

Information No. 180140

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

KELLEY DENHAM

P R O C E E D I N G S A T T R I A L

BEFORE THE HONOURABLE JUSTICE C. ANDERSON
on August 13TH and 14th, 2019, at PERTH, Ontario

APPEARANCES:

R. Corbella
F. Mansour

Counsel for the Crown
Counsel for K. Denham

ONTARIO COURT OF JUSTICE
T A B L E O F C O N T E N T S

5

PROCEEDINGS
FROM AUGUST 3
13TH, 2019

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PROCEEDINGS
FROM AUGUST 60
14TH, 2019

15

LEGEND

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[*sic*] Indicates preceding word has been reproduced verbatim and
is not a transcription error.
(ph) Indicates preceding word has been spelled phonetically

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August 13th, 2019

THE COURT: Mr. Corbella.

5 MR. CORBELLA: Yes, good morning, Your Honour, again. If we can move on then, Sir, to the matters at lines three through seven on the courts docket of Ms. Kelley Denham.

MR. MONSOUR: Good morning, Your Honour.

THE COURT: Good morning.

10 MR. MONSOUR: It's Fady Mansour for the record. I am counsel for Ms. Denham.

THE COURT: Thank you, Mr. Mansour.

15 MR. CORBELLA: So, this is a matter, Your Honour, that is set for three days. Mr. Mansour and I have had many, many discussions, we've been able to narrow down the issues significantly. The way I was going to propose dealing with it this morning is having Ms. Denham arraigned, I will be asking for a small amendment to count two on the Criminal information, there is a typographical error. Then, once she enters her pleas I would file what counsel and I have worked out to be the agreed statement of fact, giving Your Honour an opportunity to read it for 15 to 20 minutes so that you may come up to speed. During that time, I think there is some more things counsel and I have to discuss to maybe narrow things down even a little bit more, and then we can start.

20 THE COURT: That's fine. You are content with that Mr. Mansour?

25 MR. MANSOUR: That's right, Your Honour. My friend and I, as he said, we've had many discussion over many months,

5 that have brought us here, we have narrowed the issues. This is a case where essentially we agree on almost all of the fact. We will be calling a few witnesses. Even their evidence is not even uncontested, and there is going to be a legal argument at the end. If my friend, gets from those facts - if that alleges an actual offence under the Criminal Law, or not. So, I don't even think it will take the three days, but I'm glad we have the three days just in case. I am going to ask for an exclusion of witnesses order. I see there are quite a few witnesses in the courtroom, so perhaps we can start with that, and then go from there.

10 THE COURT: Is the Crown seeking any exceptions to the general order?

15 MR. CORBELLA: I'd ask for an exception, Your Honour, for the officer in charge, Detective Rakobowchuk.

MR. MANSOUR: No issue.

20 THE COURT: All right. With that exception then, all other persons who may be called upon to provide evidence in relation to this matter are ordered to leave the courtroom, and while outside waiting to testify the witnesses are further ordered not to discuss their evidence with anybody who has testified, or who may be called upon to provide evidence.

25 MR. CORBELLA: Thank you very much. So, as I indicated at the outset, Your Honour, there should be two informations before the court. There is a *Criminal Code* information with three counts, and then there should be an information under the *Child and Family Services Act*. So, under agreement, Your Honour, we will be proceeding on

30

5 both informations here today. Your Honour will note that
count two sets out section 430(1.1)(c), that should be
subparagraph (d), the wording actually corresponds to
paragraph (d) in the *Criminal Code*.

MR. MANSOUR: No issue.

THE COURT: That's fine. We will make the amendment then.

MR. CORBELLA: So, with that I am content if Ms. Denham be
arraigned.

10 CLERK OF THE COURT: May I proceed?

THE COURT: Yes, indeed.

CLERK OF THE COURT: Are you Kelley Jean Denham?

MS. DENHAM: Yes.

15 CLERK OF THE COURRT: You have been charged on count one
that on or about the 18th day of April, in year 2016, at
Smiths Falls, in the said region, Kelley Jean - Oh, my
apologies, the way the information is laid, I am just
going to re-arraign. Kelley Jean Denham, between January
31st, 2016 and April 18th, 2016, at the Town of Smiths
20 Falls, in the said region, did obstruct, interrupt, or
interfere with the lawful use of computer data of the
Family and Child Services of Lanark, Leeds and Grenville,
contrary to section 430(1.1)(c) of the *Criminal Code*.

25 Count two, that Kelley Jean Denham, between January 31st,
2016, and April 18th, 2016, at the Town of Smiths Falls,
in the said region, did obstruct, interrupt, or interfere
with a person in the lawful use of computer data, or
denied access to computer data to a person who was
30 entitled to access it, contrary to section 430(1.1)(d) of
the *Criminal Code*.

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And count three, that Kelly Jean Denham, between January 31st, 2016, and April 18th, 2016, at the Town of Smiths Falls, in the said region, did fraudulently, and without colour of right, did use, or caused to be used, directly or indirectly, a computer system with intent to commit an offence under section 430 in relation to computer data, or a computer system, contrary to section 342.1(1)(c) of the *Criminal Code*.

15
On March 21st, 2018, the Crown elected to proceed summarily.

Ms. Denham, how do you plead to count one as I have read it?

15
MS DENHAM: Not guilty.

CLERK OF THE COURT: How do you plead to count two as I have read it?

MS. DENHAM: Not guilty.

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CLERK OF THE COURT: And, how do you plead to count three as I have read it?

MS. DENHAM: Not guilty.

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CLERK OF THE COURT: And, I have a Provincial Offences information.

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Kelley Jean Denham, you have been charged along with another count one, that on or about the 18th day of April, in the year 2016, at the Town of Smiths Falls, in the said region, did publish information that has the effect of identifying a witness at, or a participant in a hearing, or a party to a hearing, to wit; the names of

clients of Family and Children Services, contrary to section 76(11) of the *Child and Family Services Act of Ontario*.

Count two; and further, Kelley Jean Denham, you have been charged with another that on or about the 18th day of April, in the year 2016, at the Town of Smiths Falls, in the said region, did publish information that has the effect of identifying a child who is a witness at, or a participant in a hearing, or the subject of a proceeding, or the child's parents, or foster parents, or a member of the child's family, to wit; the names of clients of Family and Children Services, contrary to section 45(8) of the *Child and Family Services Act of Ontario*.

How do you plead to count one as I have read it?

MS. DENHAM: Not guilty.

CLERK OF THE COURT: And, how do you plead to count two as I have read it?

MS. DENHAM: Not guilty.

CLERK OF THE COURT: Thank you. This is the time and place set to hear evidence on your trial.

MR. CORBELLA: Can I just see the Provincial Offences?

CLERK OF THE COURT: Yes, of course.

MR. CORBELLA: I don't know how I missed it, Your Honour, but there is a name of a former co-accused...

MR. MANSOUR: Yes.

MR. CORBELLA: ...the charge was withdrawn.

CLERK OF THE COURT: Okay.

MR. MANSOUR: Years ago.

MR. CORBELLA: If that name could just be crossed out.

CLERK OF THE COURT: Okay

THE COURT: That's fine. And, Mr. Mansour, you waive re-arraignment?

MR. MANSOUR: Correct.

THE COURT: That's fine.

CLERK OF THE COURT: Thank you.

MR. CORBELLA: So, as I indicated at the outset, Your Honour, counsel and I have been able to produce an agreed statement of fact. I will file a copy for Your Honour. And we will recess to allow counsel and I to have a further discussion, and give yourself an opportunity to read it.

THE COURT: Yes, we will take a few minutes, and just tell me whenever you are ready. And also, if you could give me a photocopy of just the charge?

CLERK OF THE COURT: Of course.

THE COURT: Because that's confusing.

R E C E S S

Upon resuming:

MR. CORBELLA: Yes, so good morning again, Your Honour. The first witness for the Crown is Mr. Raymond Lemay.

THE COURT: Thank you.

CLERK OF THE COURT: I'll just have you stand. Can you please state your first and last name for the record, please?

MR. LEMAY: Raymond Lemay.

CLERK OF THE COURT: If you could spell your first and last name, please?

MR. LEMAY: R-A-Y-M-O-N-D, Lemay, L-E-M-A-Y.

CLERK OF THE COURT: Thank you. And, I see you have your hand on the Bible. Do you wish to swear on the Bible?

MR. LEMAY: I do.

MR. RAYMOND LEMAY: Sworn

EXAMINATION IN CHIEF BY: Mr. Corbella

Q. Good morning, Mr. Lemay. I see, sir, you are actually quite soft spoken, so I am asking you to please use your nice loud voice so everyone can hear you, even in the back of the courtroom, and when you give us an answer it has to be verbally. You can't say, mm-hmm, or uh-huh. We are recording everything you say, all right sir?

A. I do, yeah.

Q. Okay. So, Mr. Lemay, I understand, sir, that you are the executive director of Family and Child Services of Leeds, Lanark and Grenville?

A. I am.

Q. Okay. And, for starters, how long have you been the executive director?

A. Since December, 2015.

Q. December of 2015. And, what is the executive director position? What's your role?

A. Chief executive officer of the corporation, as well as the local director for the purposes of the *Child and Youth Family Services Act*.

Q. Okay. And, your responsibilities include?

A. General oversight over the functioning of the organization. I report to a board of directors, and then a variety of administrative tasks that go with the position.

Q. Okay. Now, it's my understanding sir that back in February of 2016 you became aware of an issue with - regarding the website of Family and Child Services, Leeds, Lanark and Grenville?

A. Yes.

Q. Now, I guess like most organizations these days, this one has a website?

A. It does, yes.

Q. And, what was your understanding of the purpose of that website?

A. The purpose - the website, its general purpose was to...

Q. And, just before we go any further, I'm always referring to back in February to April, 2016. We want to know what it was back then.

A. The website is meant to be our organizations presence in the world of the internet, so that people can access information, and documentation from our organization, and we make available to citizens on the website. Its secondary purpose at that time was to provide us with a portal to disseminate confidential information to the board of directors.

Q. Okay. So, that kind of leads to my next area. You've already mentioned the board of directions. I think we all can pretty much assume, you know, what that is, but can you, for the record, tell us who all the board of directors - what are they?

A. The directors are elected by the membership of the

corporation to be the officers of the corporation, to provide it with regular oversight, ongoing oversight, and also to report to the government funder about the progress of the organization, its activities and so on.

Q. Okay. And, you mentioned - I am going to get your words slightly wrong here, but you mentioned part of the website back in February to April, 2016, dealt with providing information to the board of directors?

A. It did, yes

Q. Okay. So, can you elaborate on that for us a little bit please, sir? Where was it set up to do, what was it supposed to do?

A. It was set up - on the website there was a place on the website where board members could click on, and then they would be asked to give their log in information, as well as a password, and thus get access to a file of information that we made available to board members just prior to board meetings.

Q. Okay. So, you yourself was familiar with the website, and that - I think you used the word portal at one point in time.

A. Yeah.

Q. Yeah. You...

A. That's what, that's what people called it, a portal.

Q. Okay. You are familiar with that, back in February and April?

A. I had just arrived at the organization at that point, so this was all kind of new to me.

Q. Okay.

A. However, that's the system that I inherited, and I was working at that point in time, and that was being used.

Q. Okay, so again back in February, April, 2016, if you

clicked on, if you clicked on that portal...

A. Yeah.

Q. ...and if you didn't have, I think it's a log in name,
5 and a password, what was your understanding of what was supposed
to happen?

A. You couldn't go any further.

Q. And, what kind of information was kept in that portal?

A. Board minutes, agendas from meetings, and supporting
10 documentation for agenda items.

Q. Okay.

A. That included regular reports to the board, some of
which would have been confidential.

Q. Now, I think this all started with me commenting to
15 you, sir, or asking you if became aware of an issue with the
website back in February of 2016.

A. Yes.

Q. Right. So, take us back then in February of 2016 you
became aware of the issue, what was your understanding of what
20 the problem was?

A. As it was explained to me, one of our clients had
posted a video, a lengthy video that was a video tape of the - a
video of an intervention that we had done with her. So, some of
our staff were on the video, or were heard in the video, seen on
25 the video. But also in the video we noticed that certain
documents had been imbedded at different points of time in the
video, and that those documents to us seemed like corporate
documents that could have been - that we would - that would in
fact have been confidential documentation.

30 Q. Okay. And, was that a concern?

A. Of course. Yes it was. We initially did not know how

that person could have accessed that information. We looked at various possibilities, but ultimately came to the conclusion that this information had been taken from our secure portal.

5 Q. Okay. Now, as of a result of that, back in February, 2016, what steps did Child and Family Services, Leeds, Lanark and Grenville decide to take?

A. Well, we did a variety of things, but for the - we immediately closed down the website. And, we had had at that 10 point a company doing some work on the website, redesigning it for us, and we asked their assistance in tracking down what the problem had been, and we also hired a consultant, a consultant to come in a provide us with additional support, and to determine, if we could anyways, who ultimately the person who had accessed 15 that information, and what were the problems around that.

Q. All right. And, back in February of 2016, I think a lady by the name of Jennifer Eastwood was employed with your agency?

A. She was the director of corporate services.

20 Q. Okay. And, was she tasked with trying to figure out how to fix the problem?

A. The website fell under her mandate so she took the lead on this, and did a lot of the coordination, a lot of the contacts with the individuals, especially in the administrative 25 side of things.

Q. And, just to answer that, by February the 11th, of 2016, you received an email that just kind of set out what should be done in order to try to correct the problem?

A. Yes.

30 Q. Just to help your memory of this - I have a copy of the policy, Your Honour.

MR. MANSOUR: No issue.

5 Q. I am showing you an email, sir, that you received from
actually, it was from Tanya Shepherd, it included Ms. Jennifer
Eastwood, as well as yourself, and others.

A. Right.

Q. And, that lists out, 1-2-3-4-5-6... 7 points to be
done, I guess?

10 A. Yes.

Q. Right. So I will just...

A. That was our plan.

Q. Now, okay, so I will just read it into the record. I'm
going to file this as an exhibit, Your Honour.

15 MR. MANSOUR: Sorry, can I just have the date so I can
follow along?

MR. CORBELLA: February the 11th, 2016.

MR. MANSOUR: From Row to Eastwood?

20 MR. CORBELLA: From Tanya Shepherd to Eastwood.

MR. MANSOUR: From Shepherd to Eastwood. As per our
discussion.

25 Q. So, I'll just read into the record, sir, and I'll have
this filed for exhibit.

"Laridae will adjust the security settings within the
media library section of the website.

30 Documents currently in the Media Library/Board Portal
portal to be removed. Tammy with the assistance of

Laridae.

5 Board documents for upcoming February meeting to be stored on an encrypted U.S.B. key, and sent via courier to Board Members - Lyndsey.

10 Passwords of Board Members to be changed and secure, suggesting eight characters consisting of caps, numbers, symbols - Tammy and Lindsey.

15 Options of exploring patterns of access to the media library files/Board Portal of the website from January 18th to February 3rd, 2016 - Jennifer/Margaret.

Security checks to be initiated prior to board members regaining access to the portal - Laridae/Donna."

20 And then, "Board members to regain access to the portal - sorry, to the board portal by March, 2016, board meeting".

A. Yeah.

25 MR. CORBELLA: So, if that could be the first exhibit, please? And, the next exhibit would be - we have already made the agreed statement of facts officially the first exhibit, Your Honour?

30 THE COURT: Well, we could do - we will make the agreed statement of facts Exhibit one, and that then will be exhibit number two, that's the letter from Shepherd to

Eastwood.

EXHIBIT ONE: Agreed statement of facts.

EXHIBIT TWO: Letter from Shepherd to Eastwood

CLERK OF THE COURT: Thank you.

Q. Now, I am going to go out on a limb, Mr. Lemay, you
10 are not an I.T. person?

A. Not at all.

Q. Not at all, okay. So, everything that I've read out
just now, that was the plan for your corporation to try to
correct the problem?

15 A. Yes, it was.

Q. And, ultimately at the end of the day, who was
responsible for making sure that that plan was done?

A. It, ultimately I was meeting daily with the staff to
see the progress, to determine the progress. I guess ultimately
20 the responsibility would have been mine.

Q. Okay.

A. In terms of operational responsibility, carrying
things out, that would have been Jennifer Eastwood. And, she
would have been relying a lot on Tammy Shepherd to get some of
25 that done.

Q. Sure. Other people did the things, they report it back
to you?

A. They did.

Q. Okay. So, as far as you were concerned, based on the
30 information you were receiving, what was your understanding as to
whether or not the problem had been corrected?

A. At some point in time we received word from, from the people we had hired that we were good to go and that we could recommence using the portal.

5 Q. Okay. Before I move on to April, 2016, I just want to ask you - you mentioned that there was information on the website that was intended for the public?

A. Yes.

10 Q. Could you give us maybe just an idea? I suspect we all have a hint, but for the record, what kind of information would you be making available to the public?

A. Various procedures for becoming a foster parent, if you want to adopt, how to make a complaint. Certain reports were required by the Government to post on our website, so those reports would be there, fiscal reports, for instance, and also a copy of our Board By-Laws, the names of the Board Members who serve on the - sort of general information on the corporation, allowing people to have at least a notion of who we are and what we are before contacting us.

