son?-- We had about 40 something Tims and Timothys.

Yes?-- And then what we were going to do is we were going to Queensland for a holiday and we were going to eradicate the ones - because the rolls up here in the State archives had when they came on the roll, and we were going to go through the years that my son would have turned 18 to vote and cast off the names of the ones that were on the year or two before.

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Yes?-- And we narrowed that down to about 20-odd Tims and Timothys.

Yes?-- And we spent - my mother and I and my husband and another lady who was looking for her son - she was going through the school admission lists-----

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Yes?-- -----we thought that there was going to be all the schools in Queensland at the State archives where they had these books where they put the names of children that started schools, and she was going through them while I was still going through the electoral rolls.

And as a result of all this painstaking research and inquiries that you made, did you eventually identify your son?-- We - my friend that was looking, she came out with a Tim that was born on the same day as my son who lived in Strathpine.

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Yes?-- And his name wasn't on the name that we had - the list that we were looking for, and then she came out with a Timothy that was - she came out with a Timothy that was born on the same day as my son that lived at Strathpine. Then she came out five minutes later with another boy named Tim who had started the same school that was born 10 days later and who lived across the road from the other boy, and then we thought we would follow up - we thought that the department had lied when it said that his name was Tim, but it was Timothy. So when we got home that evening my friend made some investigations and found out that the boy that was born on the same day as my son, his birthdate was put down as the 1st of September, was in fact not my son, but he said, "My little friend across the road, Tim, he was born on the same day as I was", and I said, "Well, it said that he was born on the 10th of September", and he said, "No, no, I've rang my sister up, and she says, yes, he was born on the same day as me, he was born on the 1st of September, and he was adopted."

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And so you followed that up?-- The next day we went to the - I spoke to the sister that still lived in the same street as where they were living, and she said, "Yes, he was adopted, yes, he was born on the same day." So then we went to - later on that day we went to the electoral roll and found out that Tim was living not far away from where my mother was living at that time where I was staying.

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And you subsequently went to the house where he was living?--
Yes.

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And met his wife?-- Yes.

And did you leave some information with that lady?-- I had made two bound up journals with family photographs and letters and media articles, because I had done a media article with That's Life trying to find him, and I put that in the journal and along with family history, the letters that I have got from the department, all the documents that I had and the story about how he was taken.

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And did you subsequently hear from him?-- I left that on the Friday afternoon and Tim was on his way home from work and I ran out the driveway because I didn't want him to see me, and we never heard anything all night, and then the next day there was a phone call and my mother answered the phone and she said, "It's him", and then I answered the phone and he said - you know, he introduced himself and he said to me later that he thought he was my son and I could stop looking.

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And have you subsequently met him again - sorry, you spoke to him on the phone that day?-- Yes.

Did you subsequently meet him?-- I met him about an hour later.

How did you feel when that happened?-- It was like a shock. It was a shock because I was roaming around the gardens down at Caboolture and thinking, you know, like I had met his wife, and, you know, they were coming behind me and then I turned around and I think - and then when I - I saw his wife first, but I sort of like didn't connect with him because he didn't look how I thought he was going to look. I thought he was going to have black hair and look like his father, but it was a shock when I found out that he had my colour hair and my skin and I am thinking - you know, like I was in shock, because I didn't know, you know, like what my child would look like. He didn't look anything like that - I had been looking at people. I was always looking for an image of Steve, but-----

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And subsequently did you - putting it more generally, have you maintained contact with your son since that time?-- We have had quite regular contact, and-----

Has that increased over time?-- I think it has, yes.

How were relations initially?-- I think we were both - I think we were - when I first met him it was like just shock, because just the way that we found him. I was still trying to deal with this set of circumstances, you know, like - that - I mean, if there had been a divine intervention, you know, for like us to find him, it was just about impossible. I didn't have his name with me when I went up to Queensland.

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And over time did relations between you improve?-- I was

frightened. When I first saw him, it was like I've found him, I've found him at last, you know, like, and it was like a shock because I had built up I suppose a picture in my mind of what my son looked like and he didn't fit the picture and he didn't fit the baby ideal that I had lost, and it was like - I don't know. It was a shock. It was a shock and I was like - I was highly emotional, because now I had to try and, you know, like integrate the man with the child.

