COMMISSION OF INQUIRY INTO THE CIRCUMSTANCES SURROUNDING THE DEATH OF PHOENIX SINCLAIR

Commission Disclosure 0225

RELEASE DATE: February 7, 2003

Manitoba

THE FATALITY INQUIRIES ACT
REPORT BY PROVINCIAL JUDGE ON INQUEST

RESPECTING THE DEATH OF: SOPHIA LYNN SCHMIDT

The name of the deceased is: SOPHIA LYNN SCHMIDT

The deceased came to her death on January 26, 1996.

The deceased came to her death by the following means:

> Severe shaking which resulted in an acute and subacute subdural hematoma, leading to massive swelling to the brain

I hereby make the recommendations as set out in the attached report.

Attached hereto and forming part of my report is a schedule of exhibits required to be filed by me.

Dated at the City of Winnipeg, in Manitoba, this 5th day of February, 2003.

"Original signed by Judge Conner"

Arnold J. Conner
Provincial Judge

copies to: Chief Medical Examiner (2)
Chief Judge, Manitoba Provincial Court
Mr. Craig Murray, for the Crown
Mr. Randy McNicol (& Beth Eva), for Child & Family Services

Mr. Glenn McFetridge (& Jane Kapac), for the Department of Family Services & Director of Child & Family Services

Mr. Bruce Rutherford, New Directions for Children, Youth and Families Inc.
Mr. Jeffrey Gindin, for Norma Sinclair
Mr. John Michaels (& Reuben Potash), for Cynthia Schmidt
Mr. David Davis, for Wade Tanner

Manitoba

THE FATALITY INQUIRIES ACT
SCHEDULE ATTACHED TO PROVINCIAL JUDGE'S REPORT

RESPECTING THE DEATH OF: SOPHIA LYNN SCHMIDT

EXHIBIT LIST

EXHIBIT #	DESCRIPTION
1	Book of 58 photos
2	Medical report of Sophia Schmidt
3	Copy of curriculum vitae
4	Envoy medical report - November 12, 1997
5	Medical report Envoy
6	Inventory of medicine - 2 pp
7	Photocopy of police report - 2pp
8	Supplementary report - 7 pp
8A	Letter dated February 4, 1996
9	Genealogical report re Schmidt & Tanner family
10	3 page criminal record of Wade Tanner
11	81/2 x 14 formal statement given by Wade Tanner
12	Copy of handwritten notes
13	Formal police statement
14	Consent form permanent custody
15	Children's Home of Winnipeg - 2 pp
16	Letter - 2 pp from Native Women's Transition Centre
17	Letter from New Directions
18	Report from Dr. Fred Shane
19	Application to TRY Program
20	Summary of children
21	New Directions annual report
22	Diagram agency structure
23	New Directions for children - March 26, 1997
24	TRY pamphlet

EXHIBIT #	DESCRIPTION
25	Letter Children's Home of Winnipeg
26	Letter to Ursula Klyne - November 25, 1993
27	Letter x 2 January 27, 1994 Sinclair & Klyne
28	Letter x 2 March 24, 1994 Sinclair & Klyne
29	Letter to Sinclair April 20, 1994
30	Intake notes - Sinclair - 2 pp
31	Running notes Eleanor Robertson
32	Memo from Eleanor to Pam Gillman
33	Intake sheet Parent Support Program
34	Memorandum Mellon to Robertson re Sinclair
35	Parent Support Program
36	Memorandum to Linda Trigg
37	Parent Support Program Registration Form
38	Registration Information
39	October 30, 1995 Service Committee Review Form
40	January 8, 1996 Service Committee Review Form
41	February 19, 1996 Service Committee Review Form
42	Copy of article from Hawaii
43	Eric Mellon running notes
44	List of medication Rafiq Clinic
45	Running notes Adrienne Carriere
45A	NWTC contract with Norma Jean
46	Home assessment report
47	Winnipeg C & FS memo to foster mom from Cindy Schmidt
48	Letter to Jacqueline St. Hill
49	Running notes North End Women's Centre
50	Certified copy of information, disposition sheet PB
51	Criminal record Nellie Berens
52	Notes day care November 6-17, 1995
53	Notes day care December 4-15, 1995
54	City of Winnipeg Health Department file Sinclair/Coleman
55	Family Centre of Winnipeg report
56	Consent Interim Order
57	Running notes Ursula Klyne
58	History case notes NW & Norma Jean
59	Program Standard Manual CFS
60	Winnipeg CFS file of N.J. Sinclair
61	Letter Winnipeg C & FS February 5, 1996 V. Schwartzman
62	NW policy and procedural manual
63	Binder protection file Schmidt

EXHIBIT #	DESCRIPTION
64	Binder of Wolch, Pinx
65	Agency record check form level - 6 pp
66	Package WPS Wade Douglas Tanner
67	Package WPS Norma Jean Sinclair
68	Package WPS Cynthia Anne Schmidt
69	Position description - 10 pp
70	Agency request for name check
71	Letter from Norma Danylyshen - 2 pp
72	Agency request for criminal record
73	Curriculum Vitae Charles Anderson Ferguson
74	Manitoba Risk Estimations System 1998
75	Manitoba Risk Estimations System 1990
76	Resume of G. Wayne Govereau
77	Dr. Markestyn's report (confidential)
	Internal review placement Sophia Schmidt
78	Child & Family Services Standards
79	Winnipeg C & F Services - N.W.
80	Plan of Child and Family Support Branch
81	Letter and report to Mr. Fenwick February 21, 1996
82	Ohio Department of Human Resources
83	DD Protective Service for Children
84	Letter to Mr. Fenwick February 15, 1996
85	A brief " from the MGEU Sup. Local 7
86	Resume Keith Cooper
87	Organizational chart - December 1998
88	Two volumes - WC & FS documents
89	Winnipeg C & FS memo Darlene MacDonald
90	Intake assessment Sec. 312
91	Resume of J. Lance Barber
92	Winnipeg C & FS Reorganization 98/99
93	List of documents from C & FS support branch
94	Competency-based training status
95	Children and Youth Secretariat
96	Letter to C. Murray - K. Biener

**Please note that the exhibits will be retained at the Clerk of the Courts Office at 408 York Avenue for 30 days after which they will be destroyed.

TABLE OF CONTENTS

Procedural Concerns

Prior to addressing the substantive issues of the inquest, I wish to express my concerns with respect to procedural aspects of inquests generally and this inquest in particular.

The ***Fatality Inquiries Act*** (the Act) provides that the Minister charged with the administration of the Act (s. 25) or the Chief Medical Examiner (ss. 19(2)) may direct a Provincial Judge to hold an inquest.

Section 17 of the Act provides that

> A crown attorney ... or counsel appointed by the Minister to act for the Crown may attend an inquest and may examine witnesses called at the inquest. (emphasis added)

Subsection 28(1) of the Act provides that

> ...a person who ... is substantially and directly interested in the inquest, may attend the inquest in person or by counsel and may examine or cross-examine witnesses called at the inquest. (emphasis added)

An inquest is unlike a trial, either criminal or civil. Unlike a judge presiding at a trial, a judge presiding at an inquest

> shall not express an opinion on, or make a determination with respect to, culpability in such manner that a person is or could be reasonably identified as a culpable party in respect of the death that is the subject of the inquest. (ss. 33(2))

An inquest is an inquiry; a systematic investigation and quest for information which will permit the Provincial Judge presiding at the inquest to fulfill the statutory duties and responsibilities imposed by ss. 33(1) of the Act:

> After completion of an inquest, the presiding provincial judge shall
>
> (a) make and send a written report of the inquest to the minister setting forth when, where and by what means the deceased person died, the cause of the death, the name of the deceased person, if known, and the material circumstances of the death;
>
> ...
>
> and may recommend changes in the programs, policies or practices of the government and the relevant public agencies or institutions or in the laws of the province where the presiding provincial judge is of the opinion that such changes would serve to reduce the likelihood of deaths in circumstances similar to those that resulted in the death that is the subject of the inquest.

In the Province of Manitoba, the practice is that the Crown Attorney or counsel appointed by the Minister to act for the Crown presents the evidence at

the inquest. Although counsel for the other interested parties may also adduce evidence at the inquest, in practice, in almost all cases, the evidence is presented by the Crown Attorney or counsel acting for the Crown.

This method of adducing evidence before the inquest is unsatisfactory and may give rise to a potential conflict of interest.

The inquest or inquiry is that of the presiding Provincial Judge who must ensure all relevant information is presented to the inquest. But there is no independent counsel appointed to act as counsel to the inquest who the presiding Provincial Judge can direct in the quest for relevant evidence. Thus, the presiding Provincial Judge must rely on the Crown Attorney or counsel appointed by the Minister to act for the Crown to adduce evidence. By virtue of s. 27 of the Act, such counsel is not independent and must take instructions from the Crown. Theoretically, in all cases, and actually, in some cases, such counsel does not appear on behalf of a disinterested party.

To the credit of Crown Attorneys and other counsel appointed by the Minister, they have acted cooperatively. In my almost 25 years experience as a judge, I have always received cooperation from Crown counsel and I have never been refused a request to adduce evidence I thought to be relevant to the inquest. This practice exists because of the high professionalism of Crown Attorneys and other members of the private bar of Manitoba who have been appointed to act for the Crown. However, this does not detract from the necessity of having independent counsel appointed to act as counsel to the inquest and who the presiding judge can instruct with respect to the production of necessary and relevant evidence. Independent counsel would also be able to assist the presiding judge by doing research and helping to prepare the requested inquest report.

Another deficiency in the Act which exacerbates the present unsatisfactory method of adducing evidence at an inquest is the limit placed on Crown Attorneys and other counsel appointed to act for the Crown by s. 27 of the Act. Such counsel may only examine witnesses. They may not cross-examine witnesses. Thus, if Crown counsel is faced with a reluctant, difficult or untruthful witness, Crown counsel cannot adequately adduce the necessary evidence or test the credibility of the witness.

At an inquest, the application of the rules of evidence are somewhat relaxed and so Crown counsel are sometimes permitted to cross the bounds of examination and do cross-examine witnesses. But such cross-examination is limited and subject to objection from counsel for the other interested parties.

A practical example of the unsatisfactory and inadequate provisions of the Act can be drawn from this inquest.

Ms Eleanor Robertson was called to testify. She was possessed of essential and crucial information and knowledge of facts which had to be adduced at the inquest. Ms Robertson testified for just over three days; one-half of that time was spent answering questions I asked of her.

After examination and cross-examination by all counsel and interested parties, I was not satisfied that all the essential and critical facts had been adduced from Ms Robertson. I was therefore required "to enter the arena" and examine and cross-examine Ms Robertson. This was unsatisfactory in four ways.

First, notwithstanding the fact that I advised Ms Robertson that she should not interpret any of my questions or my demeanour as critical of her actions, the fact that she was being cross-examined by the judge may very well have made her feel uneasy, defensive and feel that she was the subject of criticism.

Second, it is trite to say that a judge must not only be impartial but must appear to be impartial. The appearance of impartiality may well be shattered when the judge is required to extensively examine or cross-examine the witness. Interested parties to the inquest, who are present in the courtroom, or even their counsel, may interpret the judge's questions as favouring one party or the other. They might assume from the judge's questions, that the judge has already decided the issue before all the evidence is adduced.

While it is appropriate and sometimes necessary for the judge to ask questions of witnesses called at an inquest, the inadequacies of the act required me to extensively examine and cross-examine Ms Robertson in order to illicit the crucial evidence necessary for me to carry out my statutory duties and responsibilities. This was an unseemly experience for me, as it must have been for the interested parties present at the inquest and their counsel and may very well have shattered the veil of impartiality.

Third, subject to certain statutory exceptions, an inquest is open to the public, which includes the media. (s. 31) The necessity of my having to examine and cross-examine Ms Robertson resulted in headlines such as JUDGE BLASTS SOCIAL WORKER IN BABY DEATH (Winnipeg Free Press, November 26, 1997) and FRUSTRATED JUDGE GRILLS SOCIAL WORKERS (Winnipeg Sun, November 27, 1997). Short of contempt, the media may report court proceedings as they see fit. But these headlines deliver a message and may inferentially, if not directly, cast blame on Ms Robertson in the eyes of the public before all the evidence is adduced and before my report is made. And as previously stated, a Provincial Judge is not to make a determination with respect to the issue of culpability. In addition, the headlines further undermine the appearance of impartiality.

Finally, I was put in the unseemly position of potentially having to rule on the propriety of any questions I asked had any of the counsel objected to such questions.

As previously stated, the provisions of the Act may give rise to a potential conflict of interest. A potential conflict of interest arose in this inquest in the following way. Mr. Murray was appointed by the Minister to act as counsel for the Crown. As previously indicated, the practice in Manitoba is for Crown counsel to present the evidence at the inquest. Such Crown counsel is instructed by the Crown.

Mr. McFetridge, a Crown counsel, represented the Department of Family Services of the Government of Manitoba and the Director of Child and Family Services who is under the control and direction of a Crown minister. Mr. McFetridge was given standing to appear at the inquest and to examine or cross-examine witnesses called at the inquest pursuant to ss. 28(1) of the Act.

Therefore, what occurred at this inquest is that Mr. Murray, Crown counsel appointed to act for the Crown, called witnesses and examined them while Mr. McFetridge, Crown counsel, cross-examined those witnesses. While I impute no improper conduct to either Mr. Murray or Mr. McFetridge, such a situation is most undesirable and presents as a potential conflict of interest.

Immediate Circumstances Surrounding Death and Cause of Death

The immediate circumstances surrounding the tragic death of Sophia Lynn Schmidt (Sophia) are a matter of public record. Norma Jean Sinclair (Sinclair) pleaded guilty to a charge of manslaughter in connection with the death of Sophia and was sentenced to a 5 year prison term. Wade Douglas Tanner (Tanner) was convicted of causing the death of Sophia by criminal negligence and was sentenced to a 4 year prison term.

If it had not been for the involvement of Child and Family Services of Winnipeg (CFS) in placing Sophia in the home of Sinclair and Tanner approximately two months before her death, I would have filed a report pursuant to ss. 34(2) of the Act advising the Minister that the circumstances of the death had been adequately examined in the aforementioned criminal proceedings.

Sophia was born on April 24, 1995, the daughter of Cynthia Schmidt (Schmidt) and Tanner. She was apprehended the same day by Child and Family Services of Winnipeg (Central) (CFS (Central)), one of the area offices of Child and Family Services of Winnipeg, because she was considered by the agency to be a child in need of protection pursuant to ss. 17(1) of the ***Child and Family Services Act***.

As of January 21, 1996, Schmidt, born January 9, 1972, has given birth to 4 children: J.S., born December 5, 1990; A.S., born October 22, 1991; a stillborn child in 1993 and Sophia. The first two children were apprehended by a child and family services agency and pursuant to a court order, they are in the custody of their maternal grandmother.