20 Q. Okay. Now, I think you also mentioned the name Kelley Denham at this point already, she was a client?

A. She was, yes.

Q. Okay. And, when you use the term client, that refers to someone who is...

25 A. Who has been referred to us, or otherwise referred themselves because of child protection concerns.

30 Q. Okay. And, I am just going to hand up to you sir - and again, we will just get you to identify. And again, Your Honour, we have covered this with counsel. There is no issue. Back in - it looks like February the 24th, 2016, you received, or at least you were copied on an email from Kelley Denham that was sent to

Kim Morrow, as well as yourself. So, I am just going to hand this up to you and see if you can identify what I've just described.

A. Yes. Yes, I do recall seeing this.

5 Q. All right, now we can read this for ourselves. I'm not going to read the whole thing in. For the record, Your Honour, I'll ask that it be the next exhibit.

10 THE COURT: Exhibit three.

EXHIBIT THREE: Email from Kelley Denham to Raymond Lemay

15 Q. Thank you. Now, sir, you obviously, I'm assuming, you've read that document back then, and I'm sure more recently as well. Can you describe for us, sir, what was your understanding of the relationship, I guess - how well was it going between Family and Child Services of Leeds, Lanark and Grenville, and Ms. Denham?

20 A. I think we had a very difficult relationship. It was very tense. And, I think the email testifies to that. It just shows that Ms. Denham had many complaints about our services. She didn't think much of them. She was very critical of them. And, she wrote a fairly long letter to sort of outline all of her, all of her bones of contention.

25 Q. Okay. All right. So, I'd like to jump ahead to April, 2016. There was a second issue with the website?

A. Yes.

30 Q. Okay. Actually, April the 18th, of 2016 when the second issue came to light?

A. That's correct.

Q. So, can you just explain to us, sir, what was your

understanding of what was the problem back in April, of 2016?

5 A. Well, as best as I can recollect, about one o'clock on
the 18th, we received a call from one of our clients indicating
to us that the names of some of our clients had been posted on a
website. And, we immediately looked into this, and found that
that was true, and then took a whole series of actions to get
that list of names off the website, and to address the issues
that, you know, that would come out of all of this.

10

MR. CORBELLA: Okay. Now, it's admitted in this - it's
admitted in this trial, sir - and, for Your Honour's
benefit, you've seen and read the agreed statement of
fact that some - approximately 252 files were downloaded.
15 Counsel has a copy, Your Honour, and we have a copy for
the court. We will identify them a little bit further if
need be, about 179 of those, of those documents that were
downloaded. So, at this point, Your Honour, unless there
is any objection, I would just - and again, we will
20 identify a bit more down the road, but that they be
either the next lettered or numbered exhibit, subject to
counsel's view, so that we can refer to them.

15

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MR. MANSOUR: It's by consent that these files were
downloaded. I don't think the witness can particularly
25 speak to them given his lack of I.T. knowledge, but I'm
fine with them being made an exhibit, Your Honour, that's
fine.

25

THE COURT: You've got four volumes?

MR. CORBELLA: Three volumes

30

THE COURT: Three volumes.

MR. CORBELLA: Volume one is tabs 1 - 50. Volume two is

tabs 51 - 100, and then volume three is tabs 1 - 20.

5 THE COURT: I think we will simply put the three volumes in. They are otherwise identified just by the numbers as you've just referred to. So, they will go in collectively as the next exhibit.

EXHIBIT FOUR: Three volumes of downloaded documents

10 MR. CORBELLA: So, I think Your Honour is going to need volume one, and I'm going to be referring to tab four. And, if I could approach the witness stand, Your Honour.

THE COURT: Yes.

15 Q. Now sir, one of the documents we have just been talking about that was downloaded was entitled - I'm sure you have heard this before, 0-5intake-stats.xlsx.

A. Yes.

Q. So, you are familiar with that document?

20 A. I am.

Q. It's an Excel document?

A. It is.

Q. So, we have the document at tab four of our materials. I'm just going to try and flip that around for you. And, if you
25 go to the one, two... the fourth page in. Now, this is an Excel spreadsheet essentially?

A. It is, yes.

Q. A document created by your agency?

A. It is, yes.

30 Q. Now, the copy that we have, we can see at the top there is "Team", and then it appears to be what city, or location

this was from.

A. That's right.

Q. Worker, that would be a worker from your agency?

A. It is, yes.

MR. MANSOUR: I am just going to ask that my friend not lead with respect to the content of this document.

MR. CORBELLA: I'm sorry?

MR. MANSOUR: I am going to ask that my friend not lead...

MR. CORBELLA: Oh yes, I apologize.

MR. MANSOUR: ...with respect to the content of this document.

MR. CORBELLA: Okay.

Q. The next line is "Case Name"?

A. Yes.

Q. Now, in our copy it's blank?

A. Yes.

Q. Now, in the copy that was obtained back in April of 2016, what would have been there.

A. It would have been the first name and family name of those various clients.

Q. Okay.

MR. MANSOUR: Sorry, that was of those various what?

MR. CORBELLA: Clients.

MR. MANSOUR: Clients.

Q. And again, a client is a person who...

A. Has been referred to us, or has referred themselves

because of child protection concerns.

Q. Okay. And so, it would be the name of - whose name would be here?

5 A. The parents name. The parents - most often the mother's name, but at least one of the parent's names would be here.

Q. Okay. Would there be a child's name there?

A. No.

10 Q. Okay. And then maybe you could explain to us the rest of the headings, and what they all mean?

A. Well, subsequent there is whether or not we would have more than one referral. The child here is five years old - whether the child - one of the child in the case is if there is a child under five years of age. There are special requirements that are put in for those kids. The referral date, and the date assigned. The referral date is when we receive the referral, and the date assigned is when we assigned it to a worker to investigate. The codes are child protection codes. We have something called the eligibility spectrum. That determines whether or not a referral is eligible for further assistance. That would have been what that code was referring to. And, response time needed is the response time within which we needed to contact the family.

25 Q. Okay. What was the purpose of that document?

A. It was a report to the board. The graphs and the statistics on the first tabs of that report were for - well, for management, but also to the board to determine how well, in fact, we were doing in respecting the time frames for intervention with children and families.

30 Q. Okay. And, was it your organizations intention that

that document be public or private?

A. Oh, private. It's - well, the graphs at the beginning are the kind of information we could put on a website and that people could see how well we are performing in terms of government standards and so on. The information further into the document at the last tabs, the client information, that is strictly confidential.

Q. All right. And, why is that?

A. Because - well, first of all there is a general duty to keep confidential the information of clients receiving services, over and over but the child welfare, there is a prohibition in the legislation about publishing information that could identify children receiving services from Children's Aid Societies.

Q. And, what is your understanding of where that document was located on your website back in 2016? Specifically April, 2016?

A. Well, it seems as if it was on that portal. I mean, that it was on the portal that we had established for documents for board members.

Q. The director's portal we talked about?

A. I'm sorry?

Q. Sorry, what was the name of the portal?

A. The board members...

Q. Board Members portal.

A. Board Members portal.

Q. All right, thank you. Okay. Now, the next question I want to ask you, sir, and you can assist if you are the correct person to answer this, or should I be asking this to another colleague of yours. Specifically, the names that are - that

would have been there back in 2016 that we don't have copies of here, are those names - do you know if those names are of any participants, witnesses, a party to a hearing, or child who is the witness or participant in a hearing, or the subject of a proceeding, or the child's parent, or foster parent, or member of the child's family?

A. I can't say. We did have that verified, and in fact, we determined that a certain number of those individuals had been involved in child protection court proceedings.

Q. Okay. Are you able to break it down for us at all as to how many, or who, or anything like that?

A. It's under 10.

Q. Under 10?

A. Under 10. The exact number, I think you would have to get that information.

Q. Okay. And, I understand sir that there had been - and this is just for the record, Your Honour. A concern had been raised with me by counsel of Child - sorry, Family and Child Services of Leeds, Lanark and Grenville, that by providing us with that evidence that the agency may, in some way, be breaching the *Child and Family Services Act*. I was of the view that that was no such concern. I placed that on the record, and obviously this witness would have been directed by Your Honour to answer those questions in any event. I see Your Honour is nodding yes.

THE COURT: Yes.

MR. CORBELLA: Yes, okay, thank you. All right, Mr. Lemay. I thank you very much sir. If you would just remain there counsel may have a few questions for you.

CROSS EXAMINATION BY: Mr Mansour

Q. Good morning, sir. Mr. Lemay, I have a horrible habit
5 that Mr. Corbella often reminds me of, of speaking too quickly,
so if I speak too quickly, and you don't understand my question,
please let me know.

MR. LEMAY: May I ask for a bit of water.

10 MR. MANSOUR: His Honour is smiling, so I think I am
already speaking too quickly.

MR. LEMAY: Thank you very much.

Q. I only have a few questions for you, okay?

15 A. Sure.

Q. Some of these questions you may or may not be able to
answer, depends on how technical they are. If you don't know the
answer please let me know.

A. That's fine.

20 Q. Security with respect to the confidential information
is quite important to you in your organization, right?

A. It is, yes.

Q. Up until the two, let's call them breaches, one in
April and one in February, you weren't aware that there was a
25 problem with your website, or portal?

A I did not - I was not aware, no.

Q. Okay. And, regardless of how you became aware of that
- so, if you had become aware of the breach in some other way,
for example; if your I.T. department came and said, "Here's a
30 problem, and it is vulnerable. No one has got into it, but it's
a problem." You would have taken the same steps that you took in

this case, take it down or fix it?

A. Of course.

Q. Right. Because, you can't have a ability of the
5 public to access the confidential information, right?

A. It's true.

Q. This just happens - in this case, the way that you
became aware of it is these two events, April and February?

A. Yes.

10 Q. So, you become aware of the problem. Who is the first
person that your organization retains to try and find out, how
did this confidential information get out there?

A. As I indicated earlier, we were already under contract
with a company that was working on our website, and that was
15 upgrading it, and redesigning it for us. So, they were the first
people we called to help out.

Q. Do you know who that was?

A. Laridae is the name of the company.

Q. Okay, and what did they conclude?

20 A. I'm sorry?

Q. What did they conclude the problem was?

A. Once again, you know, I can only tell you what I
understand of the situation.

Q. That's all I'm asking you to tell me.

25 A. What I'm told is that when the website had initially,
or originally been set up, that some of the security features had
not been put into activity, you know, turned on.

Q. You are not sure what that security feature is?

A. I do not - no, I could not comment on that.

30 Q. So, when is the day that you find out that there has
been a security breach? Do you recall what day that was?

A. I'm sorry, I don't.

Q. Does April 19th, sound right to you?

A. No, the April breach, April 18th.

5 Q. April 18th, okay. So, April 18th you become aware.
When do you then contact your I.T. department, or the I.T. company?

A. Now, at that point in time we - I honestly don't know. It was - Jennifer Eastwood who contacted them, but I'm fuzzy on
10 what those, you know, what the sequence of events was, and who did what in terms of contacting the computer company.

Q. When you decide to take the website down, have you told (indiscernible).

A. I know, I know he took the website down, but I don't
15 know how we did that.

Q. Okay. Do you know how long it was down for?

A. At least a month if not more. Once again, I'm not exactly sure how long it was off.

Q. Who made the decision to take the website down?

20 A. I did.

Q. You did, okay. So, you made the decision to take the website down, is that based on the advice you are getting from this I.T. company consultant?

A. From my, from my staff.

25 Q. From your staff. And so, who is giving you the advice to take the website down?

A. That would have been Jennifer Eastwood.

Q. And, do you know why she reached that conclusion?

A. Because it seemed to us that the website had been
30 compromised, and that there was something going on that was beyond, beyond our capability. We needed to turn the website off,

and to limit the damage at that point.

Q. So, was it your understanding that you were required to turn the website off to fix the problem, or was that just a precaution? Let's turn it down just in case, and then we are going to make sure the problem is fixed?

A. It was as a precaution.

Q. Okay. So, you can't tell me if you were required to shut down the website in order to fix that security feature that wasn't turned on previously?

A. It was in February that we determined a security feature had not been turned on. It had been turned back on by the time the April incident occurred.

Q. Okay. So, in February you become aware that there is a security breach. Do you turn it off in February, or in April? The website?

A. Both times.

Q. Both times. So, you turn it off once in February, and my question is, are you aware if that was required in order to fix the problem or were you doing it as a precaution in that incidence in February?

A. I think it was required. I don't know who would require it of us. I think it was just a good practice. I think it's just what we needed to do.

Q. So, in fairness, you don't know the answer to my question, you're not sure? Okay. And, when it goes down again in April are you told by someone you have to turn off the website in order to turn on the security feature, or are you not sure? You just made the decision. Let's turn it off just in case?

A. Turn it off just in case.

Q. I want to go back to February. You have become aware of the - you are not really sure why this has happened, and so you are scrambling to fix the problem, right?

5 A. I guess so.

Q. But, one of the - there is a bunch of theories about how this document got out. One of them is that someone has hacked this, supposedly, secure system, and gone in behind the username and password system?

10 A. Yes. Like, that did come to mind as a possibility.

Q. Right. And then you retained the I.T. firm, and eventually Ms. Row, who is an employee of C.A.S., retains her son-in-law also to consult, correct?

A. That's true.

15 Q. Eventually after quite a bit of digging around, and a lot of paper work, which some of it has been filed, and I'm sure more will be filed. You determined what the problem was. And, if you don't know you can say you don't know, but the problem is that there was a feature in which all of the documents that C.A.S. has online on the portal, or in the public's view, are actually all placed in one place online, right?

A. That I, I can't comment on that, I don't know.

Q. No, okay. Do you recall talking about, like, a switch being flipped on and off?

25 A. Yes.

Q. All right. And, do you know what that is referring to? Like, what were you trying to articulate when you were talking to...

30 A. I was just repeating what had been explained to me. That the security features of the website, when it was first installed, had not been turned on. That's what was explained to

me, and I am just repeating what I heard.

Q. So, all you know is whoever C.A.S. retained for you working in your position did something incorrectly with respect to the website that caused this issue?

A. That's what, that's what I understand, yes.

Q. My friend provided you with an email with a list of recommendations that you were required - not you, but your company was required to do in order to fix the security breach, right?

A. It was our action plan.

Q. Your action plan, okay. Do you know which, if any of those action items were actually done?

A. If I remember correctly we got them all done.

Q. Do you know when they were all done?

A. I do not, no.

Q. Who would know?

A. That - I'm sure we have a paper trail of that. There must be - I don't know, maybe Margaret Row would know.

Q. I'm not trying to trick you with my questions.

A. I honestly don't know.

Q. It's an email from...

A. I'm sure we could find out.

Q. Okay. In an email from Ms. Shepherd to Ms. Eastwood, yourself, Donna Derouin, and Margaret Row, cc'd on it is Lindsey Ducharme, and Kim Morrow, right? That's exhibit two?

A. Yes.

Q. Who would have been - did you assign someone and say, make sure the following things happen before we go back up live?

A. That would have been Jennifer Eastwood.

Q. Okay. So, Ms. Eastwood is the one that can tell us

what, if any of these things, were done?

A. That's right.

Q. Okay. Do you know what steps the organization took
5 between February and April? So, it goes down, first breach
happens in February. You take the website down. You said for
about a month, is that right?

A. About a month.

Q. A month. So, before you go back up live, what steps
10 do you take to ensure that the issue had actually been fixed?

A. We had, we had a report from Laridae who had done the
fixing of the website that we were good to go.

Q. And then, following that in April, you go down again.
Do you know how long you go down for?

15 A. I don't recall. At least a month.

Q. And, whose decision was that?

A. That was mine.

Q. And yet, it was for the same reason. You don't know
if you need to do it or not, but you are doing it off of
20 precaution. Let's just see what's wrong with our system, because
obviously the first time it didn't work.

A. That's right.

Q. Right. My friend put to you these spreadsheets, which
is tab four of the multi-volume exhibit?

25 A. Yes, he did

Q. So, you took us to kind of what these things mean, and
then you told us that ten of those names were individuals that
were involved in proceedings, participants in a proceeding?

A. Yes.

30 Q. You must have done something outside of looking at
this to determine that?

A. Yes, we - at some point we compared the list to our computer records, and determined which of the cases in fact had been before the courts

5 Q. Okay. Without comparing that, you can't tell me today which of these people are parts of proceedings?

A. I can't tell you, no.

Q. And, you can't tell me today, looking at this list, if a proceeding - if I was to identify for you the ten names, you 10 couldn't tell me when the proceedings started or ended?

A. You are asking me and I don't know that.

Q. Right. I am going to ask you one last question. It's probably just semantics, but you said in one of your answers that the documents were on a secure portal, right?

15 A. I did, yes.

Q. It turns out that the portal wasn't secure at all. If anybody goes to a link they could have accessed those documents.

A. Once again, people - obviously somebody got access to one of those documents.

20 Q. All right. So, did you ever have any understanding of how people accessed the documents?

A. It was explained to me, but once again I would give you maybe my layman's understanding of it, but it is beyond my level of knowledge.

25 Q. Fair enough then. I think we are going to hear from other witnesses on that, so those are all the questions I have for you. Thank you very much.

THE COURT: Mr. Corbella, anything arising?

30 MR. CORBELLA: No, Your Honour, thank you.

THE COURT: Thank you very much.

5 MR. CORBELLA: The next witness, Your Honour, is Ms. Margaret Row. Someone is getting her. Good morning, Ms. Row. If you could just come on up and take the witness stand next to His Honour, please.

CLERK OF THE COURT: I'll just have you stand. If you could state your first and last name for the record?