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Over a period were you able to do that?-- I had a lot of difficulty. To be honest, I was waiting for him to tell me to bugger off, you know, like I didn't know - I didn't know how to approach it. You know, like I have read through a lot of stuff about reunion and that sort of stuff and it was just like dealing with the concept, you know, like my child had been brought up by other people. I had always known about him. He hadn't known about me. So, you know, like he was - he was calling strangers - like I had always known that I was his mother and Steve was his father, but, you know, like to hear him talking about his mum and dad and I'm thinking, you know, I don't know about that, you know, like I don't know these people. Why - you know, I found it very hard to integrate that somebody else had been living my life, you know, like I was always his mother, and yet, you know, like - it was very hard for me to get that into my head, you know, that my son had a different name - a different life, you know, like when I had always been thinking of him.

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Do you know whether Stephan Benko ever met his son?-- He met him two years after we found him. I had contacted Steve when I found him and told him that he was found and-----

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And from your observations - sorry, I will withdraw that. Subsequent to contacting your son did you ascertain that he had withdrawn his contract objection which had previously been placed on his file with the department?-- I asked him to take it off.

Do you know whether he did that?-- Yes.

40

Would you have a look at this document? Is that the letter you received from the department advising you that that information - or the objection had been withdrawn and giving you details of your son?-- Yes, up until that point I was only going on like the look of him, the familiarity that he was actually - this boy was actually my son. There was no official confirmation that the young man that I had found was in fact my son, and this letter when he took off his contact objection confirmed that he was actually my son.

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Yes. I tender that letter.

HIS HONOUR: Exhibit 18.

MR DAUBNEY: I think it is 19 in fact, your Honour. 18 was the identifying information sheet.

MR WILSON: Subsequently-----

HIS HONOUR: Exhibit 19.

MR DAUBNEY: Thank you, your Honour.

ADMITTED AND MARKED "EXHIBIT 19"

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MR WILSON: And after you received that correspondence did you subsequently obtain from the department those records that it still had pertaining to your time in care?-- I can't remember. I don't think there was any more documents. I can't remember.

For example, the documents - the consent for adoption document and matters such as that, or did you already have those?-- I had them in the December of that - when they sent me the non-identifying information, they sent that material along with it.

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And do you recall what material they sent?-- They sent me - they sent me the report of investigation, the birth/death of an illegitimate child and the consent form.

And did you subsequently, once you had found your son, start investigating why things had been done the way they were in 1967?-- Yes.

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What did you do?-- I started - we were - there was a lot happening because there was - it was the Forde Inquiry happening and I had - I was trying to find my son. I was writing letters to everybody left, right and centre. I had heard that these contact objections - because at that point, you know, like I heard that the contact objections that were being put on some of them were - are being put on by other people, other than the children, and I thought that my son's contact objection was in fact fraudulent, so I was writing backwards and forwards to the ombudsman asking him to investigate to find out if my son's contact objection was indeed fraudulent, and he was going through the department to find out if that was the case. There was a lot of stuff going on with lots of people at the time.

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And you mentioned a little earlier the Forde Inquiry?-- Yes.

Did you give evidence before that Inquiry?-- Yes, I did.

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And make a submission?-- Yes.

And was that in 1998?-- Yes.

And subsequently did you engage - sorry, did you attempt to engage lawyers to act on your behalf with a view to making a claim against the State Government?-- Yes.

Do you recall whether that was at about that same time or a little later?-- At that particular time I didn't know what I was after. You know, like, it was like-----

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You gave evidence at the Forde Inquiry?-- Yes.

After you had done that, did you take any steps with a view to pursuing further the treatment that you were given in 1967?-- Yes.

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What did you do?-- I wrote around to as many lawyers as I could find. I wanted to make a claim. You know, like I wanted - I wanted to - I didn't know exactly what I was trying to claim for. To be quite honest, I just wanted to find out what my legal rights were on what had happened and what sort of claim I could bring, you know, to get - I was acting really - really I was acting quite blindly because I wasn't aware - I just didn't know.

Did you take the matter any further in so far as complaining to the police were concerned?-- Yes.

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What did you do?-- I - when I was in the Forde Inquiry and I asked Laneen Forde - I said to her, "Why wasn't somebody prosecuted for what has happened? Can I get somebody prosecuted for what they have done?"