On the afternoon of January 21, 1996, as a result of a 911 call made by Sinclair, Winnipeg Ambulance Service attended the Sinclair-Tanner residence. Sophia was found to be comatose and in respiratory distress. She was transported to the Health Sciences Centre, Children's Hospital.

On arrival at the hospital, Sophia was diagnosed with severe head injuries. Her prognosis was grave. Notwithstanding the intensive and vigorous medical treatment she received, Sophia was declared brain dead on January 26, 1996, at the age of 9 months and 2 days.

The immediate cause of Sophia's death was an acute and subacute subdural hematoma which resulted in massive swelling of the brain. The subdural hematoma was consistent with having been caused by violent shaking.

Medical examination revealed further, non-fatal injuries. Sophia was found to have numerous bruises, abrasions and lesions to her face, scalp, body, arms, hands, legs and feet. In addition, Sophia sustained a torn frenulum (the connective tissue between the upper lip and gum), a lesion to her palate (the roof of the mouth), a bite mark on her left buttock and on her right inner thigh, a healing trauma, likely a fracture, of her right tibial shaft (leg), a healing trauma, likely a fracture of the left radial neck (arm near the elbow) and fractures to the left 3rd, 4th and 5th ribs, possibly caused by the untrained application of cardiopulmonary resuscitation. The multiple and numerous bruises were of various ages, none older than approximately 21 days and some caused very recently. Some of the bruises were consistent with being forcefully grabbed and others were consistent with being pinched.

The severity and widespread nature of the trauma, as well as the age range and recurrent nature of the injuries, clearly demonstrated that Sophia was a severely battered and abused baby. Her last month of life, a least, was one of pain and agony.

The criminal proceedings against Sinclair, as well as her statements to the police (Exhibits 12 and 13), fixed Sinclair with criminal culpability for the fatal injuries sustained by Sophia and her death. Sinclair also admitted abusing Sophia and causing some of the non-fatal injuries sustained by Sophia. However, Sinclair pointed to Tanner as a co-abuser of Sophia and accused him of also battering Sophia, an accusation Tanner denied. It is not necessary to resolve this conflicting evidence, as Tanner has already been found guilty for his part in the death of Sophia.

Two Central Issues

Before reviewing the circumstances leading to the death of Sophia Schmidt, it is important to note two of the issues which are central to this inquest.

The first issue is the respective roles and philosophies of non-mandated social welfare agencies and mandated child welfare agencies.

The second and related issue is the principle of confidentiality versus the statutory obligation to report child abuse.

Non-Mandated Social Agencies

Representative of the role and philosophies of non-mandated social welfare agencies is that of New Directions for Children, Youth and Families (New Directions), formerly Children's Home of Winnipeg. The Mission Statement of New Directions states it is a "private not-for-profit organization providing a unique combination of human services that are responsive to the changing social, psychological, educational and vocational needs of children, families and adults". In its Values Statement, New Directions states that it "recognizes its clients' strengths as well as the challenges they face and responds with respect and with a goal of empowerment."(Exhibit 21)

The Service Philosophy of New Directions is stated as follows:

> The right of every client to be respected at all times is central to the service philosophy of New Directions. We employ an ecological approach in all agency services. We strive to empower clients through the way that we deliver service, and we believe that clients have their own resources and strengths to resolve their difficulties.
>
> The foundation of our service is respect for the client. It seems that many of our clients have not experienced respect in their lives and that it is incumbent on us as helpers to be respectful in all of our interactions with or on behalf of our clients. Respect refers to the client's right and responsibility to make choices, to set personal goals as long as these do not place the client or others at risk, and to have control over her/his own life as is appropriate to the age, resources and abilities of the client. Respect is given for the gender, sexual orientation, cultural, linguistic, racial and religious background or preference of the client. Respect is demonstrated by conducting our responsibilities according to accepted ethical and professional standards of the various helping professions.
>
> Consistent with respect of our clients is service delivery that takes into account the context within which a client lives, including all of the possible factors that may impact on a client. The approach that best serves this purpose on behalf of our clients is the ecological approach. The ecological approach refers to the commitment of New Directions to understand the many factors that may impact on the client, including those at a societal level, the community and neighbourhood, economic factors, other systems and institutions, peers and personal networks, and family including parents and extended family, as well as

> individual client attributes. An ecological approach considers all of these factors in understanding the client's difficulties and in considering how to be helpful.
>
> An ecological approach involves developing an awareness and understanding of the strengths and abilities of each client and how to use these to assist a client develop and reach her or his goals. New Directions staff believe that clients have personal strengths and resources regardless of the difficulties in their lives. As helpers, we assist our clients to actively employ their personal abilities, strengths, and resources in achieving resolution of their identified problems.
>
> Empowering clients can occur in many ways and is the hallmark of a truly successful intervention or outcome. Through respectful interactions and an understanding of all the factors that may impact on the individual, each client is empowered to use his or her unique strengths and abilities.
>
> New Directions' service philosophy is founded on humanitarian and egalitarian ideals. New Directions believes in the intrinsic worth and dignity of every human being. We respect each clients's unique individuality, accept and appreciate the various factors that may impact on the client, and we empower clients by assisting them to utilize their own strengths. (Exhibit 21, p. 5)

Generally, the various non-mandated social welfare agencies, with whom Sinclair came in contact, employed similar philosophies: they sought to identify the client's goals, strengths and weaknesses, respected the client's right and responsibility to make choices and set personal goals. They sought to empower the client to attain the personal goals by providing resources and assistance. Participation by the client is voluntary and the programs are client driven.

Mandated Child Welfare Agencies

The Declaration of principles set out in the Child and Family Services Act, while recognizing the family as "the basic unit of society" which should be "the basic source of care, nurture and acculturation of children" declares, in my view, that "the best interests of children" is the fundamental and paramount principle. My opinion in this regard is supported by ss. 2(1) of the Child and Family Services Act which states in part:

> The best interests of the child shall be the paramount consideration of the director, the children's advocate, an agency and a court in all proceedings under this Act affecting a child, other than proceedings to determine whether a child is in need of protection ...

Subsection 17(1) of the Child and Family Services Act provides that "a child is in need of protection where the life, health or emotional well-being of the child is endangered by the act or omission of a person". Subsection 17(2) provides illustrations of circumstances where the child is in need of protection:

> (a) is without adequate care, supervision or control;
>
> (b) is in the care, custody, control or charge of a person

(i) who is unable or unwilling to provide adequate care, supervision or control of the child, or

(ii) whose conduct endangers or might endanger the life, health or emotional well-being of the child, or

(iii) who neglects or refuses to provide or obtain proper medical or other remedial care or treatment for the health or well-being of the child or who refuses to permit such care or treatment to be provided to the child when the care or treatment is recommended by a duly qualified medical practitioner,

(c) is abused or is in danger of being abused;

(d) is beyond the control of a person who has the care, custody, control or charge of that child;

(e) is likely to suffer harm or injury due to the behaviour, condition, domestic environment or association of the child or of a person having care, custody, control or charge of the child;

(f) is subjected to aggression or sexual harassment that endangers the life, health or emotional well-being of the child;

(g) being under the age of 12 years, is left unattended and without reasonable provision being made for the supervision and safety of the child; or

(h) is the subject, or is about to become the subject, of an unlawful adoption under section 63 or of an unlawful sale under section 84."

Subsection 18.4(1) of the Child and Family Services Act states:

Where an agency receives information that causes the agency to suspect that a child is in need of protection, the agency shall immediately investigate the matter and where, upon investigation, the agency concludes that the child is in need of protection, the agency shall take such further steps as are required by this Act or are prescribed by regulation or as the agency considers necessary for the protection of the child.

Subsection 21(1) of the Child and Family Services Act provides:

The director, a representative of an agency or a peace officer who on reasonable and probable grounds believes that a child is in need of protection, may apprehend the child without a warrant and take the child to a place of safety where the child may be detained for examination and temporary care ... .

Subsection 27(1) requires an agency which apprehends a child to make an application to a court for a hearing to determine whether the child is in need of protection.

Winnipeg Child and Family Services is an agency as defined by the Child and Family Services Act and is governed by the foregoing statutory provisions. Its mandate is to protect children and act in their best interests.

Confidentiality versus Statutory Duty to Report

It is evident from the testimony of those who are associated with social welfare agencies that it is essential to build a relationship of trust with a client for there to be any successful result from the program and resources provided by these agencies. In order to discover the goals, strengths and needs of their

clients, a relationship of trust must be established and to that end, confidentiality is essential. A client must know that what is revealed will be kept confidential. This principle of confidentiality is common and essential to many professions such as the medical profession and the social work profession.

However, the Child and Family Services Act impinges upon strict confidentiality in favour of protecting children. Section 18 requires anyone who has information that leads the person reasonably to believe that a child is or might be in need of protection to forthwith report the information to a child welfare agency. This duty to report applies even though the person has acquired the information through the discharge of professional duties or within a confidential relationship.

As will be discussed later, the conflict between the principle of confidentiality versus the statutory duty to report information concerning a child who may be in need of protection, was a major circumstance leading to the death of Sophia.

With these philosophies, principles and statutory duties in mind, I now turn to an examination of the circumstances leading to the death of Sophia Lynn Schmidt.

Background of Norma Jean Sinclair

Sinclair, who was 23 years of age when Sophia died, was born near Poplar River, Manitoba. At approximately 4 years of age she was abandoned by her mother and left with an elderly couple in Poplar River, Manitoba. She lived with the elderly couple for approximately two years, during which time she was physically abused, particularly by the woman of the household. During this period, Sinclair had no contact with her father and mother.

When Sinclair was approximately 6 years old, her father retrieved her. At that time, she was suffering from malnutrition.

Needless to say, this two year period was not a happy experience for Sinclair and she experienced nightmares about the elderly couple for a long time after.

Sinclair went to live with her father, his wife (not Sinclair's mother), her paternal grandparents, an aunt and a number of cousins in Berens River, Manitoba.

This period was also not a happy experience for Sinclair. She was physically and sexually abused by her grandfather and cousins. Her father and his wife frequently abused alcohol and were rowdy and frightening. When her father came home drunk, she and the other children hid under their

grandmother's bed. Sinclair has memories of her grandmother chasing her father from the house with a broom.

Sinclair began to abuse alcohol at the age of 13 when she was introduced to it by her 15 year old stepsister.

At the age of 14, Sinclair suffered a major loss when her grandmother died.

As a result of being sexually abused by one of her cousins, Sinclair became pregnant at the age of 16.

While pregnant, Sinclair came to Winnipeg for a medical test. She remained in Winnipeg and became a ward of Child and Family Services of Winnipeg (Northwest) (CFS (NW)), another area office of Child and Family Services of Winnipeg. She resided with her aunt, Bella Berens.

On October 15, 1990, at the age of 16, Sinclair gave birth to her first son, Joshua.

CFS (NW) remained involved with Sinclair after the birth of her son. Ursula Klyne (Klyne) was the assigned case worker.

On January 1, 1991, Joshua was apprehended by CFS (NW) and placed in the foster care of Bella Berens, Sinclair's aunt.

In retrospect, Sinclair agreed that CFS acted appropriately in apprehending Joshua due to her youth, her abuse of alcohol and her transient lifestyle.

After the birth of her first son, Sinclair, in addition to abusing alcohol, began to abuse marijuana. By the time she was 17, Sinclair also abused Tylenol 3s. When she was 18, she began to abuse harder drugs such as cocaine. Later, in 1995, after meeting Tanner, she also abused Gravol.

During the short period Sinclair cared for Joshua, she met a 26 year old man and had a relationship with him. This man physically abused her and forced her to work as a prostitute. After almost a year, Sinclair left this man because she nearly had been killed by one of her "tricks". She was 17 years old at the time.

Several months later, Sinclair began an approximate three year relationship with Hartley Coleman, who fathered two of Sinclair's four sons. The first child of this relationship, Harley, Sinclair's second son, was born May 1, 1992. Sinclair was 18 years old. CFS (NW) apprehended Harley the day after his birth but he was returned to Sinclair two days later.

Shortly after Harley's return, Sinclair and Coleman left Winnipeg with Harley and went to Nova Scotia. After six or seven months, Sinclair, unable to handle Coleman's abuse, returned to Winnipeg with Harley. Coleman followed them to Winnipeg, where the abusive relationship continued.

On August 16, 1993, CFS (NW) again apprehended Harley and also placed him in the foster care of Bella Berens.

On March 23, 1993, Sinclair prematurely gave birth to her third son, Allen. He was born with a heart defect and suffered the effects of fetal alcohol syndrome. Sinclair admitted that she continued to abuse alcohol during her pregnancy. Allen remained in the hospital until CFS (NW) apprehended him on June 14, 1993, and placed him in foster care. On October 3, 1993, an order was obtained granting permanent guardianship of Allen to CFS (NW).

Like the other men in her life, Hartley Coleman physically abused Sinclair. Sinclair testified he beat her daily and it is her belief that the premature birth of Allen was a result of the beatings she received during her pregnancy. Finally, not able to cope with Coleman's physical abuse, Sinclair left him sometime after the apprehension of Harley in August, 1993.

Dr. Fred Shane, a psychiatrist, examined Sinclair when she was awaiting sentencing on the manslaughter charge. His opinion (Exhibit 18) was:

> This is a young woman who has a very sad and tragic history of psychological dysfunction, dating back to her early childhood, adolescence and early adulthood. There are many psychologically damaging experiences which have played a major role in the development of her fragile personality. These have led to a profound quality of fragility in this woman, in terms of her ability to control her violent and aggressive impulses, her sense of empathy towards others, and the very brittle quality of her self-esteem.

and

> This is a profoundly dysfunctional young woman whose early damaged background left her with a very fragile self-esteem and ability to cope with her aggressive impulses. She was unable to deal responsibly with others, especially with children. As well, she was unable to cope with the stresses and the frustrations of her life.

It is almost axiomatic that Sinclair, a very young woman with this pathetic background lacking in love and parental support and filled with physical, emotional and sexual abuse, mixed with substance abuse to dull her psychological and physical pain, would be bereft of parenting skills.

Notwithstanding Sinclair's damaged psyche, it is also not surprising that she wished to mother her three sons, Joshua, Harley and Allen, all of whom had

been apprehended by CFS (NW) and placed in alternate care. With this goal in mind, and knowing she had to satisfy CFS (NW) with respect to her ability to appropriately and adequately mother her sons, this 19 year old mother set out to change her lifestyle and seek the supports she would need to do so.

Sinclair's Introduction to the TRY Program

On November 10, 1993, Sinclair made a written application to the Training Resources for Youth (TRY) program, one of the programs offered by New Directions. The goal of the TRY program, which incorporates life skills training, is to prepare young people for entry into the workplace or a return to school.

On her written application to TRY (Exhibit 19), Sinclair stated her reasons for applying to the program as: "I want to get an education". When asked about her plans to return to school (she had dropped out of grade 10), Sinclair stated on the application: "to finish school and get on with my life". The "Referring Worker" is noted to be "Irsula Cline" (sic) and the "Agency" is noted to be "Child and Family" at "80 Salter", which was the address of CFS (NW).