MS. ROW: Margaret Row, R-O-W.

10 CLERK OF THE COURT: Thank you. And, if you could spell Margaret, please?

MS. ROW: M-A-R-G-A-R-E-T.

CLERK OF THE COURT: Thank you. And, do you wish to swear on the Bible today, or affirm by making a promise to the court?

15 MS. ROW: I will affirm.

MARGARET ROW: Affirmed.

EXAMINATION IN CHIEF BY: Mr. Corbella

20 Q. Good morning, Ms. Row.

A. Good morning.

Q. So, you speak nice and loud which is great, but if -
I'm just going to remind you that when you give an answer if you
25 could just be a yes, or a verbal answer, you can't say Mm-hmm, or
Uh-huh, or nod your head.

A. Agreed.

Q. All right, thank you. So, Ms. Row, let's just get
right into it here. I understand ma'am that you are, and were
30 back in 2016, a project manager with Family and Child Services,
of Leeds, Lanark and Grenville?

A. That's correct.

Q. Can you just help His Honour understand what that means, that you are a project manager?

5 A. A project manager takes a certain set of circumstances and moves them to a different set of circumstances with the additional resources necessary to make the change. It's essentially change management.

10 Q. So, correct me if I am wrong, if I understand correctly, so basically if there is an issue that needs to be dealt with you are asked to deal with it?

A. Correct.

15 Q. Okay. Now, back in February of 2016, we've already heard, and I don't think there is any issue, that Family and Child Services of Leeds, Lanark and Grenville, became aware there was a potential problem with the website?

A. Correct.

20 Q. We've heard about the - there was a - you became aware, and then you eventually yourself became aware as well that there was a posting of a video by Ms. Denham?

A. Yes.

Q. And that that posting contained certain documents which caused your organization some concern?

A. Yes.

25 Q. Okay. And, I understand that you reached out to your son-in-law, Mr. David Schmidt?

A. Correct.

30 Q. And, perhaps for the record, I'll - Schmidt is S-C-H-M-I-D-I-T.

A. S-C-H-M-I-D-T.

Q. Thank you.

A. You are welcome.

Q. Why did you reach out to Mr. Schmidt?

A. Mr. Schmidt is a subject matter expert in internet and
5 network security.

Q. And, how did you know that?

A. I owned a company, an internet company for five years,
and Mr. Schmidt was my systems administrator.

Q. That was before he was your son-in-law?

10 A. That's correct.

Q. Okay. Now, so you suggested that he may be a source
of information, or help to your agency?

A. That's correct.

15 Q. Okay. And, eventually your agency did decide to seek
his advice?

A. Correct.

20 Q. And, it's my understanding ma'am that - well, maybe
you could just tell us. As a result of Mr. Schmidt coming on
board, what did you decide to do with regards to the, I guess,
the investigation, or dealing of this first breach.

25 Q. With respect to the dealing with the first breach, my
involvement was minimal. I was only involved for the first three
days. After Mr. Schmidt had accepted the contract, I voluntarily
recused myself from the decision making tree because of the
family relationship.

Q. Okay. So, that answers - so, I'm not going to ask you
anything about what happened with regards to the first breach...

A. Thank you.

30 Q. ...and what you decided to do in all of that. Okay,
so, we are going to move straight ahead ma'am to what we've been
calling here in this trial as the second breach.

A. Yes.

Q. Okay. That happened on April the 18th, 2016?

A. Correct.

5 Q. Okay. What was your understanding what that was all about?

A. My understanding was that the - a document containing names of Family and Children Services clients had been posted on a public website, on a Facebook page.

10 Q. Okay. Now, we've already covered this with the previous witness, but just to let you know, I'm going to be asking some questions about those names, and his Honour has already directed that you would need to answer those questions.

A. Very good.

15 Q. Okay. So, we've already seen the document. It's already been filed as an exhibit. And, this is the 0-5intake-stats-xlsx.

A. Correct.

20 Q. Okay. So we've already been explained what it is, and all of that. But, the names that were contained. What were the names, and why did they cause you concern?

A. The names were clients who had received service in a five month period, and it is - we do not disclose family names to the public.

25 Q. Okay. Five month period of when?

A. I believe it was...

Q. Would it help you to see the document?

A. Yeah, I believe it was February to November of 2015. But, I'm sorry, I don't recall.

30 Q. Yeah, I will show you the document. So, just for the record, this is a (indiscernible) exhibit, but it's volume one of

three, tab four of the documents.

MR MANSOUR: Exhibit four.

5

Q. Thank you. Exhibit four. So, here you go. You can refer to it whenever you need to to help you answer your question ma'am.

A. Yes, it was from service from April of 2015 to 10 November of 2015.

Q. April to November, of 2015. So, the names on the list would have been clients during that time period?

A. That's correct.

Q. Okay. And, can you tell us - I mean, I forget the 15 exact number, but I think it was - do you remember an exact number of how many names were on the list?

A. 285, sir.

Q. You've answered that question a few times I imagine.

A. Once or twice.

Q. Okay. So, those 285 names, are you able to tell us if 20 any of them were ever a participant, a witness, a party to a hearing, let's stop with that.

A. Am I directed to answer that question, sir?

25

THE COURT: Yes.

A. Yes.

Q. Okay. How many of them?

A. Six families and seven children. There was one family 30 with two children.

THE COURT: Six families and how many?

5 A. Seven children. One family had two children in front
of the court.

Q. Okay. And, what proceedings - like, what would happen
with those families?

A. I don't know.

Q. Okay. But, what do you know about their cases?

10 A. I know nothing other than the cases were referred to
court.

Q. To court, okay. Would you know if any of those names
would have included a parent, foster parent, or member of the
child's family? Obviously if it's a parent, then...

15 A. I don't know. It's not my area of expertise.

Q. Okay. Now, the only other thing I wanted to ask you,
ma'am, is you assisted in compiling all of these documents that
you eventually filed, filed with the court?

A. I did.

20 Q. All right. Can you just briefly tell us, ma'am, how
did you go about doing that?

A. The - when someone accesses the internet it leaves a
log of their access. David Schmidt provided me with a list of
the logs in February, and again in April of all of the files that
25 were accessed. And, I took that list and made an - created an
alphabetical list for - documented all of the names of the files.

Q. Okay. And then you provided that list to Officer
Rakowbochuk?

A. I did.

30 Q. Okay. Thank you very much, ma'am, I don't have any
other questions for you. I would just ask you to remain there

and counsel may have a few questions.

MR. MANSOUR: Thank you, Your Honour.

CROSS EXAMINATION BY: Mr. Mansour

Q. Good morning.

A. Good morning.

Q. Ms. Row, can you tell me, when did you retain your son-in-law, Mr. Schmidt? Was it before or after the first breach?

A. At the first breach.

Q. And, before or after the second breach?

A. I did not actively retain Mr. Schmidt. That direction came from the manager - the director of corporate services.

Q. Are you talking about Mr. Lemay? Is that who that person is?

A. No, that was Jennifer Eastwood.

Q. Jennifer Eastwood, okay. So, after the first breach, do you know roughly how long after the first breach your organization decides to retain Mr. Schmidt?

A. No, I don't know.

Q. You don't know. When do you retain Mr. Schmidt?

A. Initially in February, February the 9th.

Q. And, what were your instructions then?

A. Simply to ask if he was interested in accepting a contract to assist the agency.

Q. Okay. And then, you pass it off to Ms. Eastwood after that?

A. That's correct.

Q. The decision to take down the website, and make changes to the website would have been Mr. Lemay's decision?

A. No, that was my decision based on his recommendation.

5 Q. Okay. And, you decided - when you say his recommendations, I understand its Mr. Lemay's recommendations?

A. Yes.

Q. Okay. When does Mr. Lemay recommend for you to take down the website?

10 A. On April the 18th.

Q. Okay. And, why did you decide to take down the website?

A. Because it had been compromised. We believed it had been compromised.

15 Q. At that point did you know what the compromise was?

A. No.

Q. Okay. Did you take it down at any prior to April the 18th?

A. No.

20 Q. So, it did not go down in February?

A. No.

Q. So, the website only went down after the second breach?

A. Correct.

25 Q. Okay. How long was it down for?

A. Five and a half months.

Q. And, whose decision was it to put it back up?

A. Mine.

30 Q. Okay. So, roughly what month would it have gone back up?

A. I believe it was August or September.

Q. And, at that point, who is the I.T. company that is doing the work, and putting it up, and taking it down?

A. Laridae.

5 Q. Laridae is doing all that work?

A. Yes.

Q. Based on the recommendations from Mr. Schmidt?

A. I do not know that answer.

10 Q. Okay. So, I just want to understand the decision making here. So, you reached out to Mr. Schmidt. Mr. Schmidt agrees to assist in trying to find out what the problem is, correct?

A. That's correct. As far as I understand.

15 Q. Okay. And, that happens in April? You reach out to him in April?

A. Yes - no, I did not reach out to him in April, Ms. Eastwood reached out to him in April.

Q. Okay.

20 A. My one and only contact with Mr. Schmidt was in February.

Q. So, you reached out to him in February, and that after you do nothing else, Ms. Eastwood takes over from there?

A. Correct.

25 Q. Ms. Eastwood then would take the information to Mr. Schmidt, when she would then tell Mr. Lemay, Mr. Lemay would give you a recommendation?

A. Yes.

Q. Okay. And then you would decide based on Mr. Lemay's recommendation what to do?

30 A. Yes.

Q. When you say we took down the website because it was compromised, did you - at the moment that you made the decision to take it down, did you know what the compromise was?

5 A. No.

Q. Okay. So, you took it down as a precaution to determine what the compromise was?

A. Correct.

10 Q. Had Mr. Schmidt, or anybody else provide a report to tell you what the problem was when you made that decision?

A. On April the 18th, no.

Q. Okay. By the time that you decided to put the website back up, has anyone made a report as to what the problems were?

15 A. I had seen a report from Mr. Schmidt dated February 29th, but I did not receive that until April. Part of my job as a project manager was to redesign the website, so that was already underway. I had posted the redesigned website in September, August or September.

20 Q. Okay. I want to distinguish between two separate things though. There is the website that is accessible to the public, or intended to be accessible to the public, right?

A. Correct.

25 Q. And then there was, back at the time we are speaking about, 2015, 2016, another, it's called a Board Portal that wasn't supposed to be accessible to the public?

A. That's correct.

Q. Was that within your purview as well, or was your purview only the public accessible website?

30 A. My purview was the redesign and launch of a new website.

Q. Did that include a new Portal for the directors?

A. No.

Q. So, your purview was the public domain, documents are supposed to be just in the public's view?

5 A. Correct.

Q. Who is dealing with the private documents, the Board Portal, those issues?

A. The executive assistants to the senior - to the executive director.

10 Q. And, who is that?

A. That would be Tammy Shepherd.

Q. Okay. My friend put to you exhibit four, tab four, that's that spreadsheet, and you identified I believe six families, seven children, one family with two children?

15 A. Correct.

Q. Right. Are you the one that determined that?

A. No, that was done by the manager of legal services.

Q. Who is that?

A. Karynn VonCramon.

20 Q. Okay. Can you spell that for me?

A. Karen, K-A-R-Y-N-N, Von, V-O-N, Cramon, C-R-A-M-O-N.

Q. Okay, and Ms. VonCramon, do you know what she did in order to come up with that list of names?

25 A. She would have consulted with the service managers who are responsible for the clients.

Q. Okay. And so, they would have looked at some other internal document that we don't have - that you don't have access to to determine who on this list was involved in a proceeding?

A. Correct.

30 Q. Okay. You can't tell me, looking at this list today who is involved in a proceeding if the names were visible?

A. No, I cannot.

Q. So, you know there is a breach in February, there is a breach in April, you make the decision in April for the website to eventually go back up. Do you know what the breach in February was? What caused it?

A. We understood that board documents were posted, interspersed in an interview that had been surreptitiously recorded and posted to Facebook, YouTube, and Liveleaks.com.

Q. Okay. So, I think my question wasn't clear. I know that's how it came to light for C.A.S, but my question more is, were you, did you ever become aware as to how that individual got that information, got that document?

A. No.

Q. So, you've never been aware in your roll what the security breach of your website was, like, what caused it technically?

A. Oh, I beg your pardon, the technical issue was that directory tree that lists what files are on the website was visible.

Q. So, it's actually a bit more than that. What happened was you had two systems. One was all of the public documents that were intended to be in the public's view, correct?

A. Correct.

Q. And in that exact same spot, under the same months, arranged by months, folders with months in them, were the documents on the confidential site, correct?

A. That's my understanding.

Q. Right. So, the intention was you go on the interface, and you put in a username or password for the confidential site?

A. Yes.

Q. Correct. Or, you go to the public sphere and you have access to those things, correct?

A. Correct.

5 Q. But, all somebody had to do was go to the address bar, put in the address of a certain month, year, and date, and they would get the directory of everything that C.A.S. had saved?

A. That's correct.

Q. And, that included both public and private documents?

10 A. That's correct.

Q. You didn't have to put any password?

A. That's correct.

Q. You didn't have to do anything - of any dishonesty, you just have to put in a link, anyone could have done it?

15 A. Anyone did

Q. Right. And, the problem is, whoever created your website back whenever it was created, left that function open, correct?

A. Correct.

20 Q. And, the function I am referring to is that ability to put in any U.R.L. at the top, in the address bar, and be able to browse whatever you want to browse?

A. That's correct.

Q. Thereby putting it all in the public's view?

25

MR. CORBELLA: Well, I guess that's the whole issue of the legal argument, Your Honour.

MR. MANSOUR: We can excuse the witness if my friend has an issue, and I can explain why I am asking the question.

30

THE COURT: I think that would be - if you want to just wait outside I'll hear from the lawyers, and then we will

call you back in.

5 MR. MANSOUR: There isn't much that turns on this. The witness has said she (indiscernible) anyways, but my point to the witness was, to the best of her knowledge, anyone in the public could have accessed this with no active dishonesty as far as she is aware. That is my question. I'm not asking her to define what a public sphere is, my question was poorly worded. But, my point to the witness, how I intended it is, to the best of your knowledge, anyone could have done this, Ms. Denham, or anybody else could have went online and browsed through this, that's it.

10 MR. CORBELLA: And, she's answered that, Your Honour. I think - but the next question was, and that put you into the public's sphere, and that's where the whole point of the legal argument we are having here. Again, there is not much contention here, but I think her commenting on what is or what isn't in the public sphere is for Your Honour to decide.

15 MR. MANSOUR: I can reword. I'm not trying to tip the witness or anything.

20 THE COURT: That's fine. It seems to me that you are at agreement in any event.

25 MR. MANSOUR: Yes. I'll reword the question, that's fine. I think - my friend is right. I'll reword. I only asked the witness to be excused out of caution.

THE COURT: I wonder if she could be brought back in.

30 Q. I think my question was a little bit confusing. So, let me re-ask you the question. I think you have already

answered it, but let me ask you again. As far as you are aware, at the time when the security breach existed, anybody could have gone on line and accessed those documents if they went to that
5 directory?

A. If they understood the concept of backing out.

Q. Right. So, anybody that put in what was put in the U.R.L, with that knowledge of how a U.R.L. works, or how folders work within a website, as far as you are aware, could have gone
10 and accessed it?

A. That's correct.

Q. Okay. Now, prior to this date, were you always in charge of the website, or is this something that just when you decided to launch a new website it became your purview?

15 A. No, it became my purview in November of 2015 when I assumed the role, when I assumed the communications project. The website redesign was one part of our communications project.

Q. And, during that time you wouldn't have been involved of the storing of the confidential documents?

20 A. That is correct. I was not.

Q. Okay. But, when you decided to take down the website, you decided to take down the website because you weren't sure what the security breach was, and so you wanted to make sure that
- shutdown, and make sure you fixed whatever it was?

25 A. That's correct.

Q. No, I'm assuming security is quite important to C.A.S.?

A. Yes.

30 Q. If you had found out some other way about the same security breach, or any security breach, you would have taken the same step, which is shut down the website?

A. Yes.

Q. So, if your I.T. department came to you and said, hey, I think there is a problem, no one has accessed it, but there was a problem, you would have taken the same step of shutting it down?

A. Our I.T. department had nothing to do with the website.

Q. Ma'am, I'm putting to you a hypothetical. If your I.T. department came to you and said there was a security breach on your website...

A. Yes.

Q. ...no one has accessed it yet. Would you have taken it down still?

A. Yes.

MR. MANSOUR: Thank you. Those are all my questions.

MR. CORBELLA: No re-examination, Your Honour.

THE COURT: Thank you very much, ma'am.

MS. ROW: Thank you.

MR. MANSOUR: The next witness, Your Honour, is Detective Rakobowchuk.

CLERK OF THE COURT: Can you state your first and last name for the record, please?

DETECTIVE RAKOBOWCHUK: David Rakobowchuk. R-A-K-O-B-O-W-C-H-U-K

CLERK OF THE COURT: And, do you wish to swear on the Bible today or affirm?

DETECTIVE RAKOBOWCHUK: Swear, please.

DETECTIVE DAVID RAKOBOWCHUK: Sworn.

EXAMINATION IN CHIEF BY: Mr. Corbella

5

Q. Yes, good morning officer. I understand you are a member of the Smiths Falls Police Service?

A. Yes.

10

Q. And that you are the officer that was in charge of this investigation here today?

A. I am.

Q. And, I believe I saw you bring up with you your notebook?

A I do.