Don't tell us what Mrs Forde told you, but as a result of that experience did you make a complaint to the police-----?-- Yes.

30

-----concerning what had happened in 1967?-- Yes.

And was that complaint investigated to your knowledge?-- Yes, it was.

Were you told whether it could be investigated any further?-- I was told about 18 months after the investigation - it was put in the hands of the Crime Squad - that their investigations had come to a halt, and that because they couldn't lay specific charges because the social worker was dead, couldn't find the doctor, and the nurse couldn't remember, they couldn't specifically lay charges against any particular person, and the policeman said to me, "The best thing that you could do is to go through a civil action."

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You said that you tried to find some lawyers to act for you or to tell you what your rights were?-- Yes.

Did that prove easy?-- No.

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A number of lawyers not prepared to take it on?-- Yes.

Subsequently did you find a firm of solicitors who was prepared to act for you in about the beginning of 1999?-- Yes.

And you instructed them to bring a claim?-- Yes.

Now, I asked you a little earlier and you told me that you had done that course at the TAFE College in Sydney. Have you pursued any further education since then?-- I started - I took a year off after the - the TAFE course because there was too much happening. I couldn't - we had the inquiry in New South Wales and that, and I was writing up a lot of submissions and things. I couldn't get my head around and I didn't know where I was going to go with study, and then I decided that I wanted to study law.

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Yes?-- And I put in an application and I was accepted in the year 2000 to do a Bachelor of Law at Macquarie.

Which university?-- Macquarie University.

And did you start that course?-- Yes.

And have you completed that course?-- No.

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What stage have you reached?-- I - I have done four years and I was supposed to do this - my fifth year this year but I have just caved in. I haven't been able to study at all this year because of what has been happening as far as the trial is concerned.

In terms of the trial, it came on in February and was adjourned; is that right?-- Yes.

In the period after you established contact with your son, in the years after that, did you ever seek any treatment from a psychiatrist?-- No.

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Did you go and see a social worker or a psychologist at all?-- I went and saw one towards the end of the year 2000.

And what were the circumstances which led up to that?-- Because I was losing the plot.

Why?-- Because I was studying torts and there was these things about false imprisonment, assault and all that sort of stuff and I was just like - and I was reliving my whole experience in the cell and the arrest, and I am thinking I can't handle it, I can't think, I can't think, you know, like - and I thought - I said to my husband, "I think I am going to lose the plot. I have got to go and see somebody. I just can't" - I read for a couple of minutes and then it is like, and like that, then I sit there and the whole thing would be - like - then I would be going a bit more, and then I would read something else and it would sort of trigger this, and then I just, no, no, I am losing it, I am just losing it, and the relationship, I am trying to - I am trying to deal with the reunion with my son, and I am thinking, you know, like all the things that were coming out in that, you know, like dealing with a lot of stuff, and I am thinking that I want to try and deal with the relationship between him and I and dealing with the other stuff, and I just thought, no, I can't do it any more. I have got to go and see somebody.

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So you sought professional help at the end of 2000?--
Somebody said that you could get free counselling at Fairfield
Health.

And you went there?-- I saw a psychologist there and she
said, "I'm sorry, but I can't do any counselling with you. I
will just have to give you some relaxation exercises", because
she said, "I do not want to know basically too much about what
you are going through because you need to see a psychiatrist",
and she recommended Dr Moore.

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And did you subsequently go and see Dr Moore?-- Yes.

And you told her what had happened to you?-- Yes.

And you answered her questions accurately?-- Yes.

And did you subsequently start seeing a Dr Pickering?-- Yes,
I went to - she said that I should get therapy.

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Yes?-- She suggested that I needed ongoing treatment and for
me to go to my doctor and get a referral.

And you did that?-- Yes.

And when did you start seeing Dr Pickering?-- I started - I
think I saw him once just before Christmas, and then I started
seeing him after Christmas.

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And you have seen him on many occasions?-- I see him every
week.

And before you started seeing Dr Moore or Dr Pickering, did
you take any medication?-- No.

Since seeing those psychiatrists have you taken any
medication?-- Yes.

What medication were you initially prescribed?-- I was
originally prescribed Prozac.