On November 25, 1993, New Directions sent a letter to Sinclair inviting her to attend an interview as part of the selection process for the TRY program (Exhibit 25). The interview was set for December 14, 1993.

On the same date, a letter was also sent to "Ursula Cline" of Child and Family Services, 80 Salter Street, advising of Sinclair's appointment date (Exhibit 26). The letter made the following request:

> We require a current social history prior to the program start date. Family, educational, placement, etc., history as well as any future plan is information that assists us in serving the specific needs of program participants.

Sinclair did not attend the scheduled interview on December 14, 1993, and Klyne and CFS (NW) did not supply the requested information.

On January 27, 1994, similar letters were sent to Sinclair and Klyne, this time setting the interview for February 14, 1994 (Exhibit 27). The same request for a social history was made to Klyne and CFS (NW). Once again, Sinclair did not attend the scheduled interview nor did Klyne and CFS (NW) supply the requested information.

A third series of letters was sent to Sinclair and Klyne on March 24, 1994, this time scheduling the interview for March 28, 1994, and again requesting Klyne and CFS (NW) to provide a social history (Exhibit 28).

This time, Sinclair attended the scheduled interview but Klyne and CFS (NW) did not provide the requested social history.

Sinclair's Involvement With the North End Women's Centre (NEWC)

On March 24, 1994, prior to being accepted into the TRY program and prior to meeting Eleanor Robertson (Robertson), who was to become Sinclair's case manager at TRY, Sinclair sought the assistance of another resource centre, the North End Women's Centre (NEWC).

NEWC is a resource centre which supports and counsels individuals, advocates for them, refers clients to other appropriate agencies and runs different programs such as anger management, relationship and parenting programs. Participation by the client is entirely voluntary and the programs are client driven.

According to Chris Tetlock, Executive Director of NEWC, and Linda Chisholm (Chisholm), Sinclair's support counsellor at NEWC, it is essential to build a relationship of trust with a client for there to be any successful result from the programs and resources provided by NEWC. To that end, all information, subject to any statutory duty to disclose, is confidential.

Ms Tetlock and Chisholm testified that it was not within the mandate of NEWC to assess the progress of clients. In the case of a referral from another agency, such as CFS, Ms Tetlock testified that NEWC would report the client's attendance or program completion to the referring agency.

In keeping with NEWC's philosophy and mandate, Chisholm testified that she made no assessment of Sinclair's progress and considered her role to be that of a support person and facilitator to Sinclair. She further testified she did not recall receiving any requests from anyone concerning Sinclair's progress and did not provide any assessment or progress reports to either CFS or TRY.

After graduating from grade 12 in 1985, Chisholm was hired as a trainee support worker at NEWC for one year. For the next 10 years, Chisholm continued employment with NEWC as a support worker. During that time, she received training in wife and child abuse counselling from Osborne House, child abuse counselling from Evolve, suicide prevention from Klinic as well as other workshop training from NEWC. She testified, "I also have life experience in regards to family violence".

Sinclair's first contact with NEWC was with Chisholm. Sinclair told her that her children were in care and she wanted to get her children back to live with her, that she was homeless and that she wanted to work on the issues which prevented her from getting her children back. Chisholm eventually learned of Sinclair's history of physical and sexual abuse and her alcohol abuse.

The first page of Exhibit 49 contains a note of the first meeting between Sinclair and Chisholm. It notes that Sinclair was self-referred. Chisholm testified

she understood Sinclair was self-referred because either Sinclair told her that fact or because Sinclair did not name any referring agency.

On April 20, 1994, Sinclair telephoned Chisholm seeking assistance in setting up an appointment with Klyne of CFS (NW). According to Chisholm, Sinclair was "at that point in a helpless situation, not feeling much power in talking to a Child and Family Services worker so she needs that support". (Evidence: Vol. 16, p. 63, ll. 1-3) Chisholm arranged for a meeting to take place with Klyne on May 5, 1994, at NEWC.

Introduction to Eleanor Robertson

On the same date, April 20, 1994, Eleanor Robertson (Robertson) sent a letter to Sinclair advising her that she had been accepted into the TRY program and requesting that she attend an intake interview on April 28, 1994. (Exhibit 29)

Robertson was a case manager with TRY. She obtained her Bachelor of Social Work degree at the University of Manitoba. In 1987, she completed her first practicum at Native Women's Transition Centre (NWTC). In 1988, she completed her second and third practica at New Directions and was hired by New Directions in 1989.

Sinclair first met and became involved with Robertson on April 28, 1994, when Robertson conducted the intake interview with her. Over the extended relationship she had with Robertson, Sinclair considered Robertson to be the mother she never had and described their relationship as "really good". Sinclair trusted and confided in Robertson. Sinclair testified that Robertson encouraged her and gave her the support she needed.

At the intake meeting and interview, Robertson learned of Sinclair's abused childhood and adolescence, her substance abuse, her abusive relationships, the birth of her three sons and their apprehension by CFS. She learned that Sinclair was a very sad and lonely woman with little community or family support. During this interview, Sinclair was very emotional and often cried. Contrary to what Sinclair had written in the TRY application (Exhibit 19), Robertson learned that Sinclair had no plan to return to school at that time, but rather, Sinclair expressed her strong desire to regain custody of her sons. At this interview, Sinclair told Robertson that she had stopped drinking but had attended only one Alcoholics Anonymous (AA) meeting. She said her abstention from alcohol was still a struggle for her and she continued to feel tempted. However, during direct examination, Sinclair admitted she was "substance-abusing" when she first met Robertson.

On May 2, 1994, Sinclair began the TRY program. On the same date, Sinclair called Chisholm and said she wanted Robertson to attend the May 5, 1994 meeting at NEWC.

On May 5, 1994, with Sinclair, Chisholm, Robertson and Klyne in attendance, a meeting was held at NEWC. Chisholm expressed the purpose of the meeting as follows:

> It was to open up doors for Norma Jean to communicate with Child and Family about getting her children back and --- some of the conditions that Child and Family was wanting from Norma Jean to follow through.

Robertson and Chisholm were present at this meeting to offer support to Sinclair, who was able to express her feelings of anger and confusion towards Klyne. However, she was also able to comprehend the mandate Klyne and CFS had: the protection and safety of her children.

During the meeting, Klyne advised that a pre-trial date with respect to the guardianship of Harley and Allen had been set for August, 1994, with the trial to take place in October, 1994.

The meeting concluded by identifying the steps Sinclair had to complete to achieve her goal of regaining custody of her three sons:

(1) To attend AA and connect with a sponsor;

(2) To be consistent with her contacts with CFS (NW) and with visits with her children;

(3) To complete the TRY program and to gain work experience; and

(4) To attend a parenting skills group. In addition, to learn more about Allen's medical condition and how to care for him.

Chisholm testified that Klyne was not unsympathetic towards Sinclair's goal of regaining custody of her three children but that Klyne had to be convinced that Sinclair would carry through with the plan. Chisholm did not see anything wrong with the position taken by Klyne at the meeting.

It was the opinion of both Chisholm and Robertson that Sinclair was aware of the tasks and goals that were set at the May 5, 1994, meeting and that Sinclair was committed to completing the tasks and attaining the set goals so she could regain custody of her children. Chisholm and Robertson and their respective agencies were available to Sinclair as sources of support.

Initially, Sinclair did well with the plan to rehabilitate her life. On May 13, 1994, Sinclair attended an AA meeting, accompanied by Chisholm. On May 17 and 26, 1994, Sinclair attended AA meetings accompanied by Sharon Cowie, an administrative assistant at New Directions. Sinclair began to attend AA meetings regularly and obtained an AA sponsor.

A note made on May 19, 1994, by Deanna Barbour, an instructor at TRY, states that Sinclair is "doing very well in class" and that "She is very determined and committed to regaining custody of her children and is working hard to make this happen." (Exhibit 31)

A note made by Robertson on June 13, 1994, states: "I have been preparing a letter to the lawyers assessing Norma Jean's involvement in TRY and to advise him generally how well she is doing. Norma Jean's goal is to regain custody of her children by this fall and has begun the process of attending to the tasks necessary to fulfill this goal."

A further note made by Robertson on June 14, 1994, indicates Sinclair "is doing well in class and is enjoying her work placement at a daycare".

The letter Robertson referred to in her note of June 13, 1994, is dated June 14, 1994 (Exhibit 15). It is addressed to Mr. John D. Ramsay, Barrister and Solicitor, and indicates that copies were sent to Klyne, Chisolm (sic) and Sinclair. In the letter, Robertson offered her assessment of Sinclair's progress in addressing her four self-improvement tasks. She stated:

> Presently, Norma Jean is doing excellently in this program (TRY), both in the classroom and work experience phases. Her attendance, punctuality and performance have met the rigorous demands of the program. She continues to see her children at the scheduled times arranged by Child and Family Services and she is working on maintaining a positive relationship with the worker, Ursula Klyne.

After stating that Sinclair was no longer living with her abusive partner (Hartley Coleman), Robertson continued:

> [D]rugs and alcohol, has been a major force in my involvement with Norma Jean. In March, 1994, she began to abstain from drugs and alcohol use. With additional support from Alcoholics Anonymous, Norma Jean has made great strides in mending this problem. To date, she has met with a sponsor and is now attending AA.

Robertson concludes by stating:

> Thus far, Norma Jean has been attentive in working on the first three tasks and is in the process of locating the resources for the final task.

Although dated June 14, 1994, the letter was not sent until on or after June 16, 1994. The letter itself refers to a conversation Robertson had with John Ramsay on June 16, 1994, and Robertson's note of June 20, 1994, (Exhibit 31) states: "The letter to the lawyer, John Ramsay has been sent out."

However, despite her initial positive progress, Sinclair experienced several setbacks.

A note made by Robertson on June 15, 1994, (Exhibit 31) states:

> Another concern that Norma Jean is experiencing at the present time is regarding her living situation at her aunt's, which has broken down due to an argument. According to Norma Jean, she feels that she is not receiving the much needed support from her aunt especially in areas of having home visits with her children. During these times, Norma Jean indicates, her aunt presents uncooperative, makes her feel that the children are not welcome ---. She is presently with her boyfriend, [James Grant] but feels that this is short term.

Sinclair began to miss classes and work placement at TRY. Robertson's note of June 16, 1994, (Exhibit 31) states:

> Norma Jean's work placement is on hold until next week. At that time, the work experience coordinator in TRY will find another placement.

Robertson's same note states:

> Norma Jean has raised some concerns about her living situation. I contacted Ikwe Wiijiitiwin (sic) regarding this and they were able to accomodate (sic) her. The long term goal is for Norma Jean to eventually attain the services at the Native Women's Transition Centre where she will receive further supports towards her goal to regain custody of her children.

Ikwe-Widdjiitiwin is a culturally appropriate women's shelter.

The referral to the women's shelter was made by Robertson because Sinclair had reported to her that she had been assaulted by her boyfriend, James Grant, with whom Sinclair was then living.

Unfortunately, Sinclair only remained at the women's shelter for approximately four hours. Sinclair went to live with a cousin in the north end of the city.

On June 21, 1994, Sinclair reported to Robertson and Klyne that the father of Joshua had invited her to a party where he "beat" her. The police had been called.

Klyne also called Robertson the same day to advise that Sinclair had told her about the assault. Klyne "was rather concerned about Norma Jean's re-involvement with alcohol and being at risk for abuse". (Robertson's note of June 21, 1994, Exhibit 31)

Robertson's note of June 21, 1994, continues:

> After some discussion, we were both of the opinion that this was a 'falling out' for Norma Jean and that we will work together in helping he re-establish the tasks required to accomplish her goal to get her children back in her care. On the other hand, U. Klyne and I discussed as to what would happen if Norma Jean

> failed to attend to the tasks to attain her goal. U. Klyne and myself agreed that we will both continue to support her in her goal and will also be there for her in the case that her children are apprehended on a permanent basis.

On June 30, 1994, Sinclair graduated from phase 1 of the TRY program: the life skills classroom phase of the program. Chisholm, in support of Sinclair, attended the graduation and met some of Sinclair's children.

Notwithstanding Sinclair's graduation, Deanna Barbour, an instructor at TRY, noted the following on July 11, 1994:

> From May 16/94 to June 3/94 Norma Jean was absent from class twice and was late three times. Norma Jean appears somewhat distracted with some personal issues she is dealing with at present, but she continues to try hard in class and complete all assigned assignments. During the part-time phase, Norma Jean was absent from class five times and was late on five occasions (June 6/94 to June 30/94) ---. Due to Norma Jean's attendance and lates, she will be required to attend remedial classes before full-time work is possible.

The content of this note conflicts with the contents of Robert's letter to John Ramsay (Exhibit 15).

Notwithstanding her initial progress and the continuing support from Robertson and other counsellors at New Directions and from Chisholm at NEWC, not surprisingly, Sinclair began to slip back to her old lifestyle of abusing alcohol and associating with abusive men. She did not complete the second phase of the TRY program.

Sinclair's Introduction to the Native Women's Transition Centre (NWTC)

Robertson suggested to Sinclair that the Native Women's Transition Centre (NWTC) was the appropriate resource to assist Sinclair in dealing with the issues of alcohol and drug abuse, abusive relationships with men and loneliness. Sinclair and Robertson agreed that this centre would be the most appropriate resource to attain Sinclair's goal to regain custody of her children.

On June 28, 1994, Robertson accompanied Sinclair to an intake interview at NWTC.

Robertson's note of August 29, 1994, indicates that "Norma Jean is 3 l/2 months pregnant" and that "Norma Jean spoke with me regarding her re-involvement with substance abuse". Sinclair expresses "a need to attend a alcohol drug treatment program".

On September 30, 1994, Sinclair entered NWTC.

On October 3, 1994, the Court of Queen's Bench gave permanent guardianship of Allen James Coleman to CFS (NW). On the same date, the

Court granted guardianship of Harley David Coleman to Bella Berens. Previously, on November 13, 1991, the Court had granted guardianship of Joshua Aaron Cameron Berens to Bella Berens.

Notwithstanding the Court's decisions, Sinclair remained determined to rehabilitate herself and regain custody of her three sons. Sinclair was also motivated by the fear that if she did not change her lifestyle, her unborn child would be apprehended at birth.

Once Sinclair began to reside at NWTC, she was no longer actively involved in the TRY program. Robertson had limited contact with Sinclair although they continued to talk and meet.

NWTC is a residential program whose primary role was to provide support services and counselling to aboriginal women and children who had experienced victimization either through abusive relationships or through systemic discrimination.

The Evidence of Adrienne Carriere (NWTC) Counsellor

Adrienne Carriere (Carriere) was Sinclair's primary support counsellor at NWTC. She was responsible for intakes, assessments, facilitating group programs, providing individual counselling and advocacy services to the women residents.