15

Q. And, you may need to refer to that from time to time to refresh your memory of some of the details of this investigation?

A. Yes.

20

Q. And, I'm assuming you have an independent recollection of this investigation?

A. Yes, I do.

Q. And, can you tell us when, sir, those notes were made in relation to...

25

MR. MANSOUR: The notes are not an issue, and my friend can refer - or the officer can refer to them.

THE COURT: I'm content as well. The purpose is to refresh your memory.

DETECTIVE RAKOBOWCHUK: Thank you, Your Honour.

30

THE COURT: That's fine.

Q. Okay. I actually have very few questions for you, sir. So, I am just going to start off here. It's my understand, Officer Rakobowchuk, and correct me if I'm wrong, that in - it was actually April 18th, or 19th, 2016, when you first became involved in this investigation?

A. Yes. It was about 3:30 on the 18th of April, I took the initial report from Jennifer Eastwood of Family and Children Services of Leeds, Lanark and Grenville regarding the - what she called at the time a website hack, that a document with - at that time to be 313 names of clients had been posted on a Facebook page called Smiths Falls Swap Shop.

Q. And, just for the purpose of the record, you have referred to - the information you got there was a hack, I guess?

A. Yes.

Q. But, as the investigation went on it was very - it became clear that there was no actual, I guess, a breach of a password, or anything like that used to gain this information?

A. Exactly.

Q. Yeah. Now, as part of your investigation again, a lot of this is covered in the agreed statement of facts, so I am just going to lead you on a lot of points here, sir, you became aware that Ms. Kelley Denham was a potential person of interest?

A. Yes.

Q. You took steps to discover what her I.P. addresses were, and what her computers were?

A. Yeah. I was provided a lot of documents by Ms. Row, and Ms. Eastwood with respect to the I.P. addresses, the email address associated with Ms. Denham that they had received emails from which, you know, the headers of some of these emails, the same I.P. address appeared which matched the one that they had

provided. And, subsequently I also received the log lists of all of the documents that had been accessed off of their, what they believed to be a secured Board Portal.

5 Q. Okay. And, as a result of, or part of that investigation that lead you to discover that Ms. Denham was a, I guess, a student at Durham College, and had an email account there?

A. She was a student at Algonquin College in Ottawa.

10 Q. Sorry, right.

A. Yeah. In executing a search warrant for the computer equipment that we believed to be used, and where some of these documents may reside. There was one particular tablet that at the time she asked that she retain it, and I asked; "Well, I can look at it here, and if you provide me with a password...", which she didn't, but as I noted on that device, the denh0013@algonquinlive.com email address was visible, and this was matched up with the one that I had been provided by C.A.S., at which point I then contacted Algonquin College, obtained a production order for the contents of her email from the college directly.

20 Q. Okay. And, I am just going to come up there, sir, and I am just going to hand you a document - one, two, three, four, five, six, seven, eight, the first two - or I guess title pages, it says email from account denham80013@algonquinlive.com?

A. Yes.

Q. So, that was Ms. Denham's email account?

A. Yes. The Facepage was actually made by me just to...

Q. Right.

30 A. ...for organizational purposes.

Q. Right. And then you have Sent Emails, Documents, and

Link?

A. Yes.

Q. And, these were emails that were actually found in Ms.
5 Denham's sent email folder?

A. Yes.

Q. Sort of like - I think we are all familiar with email.
After you send an email there is a folder, an email goes to sent?

A. You have it set up, then the copy of the email will be
10 put into your sent folder, for retention purposes.

Q. Right. And then the next - one, two, three, four,
five, six pages are emails that you, I guess...

A. Located.

Q. ...located, or retrieved from Ms. Denham's sent
15 folder?

A. Yes.

Q. Okay. And, just for the purposes of the record, each
page there is a little hand writing there with the date, and I
think those are your initials?

A. Yes, they are.
20

Q. So, what are - what's that date?

A. That would be the 16th of May, 2016. That's when I
reviewed the items that I had been provided by Algonquin College
on a secure device.

Q. Okay. I'd ask this be the next exhibit please, Your
25 Honour.

THE COURT: I believe we are at five?

CLERK OF THE COURT: Yes.
30

EXHIBIT FIVE: Emails of Kelley Denham

Q. Sir, I understand also that along with the emails, you also looked into, for the lack of a better term, Ms. Denham's social media presence, I guess?

5 A. Yes.

Q. Or, online presence perhaps is a better explanation. And, as a result of that you came across another document, it's entitled "Families helping families of Lanark County and Smiths Falls, Family United." Can you please explain what that is and
10 where you located this?

A. This was a website that I located. I just have to see where I got that information.

Q. Yep.

A. It was actually part of the initial information that I received on the 18th of April, 2016. The Families-
15 United.weebly.com was a website that was identified as possibly belonging to Ms. Denham. I accessed it on that day, and the following day as well just as part of, sort of, some open source searches that I had conducted in the - out of fear that some of
20 this documentation, and these websites might be taken down at a moment's notice. And, the day after I started printing off, just basically, screen shots, or copies of those, and this one is of interest because it does actually have - there is a video that's embedded on that page, as well as a letter to Family - or,
25 Children's Aid Society outlining her complaints with respect to their services that they provided to her.

Q. Okay. And, you were able to identify, well her name, respectfully Denham at the bottom?

A. Absolutely, yes.

30 Q. Right. All right, and if this could be the next exhibit, please?

CLERK OF THE COURT: Exhibit six.

EXHIBIT SIX: Denham website.

5

Q. The next thing I want to ask you, sir, our agreed statement of fact makes reference to the Smiths Falls Swap Shop website.

A. Yes.

10

Q. Or, a Facebook group actually. I understand, sir, that you are a member of that?

A. I am. Along with a number of other Swap Shop and selling Facebook pages. I actually monitor them for stolen goods that might be reported to us on occasion.

15

Q. All right. So, can you tell us, sir, what is it?

A. Individuals will post things that they have for sale, or looking for advice and recommendations on products and services, that sort of thing.

Q. Okay. How long have you been a member?

20

A. Oh goodness, I've been assigned to our Crime Unit since January of 2014, and I think about that time I decided to start joining some various groups in and around the Smiths Falls area

Q. Do you remember what it took to join back then?

25

A. You click on a banner that says join group. You may have to wait a little bit for an administrator to verify who you are, and then you get a notice saying you are now a member of this group.

30

Q. Okay. All right. And, the last thing I wanted to just cover off with you Officer, Ms. Row mentioned she compiled what turned out to be exhibit four, the three volumes of material

that we have presented to the court with all of the documents that were downloaded, and she provided that to you?

A. Mm-hmm.

Q. Yes or no for the record, sir.

A. Yes, sorry.

Q. And, you also, I understand, compared it to the list provided by Mr. David Schmidt of the files downloaded?

A. Yes.

Q. Okay. And, it doesn't exactly match?

A. No, it doesn't.

Q. Can you help us understand what...

A. As part of my work function I am the webmaster for our Smiths Falls Police website, and there can be a discrepancy at times of the documents that you believe are on a - are uploaded, and what might be actually existing on your service provider, so I know that - I've deleted, you know, I can delete documents in one location, and they may not be deleted in other locations. So, it can get to be that, you know, maybe they were not necessarily aware of all of the documents that were uploaded to the Board Portal versus what might have been accessed, that sort of thing. So, I can't explain why internally there is that discrepancy, but that would be a logical explanation that some documents may have been deleted by the time...

MR. MANSOUR: I'm just going to rise for a moment. I'm not sure this witness can give expert evidence on computers, and what's on a portal, or what isn't, based on his - a webmaster. I just...

MR. CORBELLA: I...

THE COURT: Well, we haven't had a *Voir Dire* yet, in any

event, so...

5 MR. CORBELLA: Yeah, no, I agree, Your Honour. I'm not trying to call him as an expert. It was just to be his explanation why he believes we have this discrepancy for what it's worth sir

10 MR. MANSOUR: Unless - it's an opinion because it's not a fact that he observed. An opinion is inadmissible unless it's an expert opinion, or identification, and it's neither of these things. I don't think it's admissible. Nothing really turns on this...

THE COURT: All right.

15 MR. MANSOUR: ...I like to keep the record clean with respect to these documents.

MR. CORBELLA: That's fine. We will just skip past that.

THE COURT: That's fine.

20 MR. CORBELLA: Well, with that then Officer Rakobowchuk I don't believe I have any other questions for you. Thank you.

MR. MANSOUR: I have no questions for the officer. I do want to discuss one thing with my friend with respect to exhibit five. Perhaps I can do that quickly before we break.

THE COURT: All right.

25 MR. MANSOUR: And if we can't come to an agreement I'll address it with Your Honour.

THE COURT: We will take a few minutes and give you an opportunity to do that.

30 **R E C E S S**

Upon resuming:

5 MR. CORBELLA: Yes, does Your Honour happen to have exhibit number five with you?

THE COURT: That's the most recent one?

MR. CORBELLA: No, I think it's the second to last one.

MR. MANSOUR: Correct.

CLERK OF THE COURT: The emails.

10 MR. CORBELLA: The emails.

THE COURT: Three, two...

MR. MANSOUR: It says email from account denh0013...

MR. CORBELLA: That's it.

THE COURT: There we go.

15 MR CORBELLA: With Your Honour's permission, technically it's already been filed as an exhibit. It was brought to my attention by counsel that page - there is one page that is an email from Ms. Denham to counsel. I don't know if this gentleman was ever actually retained, but it's not critical to the Crown's case, and rather than getting into a whole argument about solicitor client confidentiality, I'd be content just to remove this one page and file the exhibit.

20 THE COURT: That's fine.

25 MR. CORBELLA: There we go. And, I think that was everything we had...

MR. MANSOUR: I have not questions for today for Rakobowchuk.

THE COURT: That's fine. Thank you, sir.

30 MR. CORBELLA: Now, Your Honour, the expert who is the next, and potentially final Crown witness, there may be

5 one because of an issue that just came to my attention, wasn't available today. He will be here tomorrow morning first thing. So, we would be asking for, I guess, a recess now until tomorrow, or an adjournment until tomorrow.

THE COURT: That's fine. There isn't really any great alternative.

MR. CORBELLA: No, I apologize.

10 THE COURT: Sit here until tomorrow.

MR. CORBELLA: Now, before we do do that, Your Honour, I've already provided counsel with a case book. I am happy to file it now if Your Honour wants to start looking at it before Thursday. We will be making submissions.

15 THE COURT: That's fine.

MR. MANSOUR: I will say this now. Depending on how the evidence goes, I may ask for Your Honour's leave to adjourn at the end of the evidence for me to prepare some written submissions. There is going to be some technical evidence we are going to hear, and there is going to be an argument as to whether the evidence give rise to an offence at all, so I am going - I would like to put my arguments in writing. And so, I am going to be asking that we adjourn for a short period of time. I can waive s.11(b) if that's a concern for the purpose of me providing written submissions. Sorry, I don't have a casebook quite yet. I would like to hear the evidence first, and then ask for Your Honour's leave to provide written submissions. But - I'm just giving my friends a heads up that I'll be doing that, just so everybody

knows.

THE COURT: I'll hear from you in relation to that when
the time comes then if we are all on notice.

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MR. CORBELLA: Thank you very much, Your Honour.

MR. MANSOUR: Thank you.

THE COURT: Tomorrow then, ten o'clock? Is that when
your...

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MR. CORBELLA: Yes.

A D J O U R N E D . . .

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August 14th, 2019

THE COURT: Good morning.

MR. MANSOUR: Good morning, Your Honour.

MR. CORBELLA: Good morning, Your Honour. So, we have counsel, Ms. Karynn VonCramon from the Family and Child Services here today. She has some documents, which we may or may not need to make exhibits subject to how things work out today. Understandably, Mr. Mansour would like a chance to view all of those documents before we proceed, which I have no objection to. But, they are sealed court orders from, I guess, closed proceedings under the *Child and Family Services Act*. So, we would be asking or the protection of the agency, and to be in compliance with the law, sir, is for an order from the court ordering disclosure of the necessary documents, and also an order that any documents produced not be published, or disclosed to anyone in any way, and if they become exhibits that they be sealed as part of these proceedings.

THE COURT: Comments, Mr. Mansour?

MR. MANSOUR: Yes, a few comments, Your Honour. The reason this is coming somewhat late is yesterday is the first time I find out that there is another individual, the one who did the search, that these documents existed. Otherwise I would have made this request prior than today. I am requesting those documents. The one other thing I am requesting is an un-redacted version of that list to correlate the names to see if it is the same names or not on that list. Up until yesterday it

wouldn't have been an issue because in my view there was no evidence to show that any of those people were in proceedings. We are going to hear that evidence. I'd like to see that list to see if they do correlate or not. So, I'm asking for a few things to be disclosed. One is an un-redacted list, which I think I'm entitled to given that it's a set element to the offence. And two; whatever the witness went and found in order to determine that it is - that those people are part of a proceeding, which is court documents. I would like that disclosed. I take no issue with it being a sealed document since it would identify children that were part of a proceeding.

THE COURT: Fair enough.

MR. MANSOUR: And so, I think that should cover off - and I can give my undertaking that I won't share with anybody, I won't - other than my client, I won't share the names with anybody else. I will comply with all of those.

MR. CORBELLA: I have no difficulty with any of that, Your Honour. I have a request, that it be for counsels eyes only. I don't know if we can do that in a criminal proceeding, frankly. I mean, we do it sometime in relation child porn where counsel will see the pornography, but not necessarily show it to their client. If Mr. Mansour feels strongly that Ms. Denham needs to see and compare these names as well, that is a little concerning I guess, because then it would be another individual who wouldn't be bound by an undertaking, but she would be prohibited under the *Child and Family Services Act* obviously to make any of that public.

THE COURT: I'll hear from you Mr. Mansour?

MR. MANSOUR: Yeah. There is no provision that allows me to hide something from my client.

THE COURT: I agree.

MR. MANSOUR: I don't think I have to say anything other than that.

THE COURT: No. I don't believe you do. This is a criminal proceeding. The accused is entitled to see the evidence in order to make full answer of defence. Simply because there is counsel doesn't arrogate that. The client is still the individual charged and is entitled to see the information. So, I will make the both orders. You have the un-redacted list I take it somewhere that Mr. Mansour is asking for?

MR. CORBELLA: If I can gain access to the internet here then yes. I believe I have an un-redacted copy.

THE COURT: All right. And, it will be released then under the terms that we've discussed. The accused is of course entitled to see it. But, there will be no publication, and no making public of it in any way, nor anyone else seeing it. And, the other order is completely on consent, and that will go as well with the same terms. I'll retire, let you do that, and again I'll go downstairs on this occasion. Just tell me when you are ready.

MR. CORBELLA: Thank you very much, Your Honour.

R E C E S S

Upon resuming:

5 MR. CORBELLA: Thank you very much for your patience, Your Honour. It was very productive. We've come up with an agreed statement of fact, which will speed things along obviously. We've typed up, and we just handed up a copy of it. I don't know if Your Honour wishes it read into the record?

10 THE COURT: I think that would probably be helpful.

MR. CORBELLA: Okay. I don't have a hard copy, so I'm actually going to impose upon co-counsel.

MR. MANSOUR: I'm invited by - I'm joined by Ms. Garcia who is co-counsel on the matter. I'll let her read it.

15 THE COURT: Okay.

MS. GARCIA: Ms. VonCramon is legal counsel for F.C.S.L.L.G. After Ms. Row sent Ms. VonCramon the spreadsheet in question Ms. VonCramon, on her own volition, decided to determine if any of the individuals named on the spreadsheet are part of a proceeding pursuant to the *Child and Family Services Act*. In order to determine that she had to manually consult each name on the list within the document and cross reference it with an internal list of open files that was only accessible to the legal department at F.C.S.L.L.G. Without consulting that document she would be unable to identify if anyone was part of a proceeding. She determined that six mothers named in the spreadsheet were part of a proceeding. She could not say if the referral that caused the individual to be on the spreadsheet is the cause of the proceeding, as some of the proceedings

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predated the referral to F.C.S.L.L.G.

THE COURT: Agreed. I'll file the written document as the next exhibit, and we have it in the record in any event.

EXHIBIT SEVEN: Agreed statement of facts.

MR. CORBELLA: Thank you. Also, Your Honour, we have - I guess I should - one, two, three, four - 17 individual court orders relating to the proceedings that were before the court at the time. If they could also be the next exhibit.

EXHIBIT EIGHT: Seventeen court orders.

MR. MANSOUR: I'm just going to ask, whenever we take the next break, if I can get a copy of that because that was my copy.

CLERK OF THE COURT: Of the...

MR. CORBELLA: Of the court orders, so that counsel has a copy for his file. And, there is no issue - I'm not going to file the un-redacted list as an exhibit, Your Honour, but there is no issue that the mother's names that appear on the list - I think we said there were seven of them...

MR. MANSOUR: Six.

MR. CORBELLA: ...correlate to the...

THE COURT: Six families, and seven children.

MR. CORBELLA: Thank you. Correlate to the orders that are before the court.

MR. MANSOUR: So, the un-redacted list shows the mothers

names.

THE COURT: All right.

5 MR. MANSOUR: And, the court orders before Your Honour list the respondent as the mother's names. So, what would have been identified as mother's names only, there are no children's names on that list.

MR. CORBELLA: Yes.

THE COURT: All right.