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Yes?-- And then Aropax, and then Luvox.

Is there some reason why the medication changed?-- Because
the first lot of medication made me break out in a big rash.
The second lot of medication made me fall asleep all the time
and I couldn't study. It was like I would sit there and my
head would go banging on the table.

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And when did you change to Luvox?-- I can't remember - hang
on. It was just before my exams last year. It was about a
week before I took my final exams in property and equity.

And have you been - are you still on Luvox?-- Yes.

And how often do you - sorry, do you take that every day?--
Yes.

How often do you have to get a new prescription?-- About once every two months.

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And how much does it cost each time you fill a prescription?-- About - I don't know - about \$23 something.

Have you sought any treatment other than from Dr Pickering since the end of 2000?-- From any other psychiatrist?

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Yes?-- No.

Finally, Mrs Arthur, can I ask you to have a look at these two documents? Did you write a letter to the Queensland Minister for Health in August 1998 and receive a reply dated the 1st of September 1998?-- Yes.

Yes. I will tender those two letters, your Honour. Can I have them photocopied when we rise for the day? Otherwise that's the evidence-in-chief.

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HIS HONOUR: The letter will be Exhibit 20 when the copy becomes available and the reply Exhibit 21. I give you leave to uplift the exhibits. I will return this, Mr Wilson, and then the photocopies can become the exhibits.

MR WILSON: Thank you.

ADMITTED AND MARKED "EXHIBIT 20"

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ADMITTED AND MARKED "EXHIBIT 21"

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MR WILSON: That's the evidence in chief.

HIS HONOUR: Mr Daubney?

CROSS-EXAMINATION:

MR DAUBNEY: Mrs Arthur, you told us a few minutes ago that you were this year supposed to be doing fifth year, and that you had caved in and that you hadn't been able to do anything because of the trial. Do you recall giving that evidence a few minutes ago?-- Yes.

And the trial was originally listed for February?-- Yes.

Could we impose on your Honour's associate to extract from the file the order of Justice Helman of 21 January 2004?

HIS HONOUR: There is a note of the associate on the file. Do you know if the order was perfected?

MR DAUBNEY: It was, your Honour. I have a copy of the sealed order. In any event, it is the case, isn't it, Mrs Arthur, that on 21 January 2004 the parties consented to the trial in February being adjourned, didn't they?-- I presume so. I don't know. Yes.

And by consent you were to provide the defendant's side with amended further and better particulars within a particular timeframe?-- Yes.

We have a copy of that order now, your Honour. We tender that.

HIS HONOUR: Exhibit 22.

ADMITTED AND MARKED "EXHIBIT 22"

MR DAUBNEY: And it is also not quite correct to say, is it Mrs Arthur, that you haven't been able to do anything all year because of the trial. In fact, we are lucky, are we not, that this trial wasn't on a month ago - or you are lucky this trial wasn't on a month ago, aren't you?-- Why?

You were engaged in campaigning this time a month ago, weren't you, Mrs Arthur?-- I started to do - I didn't do anything at the beginning of this year and I started to do Discrimination Law mid term in the second half. I couldn't cope with it because I had too much going around inside and I was under the instruction to stop all study. I was asked to stand, and -

that doesn't matter. I was asked to stand for the seat of Prospect a couple of months before the election, which I did, and it had nothing to do with my studies.

So for the two months of the election campaign you were campaigning for the Australian Democrats who had endorsed you as their candidate for the seat of Prospect; that is right, isn't it?-- Yes, I had two forums that I attended. That was all. That was the extent of my campaigning.

You didn't make any further efforts to try and persuade the voters of Prospect to vote for you?-- I did a couple of articles two weeks before the election.

That was the extent of your efforts to have people vote for you in that election, was it, Mrs Arthur?-- Yes.

Let's go back in time a little bit, if we may. You have told us that you migrated with your family to Australia in 1959 when you were nine. You and your family were initially settled, or you and your family initially settled near Townsville; is that right?-- Yes.

And then about two years later you all moved to Brisbane?-- Yes.

There was your father, your mother and a total of nine children by that time?-- My mother had her last child in Brisbane.

All right. You were living, if we can be blunt, in poverty in Brisbane, weren't you?-- We were living in a house - housing commission house. When my father left we were living in a housing commission house in Mount Gravatt.