The initial concern with respect to Sinclair was that she needed a safe environment because she was 4 months pregnant at the time she entered the NWTC program. Carriere learned that Sinclair needed support and counselling to address issues of family violence, childhood abuse, alcohol dependency, parenting skills and anger management. She also learned of Sinclair's desire to regain custody of her sons.

Carriere testified that Sinclair was committed to making changes so that she could provide herself and her children with a safe environment and be able to live a stable lifestyle. However, she stated, Sinclair required a lot of support to make these changes.

While residing at NWTC, Sinclair worked toward the goals set out in Robertson's letter of June 14, 1994 (Exhibit 15).

Sinclair attended AA meetings, but not as consistently as Carriere believed necessary. Carriere spoke to Sinclair about her concerns in this regard. However, Carriere testified she had no concerns about Sinclair abusing alcohol or drugs while she resided at NWTC.

In spite of some difficulties, Carriere facilitated regular visits between Sinclair and her sons, another of the goals set out in Robertson's letter of June 14, 1994.

Sinclair also participated in programs concerning family violence, parenting skills, assertiveness training, self-care, self-sufficiency and abuse and addictions.

Carriere testified that she was advised by CFS on October 24, 1994, that CFS was no longer involved with Joshua or Harley because Bella Berens had been given guardianship of the two boys. Carriere later learned from Sinclair that there was an agreement between Bella Berens and Sinclair that Bella Berens would retain guardianship of Joshua and Harley until such time as Sinclair was able to provide a stable home for them.

On February 2, 1995, Wade Tanner (Tanner) made his first visit to Sinclair at NWTC. Sinclair disclosed that Tanner was the father of her unborn child. Tanner later disputed that fact while James Grant, Sinclair's abusive former boyfriend, claimed he was the father of the child.

On February 28, 1995, Sinclair gave birth to Wade Tanner, Jr. She continued to reside at NWTC and parent her new son. As well, she continued to take part in programs and visit with her other sons.

On March 6, 1995, Tanner's visits to NWTC were stopped because it was ascertained that Tanner was bound by a peace bond, the person protected being Nellie Berens, Tanner's former girlfriend and Sinclair's cousin.

Carriere stated that Sinclair generally did well at NWTC and had no problems dealing with parenting Wade Jr. According to Carriere, Sinclair appeared to be a good mother to her newborn son.

On April 5, 1995, Sinclair began attending a parenting skills program at NEWC. She attended 7 of the 10 scheduled classes.

However, towards the end of Sinclair's stay at NWTC, Harley's weekend visits at NWTC became problematic. According to Carriere, Sinclair was having a hard time dealing with Harley's behaviour. She became frustrated. Carriere believed that Sinclair was feeling overwhelmed trying to cope with Harley and Wade Jr. Therefore, Carriere stopped Harley's weekend visits approximately the second week of May, 1995. Carriere believed that Sinclair had to focus more on Wade, Jr. and just have day visits with Harley. With only Wade, Jr. to care for and Harley's visits restricted to the daytime, things became more stable and manageable for Sinclair.

Carriere testified that she found it difficult to contact Klyne. She estimated that 80% of her calls to Klyne were not returned and she found it frustrating. However, Carriere was able to arrange two case conferences at which she, Klyne, Chisholm and Sinclair were present. One conference was held on November 1, 1994 and the second one was held on January 17, 1995. Robertson was not present at either case conference.

A third case conference was scheduled for May 2, 1995. However, this case conference was cancelled by Lloyd Finlay of CFS (NW) because he wanted to arrange to have the CFS lawyer present at the case conference.

At the third case conference, Carriere was prepared to identify her concerns about Sinclair being overwhelmed when looking after more than Wade, Jr. Based on Sinclair's past victimization, the progress she had made to date, and her attempts to maintain the relationship with Tanner, Carriere was of the opinion that Sinclair could do no more than parent Wade, Jr. at that time.

The third case conference was not rescheduled because on May 16, 1995, Tanner advised Carriere that he and Sinclair would not then be pursuing custody of Joshua and Harley. In light of this new circumstance, Carriere did not feel it was necessary to pursue the case conference.

Although Sinclair was scheduled to leave NWTC in August, 1995, she left on May 31, 1995. At that time Tanner appeared supportive and committed to parenting Wade Jr.

Carriere testified that women can stay at NWTC for up to a year. When Sinclair left the program, she had not successfully completed it. Carriere believed that Sinclair still needed support, access to resources, education and awareness about parenting concerns, and family violence. Even if Sinclair had stayed the full year, the issues Sinclair had to deal with would have required ongoing support and counselling.

On May 24, 1995, Carriere wrote a letter (Exhibit 16) to Robertson outlining Sinclair's progress at NWTC. She continued:

> As well as the programs offered by the Native Women's Transition Centre, Norma Jean is also participating in the Parenting Program provided through the North End Women's Resource Centre. Though Norma Jean's attendance tended to be sporadic at times, it is my opinion that she obtained an adequate level of understanding and awareness of family violence and parenting issues. However, she does require ongoing support to assist her to integrate this information into her daily lifestyle. Norma Jean has been encouraged to attend AA meetings, though her motivation to follow through with this recommendation has been extremely low. This is an area of concern which I believe is necessary in order for Norma Jean to continue making positive and healthy changes in her life.

> Norma Jean intends to leave the Centre at the end of May and will reside with Wade Tanner at 600 Young Street. I met with Norma Jean and Wade to complete a discharge summary and to assist them to develop a long term plan. In regards to future planning for her son Harley, Norma Jean admits that she is not ready to parent him on a full time basis. Previously, Norma Jean was having weekend visits with Harley at NWTC, though did struggle with placing Harley's needs ahead of her personal needs. I am in agreement with Norma Jean that Harley's return home should not occur until the time when she is able to adequately meet his needs. Based on this assessment, I have put forth the following recommendations for both Norma Jean and Wade:
>
> - Both Norman Jean and Wade participate in the Family Violence program at MaMaWhiChitata Centre
>
> - Both attend and complete the parenting programs which they are currently involved in. Wade is to begin his parenting program at Mount Carmel Clinic in June.
>
> - Norma Jean continue with her therapy sessions with Gloria Vaughn Jones to address childhood abuse issues.
>
> - Norma Jean attend AA meetings on a regular basis.
>
> - Visits with Harley continue, but remain at day visits until the time when Norma Jean can adequately meet his needs.
>
> - Legal Aid and court proceedings regarding Allen be put on hold until Norma Jean can identify long-term goals in terms of visits. Based on Allen's medical condition, it is necessary that he be in a stable environment with as little disruption as possible.
>
> Norma Jean and Wade have expressed their agreement and cooperation in following through with the above recommendations. It is my understanding that Norma Jean will also be participating in a program through your agency. (emphasis added)

Carriere testified that if the May 2, 1985, case conference had proceeded, she would have brought the above information to the attention of CFS (NW). However, it did not proceed and Carriere did not send a copy of her letter to CFS (NW). Carriere advanced several reasons for not sending a copy of her letter to CFS (NW). Carriere understood that CFS (NW) was no longer involved with Joshua and Harley, their guardianship having been given to Bella Berens. There also was the issue of confidentiality. Carriere said she would not have passed on this information to CFS (NW) unless she had the authorization of Sinclair to do so or unless she felt she had to pass on the information in furtherance of her statutory obligation to do so. Carriere did not fear for the safety of Wade, Jr. when Sinclair left NWTC with Wade, Jr. Carriere also assumed that if Sinclair's other sons were to be returned to Sinclair, it would involve a court process and that she would have been consulted or subpoenaed in those proceedings because CFS typically requests progress reports for the women who stay at NWTC.

Carriere testified she was never consulted by CFS (NW) after Sinclair left NWTC and she was never specifically consulted by CFS (NW) concerning the appropriateness of placing Joshua and Harley with Sinclair.

After Sinclair left NWTC, there was no formal follow-up of her situation by anyone at NWTC and Carriere did not learn of the placement of Joshua and Harley until after the death of Sophia.

It is very apparent that Carriere possessed a great deal of information concerning Sinclair's ability to parent. This information was not accessed by CFS.

Sinclair's Continued Involvement With Robertson

When Sinclair was preparing to leave NWTC at the end of May, 1995, she reconnected with Robertson. Robertson learned that Sinclair was going to be residing with her boyfriend, Tanner, and her new baby on Spence Street. This address was outside the jurisdictional boundaries of Child and Family Services (NW).

On May 23, 1995, Robertson referred Sinclair to the Parent Support Program at New Directions. Robertson believed that Sinclair would need support from the Parent Support Program to look after Wade, Jr. However, because of a waiting list, the intake meeting with the Parent Support Program did not occur until September 21, 1995, and Sinclair did not meet her parent support worker, Eric Mellon, until October 2, 1995.

With respect to Carriere's letter of May 24, 1995, (Exhibit 16), Robertson testified that the plan and recommendations contained in the letter were reasonable and ones that she could support. Robertson had no concerns about Sinclair having custody of Wade, Jr. under the circumstances outlined in Carrier's letter, although Robertson admitted that many of the issues Sinclair had to address when she entered the TRY program in May, 1994, remained outstanding when she left NWTC at the end of May, 1995.

Robertson did not forward a copy of Carriere's letter to Klyne and CFS (NW).

Initially, Sinclair, Tanner and Wade, Jr. lived on Spence Street for two to three weeks, after which they moved to Furby Street, again an address outside the jurisdictional boundaries of CFS (NW).

Between May and July 1995, Robertson visited Sinclair and Wade, Jr. at their Spence Street residence once and visited Sinclair and Wade, Jr. at their Furby Street home approximately two times. According to Robertson, Sinclair appeared to be content and comfortable. On these visits, Robertson saw nothing

which gave rise to any concerns about Sinclair's ability to parent and care for Wade, Jr. It was Robertson's opinion, in July, 1995, that Sinclair was being a good parent to Wade, Jr. When Robertson visited the Furby Street residence, Tanner was not present because he was at work.

Joshua and Harley Come To Live With Sinclair

On July 17, 1995, Robertson learned from Sinclair that Joshua and Harley had been in her care for over a week.

Sinclair told her that she had received a telephone call from her cousin advising Sinclair that Bella Berens (the guardian of Joshua and Harley) had gone to the United States for a conference and had left Joshua and Harley in the cousin's care. The cousin had told Sinclair "to pick up Joshua and Harley right away". Sinclair happily proceeded to pick up her two sons.

At this time, Joshua was 4 years, 9 months old, Harley was 3 years, 2 months old and Wade, Jr. was 4½ months old.

Robertson testified that when Sinclair got her two sons back, Sinclair was the happiest woman she had seen. But the fact that Sinclair was happy did not displace Robertson's concern about Sinclair's ability to parent the three children. Robertson's opinion with respect to Sinclair's ability to parent the three boys was no different on July 17, 1995, than it was when she got Carriere's letter in May, 1995. It was Robertson's opinion that it was not in Sinclair's best interests to have the three children in her care nor was it in the best interests of Joshua, Harley and Wade, Jr. to be in the Sinclair home in July, 1995. As well, Robertson had concerns about the legality of Sinclair having Harley and Johsua.

Robertson thought it important to notify CFS (NW) of the situation and she advised Sinclair to call CFS (NW) to advise that she had Joshua and Harley. Robertson testified that she also contacted CFS (NW) in July, 1995, to advise of the situation but was told that Klyne was on holidays. Robertson testified that she spoke to Klyne's replacement worker. Robertson said that she called CFS (NW) because she had to confirm for herself that Sinclair's having her two sons was with the concurrence of CFS (NW). To the best of her recollection, Robertson concluded from the telephone conversation with the replacement worker that Klyne would call Robertson upon her return from her vacation and that CFS (NW) did not seem to have any concern about Sinclair having her two sons with her. It was Robertson's understanding from the telephone conversation that the two sons would remain with Sinclair until Klyne returned from her vacation.

However, on cross-examination by Mr. McNicol, Robertson testified as follows:

> Q. All right. And that's what I was trying to find out from you. Because it leads me to ask you, how is it, then, that you told His Honour that this CFS person told you they had no concerns about those boys being with Norma Jean and were prepared to wait till Ursula Klyne got back when, so far as you knew, this person didn't even know that those kids were there until you told them of it? Can you help me with that?
>
> A. I, I think I told Your Honour that, that since there were no concerns from this call . . .
>
> Q. Is what happened was that you told this person that you knew Norma Jean and were working with her --
>
> A. Yes.
>
> Q. -- and that you had no concerns --
>
> A. Yes, I had no concerns.
>
> Q. -- about the situation, and it should wait for Ursula Klyne to get back from holiday?
>
> A. Yes.
> (Evidence of Eleanor Robertson, November 27, 1997, p. 9, ll. 16-33).

Approximately a week or two later, Robertson again contacted CFS (NW), this time in regard to food and clothing needs for the children. Robertson was told that Sinclair was now living in the boundaries of CFS (Central) and the files would be transferred there.

Robertson testified that CFS (NW) was well aware that Sinclair had her two sons in her care.

Robertson went on vacation from August 3 to August 26, 1995. Robertson testified that when she returned from her vacation, she was surprised to learn that Joshua and Harley were still with Sinclair. She said that in her professional and personal opinion, Sinclair was not ready to parent three children. Robertson testified that everything was happening too fast and that Sinclair was still working on her self-improvement and rehabilitative tasks. However, Robertson said, she was comforted by the fact that CFS (NW) knew the situation and was leaving the children with Sinclair. It was Robertson's intention to support Sinclair and make available to her, as best she could, the appropriate resources.

When Robertson returned from her vacation, she reviewed her files. In Sinclair's file, there was a note dated August 25, 1995, which contained the following:

> Norma Jean states that she has been 'having a few drinks' to relax. She describes feeling overwhelmed by her situation with her boyfriend and the children.

Shortly after reading the note, Robertson said she visited Sinclair and talked about the situation and expressed her concerns to Sinclair. She encouraged Sinclair to go back to AA and reconnect with her AA sponsor. Sinclair told Robertson she would do so.

Robertson testified that she did not pass on her concerns to anyone else, particularly CFS (NW), because she viewed herself as a support person whose task was to help Sinclair get back on the right path.

When she visited Sinclair's home, she found no signs of alcohol abuse, the children were happy and the home was clean, if not tidy. Robertson testified she assessed the situation and was satisfied with what she saw. Sinclair appeared to be doing well in terms of parenting her three sons. Robertson said that if she had concerns about the welfare of the three boys she would have reported the matter to CFS (NW) but she had no such concerns.

Robertson recalled visiting the Furby Street home on at least two occasions when the boys were at home. Whenever she saw the three boys, they seemed comfortable, happy and healthy. She was satisfied that Sinclair and the three boys were doing well.

At the beginning of September, Sinclair and her family moved again, this time to Toronto Street. The family remained within the jurisdictional boundaries of CFS (Central).

Around the same time, Sinclair contacted Robertson to seek her assistance in getting some of Joshua and Harley's clothes from Bella Berens. Robertson advised Sinclair to contact CFS (NW). Robertson followed-up Sinclair's telephone call to CFS (NW) and spoke to Klyne's replacement. Robertson was advised that this was now a matter for CFS (Central) and that the files were being transferred from the Northwest region to the Central region.