10 MR. MANSOUR: So, that would be the correlation. I can, at some point, make a list of those names as well and provide them for Your Honour. It's by agreement that that's - I've correlated, and they do correlate.

THE COURT: All right

15 MR. CORBELLA: And, as agreed, I guess the agreed statement of fact, as well as the court orders would be sealed exhibits.

MR. MANSOUR: No issue.

THE COURT: And they will be.

20 MR. CORBELLA: Thank you. Okay, so with that, Your Honour, that brings us to our next witness, Mr. David Schmidt. He is an expert witness. He will be having a laptop with him to assist, so we do need to set up the T.V. for him so that we can all see what he is going to be showing us. Be careful of the wire, Mr. Schmidt, don't trip over it. And, once again, Mr. Schmidt's evidence, Your Honour, we are going to be referring to some documents that are known as server logs. Mr. Schmidt has copies, counsel has a copy, and there is a copy for Your Honour as well.

30 THE COURT: If he could be sworn then.

CLERK OF THE COURT: If you could just stand, and remain standing for a moment.

MR. SCHMIDT: Yes, absolutely.

CLERK OF THE COURT: I'll just have you state and spell your name for the court record?

MR. SCHMIDT: David, D-A-V-I-D, Schmidt, S-C-H-M-I-D-T.

CLERK OF THE COURT: And, do you wish to swear on the Bible, or solemnly affirm?

MR. SCHMIDT: I'll solemnly affirm.

MR. SCHMIDT: Affirmed.

MR. COBELLA: I just thought of something, Your Honour. Yeah, there is one point, Your Honour, I apologize to Mr. Schmidt, and to Your Honour, that we would need Mr. Schmidt just to step out of the courtroom briefly while we put something on the record, please.

MR. SCHMIDT: Right now, sure.

MR. CORBELLA: Yes, please, I'm sorry.

MR. MANSOUR: It's for my benefit and I thank my friend for that.

MR. CORBELLA: Yes, Your Honour, the way we are going to be proceeding in this - with this witness, Your Honour, is there is no issue as I understand it with regards to Mr. David Schmidt's qualifications. But, as Your Honour heard, he is the son-in-law of Ms. Margaret Row. We don't anticipate that posing a problem, but should potential bias become an issue for counsel, we've agreed that he can certainly raise that at the end of Mr. Schmidt's evidence as something for Your Honour to

consider, if I've put that correctly.

5 MR. MANSOUR: I take no issue with Mr. Schmidt's qualifications. I'm happy to proceed in a blended fashion. My friend can even lead him through the qualifications portion. If at some point I do decide to oppose it will be on the narrow issue of him being biased with respect to his relationship with Ms. Row. At this point I'm not going to anticipate that being an issue as I know what he is going to say and I largely agree with it. But, in the event that he says something different I want that open for me to argue that it should be given less weight, or excluded entirely on bias. So, I just wanted that on the record. But otherwise, I don't anticipate that will be an issue.

10 THE COURT: That's fine, thank you.

MR. CORBELLA: Thank you very much, Your Honour. So, if Mr. Schmidt could come back in please.

15 THE COURT: Go ahead.

20 MR. CORBELLA: So, I guess technically, Your Honour, we are in the blended *Voir Dire* at this point. So, I'll pass up a copy of Mr. Schmidt's C.V.

25 *V O I R D I R E*

EXAMINATION IN CHIEF BY: Mr. Corbella

Q. Good morning, Mr. Schmidt.

A. Good morning.

30 Q. Thank you very much for coming here today to assist us. For starters, could you just tell the court, sir, what it is

you do for a living?

A. I work in I.T. with a focus on security.

Q. Security of?

5 A. Systems, of networks...

Q. Right.

A. ...servers.

Q. Servers. And, that includes websites and those kinds
of things as well?

10 A. Correct.

Q. And, how long have you been doing that?

A. I've been doing it since about 1995.

Q. All right. So, just as computers were getting going
pretty much?

15 A. Just as the internet was getting going.

Q. The internet.

A. Computers have been around a long time.

Q. Right, fair enough. And, we have a copy of your
curriculum vitae. And, I'll just read in a couple of portions
20 here. It says you are an I.T. professional with 20 years of
experience specializing in the architecture, deployment, and
management of integrated technology solutions for small and
medium sized businesses with a strong focus on appropriate,
affordable, reliable, secure, and sustainable systems. That's
25 essentially what it is that you do?

A. That's correct.

Q. And, I see you have - You have been working in the
field, you said, since 1995. And, just in terms of - did you
have any formal education in that area, or is it pretty much
30 learn as you....

A. A lot of it was, a lot of it was self-taught, and

through additional courses through the years.

Q. And, you have your own company now, I understand?

A. I do. That is correct.

5 Q. And, that company specializes in?

A. We do everything from I.T. services through to what are called data center solutions. So, we provide hosting services, collocated servers, and those sorts of things.

10 MR. CORBELLA: Okay. So, subject to any questions from counsel, Your Honour, and the caveat we discussed earlier, I'd be seeking to have Mr. Schmidt qualified as an expert in the subject matter of networking and I.T., which I guess is information technology security.

15 MR. MANSOUR: I have no issue with qualifications, or any questions. I have no issue in him being tendered for that purpose. Your Honour will make the decision in the very end whether he will be qualified or not.

20 THE COURT: I am satisfied as well. We will hear the evidence.

MR CORBELLA: Thank you very much.

25 Q. All right, Mr. Schmidt, we are just going to get right into why you are here today. And, a number of things aren't an issue here. Well, most things aren't. You are the son-in-law of Margaret Row?

A. That's correct.

Q. And, I guess back in February...

30 MADAME REPORTER: Excuse me, Your Honour. I'm having a problem with the equipment.

REPORTER'S NOTE: Sound equipment malfunction.

R E C E S S

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Upon resuming:

Q. So, I think Mr. Schmidt, what we were just covering
off before the technical issue was that Ms. Margaret Row, who is
10 your mother in law, contacted you back in February of 2016?

A. Correct.

Q. All right. So, why don't you just let us know; what
did she tell you that was the concern, and what did you decide to
do?

15

A. Okay. So, I got a call in the early afternoon.
Margaret reached out asking if she could discuss their website.
I responded and we started to talk about it, and she indicated
that there was some concern that material from their website, or
from - sensitive material had been accessed.

20

Q. Right. And, this is from Child and Family Services?

25

A. It's from the F.C.S.L.L.G. And, I indicated that the
best way to determine that for sure would be to have access to
the log files, web servers, store logs, of requests that are made
to them, and essentially that was the, that was the next step,
was to look at those logs.

Q. All right.

30

A. So, we executed a confidentiality agreement, as is
standard in these sorts of situations. And, once that was
submitted to them they got me credential information so I could
log into their web host, and I could access those logs, and start
to analyze them.

Q. All right. And, just for our own benefit, in layman's terms, can you tell us what a server log is?

A. Fair enough. When anybody goes to any website the server at the other end records transactional information about the request, and what the response to that request was. So, it's in many ways kind of like a phone bill, back in the day when you cared about long distance, and you could see each transaction based on date or time. So, when a request happens, when we go to a website, let's say the court's website, the program you are using, Firefox, Chrome, Internet Explorer, anything like that, makes the request to the site, and the server software at the other end logs that request and responds to it, and logs what it's response is.

Q. Okay.

A. So, in the case of a webpage it might be here for pictures, here is a bunch of text, and a request can make up - can be made up of multiple files. So, if you asked for the Google webpage, Google will come up with, as you know, the iconic graphic, and then the text and some other summary things. So, that's what makes up a request. So, in the logs will be this request was made, and these files were responded with.

Q. Okay. So, as I understand it, and correct me if I'm wrong, you were able to gain access to the F. - I always get this wrong, Child and Family Services server logs going back to the beginning of February, 2016?

A. Correct. I think the last day of January through to - obviously at that point it was February 12th.

Q. Okay. And, you were kind enough to, I guess, to sort these for us a little bit, and break them down, and I believe you have with you the copy I've provided of the server log materials?

A. Yep.

Q. Okay. So, I would just like to take you through this document if I may, starting at tab one.

5 A. Okay.

Q. Okay. So, tab one is pretty much self-explanatory. On the very first page we see: "February, 2016 - files downloaded by I.P. address..." and then there is the address 7-2-3-9-2-4-3-1-6-2?

10 A. Correct.

Q. Right. Again, there is - why don't you tell us what an I.P. address is?

A. Okay. So, any device accessing the internet has to have an I.P. address, or be routed by something providing an I.P. address. So, your phone right now, on Roger's network, has an I.P. address that it uses when it requests access to the internet, and the same way that your home computer would, or a court computer would here, and that address is typically unique by device, but can be shared in situations like a cell network. But, in general, in a home use scenario, your router gets the I.P. address from the internet service provider, and then your computer is in your home, either wirelessly or wired, talked to that device, and to the rest of the world you appear as coming from that I.P. address.

25 Q. Okay. So, the report - again, when you look at it, there is a series of date and time, those are dates and times of what?

A. Those are date and times of documents that were requested and served to that - to a web browser at that I.P. address.

30 Q. Okay, and then we see...

A. And, by document, essentially in this case we are referencing word files, P.D.F. files, and things like that.

Q. Right. And then when you see file name, that's the actual name of the document?

A. Correct.

Q. Okay. So, that tells us the date the time that I.P. address 7-2-3-9-2-4-3-1-6-2 requested that document...

A. Correct.

Q. ...and downloaded that document?

A. Correct.

Q. Okay. And then if we just go to, I guess, the second page?

A. Yep.

Q. About - I think I highlighted it for everybody, yes. One, two, three, four, five, six, seven, eight, nine, ten, the tenth of eleventh line down, we see February 1st, 2016, 14-23-37, we see the document 0-5-intake-stats.xlsx?

A. Correct.

Q. So, that's the date and the time that that I.P. address downloaded that document?

A. Correct.

Q. Okay. And again, we can look at the other documents by name, but that's what all of those documents are?

A. That's correct.

Q. Right. And, if you go to the very last - or, I'm sorry, the next page of that, then we see February 9th, 2016 at 11:13, and 11:45 again we see downloads of that same document?

A. Correct. One is the X.L. version of it and one is the Acrobat, the P.D.F. version of it.

Q. Okay. So, same document, just different format?

A. Yes.

Q. All right. And then - okay. On the very last page of tab one?

5 A. Yes.

Q. Okay, once again, this time it says April, 2016, files downloaded by I.P. address, and this time it's 7-2-3-9-2-4-3.2-5?

A. Correct.

Q. So, a different I.P. address.

10 A. Correct. So, I.P. addresses will change as time goes on. Internet providers essentially provide a lease of an I.P. address to a device, and based on that lease cycle, your home router, or your device will get a different I.P. address over time. And, we were able to identify that this was an I.P. address of interest, and so in the - in what happened in April. And so, 15 went and looked at the logs at that time for that I.P. address.

Q. Okay. And, on this page, again I think I highlighted for everyone. If I didn't I apologize. But, there is one, two, three, four, five, six, seven different times that that 20 particular document 0-5-intake-stats.xlsx was downloaded?

A. That is correct.

Q. And, we see the dates and the times that are there. Okay. So, turning to tab two. This is, I guess, what you referred to as the actual server logs?

25 A. This is the raw transaction log from the web server, that's correct.

Q. Okay. So, what I am going to try to do, sir, is to take you through it a little bit so you could teach us how to read these things properly so that if we need to refer to a 30 different line other than what we cover with you we know what it means.

A. Certainly.

Q. Okay, so let's just start at the very first one.

A. Okay.

5 Q. Okay, and you see 72.39.243.162, that's the I.P. address?

A. That's the I.P. address of the device making the request.

10 Q. Right. And, you've already explained to us what that is?

A. Correct.

Q. All right. Then next to that you see 31\jan2016:10:20:47-5000?

A. So, that's the date, the time, and the time zone.

15 Q. The date, the time and the?

A. Time zone.

Q. Time zone.

A. So, minus five, so Eastern time typically is G.M.T. or universal time minus five, accept when we are in daylight savings 20 time.

Q. Okay.

A. So, the next item starts with "Get".

Q. Yes.

A. And, that is the request being made by the web browser 25 for a specific item. And, in this case it is a - what's called a path, a set of folders. So, it's asking for the F.C.S.L.L.G website/wp-content/uploads/2015/04. So, this would be the same way that you would navigate a folder on your computer that has multiple levels, right? So, from the top level there is a folder 30 called "wp-content", underneath that is a folder called "uploads", underneath that is a folder called "2015", underneath

that is a folder called "04". So, this was a request for that. The Http:1.1 is the type of request it was. Http:1.1 is just the type of request that most web browsers software makes these days.

5 Q. Okay.

A. The 200 number you see there - so, for every request made to a web server, that request has a number of different responses that can be made. The 200 family of requests, of response codes is a success code. So, the 200 means that this 10 was successfully requested from the server. After that is a number, and that number is the size of the payload of the response. Okay? SO, in this case that request is a directory listing, and that directory listing had a size of 19,710 bytes. The next item in the log is what's called the "referrer". So, 15 when a web request is made it will pass on transactional information of saying: "I'm asking for this, and this is where I came from", okay? The referrer is used - it's typically how sites know how you found out about them, right? If the referrer was Google.ca you would know that that request was referred by the 20 search engine. In this case that referrer is the F.C.S.L.L.G. website, and it's the upload's, 2015 folder. So, essentially in this case someone would have been looking at the 2015 folder listing and clicked on the 0-4, okay? So, web logs are very verbose because of how they record all of this.

25 The next thing after that, the Mozilla 5, etcetera, that's sort of the finger print of the web browser. That's sort of the version and type of web browser that made that request. So, in this case, that web browser was a browser called Firefox, 30 and it was version 43 of Firefox, and it was running on a Windows based computer.

Q. Okay. So, basically you are saying that - and correct me if I'm wrong, someone, and there is no real issue of this trial who...

5 A. Yep.

Q. ...but, using that I.P. address, using the Mozilla web browser, on that date, and time, asked for that particular folder?

A. Correct.

10 Q. And, the 200 tells us...

A. And, the 200 tells us that it was successful.

Q. Successful.

A. If it was - if it had failed there is a different code, the 4-0-4, which is the, "I'm sorry, that's not here. I can't show you that" type of request.

15 Q. Okay. So, let's talk about those codes for a second. Codes at 200 - the 200 family, I think you said...

A. Yep.

Q. ...means successful?

20 A. Correct.

Q. You just told us 4-0-4 means...

A. Yeah, so the 400 family is a no, is an unsuccessful. So, 4-0-4 is unsuccessful because it couldn't be found.

Q. Right.

25 A. The 4-0-3 is forbidden because you didn't have security to access that file. There are other codes, but the most common anybody in the courtroom might have encountered is if you mistype a web address you might get a 4-0-4 error saying; "I'm sorry, it's not here."

30 Q. Right. Okay. And, there are also the 300 series of errors?

A. Yup. The 300 family of err(sic) - of responses is essentially a redirect. So, if you ever go to a website, let's say a company has changed names, and you go to companyname.com, and it redirects to companyname2.com, that redirect would be logged in a web server log saying; "They requested this but they got redirected to this."

Q. Okay. And there are 500 series of errors?

A. Correct. And, those 500 series errors are essentially a server error, and those are most common when a web server is overloaded. At tax time, when Revenue Canada's website was overloaded for people submitting their tax returns, people were getting a 500 error, and that was the request got to the web server, but the web server couldn't handle it, and threw back an error, and nobody can proceed. So, most commonly that's referred to as a web site crash.

Q. Okay. Now - so, you've told us that that first line means, you know, someone using Mozilla with that I.P. address is requesting this information?

A. Correct.

Q. But, again, correct me if I'm wrong, but that doesn't necessarily mean that the person, be it on a computer, or on their phone, or tablet, whatever device they are using, is typing in the words get\wpcontent\uploads\... etcetera, etcetera, etcetera...

A. That's correct. In fact, in fact this is a good log line to look at because this actually tells us that it was a referred request from the uploads 2015. So, in that case, when we get the technical stuff up I can demonstrate what that looks like. Essentially it's a - somebody was looking at a link that they clicked on, and it then took them to the 2015-04 folder.

Q. Okay.

A. So, that would be a listing of all the months in 2015, and somebody clicked on the 04.

5 Q. Okay.

A. Different requests - so, if a request was - did not have the referrer in it it means that was, that was requested directly. And, a direct request could be somebody typing in a web address verbatim, or somebody copying and pasting a web address somebody else sent them, or it could be somebody clicking
10 on a link in their own web browser history.

Q. Okay.

A. Because, essentially at that point the web server is receiving the request as a knock on the door with no additional, this is where I came from, information
15

Q. Okay. All right. I just want to ask you a few questions then about the second one we see on the same page.

A. Yep.

Q. Page one. So, 7-2-3-9-2-4-3-1-6-2--31jan2016-
20 10:21:04-get-wpcontent-uploads-2015\04\ - and this time it says financereport\October272015.docx? What does that necessarily mean?

A. So, that is - at that time a request for a document in the 2015/04 folder of the uploads folder called: "Finance Report,
25 October 27, 2015.docx". A DOCX file is a Microsoft Word document. And, that 200 error - 200 result code tells us that it was a successful request. The number is the size of the file that was served, and after that is then the referrer of; "I was sent here by..." the 2015/04 folder. So, this would usually be
30 what you would see when somebody was browsing a directory structure, and they clicked on a file name in that directory

structure.