You were living in inadequate conditions?-- What do you mean inadequate conditions?

All right. Perhaps we will approach it this way. Your father was an alcoholic, was he not?-- No.

He was a drunk?-- My father was a person that could go without a drink for quite sometime, and then he would go on a binge.

When he went on a binge he became abusive?-- I don't know that my father became abusive every time that he went on a binge.

On occasion?-- On occasion.

Physically abusive?-- Sometimes.

To your mother?-- Yes.

To you?-- No, not necessarily very much to us.

You saw your father physically abuse your mother when he was

drunk?-- Not very often.

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Often enough, Mrs Arthur?-- I can only recall twice.

You were what age at this time? Nine or ten or thereabouts?--
I was about ten.

You told Dr Moore, didn't you, that when you moved to Brisbane with your family you lived in a shack?-- Yes, when we first moved down from Townsville we did. We lived in a house and my father had bought a five acre property out at Rochedale and he built a little shack out there.

10

And there were complaints to a welfare organisation that the conditions in which you were living were inadequate because there was no water or electricity?-- My father built a bigger house up the hill, and it was a big house and we had beds, tables, stoves, whatever. What happened at the time was that the school complained about us having to go so far to school and we would get wet, and we didn't have any transport.

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Didn't you tell Dr Moore that there were complaints to the welfare department - I am sorry, didn't you tell Dr Moore that you were living in a shack in Brisbane and that there were complaints to the welfare organisation that the conditions were inadequate as there was no water or electricity, and that your family was moved to a house?-- Yes, but that doesn't mean to say that the house we lived in wasn't - it may not have been by your standards a house, but it was still a safe covering. I don't - I think the nuns at the school complained to the welfare about my father.

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Because of his abusive behaviour?-- No, because he was - not because of his abusive behaviour, but the fact that sometimes we were poor and went to the church and asked for some help.

Your father left and went back to England and left you and your mother and your family?-- Yes.

He left you without any money?-- Yes.

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He left you without any support?-- Yes.

On 23 September 1962 you were made a ward of the state for the first time?-- Yes.

Other members of your family were made wards of the State?-- Yes.

You were put under State care?-- Yes.

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Where did you live during that time, Mrs Arthur?-- We were living at - we moved around. We were living at Mount Gravatt when my father left. We then moved - my mother bought a house at Lota and then she bought a property after that, she bought a property on three acres at Woodridge.

You left school at the age of 13 after Grade 7 to help your

mother look after the family?-- Yes.

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And, of course, that was unpaid work. You weren't paid anything for helping your mother look after the family, were you?-- No.

No. At the age of 14 you started work as a machinist at the Queensland Cooperative Boot Society at Woolloongabba?-- Yes.

You worked there for some time?-- I worked there for about 12 months.

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And then you went to work at Sleepmaker Mattress?-- I had a couple of small jobs between then and when I went to work at Sleepmaker.

You left home in about August 1966?-- It could have been a little bit later. It was about that time.

Your mother had met a man that she planned to marry?-- Yes.

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And had sought a divorce from your father?-- Yes.

Your father was still in England at that time?-- Yes.

Your father came back from England?-- Yes.

Your father tried to stab the man who was to become your stepfather?-- He came out to the house that night and somebody had said that they thought they may have seen my father. I don't know who it was but what happened was I didn't witness the stabbing. He was banging on the door. My father was banging on the door and when my stepfather opened it he lunged at him with a knife, and they pushed the door shut and my - I was behind. I didn't see what was going on.

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You heard what was going on?-- I heard what was going on and my father-----

I am sorry?-- My stepfather sung out to my brother, "Go and get the gun", because he had an air-rifle, and we bolted off - after we thought it was safe, we got into my stepfather's car and my stepfather drove to the neighbour's house and they called an ambulance and they rushed him off to hospital.

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I am sorry, your stepfather had in fact been injured?-- Yes.

He had been stabbed?-- Yes.

You saw him immediately after he had been stabbed?-- Yes.

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He was bleeding?-- He was just holding his hand like that.

Certainly sufficiently injured, I think you were telling us, for an ambulance to need to be called to take him to hospital?-- Yes.