On September 14, 1995, Sinclair advised Robertson that she was interested in obtaining legal custody of Joshua and Harley, who remained in her care. Sinclair also advised Robertson that blood tests had revealed that Tanner was the father of Sophia, who had been apprehended from Schmidt by CFS (Central). Sophia was 4 months old. Sinclair further advised Robertson that Tanner wanted to bring Sophia into their home to live with them. Sinclair told Robertson that she did not have a problem with this plan.

Robertson testified this caused her great concern and she discussed her concerns with Sinclair on September 14, 1995, and again at the Parent Support Program intake meeting on September 21, 1995. Robertson testified that she did not support the plan to bring Sophia into the Sinclair-Tanner home.

Robertson discussed with Sinclair her concerns about their living conditions, that there was no room in the home, that Sinclair already had three young children in her care, that they were poor and that Sinclair was mainly alone in looking after the children. Robertson testified that she told Sinclair that she thought that the three children were enough for her to handle. Notwithstanding this advice, Sinclair advised Robertson that she wanted to support Tanner in his application to get custody of Sophia.

Robertson testified that, up until this point in time, when she visited at the Sinclair-Tanner home or when Sinclair visited at Robertson's office with the children, the children appeared to be clean, well dressed, comfortable and happy. She saw no signs of Sinclair being re-involved with the abuse of alcohol. Sinclair was happy and appeared to be doing reasonably well.

Robertson testified that she did not try and talk Sinclair out of her decision to support Tanner's application to obtain custody of Sophia. Robertson said it was her position to support clients with decisions they make and to provide as much support and resources as she could.

On cross-examination by Mr. McFetridge, Robertson testified she was not concerned from a safety point of view that Sophia might come into the Sinclair home but she was concerned about the "impoverished family situation that existed".

However, Robertson also testified that she had concern for the welfare of all 4 children should Sophia be placed in the home. Robertson testified that she could not recall advising CFS (NW) of this concern nor did she have any notes of any telephone calls which she may have made to CFS (NW) in this regard. She went on to add that she could not support the decision to bring Sophia into the home; that it would be too much. She added that it was not her decision to put Sophia in the home. It was for CFS (Central) to make that decision.

Sinclair's Referral to the Parent Support Program, New Directions, and the Evidence of Pamela Gillman

Pamela Gillman, the program manager of the Parent Support Program administered by New Directions, testified at the inquest. She had been the program manager for the past 17 years. She also was the supervisor of Eric Mellon, who was Sinclair's counsellor in the Parent Support Program.

Gillman described the main objective of the Parent Support Program as the improvement of parenting of the children and families they work with. She testified that the referrals they get from the professional community are all families where there is a concern about the parenting of the children. The Program workers are aware of the potential for physical or emotional harm to

children. Topics of discussion include physical neglect, emotional neglect, emotional abuse and physical abuse.

Gillman took part in the Parent Support Program intake meeting of September 21, 1995. As previously stated, the referral to this program was made by Robertson in May, 1995. Gillman testified that the Program has a waiting list of about one year. During the waiting period, the Program does not have any contact with the referred family.

Gillman testified she advises the family at the intake meeting that if the program personnel notice anything that appears to be unsafe, dangerous, or risky for the children, the Program would have to address the issue with a mandated agency.

Gillman stated that the Program works with a family, on average, for 3½ to 4 years.

Present at the intake meeting of September 21, 1995, were Sinclair, Robertson, Gillman, Eric Mellon, Harley and Wade, Jr. Klyne was not present nor had she been invited to attend.

Gillman testified that she received information at the intake meeting from Robertson and Sinclair that led her to understand that Sinclair was overwhelmed, not feeling comfortable parenting and was stressed. Sinclair advised that she was not totally comfortable in her relationship with her partner, Tanner, was not comfortable with her weight and was not feeling good about herself. Sinclair was also uncomfortable with her family of origin and her relationship with them.

Gillman had been made aware at the time of referral in May, 1995, that Sinclair had lost her children to CFS because of alcohol and substance abuse. She was told at the intake meeting that Sinclair had been sober for almost a year and that Robertson wanted support for Sinclair so she could maintain her sobriety. Gillman was advised at the intake meeting of the circumstances under which Joshua and Harley were returned to Sinclair. She was further told that Sinclair had called CFS (NW) to advise Klyne that the boys were with her and that Klyne had said that was fine.

The statement that Klyne had approved of Joshua and Harley being in the Sinclair-Tanner home is inconsistent with the other evidence in this regard. Klyne was on holidays when Joshua and Harley came to live at the Sinclair-Tanner home and neither Robertson nor Sinclair spoke to Klyne concerning this matter; they spoke to Klyne's replacement worker.

Gillman testified that she did not recall being told at the September 21, 1995, intake meeting that Sinclair had admitted in August, 1995, to having a few drinks to relax. She stated that had she been given this information, the issue of

alcohol abuse would have been more formally addressed at the beginning of the program. Gillman testified that alcoholism is a major concern in many families where there is neglect of children.

Robertson did not testify that she advised Gillman that Sinclair had a few drinks to relax in August, 1995. Nor did Sinclair testify to this effect. Neither testified that they told Gillman that Sinclair only sporadically attended AA meetings. I can only conclude that this valuable information was not passed onto Gillman.

Gillman was not made aware of Carrier's letter (Exhibit 16) at the September 21, 1995 meeting.

In my opinion, Robertson failed to provide Gillman with essential information at the September 21, 1995, intake meeting. No explanation for failing to provide this information was offered by Robertson.

Gillman testified that she was not advised at the intake meeting that Sinclair previously had been violent with her son. Gillman said that had she received a social history from CFS which indicated that Sinclair had been violent with any of her children in the past, when stressed or overwhelmed, the Program would have monitored Sinclair more closely and in a different way. The program counsellor would have talked to Sinclair about stress and how she was coping with it. The counsellor would have asked Sinclair to describe her feelings and the Program would have been very cautious if they perceived Sinclair becoming overwhelmed. The Program would have set up a safety plan which would directly address the issue of stress. As well, Gillman stated, the Program would have had a different relationship with the CFS worker. The Program immediately would have been in touch with the CFS worker. There would have been regular weekly or bi-weekly meetings between the CFS worker and the client where the situation would be reviewed. Because Gillman did not find out about the allegation of violence until after Sophia's death and because CFS was not the referring agency, contact with CFS was not made immediately and was more casual.

Gillman stressed that confidentiality and building trust with the parent is essential to the success of their program.

Gillman testified that, generally, the flow of information between the Parent Support Program and CFS is very good. In this specific case, because the referral was not from CFS and the participation of Sinclair had just begun, there was no exchange of information between the Program and CFS and there was no case conference held between September 21, 1995 and January 26, 1996, to which CFS would be invited.

Gillman stated that she had not been consulted by CFS with regard to Sophia going into the Sinclair-Tanner home. She said even if she had been consulted, she would not have been able to give an opinion because she did not know Sinclair well enough to express an opinion. As well, the Program is not set up to make assessments of their clients.

A registration form (Exhibit 37) was completed at the time of the intake meeting. It identified family conflict, parenting skills, childhood family violence, adult family violence, emotional abuse, sexual abuse, isolation and loneliness, substance abuse, insufficient family support and poverty as issues of concern.

Gillman testified that the impression she got from the meeting was that Sinclair was doing well and that people had confidence in her. The fact that she was told that CFS (NW) was supporting Joshua and Harley being in the home and was considering placing Sophia in the home impacted Gillman in a favourable way.

Gillman testified that the situation that existed in the Sinclair-Tanner family was not unusual. She said it is not unusual for a family to move from a situation of no children to caring for four children in a short period of time and that it was the job of the Parent Support Program to try and work with and support these families.

Gillman also testified that the fact that Sinclair had three children at home and a possibility of having a fourth child at home, all very young children, led to a concern that there would be a lot for Sinclair to cope with by herself because Tanner was working during the day. There was a fear that Sinclair was being set up to fail. Gillman concluded that without supports in place, Sinclair would be overwhelmed. Gillman added that most parents with three or four very young children could be overwhelmed without supports.

Gillman testified that the counsellors, in their observation of families in the Program, were always vigilant of signs of neglect, verbal mistreatment and physical and emotional abuse of children.

Gillman testified that case reviews were done on the Sinclair family on three occasions: October 30, 1995, January 8, 1996 and February 19, 1996. The committee which conducts the case review is composed of Gillman, Terry Leijko, the Child and Family Services supervisor, and Chris Cassels, a clinical director in the Parent Support Program. Also present was Eric Mellon, who was to become Sinclair's support person and counsellor. The purpose of these meetings was to review the work that the Program is doing with each family and to have the information reviewed from a Child and Family Services perspective. At the October 30, 1995, review, two legal issues were identified: Tanner attempting to get custody of his daughter, Sophia, and Sinclair getting legal custody of Joshua and Harley. Assessment and Treatment Goals of the Parent

Support Program were identified as helping Sinclair and Tanner with parenting issues and to be supportive to them with respect to the legal issues. The plan for the Parent Support Program at that time was to get to know Sinclair and Tanner, because they had only been in the program for about five weeks, and to assist Sinclair in using the knowledge she had gained from the parenting classes she took at NEWC.

The same individuals were present at the second case review on January 8, 1996. Gillman testified that the front of the Service Committee Case Review Form (Exhibit 40) is not filled out after the case review unless there is a change in circumstances. Gillman testified there was nothing new to add to the information contained on the first form (Exhibit 39). However, by January 8, 1996, Sophia Schmidt was residing in the Sinclair home and this change was not noted on Exhibit 40.

At the second case review, Mellon advised that he was continuing to work with Sinclair and trying to get to know her. Sinclair had advised Mellon that her weight was a concern to her because Tanner "bugs" her about it. She advised Mellon that her family of origin was very involved in alcohol, that she wanted to work on her personal issues, but could not do so because she was lost in her responsibilities. Sinclair said that it was hard for her to get a babysitter so she could have time to herself. A note is also made of the fact that the family had not yet moved from the Toronto Street home to larger premises, possibly because Sinclair's Toronto home was so conveniently located to Robertson's office.

The plan was to try and obtain some respite for Sinclair and to discuss family of origin issues, possibly at night meetings, so that Tanner could be accommodated.

Gillman testified that they had just begun their work with the family when Sophia's death occurred. It was very early in the process. In this short period, it was observed that Sinclair was an under-confident woman who was very self-conscious about her weight, that she was interested in doing a lot of things and bettering herself, was very proud of the fact that she had not been drinking, appeared to really care about her children and take good care of them. Sinclair was cooperative and well engaged with the Program. Sinclair appeared happy.

The last case review was done after the death of Sophia. It was decided that Mellon would cease his involvement with Sinclair and the Parent Support Program file would be closed.

Gillman testified that even if she had received all the information she had not received at the intake meeting, the course of action followed by the Parent Support Program may not have changed. The emphasis of the support may have been different, but the support would have continued.

Since Sophia's death, changes have been made to the Program. Now, before a family is accepted into the Program, information from CFS must first be obtained.

The Evidence of Eric Mellon

Mellon had been a counsellor with the Parent Support Program since 1989.

Mellon first met Sinclair at the intake meeting of September 21, 1995. At this meeting, Robertson advised that Sinclair had maintained sobriety for approximately one year, was coping with the two older boys in her care and just needed support. Mellon said the Sinclair case was presented quite positively.

Mellon testified that the fact he was told Sinclair had maintained sobriety for approximately one year was a positive indicator to him.

Mellon concluded from the information he received at the intake meeting that Sinclair had begun to make and wanted to make changes in her life and was quite motivated. He also thought that Sinclair was a young lady who was doing a fair job of handling her responsibilities and was reaching out for more support from the Parent Support Program.

Mellon testified that he had not read Robertson's running notes prior to Sophia's death. He said the usual practice was to rely on the referring worker to pass on the relevant information. As well, Mellon testified, he did not look at Robertson's running notes prior to September 21, 1995, because he knew Robertson, how conscientious she was as a worker and he trusted her judgment.

Mellon was also not made aware of Carriere's letter, the information contained in the August 25, 1995, note, nor the fact that Harley had been apprehended because of an allegation of violence by Sinclair. He learned of these facts after Sophia's death.

Mellon testified that he would have acted differently had he been provided with all the relevant information at the beginning. He said that had he been aware of the August 25, 1995, note, that information would have lessened the confidence he had in Sinclair and he would have checked things more cautiously and vigilantly. He also would have been more concerned about how Sinclair was reacting to stress. He stated that he would have talked to Sinclair about a safety plan, would have talked to her more about her stress level, what was happening in her life and how she was coping. Mellon testified he would have been more aware of the danger factor in this case.

Mellon testified that a safety plan involves talking with the client about what they can do when they see stress building up, what alternative action they can take, who they can inform, how they can handle the situation better and giving the client more information so they can better deal with the situation.

Mellon testified that he would have proceeded more cautiously and there may have been more monitoring of the Sinclair-Tanner home.

Mellon further testified that had he been provided with all the information that was available, it would have been his opinion that Sinclair was not ready to handle a fourth child in the home.

Mellon began by visiting Sinclair once a week. Once Sophia moved into the home, Mellon's visits increased to twice weekly. The plan was for Mellon to visit a third time each week, commencing January, 1996.

Mellon met with Sinclair twenty times between September 21, 1995, and January 21, 1996. During this same time period, Mellon met with Tanner on three occasions. Mellon had no contact with CFS during this period.

Mellon testified that during the time he worked with Sinclair, he did not observe anything that caused him to become alarmed or to put a safety plan in place.

Mellon testified that his first visit with Sinclair took place at her home. Wade, Jr. and Harley were present. Mellon stated that Sinclair dealt with the children appropriately when he was present. Mellon said the apartment on Toronto Street was small but seemed tidy for the number of people residing there.

Mellon testified that Sinclair never showed any reservations about Sophia coming into their home. He also could not recall Robertson advising him that Sinclair had any reservations about Sophia coming into their home.

Mellon's note of December 6, 1995, recorded that Sinclair was getting a bit stressed with all the children. Mellon testified that having the care of four children under five years of age would be stressful for anyone. However, Mellon testified, Sinclair seemed to be handling the stress well in that the children always seemed clean, always looked fed, wore clean clothes and the apartment was in fairly good condition, considering all the people who lived there.

In order to alleviate some of Sinclair's child care burden, Joshua and Harley went to daycare and Sinclair was left to care for Wade, Jr. and Sophia. Because Tanner left for work before Joshua and Harley went to daycare, the task of getting the two older boys to daycare fell to Sinclair. When Mellon visited Sinclair several times a week, he was able to assist Sinclair in this task. It was Mellon's opinion that Sinclair was handling the children quite well.

Mellon testified that the absence of a telephone in the Sinclair home made matters more complicated and stressful.