Q. Okay, so when we see something...

A. So, somebody wouldn't have typed that file name, or
5 copied and pasted it. That was direct. A link was visible on a
screen, and a click happened, whether it's on a mobile device or
a computer. In this case, the information in the log tells us it
was a Windows based PC running Firefox.

Q. Okay. So, when we see the name of - well, at least
10 what appears to be the name of a document...

A. Mm-hmm.

Q. Like, this one was finance report, and that's a
request for that specific document?

A. Correct.

Q. Okay. All right. I think I need you to turn to page
15 36. And again, I think I've highlighted for everybody the
portions I am going to be referring to. Let me know when you get
there.

A. Okay. I'm at page 36.

20 MR. CORBELLA: Your Honour is there as well?

THE COURT: Yes, I am.

MR. CORBELLA: I hope I have highlighted for Your Honour
as well.

25 Q. Near the bottom of the page, there is one, two, three,
four I.P. entries, I guess, or server log entries which seem to
be requesting the document 05-intake-stats.xlsx?

A. Correct.

30 Q. Okay.

A. So...

Q. Go ahead.

A. At that time from that I.P. address, that document was requested. It's an Excel spreadsheet. The 200 code tells us this was a success. The 1-0-5-7-3-3 tells us the size of the file, and then the next thing is the referrer. And again, the referrer refers to the folder name. So, in that case that was somebody looking at a directory listing and they clicked on a file name.

Q. Right. Not necessarily typing in...

A. Correct.

Q. ...all of the....

A. In this, in this case that log entry would tell us that, no, they didn't type it indirectly. They viewed it from a list of links, very likely, and clicked on a link because the referrer information is intake.

Q. Okay, and that's the same for each one of those entries, correct?

A. Correct. So, the next one down is the intake stats, a successful request, the size and the same referrer. And then the next one, another document, a referrer, yes. So, all of the remainder that you highlighted here are essentially the same thing but for a different document. Now, just something to point out here on the third request there is a code of 206, okay?

Q. Yes.

A. And, I'll just take your eyes to the log line above where there is a 200 code for the same thing at a different size. A 206 code means that it was partially served. So, if I was to hand you a ten page document and only hand you five of it, the code would be a 205- or sorry, a 206 code, okay? So, the, the second line in tells us that the intake stats P.D.F. was requested successfully in its entirety. The next two requests

were subsequent requests for that same document, maybe a refresh of the page, or whatever else, that didn't download all the way, okay? And, that just lets you determine whether all of it was sent from the server to a browser.

Q. All right. Okay. If you could turn to tab three, please? Now, tab three says - now, the title at the very top, that's something you inserted yourself?

A. That is correct, that is correct. Essentially it was just to indicate that these were, these were, these were the entries that we were suspicious of.

Q. Right, so it says: "Suspect February, 2016, Downloads". So, what do these server entries, or server logs of...

A. So...

Q. ...Yeah.

A. ...these - I'm just checking something. So, essentially we talked about the fact that the I.P. changes.

Q. Right.

A. Right? So, when the situation in April happened, as the second event, we learned that the I.P. address that was being used had changed. And so, part of the analysis of April's logs was also to take the, the new I.P. address that we learned of and look back through the historical logs that we had from February as well, and that just showed that between the 10th and the 11th of February, the I.P. address changed, and that these were the additional requests being made by that new I.P. address, which just gave us a more full picture of all that was requested.

Q. Okay.

A. And so, these again are log lines like the others, and the top log line here is an example of a request for a folder,

the uploads directory, which at this point was an open directory, and showed that list, and was successfully viewed. And, in this case, you can see that the, that the version of Firefox updated. 5 Firefox is always pushing out updates. Previously, previous to the 11th of February the browser being used version 43. It was now version 44.

Q. Okay, all right. So - I just want to double check something here. Yes, okay. Tab four.

10 A. I'm there.

Q. And again, this is more of the same as tab three...

A. Correct.

Q. ...but this time its April?

15 A. That's correct. So in, so in April I, I got the call again saying; "Hey, something's happened. We need you to look again." And, that was when we determined that this different I.P. address had, had requested and downloaded material.

Q. And, if you could turn to page three...

A. Yes.

20 Q. ...of tab four?

A. Yep.

Q. Near the bottom, one, two - yeah, the third and forth....

25 A. Correct. So, on the 17th of April, 2016, at 10:59:55 a.m. a get request was made for a file called; 0-5-intake-stats.xlsx, and that 200 code tells us that it was successful. And again, at this point Firefox had updated to version 45. Again, just part of the browser fingerprint.

30 Q. Okay. And again, this is not someone typing in those words?

A. So, in this, in this particular case, there is no

referrer.

Q. Okay.

A. So, in this case somebody would have either typed in
5 that web address, or copied and pasted that web address, or
clicked on a link from their browser history, right? But, it
wouldn't have come from a - nothing on the website would have
been a link to that document.

Q. Okay.

10 A. So, typically in this, in this case, as I said, it
would be an example of either a favoured link, or something that
is copy and pasted, or something out of a history.

Q. So...

A. Something you can see if it's still there, something
15 that you had before.

Q. Okay. And, is that the same for both of those?

A. Both of those ones that you've highlighted. They are
both requests for that same intake stats document within ten
seconds of each other, and they were both successful requests for
20 that size of that document.

Q. Okay. And, on page six. About three quarters of the
way down the page, I hope there is something highlighted there
for...

A. Page six, the time code for the 17th of April, 2016, is
25 11:13:23, and there was a get request made again for the 0-5-
intake-stats.xlsx file, and the 200 code tells us that it was
successful, and it was made by that I.P. using Firefox 45.

Q. And sorry, I may have missed it, was there a referral
on this one as well, or no?

30 A. There is no referral on this one. So this, again,
would have been either a copy and paste of a link, or from a

favourite, or from a history. Some way other than the web server referring to it itself.

Q. Okay. Page eight. The very last entry on page 8.

5 A. Again, the same, the same type of request that we've looked at before, and in this case again it's the get request that's successful for that size. And, you will notice that all of the sizes are the same for each mention of this. And again, that was a successful one, and there is no referrer, and that
10 would mean that the, the, the link would have been gone to directly in one of the previously mentioned ways, whether it was out of their favourites, their history, a copy and paste, that sort of thing.

Q. Okay. And then page nine. The first two entries.

15 A. Okay, so the first entry, we again have, just like the previous entry we talked about, a successful request for that document at that size. And again, no referrer. Now, the next one is different because it's a request for the document, but it has a referrer, and this time the referrer is the Facebook site.

20 Q. All right. So, what does that mean?

A. That means that the the link clicked on was something that had been posted on Facebook.

Q. Okay.

25 A. Okay? So, essentially, when you go to Facebook and somebody posts a silly cat picture, and you click on that cat picture, the site hosting that cat picture knows that you viewed it from Facebook.

Q. Okay. So...

30 A. So, that shows us that a link to this file on the F.C.S.L.L.G website resided somewhere on Facebook at that time and date, and was clicked on by the person at this I.P. address.

Q. Okay. All right. I think that does it for tab four.
Tab five?

A. Okay, so tab five refers to 404 errors, okay? These
5 are requests that were made that were rejected by the web server
because the document wasn't there, okay? So, the first request
at the top is that I.P. address requesting an open directory, or
what would have done an open directory in February. So, it's
asking for the W.P. content uploads 2014 folder. And, the
10 response code is a 4-0-4 saying; "I'm sorry, it's not there."
22-04-7 refers to the size of the response, and essentially that
is the customized error message of the branding of the
F.C.S.L.L.G. saying; "Sorry, it's not here". The - and again,
there is no referrer on that, so that would have been requested
15 directly either by clicking on something in favourites, a
history, or a copy and paste.

Q. Okay. And I'm sorry, why would you get a 400 error?

A. 400 series means it's not there, which means that
essentially the web server was not allowing direct access to
20 that. So, the problem that allowed the browsing of the directory
tree in the discovery of those additional files in February had
been fixed.

Q. Had been fixed.

A. Okay?

25 Q. But yet we saw on the earlier tab, I think tab -
sorry, I get the April...

A. Tab four?

Q. Was it tab four? Right. The April downloads.

A. Yes.

30 Q. We saw that...

A. 0-5 Intake?

Q. Intake, thank you very much, had been obtained...

A. Correct.

Q. ...as late as April 17th?

5 A. That is correct. So, so...

Q. Why would that be?

A. What happened was that F.C.S.L.L.G. did not remove all of the sensitive content from that folder. They essentially tinted the glass, right, so that somebody couldn't see into the folder, and see what was there, but they missed something, or they missed a few things in what had been originally - so, in February, we, we, we identified that they had sensitive material sitting in publicly accessible folders that if somebody knew how to get there they could find. And, they were supposed to have removed that. Unfortunately in the case of this intake document that was not removed.

15 Q. Okay.

A. So, it meant that that document lived there and was accessible. What we are seeing in tab five is we are seeing a bunch of failed requests to documents that were previously accessible. So, my theory in that case is it probably came from, like, a web browser history of documents that had been accessed before.

20 Q. Right.

A. And again, the lack of a referrer suggests that those were gone to in some kind of direct fashion.

25 Q. Right. Okay. Tab six.

A. All right. So, this is from April, 2016, a list of - because this was the file, the file of interest, these were all of the successful requests made for that file in the April timeframe. So, the first entry is a request made from the I.P.

in question for that file, successfully a 200 response, and the size of the file. So, that's the first one. The second one is the same. The third one is the same. The fourth one is the same. 5 And then the fifth one is a little different because it actually refers now to a different I.P. address, starting with 157.55.39.171.

Q. Right.

A. And, that is a request for that document successfully 10 delivered to a computer running a browser with the Bing preview tool bar on it, okay? So, that was - so this was now a third party, for lack of a better definition. Somebody other than the I.P. that was being looked at requesting it. And the request right after that is a bit of a telling log entry because the I.P. 15 address of 173.252.74.106 at that date and time requested that document, the response code was 206, so that's a partially served request, but if you look at the size of the return request that was a full, the full file was transferred, and the referrer - sorry, the browser in this case was Facebook external hit 1.1. 20 When you go and you post a link to something on Facebook, Facebook will - its internal system will initiate from Facebook servers a request to the web server for that document so it can bring up a pretty picture, a thumbnail, a description, those sorts of things. So, this would usually happen right after 25 somebody posted a link to something on Facebook, okay? Again, if this were a cat video, a cat video hosting site would see an external hit from Facebook coming in to verify that it's actually there, and to pull a thumbnail, or some sort of information about it to then put as part of the post.

30 Q. Okay. So, if I understood that correctly - and again, correct me if I'm wrong, on April the 17th, 2016, at 16:32:19...

A. 18:32.

Q. Sorry, 18:32, thank you. Someone using the I.P. address 173.252.74.106 went on Facebook, clicked on a link...

5 A. No, that is the Facebook server...

Q. Okay, all right.

A. ...doing the hit. Later on you will see, you'll see evidence of, of an actual viewing from, from somebody clicking a Facebook link.

10 Q. What do you mean it's the Facebook server doing the hit?

A. So, when you post something to Facebook, Facebook's internal system will say; "Great, you've requested that you want to post this, make this post with a link to here." Facebook wants to verify that whatever you are posting is there, and to collect a thumbnail, or a file name, or any additional information with regard to that.

15 Q. Okay.

A. So, that is, so that is what, what happens directly after somebody posts something to Facebook, any link to a site.

20 Q. So, the person using that I.P. address - again, correct me if I'm wrong, was posting that link to Facebook?

A. No, that was...

Q. Clearly I don't understand, sir.

25 A. It's quite all right. The 1-7-3... So, each web request says who made that request.

Q. Okay.

A. That web request was made by a Facebook server...

Q. Okay.

30 A. ...in response to somebody posting it. So, Facebook's logs would have information on who actually posted the link...

Q. Okay.

A. ...to Facebook. But, this is Facebook's system. So, for example, you say; "Hey David, there is this great site that I like about cars", I go; "That's neat, I'm going to go and look at it." You didn't make the request, I made the request. In that case the "I" is the Facebook server verifying that that site exists, okay? So that, so that shows that Facebook's internal system saw that somebody posted that link and was validating that that link existed.

Q. So, this is Facebook?

A. This is Facebook's server doing this.

Q. I finally understand.

A. Right. So, the user in this case is a piece of software running on a Facebook server.

Q. Okay. So, does that mean I.P. address 173.252.74.106 belongs to - was being used by...

A. A Facebook server.

Q. A Facebook server, okay, I was right. Okay. So, when we go through this list...

A. Yep.

Q. And, we see different I.P. addresses, what does that suggest to us?

A. So, as we go - so, so from that link onwards, that was kind of the genesis moment on which it was available at Facebook, okay?

Q. Okay.

A. I am just trying to find a relevant log line here. So, if we look at - actually, it's the last log line on page one.

Q. Page one, okay.

A. Starting with I.P. address 174.95.25.279...

Q. Okay.

A. ...date of April 18th, 2016, at 13:31:09.

Q. Yes.

5 A. We have a "get" request for that Excel spreadsheet, the 0-5 intake stats. Its response was 200, so it was successful, and the size of the file there matches the previous requests. And, the referrer is the Facebook webpage. It's the Facebook mobile page, okay? And so, this would have been done, the
10 additional information on this says that it was an iPad that was requesting this as a referrer from Facebook. So, when you see that in a log file it says that the link that the person came to, whoever is at that I.P. address was on Facebook system. So, somebody looked at a Facebook post, clicked on a link, the
15 request went to the web server, and it told the web server; "By the way, I'm coming from Facebook".

Q. Okay.

A. Okay? So that, that's a good log line to just show that that request was referred by Facebook.

20 Q. Okay. And again, just when we see that kind of request with a different I.P. address at the start, that is...

A. Correct. That would typically indicate different users, different devices requesting it. So, we see a whole bunch of different I.P. addresses requesting, and successfully getting
25 that document, okay? So, 104.145.11.178, then there is a 72.39... I.P., and all of these different unique address can be - are typically different devices, and/or individuals knowing that more than one individual can sit behind a device.

Q. Sure. Okay. All right.

30 A. Right? Because when you - you're family surfs the web from home all of your family members come from that same I.P.

address that your internet provider has provided you with.

Q. Okay. So, that is essentially what happened to Child and Family Services server, or website through February and 5 April, correct?

A. Correct.

Q. All right. I want to discuss with you how that was done, and I understand you have prepared for us a demonstration?

A. I did.

10

MR. CORBELLA: And, we tried it out, Your Honour, and unfortunately technology being what it is, we could not get it to appear on the screen. So, I note it's 12:15, if we took the lunch break at this point we can try again to see if we can get it going, and if not, we may have to ask if we can move to courtroom number one to see if we can get it working there.

15

THE COURT: Okay. I will take lunch now. What time do you want me back?

20

MR. CORBELLA: If we came back at 1:30 that gives everyone a chance to eat, I guess?

THE COURT: That's fine.

MR. CORBELLA: Thank you.

25

R E C E S S

Upon resuming:

REPORTERS NOTE: Proceedings moved into Courtroom #1.

30

MR. CORBELLA: Yes, good afternoon Your Honour. Because

of the limitations of our facilities, as you can see, we have before you the demonstration we wish to show to the court.

5 THE COURT: Right.

MR. CORBELLA: But, we can't get the computer into the witness stand, so with Your Honour's permission, he is going to have to testify from the podium.

THE COURT: That's fine.

10 MR. CORBELLA: Also, in order to make this an exhibit, I had contemplated taking screen shots as the screens change, but I don't want to disturb the flow of the presentation. Counsel actually suggested, and I think it's a great idea, having the officer video tape the screen and then we will download the video and file that as an exhibit on another date.

15 THE COURT: That's fine.

MR. MANSOUR: I consent.

20 MR. CORBELLA: So, that's wonderful. So, once Officer Rakobowchuk hits the - as he records. So, Mr. Schmidt, a little different setup here. I'll just kind of stand-off to the side here.

EXAMINATION IN CHIEF CONTINUED BY: Mr. Corbella

25 A. Okay. So, what I've done here is a bit of a mock up of a WordPress web site very similar to the way the F.C.S.L.L.G. website would have been set up with a WordPress, and with the unprotected browseable directory. So, we just see here sort of
30 your typical website that has material on it, and I've set up a couple of sample links down here for us to sort of demonstrate

the situation.

Q. All right. So, for starters, again I appreciate this is one that you set up, but if you were just someone at home back in 2016, you know, in February or April, and you went to the Family Law - or, Child and Family Services website, what would you see in the U.R.L. part?

A. So, up at the top where the web address is you would see the name of the business. This is a mock up called Environet.ca(ph).

Q. Right.

A. You would have seen FCSSLG.ca up there.

Q. Okay.

A. Okay?

Q. So, please continue.

A. So, I've created a dummy link here to what we are calling a download this example basic document. So, you see where the mouse pointer is, and this is what's called a hyper link.

Q. Yes.

A. And so, when we click on it it takes us to that example document. So, a couple of details; number one, in the server log, we would see a 200 status message saying that this had been downloaded, and we would see the referrer of the main webpage showing us this. If you look up at the top bar where it says environet.ca/wp-content/uploads/2018/07/basicdocument.txt...

Q. Yes.

A. ...that is the exact address of that document.

Q. Okay.

A. Okay? So, if somebody were to want to look around and see what else is there...

Q. Okay, can we just stop there for one second?

A. Yup.

Q. Again, just to keep it related to our case...

A. Yes.

5 Q. Back in 2016, on the Family and Child Services website, if you clicked on a link on their website just as you showed us here...