Right. This was, and correct me if I am wrong, the first time

you had had contact with your natural father since he had left you and the family, or left your family some five years previously?-- Yes. 1

The first contact was for him to turn up at the front door and stab the man that your mother was living with?-- We didn't know whether he was back in the country, but we thought that he may have been. We weren't sure, but we all went off to my stepfather's sister's house and we stayed there, and the police came to the house with my father in the back of the car and I went down and spoke to him and he said to me, "Which one of them are you?", and I said, "I am Lily", and he said, "Have you got a smoke there, lass?" So I asked - he gave me - asked me for a cigarette and I gave him one, and then we were just talking at the window of the car and then the police took him off. That was the last time I saw my father again. 10

Well, as I said before, that was the first time you had seen him since he had deserted your mother and your family and it was the last time you saw him?-- It was the first and the last time I saw him. 20

I see. Because your father was subsequently convicted and gaoled for a term of imprisonment in Boggo Road; is that so?-- Yes.

Where was your mother living at the time?-- She was living in Wembley Road, Woodridge.

And is that where you were living as well?-- Yes. 30

Or had you moved out by then?-- No, I was still living there.

Your mother sold that house and moved to Sydney because she was scared, didn't she?-- Yes. She didn't want my father coming back there again.

And you didn't want to go to Sydney?-- No.

You wanted to stay in Brisbane; is that so?-- Yes, I was very happy here. 40

Had you met Mr Benko at that stage of the game?-- Yes.

And at that time you were also working for Sleepmaker Mattress?-- Yes.

You have told us about the circumstances in late 1996 which led to you moving in with Mr Benko, and you fell pregnant in January 1967; is that so?-- Yes. 50

Now, after you were discharged from the Holy Cross in October 1967 and you were sent back to Sydney you lived with your mother and stepfather initially?-- Yes.

It is correct to say that your stepfather was abusive to you?-- Yes.

You hated your stepfather?-- Yes.

He used to get drunk and call you a slut?-- Yes.

And you never had any sort of decent relationship with your stepfather, did you?-- No, not really.

You had a number of jobs around that time. You worked for Inghams Chickens for some time?-- Yes.

You worked for a short time for Lola Lane as a machinist?-- Yes.

You worked for Australian Lighting Industries as a process worker for some months in late 1968?-- Yes.

In October 1968 you went to work for Arnotts Biscuits?-- Yes.

And in early 1969 you started work for Hoovers as a process worker?-- Yes.

And in January of 1971 you commenced the public service job in the Department of Repatriation?-- Yes.

That you have told us about?-- Yes. I can't state specifically exactly what dates, but that was around the period of time.

In the meantime you had met Mr Fuller?-- I met Mr Fuller in about March of 1968.

And married him with within 12 months of your going to Sydney?-- Yes.

You have told us about developing a suspicion that Mr Fuller was infertile, and leaving him and leaving your job?-- Yes.

You came back to Queensland hoping to find your baby and Mr Benko?-- Yes.

After about six months you returned to Sydney and got work in Rose's Laundry?-- I returned to Sydney about three months later, two to three months later. I wasn't up here very long.

You met another man and started living with him?-- Yes.

And he is the gentleman that you fell pregnant to with your daughter?-- Yes.

You left him?-- Yes.

Do you have any ongoing contact with him?-- No.

Your daughter was born on 7 April 1972; is that correct?-- Yes.

You were then not employed for about ten years while you raised your daughter?-- She was ten months - I think she was

about ten months old when I - she was about two months old when I got a job, and about ten months old when I left work, and I never went back to work until she turned 12. She started high school the same time as I started work.

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Your marriage to Mr Fuller was, to put it neutrally, unhappy?-- Yes.

From about 1982 on you worked as a cleaner initially part-time and then fulltime?-- Yes.

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In 1986 you started working in a family store with your husband?-- Yes.

In 1990 you enrolled in an introduction to law course, but although having enrolled in it you never started it because of your abusive husband?-- He didn't like the idea that I had to go and study two nights a week.

I will put it to you again, that it was his abuse that prevented you from starting the course?-- He thought that I was getting beyond myself.

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He was jealous of your ambitions?-- Yes.

In 1991 you started a keyboard course but could not complete that, again because of your abusive husband?-- Yes.