On December 15, 1995, Mellon learned that Tanner was being laid off and would not be hired back for approximately one month. He also learned from Sinclair that Tanner did not like staying home all day because he would rather be employed earning money. The family was having a difficult time with the money they had available. Although Sinclair advised him that Tanner became easily frustrated when the children cried, Mellon testified there was nothing he observed to suggest, at that time, that Tanner did not have the patience to deal with the children or was not looking forward to being at home with the children.

Mellon testified that as of December 22, 1995, the stress level in the family seemed manageable and that Sinclair and Tanner were managing the stress very appropriately.

Mellon visited the Sinclair-Tanner home again on December 27, 1995. The two younger children were dressed in their winter clothing ready to go out when he arrived. This was not unusual. Sinclair advised Mellon to be careful in handling Sophia's leg. Sinclair advised Mellon that Sophia had caught her leg in the crib and twisted it. She said she had a doctor look at Sophia's leg. Mellon felt what he thought was a tensor bandage on Sophia's leg. Mellon thought that Sinclair had acted appropriately and did not pursue the matter. Mellon said when he picked up Sophia, she reacted normally and did not seem to be in any severe pain.

On December 29, 1995, Mellon again visited the Sinclair home and everything seemed fine at the time.

On January 10, 1996, Mellon had another visit with Sinclair. Sinclair indicated to Mellon that she and Tanner had been arguing and yelling at each other. Sinclair told him that she had been putting on some weight and that Tanner was teasing her. She said this bothered her. Sinclair also advised Mellon that she had asked Tanner to leave the home and to take Sophia with him.

Mellon testified that he talked to Sinclair about how to resolve the issue and how better to communicate with Tanner. When Mellon visited Sinclair on January 12, 1995, he and Sinclair again discussed the issue. Sinclair told Mellon she had confronted Tanner and told him how the arguing and teasing was upsetting her. Mellon testified that Sinclair told him that Tanner had said he did not know that he was upsetting her and he would try to be more supportive in the future. Mellon said he was satisfied that Sinclair had begun to deal with the situation in an appropriate fashion.

Mellon's last visit to the Sinclair apartment was on January 12, 1996. Mellon said the appearance of the apartment was the same as it had been in the past. He said it was a little bit messy but not out of the ordinary. His opinion was

that Sinclair was doing a fair job at being a mother and taking care of the children.

Mellon viewed the photographs taken after Sophia was hospitalized (Exhibit 11). He said the photographs did not depict the way the apartment appeared on January 12, 1996. Mellon said that the apartment on January 12, 1996, was not as messy as it appeared in the pictures. On January 12, 1996, things were much neater, much more organized.

On January 17, 1996, Mellon could not keep his scheduled meeting with Sinclair because he was ill.

On January 18, 1996, Mellon received a telephone message from Sinclair indicating that she could not keep their scheduled meeting of January 19, 1996, but would keep the appointments for the scheduled visits the next week.

Mellon testified that he had no concern about how the family was coping at that time. In fact, he viewed her phone call as a positive sign because he knew that she had to make some effort to make the phone call to cancel the appointment.

On cross-examination by Mr. McNicol, Mellon confirmed that the majority of the information he received at the intake meeting of September 21, 1995 came from Robertson. She told him that Sinclair had been clean and sober for approximately a year, that Sinclair had been coping and doing fine with the children in her care and that Sinclair was handling her responsibilities and doing a fair job of it, that CFS (NW) was aware Sinclair had Joshua and Harley in her care and that this arrangement was satisfactory to CFS (NW). Mellon was told Sinclair had completed the NWTC program and that it was a positive experience for her. All the information conveyed positive messages to Mellon. Mellon was not told at the intake meeting that there were incomplete or outstanding goals left over from the NWTC program. Mellon did not receive a copy of Carrier's letter (Exhibit 16) nor the information that was contained within it. Mellon was not made aware of the fact that Sinclair had agreed in May, 1995, that she was not ready to parent Harley. As well, Mellon was not told by Robertson that she agreed with the assessment that Sinclair was not ready to parent Harley. Nor did she share with Mellon that in August, 1995, she was of the opinion that Sinclair was not ready to parent her three children. Robertson did not tell Mellon that Sinclair had told her on August 25, 1995, that she was feeling overwhelmed and having a few drinks to relax. Mellon agreed that this was all very important and significant information which he had not received.

Mellon testified that if he had received the foregoing information, he would have been more alert to the issue of how Sinclair reacted to stress and would have paid more attention to it.

Mellon testified he did not receive the information contained in Robertson's running notes (Exhibit 30) and he acknowledged it contained valuable and relevant information concerning Sinclair.

Mellon stated Sinclair told those at the intake meeting CFS (NW) had been advised by her that she had Joshua and Harley. Sinclair also stated that CFS (NW) thought it was "okay" that Joshua and Harley remained in her care.

Further on cross-examination, Mellon testified that in November and December 1995, he had no concerns about the welfare or safety of any of the children in her care.

Mellon testified that, throughout his contact with Sinclair, he never detected any sign or indication of Sinclair using alcohol. Nor did he detect any sign that Sinclair was abusing Gravol or Tylenol. He said he was not aware that Sinclair was seeing a doctor at the Rafiq Walk-in Medical Clinic and obtaining prescriptions for Gravol and Tylenol for herself.

Throughout his association with Sinclair and Tanner, it was clear to Mellon that both Sinclair and Tanner wanted to get custody of Sophia and bring her into their home.

Mellon saw Sophia in the home on December 6, 1995 and January 12, 1996, and on both occasions, other than the sore leg and some eczema, Sophia seemed well. He never noticed any bruising or abrasions anywhere on her body. Mellon never thought that Sophia was being abused or battered. Mellon observed Tanner and Sophia together on one occasion and the interaction between the two seemed quite appropriate.

As to the number of young children in the Sinclair home, Mellon testified that he does not see that number of young children in a home that often but has seen it on occasion. The number of children was not, in itself, a specific cause for concern for him.

Finally, Mellon testified that he was in shock when he heard what had happened to Sophia and that he had seen no predictors of it.

On cross-examination by Mr. McFetridge, Mellon said he never observed Sinclair spank the children. She would use her voice to discipline the children and she treated Sophia no differently than Wade, Jr.

Mellon testified that Sinclair told him, on a few occasions, that Tanner did not help with the children; that he would come home and fall asleep on the chesterfield. Mellon said he spoke to Sinclair about methods she could use to get Tanner to help with the children. Sinclair never complained to Mellon about Tanner hitting the children. She did say he would yell at them.

Mellon said he had taken many courses in risk assessment as well as other courses relevant to his employment. Mellon said that his observation of Sophia led him to conclude she was a normal baby. He said he had held Sophia on many occasions and she never reacted in pain when he handled her.

At the time he worked with the Sinclair family, Mellon was not aware he should be suspicious when told that a non-mobile child was injured in a crib. He said he has since read an article by Dr. Charles Ferguson about injuries to non-mobile children. Prior to his dealing with the Sinclair family, he had not received any seminars or information from the Child Protection Centre.

Mellon did not have information as to the extent of Sinclair's alcohol abuse, when she was drinking, nor did he know how she reacted when she was abusing alcohol. He also did not know that Sinclair had difficulty managing her anger. He said she had never lost her temper in his presence.

At the intake meeting, Sinclair advised she had taken two parenting courses when she was at NWTC but that she still needed help parenting. Mellon said he considered this as positive information, in that she was seeking assistance. Mellon became aware that Sinclair had grown up in an abusive family where there was substance abuse, conflict and violence. He learned that Sinclair had been emotionally abused in her family of origin and that her needs were not met on many different levels. He also learned that she had been sexually abused by members of her family. In her adult relationships, Mellon learned that she had a tendency to pick violent partners and that she was the victim of domestic violence. He learned that since she separated from her family of origin, she felt isolated and lonely. Mellon concluded that Sinclair was a woman without family supports and she needed to develop friendships. Mellon also stated that Sinclair lived in poverty. Mellon understood that the primary concern was substance abuse. Sinclair had grown up in a family which abused substances, she had abused substances herself and was, at that time, dealing with this issue. Mellon was told that Sinclair had been sober for almost a year. Mellon was made aware that Sinclair had been at NWTC to deal with her alcohol abuse problem and to make positive changes in her life. He understood that Sinclair had made some headway with her alcohol problem. Mellon was not told that Sinclair may have been physically abusive to her child. This area was canvassed at the intake meeting.

The information that was provided to Mellon at the intake meeting was the basis upon which he provided services to Sinclair and her family.

Mellon stated he did not know whether Sinclair was attending AA meetings during the time he dealt with her. He said he did not canvass this issue with Sinclair because he was dealing with many other issues. Mellon said he was always vigilant for signs of alcohol abuse, especially because of her

previous history of alcohol abuse. Mellon testified that Sinclair never indicated to him that she was drinking and he saw no signs of impairment.

Mellon said that had he had information concerning previous physical abuse of a child, he would have treated the leg injury of Sophia differently. He said he would have attempted to examine the leg injury.

Mellon testified that although he had discussions with Sinclair about setting limits for Harley, throughout his involvement with Sinclair, she parented the children quite appropriately. He said, compared to some of the other families he worked with, Sinclair did quite well. She took care of the children's needs, kept them clean and kept them fed.

Mellon testified that even if he had been aware of the August 25, 1995, note respecting Sinclair's drinking, he was not sure if it would have made a difference. He testified he always kept a watchful eye for alcohol abuse. He said he did not know if he would have done anything differently or changed how he would have interacted with Sinclair.

Mellon testified that information concerning past child abuse was very important and vital to have. If he had been aware of allegations concerning Sinclair's past violence, it would have made him much more vigilant of the potential for violence against the children.

Mellon said he did not refer Sinclair to an alcohol abuse rehabilitation program even though alcohol abuse was considered to be the primary issue of concern. He said he had ongoing talks with Sinclair about the issue and Sinclair confirmed to him that she had not been drinking. Mellon never saw any signs of Sinclair abusing alcohol.

Mellon said he was not surprised at the degree of success Sinclair was having in the Program. He believed that Sinclair was working very hard to succeed. At the beginning, he was skeptical about her success, that maybe she was doing things for his benefit to make herself look good. However, over the term he worked with her, she continued to succeed. In his experience working in the Program, Sinclair did not stand out as exceptional in her progress.

Mellon testified that he recognized the number of children in the home as a problem and source of stress. He said he talked to Sinclair about stress and how she could deal with it. He said there were too many children in the home for Sinclair to deal with and that he was trying to get respite for her. Mellon said he never thought of phoning CFS and discussing his concern with CFS. Mellon said that he had not seen this number of young children in a home very often. It was a situation that was out of the ordinary.

Mellon testified that until January 10, 1996, the relationship between Sinclair and Tanner was relatively good. On or about January 10, 1996, Sinclair told Mellon that Tanner was calling her fat and it distressed her. Sinclair also told Mellon that Tanner would come home, "pass out" on the chesterfield and not give her much assistance. Sinclair did all the child care by herself. Mellon said he was surprised when Sinclair told him that she had told Tanner to leave with Sophia. Mellon said he realized there were "issues" going on between Sinclair and Tanner. Mellon testified he addressed the issues with Sinclair.

Sometime in December, Mellon said he realized there were communication problems between Sinclair and Tanner. To that end, Mellon was prepared to meet with Sinclair and Tanner alone, one evening a week, to address the issue. He was in the process of setting up these meetings when the death of Sophia occurred. He said the inability of Sinclair and Tanner to communicate appropriately was an ongoing concern of his.

I found Mellon's evidence to be both contradictory and inconsistent. On the one hand, he said he would have monitored the situation differently if he had received all the relevant information at the beginning of the process. On the other hand, he described his monitoring in such a way that he covered all the issues of concern. At times, he testified that he did not know certain information and at other times he acknowledged knowing the information. At times, he described the situation as being positive and later he would describe the same situation as stressful. Nevertheless, it was my impression of Mellon's evidence, that he tried his best to support Sinclair. Perhaps he had seen too many family situations like Sinclair's and that may have blinded him or hardened him to the reality of Sinclair's circumstances. This is not necessarily a criticism of Mellon, but rather, a comment upon the vast number of families that live in poverty and come from and live dysfunctional lives.

The Evidence of Ursula Klyne and the Involvement of CFS - A Mandated Agency

Ursula Klyne (Klyne) began to work for CFS in 1985, after graduating from grade 12 and the New Careers Program. Klyne described the New Careers Program as a two year program, sponsored by the provincial government, to fill the need for more aboriginal social workers in the field of child care with CFS. At the completion of the program, she received a Child and Family Protection Worker Diploma and became a certified social worker through the New Careers Program. Klyne has worked in the child protection field with CFS (NW) for approximately 12 years.

In 1995, Klyne had responsibility for approximately 45 children. She characterized her workload as heavy, but "okay". She said the optimal number of children to care for would be 15, which would give her some time to work with the families.

Klyne first met Sinclair in 1990, when Sinclair moved to Winnipeg from Berens River. Sinclair was 16 years old at the time she was added to Klyne's caseload. According to Klyne, Joshua was approximately three months old and was residing with Bella Berens.

Sinclair was abusing alcohol when Klyne first met her. She would leave Joshua with Bella Berens for various periods of time when she went drinking. On one occasion, Sinclair abandoned Joshua by leaving him with Bella Berens for a three month period. On January 1, 1991, CFS (NW) apprehended Joshua and placed him in the care of Bella Berens. On November 13, 1991, Bella Berens obtained guardianship of Joshua.

Subsequently, Sinclair gave birth to Harley and Allen. Sinclair's alcohol abuse continued during this time period. Allen was apprehended on June 14, 1993, and placed in foster care. Harley was apprehended on August 16, 1993, (for the second time) and placed in the care of Bella Berens. On October 3, 1994, Bella obtained guardianship of Harley and Allen was made a permanent ward of CFS (NW).

Klyne was the child protection worker for Sinclair's three sons. Klyne testified that Sinclair viewed her as the enemy because she took away Sinclair's children. According to Klyne, Sinclair did not trust her and was guarded in what she said. Sinclair would only tell Klyne what Sinclair wanted Klyne to hear. Klyne testified that the only thing Sinclair told her about her childhood was that her mother abandoned her and her father raised her. Otherwise, according to Klyne's testimony, Sinclair would not tell Klyne anything else about her background or children.

Klyne testified that Sinclair's aunt, Bella Berens, was a source of information concerning Sinclair and her children. But, Klyne said, Sinclair viewed her aunt as someone who meddled in her affairs and worked against her.

Nellie Berens, Sinclair's cousin, was another source of information for Klyne. However, because Sinclair and Nellie Berens were always feuding, Klyne said she could not always trust the information she received from Nellie Berens.

Klyne testified that she recognized from the beginning that it was Sinclair's main goal to have her children returned to her. Klyne said she told Sinclair that she would have to turn her life around by abstaining from alcohol and taking parenting courses. In addition, Klyne told Sinclair she would have to satisfy her that she was able to care for her children.