A. Yep.

10 Q. ...correct me if I'm wrong, but you would - instead of saying environet.ca, it would say Family and Child Services...

A. Yep.

Q. Right? Would you also see - \wtcontent...

15 A. Only if, only if you accessed, like, a P.D.F. document that they had posted for people to see. If you were just clicking on regular links...

Q. Right.

A. ...you would never see the wp-content show up.

Q. Okay.

20 A. So, that would show up when, let's say, they posted their brochure, and it's an acrobat P.D.F. document, or something like that.

Q. Right. So, you would see the same thing we have up now only it would be relating to Family and Child Services?

A. Correct.

25 Q. Right. Okay, please continue.

A. Okay. So, we talked about how, how the visitor could have, could have found the uploads folder.

Q. Yes.

30 A. And so, if we take our pointer up here to where the address bar is...

Q. Yes.

A. ...we click in it and we remove the name of the document - so, if we remove basicdocument.txt...

Q. Yes.

5 A. ...which takes us back to, essentially, specifying a folder name, and we hit enter, what we have is a directory listing. So, this is, this is everything that sits on the web server in the wp/content/uploads/2018/07 folder. And, we will see there are a whole bunch of picture files there referring to various photos that are used on the website, and as we scroll
10 down, down into the B's for our basic document example, there is that basicdocument.txt, and this would be a way that we could go to it a different way.

Q. Okay.

15 A. But, the example I want to show is is if we go down into the S's, where I've just put a dummy sensitive document - sorry, too far - a sensitivedocument.txt, we see the name of it, we are interested in it, we click on it, we now see an example of a document that has content that might be deemed sensitive. So,
20 this would be an example of that 05-intake.xls file, or one of the other documents that the F.C.S. believed was secured with their Board Portal.

Q. Okay.

A. So, that's just a very simple - this is, this is how
25 it would have been seen.

Q. All right. What if you back up all the way to uploads?

A. Yep. So, off we go. Up here to the web address bar, and back up all the way up to uploads, again because there is no extra protection put in place to stop this listing, we are
30 essentially looking through, as it were, a clear pane of glass to see that there are multiple folders there, 2018, 2019, and some

other folders relating to the WordPress setup. So, we could then choose a folder, like, 2018. We could then choose a month, like, 0-7, or 0-8, and you see some of these folders are empty because there is not anything in them, but if we go into the, for example, the 0-7 one, we see again the images that make up the website, as well as anything else that's been uploaded, and that's where our two example documents are that I put there as a demonstration.

Q. Okay. Any other ways of getting to the uploads folder, or files kept in there?

A. Well, if somebody, if somebody knew about the fact that WordPress doesn't protect this by default they might have gone and typed the address directly, all right?

Q. Right.

A. Other than that, given our understanding of what occurred, this is really the only way that that would have happened.

Q. So, correct me if I'm wrong, without any prior knowledge, if you were just sitting at home randomly typing on your device, and you typed in the name of the website, wpcontent\uploads, you would need to know the precise name of the folder and file you are looking for?

A. That's correct. And, I mean WordPress always has the year and the month based on when files were there. So, someone could guess, you know, 2019/08...

Q. Right.

A. Right? And, if it's unprotected they would see an example, you know, they would see whatever is in that folder.

Q. Right.

A. Right? But, if it's protected like it was in April,

at least so you couldn't look in, you would have had to either type in, copy or paste, or click on a link from a favourite, or a history of your browser to get there.

5 Q. Right. You would need the specific name.

A. Correct.

Q. You - in the past - okay, first of all, I don't think if you explained, or if you did I don't remember, you mentioned WordPress, what's WordPress?

10 A. WordPress is something called a content management system. It is a piece of software that runs on a web server that people can use to create a website.

Q. Okay.

15 A. Okay? It's the most commonly used such tool on the internet. It commands, I think, thirty five percent of all internet websites use WordPress.

Q. And, back in February- sorry, yes, February to April 2016, Family and Child Services was using WordPress?

A. That is correct.

20 Q. Okay. And, when you were, I guess, investigating all of this, you actually went to their website back in February and April, 2016?

A. Correct.

Q. And, you tried to access the various documents?

25 A. Well, I mean, I looked at the logs.

Q. Right.

30 A. I looked at their Board Portal and I tried, you know, just user names and passwords to see if, you know, maybe something like Admin, Admin, would let somebody in, and that didn't work. And I was...

Q. Okay, so just, just...

A. ...able to verify...

Q. ...just a...

A. ...that this method at that point worked.

5 Q. Okay. So, that's what I wanted to get. So, just to stop you there for one second.

A. Yes.

Q. So you actually, back again between, I guess...

A. In February.

10 Q. In February, 2016, you actually went to the website...

A. And, I checked the uploads.

Q. Right. But, you went to the Board Portal?

A. Well, I, I visited the website. I also visited the Board Portal just to see whether anything in the Board Portal itself was open.

15 Q. And, what did you try doing to get through there?

A. I tried, sort of, random user names and passwords to see if anything, sort of, default would be enabled.

Q. And, when you tried that what happened?

20 A. The usernames and passwords were incorrect.

Q. And, what did you see on the screen?

A. An error telling me that the password was not, was not valid.

Q. So then what did you decide to do?

25 A. Well, then, then I decided to check whether this particular hole existed.

Q. Right.

A. Right? And, I went to the wpcontent/uploads folder and I was then able to browse a directory like we are looking at right now.

30 Q. Okay. And, it was as simple as backing up the

U.R.L...

A. Correct.

Q. ...to...

5 A. Essentially, we are moving something from the end of
it to make it a more generic request.

Q. Okay. I remember when you got here this morning and
you were showing us this demonstration, Mr. Mansour asked you
about - to add in one particular - I don't remember if it was a
10 document, or a link that he wanted to see. Is there a way of -
can you show us that please?

A. Yes. So, that was on the main page when we, when we
got there. So, I am just going to take us back to the main here.
It's just going to take a moment because this is not a server,
15 this is a basic laptop. So essentially, what Mr. Mansour asked
me to do was to put a link on the dummy webpage here in a similar
fashion to how F.C.S.L.L.G. would have linked a document on their
public website. So, let's say F.C.S.L.L.G. had an "About Us"
P.D.F. document that they wanted to link off their page they
20 would have uploaded the file, and then they would have created a
hyper link to it, which this example basic document is an example
of.

Q. Okay. Okay, so show us what happens?

A. Yep. So, that is what we showed earlier, and that's
25 when the, sort of, the document would come up. So, if this was a
P.D.F. it would display a P.D.F. If it was a picture it would
display a picture.

Q. Okay. And...

A. If it was a spreadsheet it would, you know...

30 Q. Right.

A. ...display a spreadsheet.

Q. Right. And then back in 2016...

A. Yes.

Q. ...because there was a lack of, a lack of security, I
5 guess, on Child and Family Services website, someone could have
just gone to a link, as you've just shown us...

A. Yes.

Q. ...backed up the U.R.L all the way to uploads...

A. Correct.

10 Q. ...and the entire directory would have been seen?

A. Correct.

Q. Okay. Is that a, is that a good practice or a bad
practice for a public website?

15 A. A public website, that's a, that's a foolish - it's
not a good practice.

Q. Right.

A. The problem is that WordPress to this date ships this
way. So, if you decided to set up a website for your car fan
club, and you decided to deploy WordPress, if you deployed
20 WordPress and you didn't consciously go and make a change...

Q. Right.

A. ...this structure would be browse able the way that we
are demonstrating.

Q. Okay. A properly set up website, or...

25 A. Correct.

Q. ...a properly secured website, if someone tried that,
if someone went to a link like you've just showed us, basic
document, and backed up to uploads, and hit enter, and if it's
properly secured, what should happen?

30 A. If it's properly restricted, and I'm going to be
semantic here about the difference between secured and, and

restricted...

Q. Sure.

A. ...if it was properly restricted we would have gotten
5 a 404 error, and a saying; "Hey, you can't see this, this isn't
here."

Q. Okay.

A. Okay?

Q. So, just flashing back to the 404 errors in the server
10 logs...

A. Yep.

Q. ...you showed us earlier, that's essentially what was
happening with those server logs.

A. Exactly. So those - we talked about in April there
15 were successfully accessed things, and there were things that
were not successfully accessed. The things that were not
successfully accessed through a - what's called a 404 error, and
that's what a properly restricted uploads folder would have done
rather than essentially letting you look through the clear pane
20 of glass. You wouldn't have been able to see what was inside. If
you had known specifically an exact file name of something that
was inside you could make a request for that, and if it was there
it would give it to you.

Q. Okay.

A. And, that's why I differentiated between secured and
25 restricted.

Q. Okay, thank you. All right, sir, I don't think I have
any further questions for you, so just stay there and Mr. Mansour
might have a question of you.
30

CROSS EXAMINATION BY: Mr. Mansour.

Q. Good afternoon.

5 A. Good afternoon.

Q. I'm just going to get something to put my stuff on.

Maybe I will just -

A. I can move if that helps?

Q. No, that's okay.

10 A. Okay.

Q. All right. So, I want to go back to 2016, just in the very beginning, okay? They have a website, okay? There is a website that is intended for the public?

A. Correct.

15 Q. Correct. On that website there is various public documents, like, forms, things that the public would need?

A. That's correct.

Q. Okay. There is also a Board Portal?

A. Yes.

20 Q. And, the Board Portal requires a username and password?

A. Correct.

Q. Okay. And, that's the front end of what a user sees when they go to fcsl1lg.ca or .com?

25 A. Correct.

Q. Okay. In the background, the website has to save all the documents - or the webmaster has to save the documents somewhere?

A. Correct.

30 Q. They are saved in the directory?

A. Correct.

Q. Now, if this was properly set up you would have a directory for the non-confidential information to the public stuff?

5 A. Yes.

Q. And, you would have a directory for the confidential information?

A. Correct.

Q. And, they'd be separate?

10 A. Yes.

Q. Okay. In this case they were not?

A. That is correct.

Q. Okay. And, if you were going to have a directory for confidential information, one; it would be password protected?

15 A. Absolutely.

Q. It would be non-browseable?

A. Correct.

Q. And, nothing in it would be non-confidential?

A. Correct.

20 Q. Right

A. Unless, unless you were - so, for example, in the case of a Board Portal, you might have a non-confidential document a board member could see.

Q. That's the thing...

25 A. But, realistically you would want a segregation between that which should be public, and that which should not be public.

Q. And, all those things that I listed, all of those things did not occur back in 2016 when you were retained?

30 A. That is, that is correct.

Q. Okay. So, you get a phone call from Ms. - is it Row?

A. Yes.

Q. So, Ms. Row, your mother-in-law, and she says there has been a leak of some sort, right?

5 A. Yep, yep. She said she got brought into a meeting about website stuff that was happening and she knew that I had an expertise in the field, and so she reached out and said; "Can you help us investigate."

10 Q. And, at this point you don't know the cause of how this information got out?

A. Correct.

Q. All lot of the time, or some times when information gets out it gets out because someone has done something - I'm going to call it dishonest, or nefarious...

15 A. Mm-hmm.

Q. And, what I mean by that is this, I will define it for you; it's like hacking. So, for example, you download a program, or use certain code, or you do something to get past a username and a password.

20 A. Breaching passwords, finding an exploit, or something like that, yeah.

Q. Right. But, it requires, one; a certain level of knowledge, right?

A. Mm-hmm.

25 Q. Yes.

A. Yes.

Q. I know you are nodding, but...

A. Sorry, yes. For the record, yes.

30 Q. And two; it would require excessive knowledge of a certain amount of dishonesty on your part to try and get past a username and password that is clearly intended to block you?

A. Dishonesty, interest in what's behind it, yes, absolutely.

Q. I'm not talking from a moral sense...

5 A. Yep.

Q. ...I'm talking from a computer sense, you are trying to get past something that's intended to stop you?

A. That's intended not to be, not to be accessed, yeah.

10 Q. Right. In this case the directory had no password, nothing in it was intended to stop you from getting to it?

A. That's correct.

Q. So, you talked about WordPress, right? And, WordPress is used by about sixty million websites worldwide, right?

A. Correct.

15 Q. It's the most widely used...

A. Yep. Over thirty five percent of public websites use WordPress.

Q. Right. It's open source?

A. Correct.

20 Q. And, open source just means anybody can use it, you don't need a licence, you don't need to buy anything?

A. Correct.

Q. Anyone can use...

25 A. And, all the source code is available for viewing by anybody. There is nothing proprietary behind it.

Q. Right. And, it's intended to be pretty user friendly?

A. Mm-hmm.

Q. Right?

A. Yes.

30 Q. Yes. There is quadrants made for it, there is other themes for it. It's intended for the average person to be able

to build the website for their home business, or just for fun, or for a blog, or for whatever?

A. Absolutely.

5 Q. Right. It doesn't require a special knowledge to use WordPress?

A. Not particularly.

10 Q. Right. And, because of that, it's not actually, as it's set out by default, not intended for confidential documents at all?

A. I guess not.

Q. Well, and the reason I say this is from what you said which is that by default it has a browseable directory...

A. Yep, absolutely.

15 Q. ...that you could go to that doesn't lock. So, by default, a logical inference is, if you have a directory that's browseable where you can get to every document with no password, that's the default settings.

A. Absolutely.

20 Q. By default, it is not intended for confidential documents?

A. That is true.

25 Q. So, we then go to the problem where we say the directory was browseable. I just want to define what that is, okay? What you showed us today is that you go to the U.R.L. at the top, which is the www.fcsl11g, right? And, within that there is an address?

A. Correct.

30 Q. The first part is the F-C-S-L-L-G, which is the website?

A. The domain.

Q. After that it says the word, "WP", which is for
WordPress?

A. Yep.

5 Q. Right?

A. "WP content"

Q. After that it says uploads, correct?

A. Correct.

10 Q. So, if you know what the word uploads means, which is
you upload something to the internet, you put something online,
right?

A. Yep, yes.

Q. You would be able to look at uploads, and then after
that is a year, a month, and a date?

15 A. A year and a month, in this case.

Q. So, the logical inference is that's where things are
stored based on year, month, and date?

A. Yep, and that's how WordPress operates.

Q. Right

20 A. That is how WordPress, that is the, the methodology
that WordPress uses to store documents that people upload using
the content management system.

Q. Correct. Now, once you get there you can go behind
the scenes, so to say, and just look at every document, which is
25 what makes it browseable. You can just start clicking...

A. If it is browseable, then yes, you can view it openly.
That's correct.

Q. So, you can just start clicking on the different
folders, the different months, the different years...

30 A. Correct.

Q. ...etcetera. When you were retained in February you

made a list of all of the problems with the website, right?

A. Yes.

Q. Okay. So, I am going to go through that list with
5 you, okay?

A. Absolutely.

Q. So, number one; if you are going to put confidential
information, like a Board Portal, the most secure way to do it is
you don't even put it online. You put it in an intranet system,
10 like an internal system...

A. Absolutely, that's right.

Q. Sorry, just let me finish...

A. Sorry.

Q. ...because the transcript becomes really difficult to
15 follow. So, there is an intranet, an internal system, yes?

A. Yes.

Q. And, you then use what's called a V.P.N to access that
intranet if you are not on that network, right?

A. Yes.

Q. So, for example, the intranet would be accessible from
20 your work place only?

A. Typically, yes.

Q. And, if you wanted access from home the board members
would then have access via a V.P.N., yes?

25 A. Correct.

Q. Which requires a username and password, yes?

A. Yes.

Q. To get in?

A. Yes.

30 Q. That's the most secure?

A. That is.

Q. Very difficult to hack?

A. Correct.

Q. You don't come into any of these problems, right?

5 A. Correct

Q. And, it is very clear, this is confidential, no one
can get into it?

A. Absolutely.

10 Q. Okay. If you are one step worse than that, which is
not quite as secure...

A. Yep.

Q. You are going to put it on its own separate website,
yes?

A. Yes.

15 Q. Aside from non-confidential information?

A. Correct.

Q. You are going to require a username and password?

A. For everything.

20 Q. Well. So the one, you are going to require a username
and password for the website?

A. Correct.

Q. Then, you will make sure that the directory is not
browseable?

A. Correct.

25 Q. Then, you would make the documents password protected
in the event that for some reason something went wrong, it makes
it very clear that you can't get here?

A. Yes, that is correct.

Q. None of those things happened in this case?

30 A. My understanding is that you are right.

Q. Right. We are here for your understanding.

A. Yes, absolutely.

Q. Okay.

A. I mean, I know that they did post some documents that
5 were passworded, but by and large the documents that they posted
for the board members were not password protected.

Q. So, I was about to go there next. Obviously the
person who did this had the ability to password protect because
some of the P.D.F. documents were password protected?

10 A. That is correct.

Q. But, the document in question, or one of them, which
is this Excel spreadsheet...

A. Yep.

Q. ...that we went through the log sheet, the log lines
15 on, that one was not?

A. Correct.

Q. Right. Now, you gave us one way in which you can find
out that it's open, okay?

A. Yes.

20 Q. And, that was the whole purpose of you creating this
fake website?

A. Yep. It was demonstration.

Q. Which is just to show us how someone could figure out
that, "Hey, this is open directory"?

25 A. Yes.

Q. Okay. So, the purpose of that is to say that you
could be going on just actual documents that are on the front of
the page, right?