He wanted to control you and dominate you?-- He was getting upset because I wasn't there to cook his meals of a night-time.

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1991 was the year in which you had applied to the Department for information on adoption, and we have seen a letter that you wrote to Jenny Brown and Mr Prinsa's letter in response, and then you received the news that your son did not want contact with you and that so devastated you that within two months you had left home, resigned your job and moved to Queensland?-- Yes.

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You suffered what you described as a major nervous breakdown at the time?-- Yes.

Did you seek any treatment for that major nervous breakdown?-- No.

You moved to Queensland. You obtained work as a cleaner at the Morayfield school; is that right?-- Yes.

At that time - specifically I am talking about August 1991; this is when you are working at the Morayfield school - you were sharing a house with a bikie?-- Yes.

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A dysfunctional bikie?-- Yes.

A dysfunctional drugged-out bikie?-- Yes.

A dysfunctional drugged-out bikie who had psychiatric problems

and threatened to kill you?-- Yes.

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And you were in grave fear because of those threats to kill you, weren't you? You took it seriously, Mrs Arthur, didn't you?-- I think at that point in my life I just accepted that if he was going to harm me, he was going to harm me, but I thought that in some respect that I was going to help him.

Well, because of his threat to kill you, you returned to Sydney, didn't you?-- No.

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Didn't you tell Dr Whiteford that as a result of the threat to kill you you returned to Sydney at the end of 1993 to live with your daughter and her family?-- No. I moved in with my mother.

At about that time was your daughter due to give birth to your grandchild?-- She had already given birth to my grandchild.

Were your co-workers harassing you?-- Yes.

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All right. Well, we have got a threat of killing, we have got daughter having grandchild, we have got coworkers harassing you. What was it that sent you back to Sydney or was it a combination of all of those factors?-- A lot of things had settled down by the time I went back to Sydney. I had moved out. I had lived with my mother for a while and then I got a Housing Commission flat of my own. I was living quite comfortably on my own for about six weeks and my daughter was writing to me asking me to come back so I could get to know my grandson, and I was just sitting - I was having an extremely hard time at work because people were going out of their way to deliberately harass me and I was sitting there one day - it was just about a week before Christmas holidays, and this fellow that I was working with said to me, "Lily, why are you here?", and I said, "What do you mean, why am I here?" He said, "You have got nothing up here. You've got your daughter and your family back in Sydney. Why don't you go back to Sydney?", and I thought, well, if I could move all my furniture back there and everything else like that I would go. So I went home, I thought about it, and I thought, why am I up here? I couldn't see any reason for staying here. I rang up a truck and I said, "How much is it going to cost to take this, this and this back to Sydney?", and they said "\$120", and when I got my holiday pay I thought, well, my daughter had got a big house then, which I had had my own room and my lounge room, I threw everything on to that truck and I went back there.

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In 1995 or for a couple of years commencing 1995 you suffered from a number of gynaecological problems?-- Yes.

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You ultimately underwent a hysterectomy in 1996?-- Yes.

In 1997 you suffered the shoulder injury that you told his Honour about when you were working in your care job?-- Yes.

That injury left you unable to work?-- Yes.

You received a compensation payout as a result of that injury, didn't you?-- It took three years to get a compensation payout.

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You received a compensation payout as a result of that injury, didn't you?-- Yes.

In 1997 you started TAFE studies in community welfare?-- Yes.

In 19 - at the beginning of 1999 you found solicitors who would act for you in your proposed proceedings against the State of Queensland; that's so, isn't it?-- I think - I am not exactly sure of the date, because there was a bit of umming and ahing about the solicitors, whether they were going to take the case on or not.

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Sorry, I am just referring to the evidence that you gave earlier?-- I don't know exactly - it took them months before they decided whether I had a case or not, so I don't know.

All right. In the meantime in 2000 you commenced your Bachelor of Laws course at Macquarie?-- Yes.

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And you didn't institute these proceedings until April 2001?-- Well, it had been in the hands of the lawyers the whole time.

I see. Is that a convenient time, your Honour?

HIS HONOUR: Yes. The Court will adjourn till 10 o'clock tomorrow.

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THE COURT ADJOURNED AT 4.30 P.M. TILL 10.00 A.M. THE FOLLOWING DAY

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