Klyne stated that throughout her connections with Sinclair, alcohol abuse continued to be the most pervasive problems for Sinclair.

Klyne testified that she was the one who referred Sinclair to New Directions. After Sinclair did not keep the first appointment with TRY, Klyne said she scheduled a second appointment for Sinclair. After Sinclair did not keep the second appointment, Klyne said she told Sinclair that she would have to schedule the next appointment herself and follow through.

Klyne testified that it was only after she threatened to apprehend Sinclair's unborn baby that Sinclair made an appointment with New Directions and attended at NEWC.

In this regard, Klyne is in error. Sinclair first attended at New Directions for an appointment on November 10, 1995. The intake meeting with Sinclair was on March 28, 1994. Sinclair first contacted NEWC on March 24, 1994. Sinclair was not pregnant with Wade, Jr. on any of these dates.

Klyne subsequently acknowledged her error and conceded that Sinclair could not have been pregnant when she referred Sinclair to TRY.

In the "History of N/W and Norma Jean" (Exhibit 58), a document prepared by Klyne and her supervisor, Lloyd Finlay, after the death of Sophia, the following is stated: "Spring of 1994 Norma Jean quit visiting the children as she was heavily involved in drinking, drugs and prostitution." (Exhibit 58, p. 2, para. 1). Klyne testified that it had been her recollection that Sinclair was pregnant with Wade, Jr. when she was involved in prostitution and drugs. Again, Klyne's recollection was wrong. When Sinclair became pregnant with Wade, Jr., she was involved with the TRY program. Klyne acknowledged that she knew that Sinclair initially did well at TRY. Klyne also testified that she was in agreement with the statement in Robertson's letter that "in March, 1994, she began to abstain from drug and alcohol use." Ultimately, Klyne testified that she did not remember when she learned that Sinclair was involved in prostitution.

In this regard, Exhibit 58 states: "July/94 we learn Norma Jean is pregnant and we advised her of our intention to apprehend her baby at birth." (p. 2, para. 2)

Klyne was equivocal in trying to explain why she did not provide a social history to TRY, as repeatedly requested. Initially, Klyne said CFS (NW) had no social history for Sinclair when the three requests were received. It is highly unlikely that this excuse is true. CFS (NW) had already apprehended Sinclair's three children. There certainly should have been a history concerning Sinclair's alcohol abuse and the resulting abandonment of Joshua. There certainly should have been a history of Sinclair's alcohol abuse and resulting violence towards Harley. CFS (NW) proceeded to court after these apprehensions and would have had to provide information to the court.

Then Klyne testified that CFS (NW) does many social histories, especially when children are involved. Klyne testified that social histories are sent out when CFS (NW) makes a referral of a client. In this case, Klyne said she had referred Sinclair to New Directions. Then Klyne testified that she had never previously sent a social history to TRY. This statement is not surprising in view of the fact Klyne could not recall referring anyone, other than Sinclair, to the TRY program. I find that Klyne did not send Sinclair's social history to TRY because she ignored TRY's requests.

Klyne testified that when she referred Sinclair to TRY, she spoke to someone on the telephone and provided that person with all the information she had concerning Sinclair. Klyne said she recalled telling the TRY person that Sinclair had abandoned Johsua and that he was living with Sinclair's aunt. She recalled telling TRY that Allen was suffering from fetal alcohol effects. Klyne then testified that all she told TRY was that Allen had medical difficulties. Klyne had no recollection of telling TRY that Sinclair was abusing alcohol nor did she have a recollection of telling TRY that Sinclair had been violent with Harley when CFS (NW) apprehended him. Klyne then testified that she could not recall what she told the person she spoke with at TRY. Then Klyne returned to her original position that she passed on all the relevant information to TRY. Klyne's reasons for returning to her original position was because that is the information CFS (NW) always passes on and she just could not recall, verbatim, what she said.

Klyne could not recall who she spoke with at TRY nor did Klyne have any notes of either making the referral to TRY or of the purported telephone conversation.

Klyne should have possessed important and relevant information concerning Sinclair and her children. Because of Klyne's confusing, contradictory and equivocal evidence, I am unable to conclude whether Klyne had a conversation with anyone at TRY, or if she did, what information, if any, she passed on to TRY.

Klyne attended the May 5, 1994, meeting at NEWC with Sinclair, Robertson and Chisholm. Klyne testified that Sinclair was pregnant at the time of the meeting. Klyne then conceded that she may have been in error when she stated she knew Sinclair was pregnant with Wade, Jr. on May 5, 1994.

Klyne testified she provided all the information she had concerning Sinclair at the May 5, 1994, case conference. She said she was certain she explained to Robertson why Harley had been apprehended. Klyne then testified she could not say with certainty that she passed on this information. Klyne then testified that she could not recall what she said at the May 5, 1994, meeting.

In initially stating that she provided the circumstances surrounding Harley's apprehension, Klyne was in error. She did not provide that information to anyone at the May 5, 1994, case conference.

Klyne testified that she learned at this meeting that Sinclair wanted her children back. This statement is inconsistent with Klyne's earlier testimony on this point.

It was Klyne's evidence that she told Sinclair and the others what the expectations of CFS (NW) were for Sinclair to have her children returned.

Klyne said she still had concerns about Sinclair's alcohol abuse and, at the end of the meeting, Klyne was fearful that Sinclair's alcohol abuse would continue. Klyne testified she was uncertain whether there was a discussion about Sinclair attending NWTC or whether this topic arose after Sinclair became re-involved in abusing alcohol in June, 1994. In fact, the decision to have Sinclair attend NWTC was made after Sinclair began to falter in June, 1994.

After the May 5, 1994, meeting, Klyne decided to step back and allow Sinclair to proceed with her plan for self-improvement. Klyne did not contact anyone at NEWC after the May 5, 1994 case conference.

Klyne had never before worked with Robertson or Chisholm.

Klyne testified she received a copy of Robertson's letter of June 14, 1994, (Exhibit 15). She said she monitored the four steps set forth in Robertson's letter. Klyne's evidence with respect to monitoring Sinclair's progress is both equivocal and uncertain.

Initially, Klyne testified that after the May 5, 1994, meeting, she would be in telephone contact with Robertson from time to time. During these conversations, Robertson would report on Sinclair's progress. Then Klyne testified that she could not recall how many times she spoke to Robertson between May 2, 1994, and September 30, 1994. Finally, Klyne testified she had no recollection of speaking with Robertson other than the one time when Sinclair was assaulted by her ex-boyfriend.

With regard to the assault, Klyne recalled Sinclair contacting her about the incident. Klyne testified she was concerned about Sinclair's re-involvement with alcohol. Klyne could not recall when she spoke to Robertson about the assault, whether she asked if Sinclair was again abusing alcohol or whether Sinclair was attending an alcohol rehabilitation program. Klyne believed the assault occurred when Sinclair was at NWTC. Klyne was in error. The assault occurred in June, 1994, and Sinclair did not enter NWTC until September 30, 1994.

Klyne testified that, initially, Sinclair did well in the TRY program, that Sinclair looked good, presented well and had a job. Klyne said the source of this information was Sinclair. However, Klyne could not recall when or how often she spoke with Sinclair.

Klyne believed that Sinclair worked at a drug store and a day care centre. There was no evidence that Sinclair worked at a drug store while she was involved with TRY.

Klyne could not remember if she had been aware that Sinclair began to miss classes and some of her work placement in June, 1994. She was not aware that Sinclair's work placement had been suspended due to poor attendance and being late for work. Nor was Klyne aware that Sinclair was required to attend remedial classes at TRY before full-time work was available to her.

Klyne testified that she did not know whether Sinclair completed the TRY program and was unable to express an opinion concerning Sinclair's rehabilitative efforts to September 30, 1994.

On October 3, 1994, CFS (NW) proceeded with its guardianship application for Harley and Joshua. It was Klyne's opinion that as of October 4, 1994, Harley and Joshua were in need of protection.

After Sinclair entered NWTC, Klyne attended two case conferences. She did not remember the dates of the case conferences and had made no notes in this regard. What Klyne did recall was that, at one of the case conferences, she was accused of not having a heart and that she was not giving Sinclair a chance to prove herself. Klyne could not recall who made these comments. The case conferences Klyne attended were held on November 1, 1994, and January 17, 1995. Robertson was not present at these case conferences.

Klyne testified that as a result of the comments made to her at the case conferences, she stepped back (for the second time) and allowed the collateral agencies to take over and work with Sinclair. From this point on, Klyne said she was not as involved with Sinclair. Klyne testified that Sinclair had strong support from NEWC, NWTC and TRY. Klyne said she continued to monitor the situation.

Klyne first testified that it was her understanding that Sinclair attended AA while she was at NWTC. Then Klyne testified she did not know whether Sinclair attended AA while at NWTC.

Klyne admitted that, other than attending the case conferences at NWTC, she did not monitor Sinclair's progress at NWTC nor did she take any steps to ensure that the treatment plans and goals put in place by NEWC and NWTC

were attained. Klyne testified that she did not stay in contact with the collateral agencies, but they would contact her or *vice versa*, if something came up.

Klyne testified she was aware that Sinclair left NWTC with Wade, Jr. but had no concerns because Sinclair had ""supports". Klyne thought that she learned of Sinclair's leaving NWTC on June 5, 1995. Klyne did not contact anyone at NWTC to inquire about Sinclair's progress while at NWTC. She could offer no explanation for not contacting NWTC for a progress report.

Klyne testified she was unaware that Sinclair was associating with Tanner when Sinclair resided at NWTC.

Klyne recalled having had a telephone conversation with Robertson at the time Sinclair left NWTC but she could not recall what was discussed.

With respect to Klyne's running notes (Exhibit 57), a note dated June 5, 1995, states "Norma has moved to 5-600 Young Street." Klyne made no further notes regarding this matter prior to Sophia's death.

The Involvement of Carena Roller, Sinclair's Counsel

Carena Roller, a lawyer with Legal Aid Manitoba, assisted Sinclair in her efforts to obtain access to Harley and Joshua. On February 22, 1995, Roller wrote to Klyne requesting a copy of a report from the Child Protection Centre concerning bruising Sinclair saw on her two sons. (Exhibit 60, Tab 4) Having received no reply, Roller again wrote to Klyne on March 15, 1995, requesting a response to her letter of February 22, 1995. (Exhibit 60, Tab 4)

Klyne testified she did not reply to either letter. She could offer no explanation for not replying.

On March 30, 1995, Roller wrote a letter to Lloyd Finlay, Klyne's supervisor. The letters states in part:

> As counsel, I wrote to Ursula Klein (sic), the worker assigned to the file in the past, and despite my two letters, dated February 22 and March 15, 1995, I have not had Ms Klein's response. It is therefore to you that I turn. (Exhibit 60, Tab 4)

Klyne testified that Finlay shared Roller's March 30, 1995, letter with her. Klyne said she advised Finlay that she telephoned Roller and told her Sinclair's children were not in the care of CFS (NW). Notwithstanding Roller's letter of March 30, 1995, Klyne insisted, in her testimony, that she had spoken to Roller.

On April 26, 1995, Roller wrote another letter, this time addressed to Finlay and "Klein". (Exhibit 60, Tab 4) The letter stated:

> Further to my letters of February 22, March 15, and March 30, 1995, I have yet had an opportunity to speak with you regarding my client's concerns regarding access. I understand that Adrienne Carriere, Norma Jean's support worker at the Native Women's Transition Centre, has also been unable to solicit your response to her concerns. As such, I propose a meeting take place at the Northwest Child and Family Services Centre on Tuesday, May 2, 1995 at 2:00 p.m. Please advise if this date is inconvenient.

Klyne continued to insist that she had spoken to Roller. No one at CFS (NW) responded to Roller's letters.

CFS (NW) cancelled the May 2, 1995, meeting proposed by Roller.

On May 5, 1995, Roller again wrote to Finlay and Klyne requesting that the cancelled meeting be rescheduled, as soon as possible, "to work out a plan for Norma Jean to have continued access to the children". (Exhibit 60, Tab 4)

Klyne testified she did not recall whether she replied to Roller's letter of May 5, 1995. No copy of a written reply was found on the CFS (NW) file.

Unfortunately, the proposed meeting was never rescheduled. It is to be recalled that Carriere had testified that had the meeting of May 2, 1995, proceeded, she would have raised the issue she set forth in her letter of May 24, 1995 (Exhibit 16). Carriere never passed on her concerns to CFS (NW).

Klyne's Knowledge of the Return of Harley and Joshua

Sometime on July 9 or 10, 1995, Nellie Berens told Sinclair to pick up Harley and Joshua. Bella Berens, their guardian, had left the two boys in the care of Nellie Berens. Nellie Berens also telephoned the night staff at CFS (NW) and told one of the staff to pick up her own sons. A note made by the staff member reads:

> July 9 - 10
> Ask Nellie to babysit
> We picked up Nellie's kids
> Stella

The note is found in Klyne's running notes (Exhibit 57).

Klyne testified she did not see the note when she returned from her vacation. She could not offer any explanation for not seeing the note. Klyne could not recall if she was at work on July 10, 1995. CFS (NW) records do not show that Klyne was absent from work on July 10, 1995. Even if Klyne was absent from work on July 10, 1995, she offered no explanation for not seeing the note the following day.

Klyne then testified that this note did not concern Sinclair's children and that she was not Nellie Beren's child protection worker. She then stated that, whenever it was that she saw the note, she probably inquired about it. However, she had no recollection of the purported inquiry. Klyne then added she was not aware that Nellie Berens had telephoned CFS (NW) to pick up her children.

Klyne made a note on the back of the July 9-10, 1995, note. Klyne testified that the note she made referred to the time Bella Berens moved to Prince Edward Island, in December, 1995. That information was obtained by Klyne sometime in 1996.

On the second last page of Klyne's running notes (Exhibit 57), on a page headed February 6, 1996, a note made by Klyne states:

> Norma P/C to Bella to ask her for a weekend visit by Bella Wasn't home Nellie answer the phone she said come and pick up the kids or I'm going to leave them She then told me that Bella was in the states for a church Revil (sic) group she didn't come back for two weeks.

Klyne testified she did not know when she made the note, nor could she offer any explanation why the note appears on a page dated February 6, 1996. Klyne stated the information contained in the note was received from Sinclair, but that she could not recall when she received this information.

Klyne stated that shortly before she went on vacation on August 17, 1995, she received a telephone call from Bella Berens. Bella Berens was upset and advised her that she was in the United States and while away, Sinclair took Joshua and Harley. Bella Berens told Klyne she was not prepared to relinquish her guardianship of Joshua and Harley. According to Klyne's testimony, she told Bella Berens that she had the right to take back the boys because she was their legal guardian. Klyne testified that Bella Berens replied to her by stating she was prepared to leave the two boys with Sinclair for the time being because Sinclair would not be able to handle them, would return to her abuse of alcohol and would abandon her two sons. Klyne said that Bella Berens told her she expected the two boys to be back in her care within a few months. Klyne testified she agreed with Bella Berens' assessment of the situation and that she, Klyne, was content to leave Joshua and Harley with Sinclair. Klyne said she was prepared to wait for that eventuality to occur. Klyne's attitude in this regard is unbelievable, especially because she knew Sinclair had a newborn child at home and especially because Klyne was always concerned about Sinclair's alcohol abuse. Klyne apparently was prepared to gamble with the childrens' safety.