A. Correct.

30 Q. And then, at the top you look at the U.R.L. and say;

"I wonder what other documents I just - I'm allowed to access. I'm just going to go back to that month. I want to look at all the documents?

5 A. Yes.

Q. You would go there, and nothing is password protected, you can just start clicking, right?

A. Correct.

10 Q. Right. Another way - in 2004, Google started to index websites, right?

A. Correct.

15 Q. Okay. And, indexing means that Google uses an algorithm, or some kind of program that crawls the internet, going into these websites that are open, and starts to download their stuff so that it's searchable?

A. Correct.

20 Q. Right. So, if it's an open directory, not password protected, and unless you take an extra step to ensure it doesn't get indexed, it will be indexed?

A. That is correct.

Q. And, the result will be it's Google searchable?

A. That is correct.

25 Q. Right. So, in this case we know it's an open directory?

A. Mm-hmm.

Q. We know that - yes?

A. Yes.

Q. We know that it's not password protected?

A. That is correct.

30 Q. And, there is no reason for us to think they took that extra step of not indexing it?

A. Well, that, that could be correct. We did check Google and there was no evidence that there was anything that Google had indexed the upload's folder. But, that was one of the things that we looked into in February.

Q. And, when did you do that?

A. In February.

Q. In February, okay. So, you couldn't tell me if it was indexed before that, because the indexing has a cycle, it doesn't get indexed permanently?

A. I mean, essentially Google will index something, and then it will re-index, right?

Q. Right. Okay. So...

A. But, there is a way by going to Google that you can query the index to see if documents within the WP Content uploads for that site are even in the index.

Q. Right.

A. And so, that was one of the, one of the things that was checked, was to say; "Okay, was this Google searchable for this?", and there was no evidence of that.

Q. But, you couldn't tell me that before that date it wasn't Google searchable?

A. Before, before February 12th, no, I couldn't tell you that it wasn't in a Google index.

Q. Right. And, the reason is they didn't have the log files prior to January 31st?

A. That - well, that's part of it. The other, the other thing about it is that in checking Google's index, if Google had it indexed Google would have given that result, and given information...

Q. Right. That's what I am trying to get to. So, you

went through the server logs today, right?

A. Correct.

Q. And, that tells us who has accessed it, and how they
5 accessed it and how they accessed it?

A. Correct.

Q. So, one of the other problems that you identified is,
you are not even saving your server logs beyond a month?

A. That's correct. Their web host was not doing that.

10 Q. Right. Your order came in February. You could only
go back to January 31st?

A. Correct.

Q. So, prior to January 31st you had no idea who accessed
these documents?

15 A. That is correct.

Q. And therefore, if you had the logs, you could sit here
and say, yep, Google indexed them, and in fact, "X" number of
people went to them...

A. Yes.

20 Q. ...and you could tell me who did it?

A. Correct.

Q. Right. But, you can't because we don't have those
things?

A. We don't have that information.

25 Q. Right. The way that WordPress is set up, if you are
not going to change any of these functions, just like its
browseable unless you do something, it will be indexable?

A. That is correct.

30 Q. And, what - the types of documents that get indexed
most readily, or easily for Google are word documents?

A. Well, typically H.T.M.L. documents, image files, and then subsidiary to that, P.D.F's, and Google will index office documents, so Word, Excel, Power Point, those sorts of things

5 Q. Right. And, the document that we are talking about was an Excel document?

A. Correct.

Q. Right. So, that could have been - the document itself would have been - could have been indexed?

10 A. At some point in the previous time it could have been. There was no evidence of it being in Google's index at the time in February.

Q. I understand. And, if it was indexed, the content would then have been indexed too, because Google could actually read within the document?

15 A. Correct.

Q. Right. So, if you search a name of someone listed on the document, it could actually come up in the search results?

A. Correct.

20 Q. So, that's another way that if it was indexed you could actually come upon the documents?

A. Correct.

Q. Right. So, there was a breach in February, you make a whole bunch of recommendations, I've gone through them. Did I miss any, did I miss any of your recommendations?

25 A. I mean, one of my core recommendations was that the Board Portal should not be on a public facing site, period, right?

Q. Right.

30 A. And, to that end it was, take everything Board Portal related off the public internet.

Q. Right.

A. And, I advised them at that point to keep the website offline until that had been scrubbed.

5 Q. Right. So, do you know if it went offline?

A. I believe it went offline for a short period of time.

Q. And, when you say I believe, why aren't you certain if it was, or did not go off line? Did you check?

A. I did not check, no.

10 Q. Okay, so you don't actually know?

A. That is correct.

Q. So, your recommendation was, take it off line...

A. Correct.

15 Q. ...and fix my list of problems that I've given you if you want to be secure?

A. Correct.

Q. Okay. They don't do what you tell them to do before it goes back online or remains online?

A. That is my understanding.

20 Q. Right. Well, you eventually check again in April...

A. Yep.

Q. ...and you do find out that they did in fact did not do what you told them to do?

25 A. Well, they did part of it absolutely, yes. They did not do all of it because they missed documents.

Q. Right, so one thing you said was that the directory is open, anyone can just go into this, so turn that functionality off?

A. Correct.

30 Q. Right. Two; take off all the documents, right?

A. Right.

Q. And password protect them?

A. Yep.

Q. Right. Then in April documents are still there, yes?

5 A. Correct.

Q. And they are not password protected?

A. Correct.

Q. Still accessible to any member of the public that can get to that link?

10 A. Correct.

Q. And in fact, your second recommendation is - you use the vehemently, you say; "I'm telling you this again, like, you have to do this, you have to take this stuff down".

15 A. Yep, yep. In April essentially I revisited my original recommendations saying; "The only reason we are here is that the original recommendations weren't followed".

Q. Right. It didn't make any sense because in February you are telling them; "Anyone can access this. Here is why. Fix this".

20 A. Yep.

Q. In April, some of the same problems existing allowing anyone to still access the documents.

A. Correct. The difference in April was that the person would have had to know the exact location of that document.

25 Q. Right.

A. Whereas previously it was an open book, as it were.

30 Q. Or, they would have had to just guess through the folders, and if they knew the name, just the name - they wouldn't have to know the link, they would have to know the name of where it's located. So, if you know that something happened in a certain month...

A. In February, that is correct.

Q. Yes.

A. In April, no.

5 Q. You did not recommend - did you recommend that they take down the website, or did you recommend that they just turn off the browsing function? Did you say it was recommend to do this, you didn't have to take it down? What was your ultimate recommendation in February?

10 A. My ultimate recommendation was to take down the website, make sure everything was scrubbed before anything went back online, because essentially doing, doing that scrubbing while the site is online isn't safe, right? You want to make sure it's not accessible by anybody while you are cleaning up.

15 Q. Okay. But, you don't know, because you never determined how many documents were confidential and how many weren't?

A. Correct.

20 Q. So, you couldn't tell me if - if there was only ten documents you needed to take down, you couldn't say?

A. Correct. I - it was left to them to investigate what was on their, on their web server, and determine whether a document was safe or not.

25 Q. So hypothetically, let's say it was five documents?

A. Correct.

Q. Or ten documents, it would be very easy to just turn off the browsability, go to those ten documents, either delete them, or password protect them. It would take a few minutes?

A. Yep.

30 Q. It wouldn't take a long time?

A. If there were only five or ten documents...

Q. Right.

A. It shouldn't take a long time, no.

Q. It's a numbers game, right?

5

A. Yeah.

Q. The larger the number the longer it would take you?

A. Absolutely.

Q. If we are talking a thousand documents you would have to go visit a thousand links?

10

A. Correct.

Q. If it's ten documents you visit ten, and it would take you a few minutes?

A. Conceivably, that's right.

15

Q. And so, the reason you have to take it down is only if the number is so large that you couldn't possibly do it in a safe enough time, or quick enough?

A. As a general precaution you would take it down anyway.

Q. Okay.

20

A. Even if it was only ten you would want to make sure that you pulled those ten without anybody else accessing those documents.

Q. So that in those few minutes that you are doing your work no one else accesses them?

A. Correct.

25

Q. Do you know if the website is set up today the same way it was set up then in terms of the Google indexing?

A. I don't know.

Q. Okay. If it were indexible today, does that make it more likely it was indexible then?

30

A. I don't know what changes they made after April. I was privy to what they, what they did.

Q. Okay. Tell me what you did to determine what was or wasn't indexed in February?

A. We looked at checking Google indices' to see if any of the WPcontent\uploads showed up in searches at Google.

Q. So, would have checked every document, or did you check the...

A. No, no.

Q. ...uploads folder?

A. We would have checked the uploads, and the uploads2016\02 sort of structure. And, when those didn't show up as in a Google index that was the point at which, okay, it doesn't look like it's been indexed, get these off line.

Q. But, when you say "it", we are talking about, like, the particular documents they were interested in?

A. The uploads folder.

Q. The whole folder?

A. Yep.

Q. So, are you saying that not even the public documents in that month were indexed?

A. The, the - if a document was publically linked, right? So, let's say a brochure, or whatever, was linked off the main site that document would show in the index.

Q. Right. So, what I'm trying to get to is, like, that website was indexed, right?

A. Correct.

Q. So, you could search something and it would take you to that same U.R.L., and then you could do the same things of looking through it, right?

A. Correct.

Q. And, you don't know what documents before that month, or before that period would have been indexed at all, confidential or public, right?

5 A. Okay.

Q. Yes? You agree?

A. Yes.

Q. Okay. But, we know that at least all of the public stuff would have been indexed?

10 A. Likely, yes.

Q. Yes.

A. The Google search behaviour is to hit the site and follow all of the links, right? And, that's why things that were publically linked were - would be in that index, and why things that weren't publically linked - so, for example, the intake document, would likely not have been indexed because it wasn't mentioned anywhere publically on the site. Google had no access to the Board Portal where that might have been linked from, is what I'm getting at.

20 Q. I understand. Those are all the questions I have for you

A. All right.

THE COURT: Anything further?

25 MR. CORBELLA: Just a couples of areas for re-examination, Your Honour.

RE-EXAMINATION BY : Mr. Corbella

30 Q. One of the things I wanted to ask you sir was - I'm just getting closer to a microphone here. You were asked about

WordPress, and you told us how common a program...

A. A tool, yep.

Q. Oh it is. And, you were asked if you require any
5 special knowledge to use it?

A. Correct.

Q. And, you kind of hesitated a little bit.

A. Well, I mean, essentially if you are somebody that
doesn't understand the web, and doesn't understand computers...

10 Q. Right.

A. Using, and administering WordPress isn't, isn't
simple, right? Yes there are things to click on, and do, but it's
not, it's not like opening up Microsoft Word and typing a
document.

15 Q. Right. For someone like you using WordPress is
remarkably simple?

A. Yep, absolutely.

Q. And, it varies depending on your own skill and comfort
with computers?

20 A. Absolutely, that's right.

Q. Okay. You were asked, or it was suggested to you, sir,
that really WordPress is not intended for private documents?

A. In its - exactly. In its default configuration there
is nothing, there is nothing about WordPress that says; "Hey
25 host, confidential material inside me." There is also nothing
inside WordPress's documentation that says don't host
confidential material, right? It's, it's essentially - in any
corporate environment an I.T. department would be privy to -
hopefully be privy to what is being done from a public facing, or
30 private side of things, and would hopefully be aware that
somebody was implementing WordPress, and say; "Hey, wait a

minute, make sure it's secured before it goes online."

Q. Right. So, things can be done to WordPress to make it secure?

5 A. Yes, that is correct.

Q. And, today, in 2019, Child and Family Services is still using WordPress, is that correct?

A. It is my understanding they are still using WordPress, yes.

10 Q. And, you haven't - have you checked lately of any problems?

A. I, as a matter of course, looked to see whether their uploads folder was browseable. Their uploads folder is not browseable at this point

15 Q. Okay. And, I think the last thing I wanted to ask you, I just want to make sure I understood your evidence here, when it comes to Google, when you were hired on, in laymen's terms, you tried Googling this information?

A. Essentially, that's correct.

20 Q. And, were you successful in Googling any of the confidential information?

A. The confidential, no.

Q. What were you....

A. I could, I could Google the public stuff...

25 Q. Right

A. ...because essentially when Google spiders a site, and the term used is spidering, it essentially follows hierarchically all the links, right? So, you hit a main website, a main website has a whole bunch of links off of it. Google then follows each
30 of those links, and whatever those links get to it will index. It doesn't - the Google search engine doesn't go and say; "Hey,

cool, it's WordPress, let's index the uploads folder", right? It will follow a link to a document, right? So, with WordPress, because it's lifecycle usually lasts a long time, through people replacing sites, and those sorts of things, very often you will have what are called "orphaned files", files from old, from old versions of things that just sit in that structure forever. And, if Google has indexed those, and you go and you Google, you can find somebodies rate sheet because it was previously indexed and it was never removed from the site. But, if I went and I uploaded a new rate sheet today, and it wasn't linked anywhere from the site, and Google went and did its update of its index it wouldn't know about that document, even if you foolishly didn't protect the browseability of your folder structure.

Q. Okay. It's simply the document we are concerned about, 0-5stat... etcetera, etcetera...

A. Correct.

Q. You tried Googling that?

A. That is correct.

Q. And?

A. I tried sort of the key names of those documents and nothing came up. I did some tests of content that was inside some of those files, recognizing the sensitive nature of it. I made sure that if I was Googling stuff it wasn't necessarily children oriented stuff, because I am familiar with the law pertaining to identities of children under care.

Q. Okay. And, I think you said you couldn't find any?

A. Correct. I could not find anything via Google referring to documents that were not linked from the public website that were confidential.

Q. Okay. Thank you very much. I have no further

questions.

5 MR. MANSOUR: Your Honour, I wonder if I could seek leave to ask one follow up question of the indexing, with respect to that?

THE COURT: Do you take a position?

10 MR. CORBELLA: Maybe I could hear the question? I have no objection, Your Honour

THE COURT: Go right ahead.

CONTINUATION OF CROSS EXAMINATION BY: Mr. Mansour

15 Q. Did you only check Google, or did you check other search engines, like Bing, or Yahoo, or anybody else?

A. I did not check Bing, or Yahoo, I just checked Google.

20 Q. And, you can't tell us if those things indexed any of those?

A. That is correct, I cannot.

Q. Thank you. Those are all my questions.

A. No problem

THE COURT: Thank you very much.

25 MR. CORBELLA: I'll let Mr. Schmidt pack up his materials, Your Honour. Thank you for coming down to educate us. So with that, Your Honour, that is the case for the Crown.

MR. MANSOUR: I have no evidence, Your Honour.

THE COURT: All right.

30 MR. CORBELLA: Okay, so - we had anticipated being, or at least I had anticipated submissions tomorrow, but if counsel wishes to do written submissions, as much as that

5
pains me, I guess I am going to go along with that, Your Honour. It's probably better for you. So, obviously we can't have that in place by tomorrow. We would need to order the transcripts, prepare our submissions for you. So, how would we find out Your Honour's schedule, and when you might be available again?

10
THE COURT: Not that tricky. I think the only date I'm away, most of September in New Brunswick, and then we are going to England for a few days in October for a couple of weeks, but aside from that I think the only date I have on a schedule that I have to actually be somewhere is Pembroke on the 26th of September.

15
MR. CORBELLA: All right. So, I guess the easiest thing to do is - is Ms. Kerr here today? Maybe if Mr. Mansour and I go see Ms. Kerr, find a date that works for his schedule and mine, and Your Honour's, and then we will come back up and ask for an adjournment to that date, sir.

20
THE COURT: All right

R E C E S S

Upon resuming:

25
30
MR. CORBELLA: Yes, good afternoon again, Your Honour. We spoke with Ms. Karen Kerr, our trial coordinator. It's a little more complicated. She needs to contact Ottawa to schedule your availability. She is going to need some time to do that. We are suggesting sir that we come back on August the 26th in our remand court here at nine

5 o'clock in the morning. Mr. Mansour and I are going to communicate with the trial coordinator in advance to figure out what date works for you and we will set the date at that time

THE COURT: I'll leave my entire computer record with the people downstairs so that Ottawa has it as well. Thank you.

10 MR. CORBELLA: Thank you very much. Oh yes, thank you, I keep forgetting, I need to file, or at least officially make the server logs and Mr. - I've forgotten his name.

MR. MANSOUR: Mr. Schmidt.

MR. CORBELLA: Mr. Schmidt, thank you, his C.V., records, as exhibits.

15 THE COURT: Yes, and the last tape, or whatever it was, the video of the screen...

MR. CORBELLA: Yes, we should give it a number, I guess, and then we will file it on the next - I'll file it on the 26th, I'll have it by then.

20 MR. MANSOUR: That's fine.

THE COURT: All right.

MR. CORBELLA: Thank you.

25 THE COURT: Oh, and I am going to want a transcript of everything.

M A T T E R C O N C L U D E D

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I, SARA MACFARLANE, certify that this document is a true and accurate transcript of the recording of the matter of R. v. Kelley Denham, in the Ontario Court of Justice held at 43 Drummond Street East, Perth, ON, taken from Recording No. 1811_CR02_20190813_090018__6_ANDERSC.dcr, 1811_CR02_20190813_090018__6_ANDERSC.dcr and 1811_CR01_20190814_131301__6_ANDERSC.dcr, as certified in Form 1.

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S. MacFarlane
Court Reporter

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