Klyne testified that she could not recall whether she received any communication from Robertson or Sinclair concerning the return of the boys prior to her conversation with Bella Berens. Even though this was a significant event, Klyne made no notes concerning the return of Joshua and Harley, except her note on a paper headed February 6, 1996.

Klyne testified that before she went on vacation, she wrote a note to her replacement, Sadie Ballantyne, advising her of the situation as well as noting that Sinclair had a lot of support around her.

Klyne contradicted Sinclair's evidence and denied having had a conversation with Sinclair in which she told Sinclair that Johsua and Harley were apprehended and that Sinclair could, therefore, have custody of her children.

Klyne expressed her opinion that Sinclair was not ready to parent Joshua and Harley on a full-time basis when she left NWTC at the end of May, 1995. Klyne testified that Sinclair was still working on maintaining her sobriety, that she needed more time to bond with Wade, Jr. and to work on some of her other issues. Klyne said that even though she did not see Carriere's letter (Exhibit 16) until after Sophia's death, she agreed with Carriere's opinion that Sinclair was not ready to parent Harley on a full-time basis and that his return home should not then occur.

Klyne was asked if anything had occurred between May and August, 1995, to change her opinion. Klyne responded that the children were in day care and that Sinclair was receiving a lot of support. With this support, Klyne felt Sinclair was okay.

Klyne's evidence in this regard is shocking and incredulous.

Klyne first testified that she agreed with Carriere's opinion that Sinclair was not ready to parent Harley on a full-time basis. Not only did Sinclair end up caring for Harley on a full-time basis but she also had Joshua to care for on a full-time basis.

Then Klyne testified that when she spoke to Bella Berens in August, 1995, she agreed with Bella Beren's opinion that Sinclair would not be able to handle Harley and Joshua and would return to abusing alcohol.

Klyne testified that as of the end of May, 1995, Sinclair was still working on maintaining her sobriety, that she needed more time to bond with Wade, Jr., and to work on her other issues. Surely, the period between the end of May, 1995, and July 9 or 10, 1995, when Sinclair got her two sons back was not sufficient time for Sinclair to deal with all the issues that concerned Klyne.

Klyne was asked why she did not apprehend Joshua and Harley when she learned that they were in Sinclair's care. Klyne replied that she did not apprehend the two boys because there was no evidence to do so. Klyne's decision not to apprehend and her opinion that there was no evidence to apprehend them is, to say the least, very questionable. Had Klyne properly monitored the situation, she would have learned that Sinclair was caring for the

three children without much, if any, support. She may have learned of Carriere's opinion that Sinclair was not ready to parent Harley.

Klyne also should have considered the fact that Bella Berens had left Joshua and Harley in the care of her daughter, Nellie Berens, who, in essence, abandoned them when she phoned Sinclair to pick them up.

The decision not to apprehend the two boys also begs the question: Why wait for two months for Sinclair to start abusing alcohol and abandon her children? Would the welfare of the two boys not be better served if they had been apprehended immediately rather than wait for harm to befall them, as Klyne believed would occur? Based on Sinclair's past history, Klyne was prepared to apprehend Wade, Jr. at birth. That same history and the addition of Wade, Jr. to that history, should have caused great concern for Klyne.

Any reasonable person, utilizing a minimum of common sense, would have foreseen the inevitable overburdening of Sinclair. In my opinion, Klyne failed to act responsibly when she failed to remove Joshua and Harley from Sinclair's residence.

Klyne testified it was her understanding from what Sinclair told her and from attending one of the NWTC case conferences that NWTC provided ongoing support for their clients after they left NWTC. This is contrary to Carriere's testimony. I accept Carriere's evidence that NWTC did not provide support after their client leaves NWTC. I also find that no one at the NWTC case conferences told Klyne that NWTC did provide such support.

Klyne testified that Sinclair told her she was receiving support from New Directions and was receiving therapy, counselling from the Parent Support Program and that support people were coming into her home to teach her how to budget and how to discipline her children. The support people were also providing Sinclair with respite. While Sinclair may have said these things to Klyne, Klyne is confused as to the time frame. Sinclair did not become involved with the Parent Support Program until September 30, 1995, and the first visit by Mellon did not occur until October 2, 1995.

On the other hand, Klyne testified she could not recall what Sinclair told her in May, June and July, 1995, and she could not recall if she spoke to Robertson to confirm what Sinclair purportedly told her between May and July, 1995. Had she done so, especially when she learned that Joshua and Harley were back in the care of Sinclair, Klyne would have learned that Sinclair was not receiving assistance from the Parent Support Program at that time and was not receiving respite from her responsibilities of mothering her three young sons.

Klyne testified she recalled speaking to someone at the day care centre but she was unable to recall when the conversation occurred. In her running

notes (Exhibit 57), Klyne made a note on a page dated January, 1996. The note states that Harley was attending daycare and Joshua was attending kindergarten in the morning and daycare in the afternoon.

Then Klyne testified that upon her return from vacation in September, 1995, she telephoned the daycare centre and received a satisfactory report. She testified that the person at daycare told her the children were clean, appropriately dressed and came to daycare with lunches. Klyne stated that no concerns were expressed by the daycare centre. Klyne did not refer to the fact that the daycare centre, on occasion, was required to supply Joshua and Harley with appropriate lunches.

Klyne testified that she also checked with the school and was told by the school that they had no concerns, that "the children" were clean, appropriately dressed and they always had good lunches. Klyne's use of the word "children" is inconsistent with the facts of this case. Only Joshua attended school.

Klyne testified she spoke to Robertson who advised her that Sinclair was doing well, that supports were in place and that everything was okay. Klyne added that she was confused and could not remember when she spoke to Robertson. She could not recall speaking to Robertson in August or September, 1995.

Klyne said she knew Sinclair was involved with NWTC and New Directions. She said she could not recall verifying the information Sinclair provided to her, nor could she offer any explanation for not doing so. This was very neglectful having regard to Klyne's previous testimony that she knew that she was told only what Sinclair wanted her to know.

Klyne testified that given the information she received, after her return from her vacation, she had no concerns about the welfare of Sinclair's children.

After her vacation, Klyne did not visit Sinclair and her children. At first, she could offer no explanation for her failure to do so. Then Klyne testified that she did not make any visits because she was confident in relying on the collateral agencies.

Klyne testified that had she known Sinclair was "having a few drinks" to relax and was feeling overwhelmed, she would have apprehended Sinclair's children. Klyne said she did not learn of this information until after Sophia's death. Had Klyne acted responsibly and made the appropriate inquiries, she may have learned of this critical information at the relevant time.

The Evidence of Lloyd Finlay, CFS (NW) Supervisor

Lloyd Finlay became a supervisor at CFS (NW) in 1988, when he began to supervise Klyne.

In 1995, Finlay was supervising nine people; one secretary and eight social workers, including Klyne.

Finlay testified that because of the area in which CFS (NW) is situate, it is more likely to deal with difficult cases. He stated that the vast majority of the population which live in the North West and Central Areas are poor and migratory. In addition, CFS (NW) and CFS (Central) are more likely to handle cases where families are involved in alcohol abuse, drug abuse, sniffing and prostitution. He characterized these issues as major and complicating factors.

Finlay described the workload at CFS (NW) as extremely high and the demands placed on the workers are great. As an example, Finlay cited Klyne's caseload. She had a caseload of 40-45 active child protection cases. Finlay stated that a caseload of 20-22 is considered manageable. In general, Finlay stated, the workload for the eight workers he supervised was very high and more than was reasonably manageable.

Finlay testified that CFS (NW) workers routinely face very difficult and dangerous situations. These difficult cases tend to be the norm and the shock of continuously dealing with the devastation resulting from dysfunctional families becomes routine. The overall effect of dealing with these types of cases is that the workers begin to wear down over time and Finlay has seen workers "burn out". Finlay stated that because of the unmanageable workload and high stress levels, there is tremendous use of sick leave, which in itself becomes difficult to manage. Other workers have to "cover-off" for the workers who are away on sick leave. Because of the large workloads and high stress levels, record-keeping suffers, but his workers make every effort to provide the mandated services that are required of them.

The heavy workload at CFS (NW) permitted him to spend very little time reviewing the open files with the caseworkers he supervises. He said he spent most of his time dealing with crises which arose in various cases. Finlay testified he would have hands on involvement in the more active cases. According to Finlay, dealing with crises was routine.

Finlay testified that the heavy workload has been the status quo since he began to work in child welfare, in 1988. There had been attempts to reorganize to relieve the workload and stress, but without much success. The intention was to try and reduce the number of files that were being opened but, in his view, that has not been achieved. Finlay stated there is a great demand for child welfare services and "no matter how you cut the pie, it's still the same numbers". In regard to "numbers", Finlay cited the present case. Cynthia Schmidt, Nellie Berens and Norma Jean Sinclair gave birth to 17 children between them. All but

Wade, Jr. had been apprehended because they were in need of protection. Wade, Jr. was apprehended after Sophia's death. Tanner had fathered children with each of these women. Finlay testified there was nothing unusual about this situation and that CFS (NW) deals with a great number of people who are in the same type of situation.

I accept the evidence of Finlay with respect to the unmanageable caseloads and the high stress levels the workers endure.

The Provincial Standards Manual

The Province of Manitoba has developed and put in place the Child and Family Services Program Standards Manual. All mandated agencies are expected to comply with these standards.

A different set of standards was developed by CFS (NW) when it was a separate entity. These standards are less onerous than the provincial standards. Their creation was authorized by Mr. Tim Maloney, who was then Executive Director of CFS (NW).

Finlay testified that he was expected to follow the provincial standards and he expected his workers to do their best to meet the provincial standards. He termed them "minimal standards".

Finlay conceded that he had never read the entire provincial standards manual. When a caseworker starts employment with CFS (NW), the caseworker is not required to read the manual and is to rely on the supervisor to advise of the specific standards which apply to a given situation. Somewhat contradictorily, Finlay testified that he did not think he had ever discussed the provincial standards with the unit he supervised.

Finlay further conceded that he was never authorized to deviate from or disregard the provincial standards. He admitted that the workers he supervised may well have adopted his attitude to the program standards.

Although the provincial government expected that CFS (NW) would meet the provincial standards, Finlay admitted that the provincial standards were rarely met. Finlay stated in evidence:

> The provincial standard is rarely met in, in any of our cases. We also have another standard which Northwest developed about 7 or 8 years ago, which does not meet the standards of the provincial standards. And that's been an issue between, you know, Child and Family and the Province for a long time. I don't believe that workers would have the time to meet all of the standards that are set out in the --- provincial standard and provide service to our clients as well.

Finlay further conceded that CFS (NW) does not even follow its own standards and, in this case, did not completely follow CFS (NW) standards.

Standard 320.2 of the Child and Family Services Program Standards Manual states:

> All case recording regarding child protection cases is initialed and dated by the workers and is read, initialed and dated by the supervisor. (emphasis added)

Finlay did not comply with standard 320.2 in this case.

Below standard 320.2, the following procedures are set forth:

1. Notes are made on all cases immediately after the occurrences of the events.
2. The data includes:
   - date, time, names and addresses of people involved;
   - significant details pertinent to the case; and
   - date and time of the recording.
3. Notes include all contacts including telephone and written communications with clients, relatives, neighbours and agencies.

In many instances, Klyne did not follow these procedures.

The prelude to standard 321.1 states:

> The social assessment is the process by which an agency worker gathers information about the child, the family and the circumstances. It is a disciplined process which includes the thoughtful integration of facts and observations.
>
> The purpose of the social assessment is to determine why abuse or neglect has occurred and to identify the areas in which treatment can help. The end result is a summary or assessment of the family's abuse and/or neglect related problems, the internal strengths they can draw upon to resolve these problems, and the type of help they will need to do so.

Standard 321.1 states:

> Although the specific information needed depends on the circumstances of each case, by the end of the social assessment the following general types of information assembled include:
>
> - Factual information on the family - names, ages, birth dates, occupations, addresses.
> - A brief summary of the family's contact with other agencies as part of the investigation.
> - The family's perceptions of the incidence of abuse and/or neglect, the worker's perceptions, and notations of any discrepancies between the two.
> - Strengths and limitations in the family.
> - Ways in which the family interacts.
> - Significant historical data about the parents upbringing which describe events that formed their ideas of child rearing, parent/child relations, appropriate behaviour for children.
> - A listing of the family's needs which should be met to assure the safety and health of the child.

Standard 321.3 states:

> The social assessment is stated in writing in the file WITHIN 30 DAYS of the initial intake and is revised as necessary as new information becomes available. (emphasis in Manual)

Klyne did not prepare a social assessment as required. Finlay testified that it was Klyne's responsibility to prepare one. As her supervisor, Finlay failed in his responsibility to ensure a social assessment was prepared by Klyne.

Standard 322.1 states that a service plan is to be developed and stated in writing in the file "WITHIN ONE MONTH" of the initial referral. (emphasis in Manual)

Finlay described a service plan as a document which records the issues and elements of a particular case and the development of a plan by which the agency will address the issues of the case.

Standard 322.2 of the Manual provides:

> A service plan is reviewed, revised and changed as needed to meet the case circumstances, but minimally EVERY THREE MONTHS the worker and supervisor will review the service plan and record the results in the file. (emphasis in Manual)

Klyne did not prepare a service plan and Finlay did not ensure one was in place.

Section 323 of the Manual provides:

> In the implementation process the child protection worker provides for or arranges for the appropriate service on behalf of the client being served. There are two central functions in the implementation process:
> - **Function of direction** - This is a motivating function in which the worker maintains a supportive involvement with the client and the service provider throughout the total process.
> - **Function of coordinating** - This involves monitoring the case to make sure all services are being provided to meet the needs of the client, the provider, and the agency.
>
> STANDARDS
>
> 323.1 SERVICE COORDINATOR
>
> The agency is responsible for involving and coordinating other services and community resources necessary to improve family functioning so that the family receives service in an integrated manner.
>
> 323.2 SERVICES PROVIDED BY COLLATERALS

Where another professional or agency is providing additional services the agency determines:

- which professional/agency is assuming the additional treatment role and the extent of that professional's/agency's responsibility;
- the treatment plan and ensures the professional/agency has a clear agreement with the family for service;
- whether the other professional/agency will obtain and provide information regarding incidents or suspicions of further abuse or neglect, withdrawal or avoidance by family or lack of access to the child; and
- all of the above are confirmed in writing. (emphasis added)

323.3 REGULAR CONTACT WITH COLLATERAL

The agency ensures regular contact with the other agencies which are providing the major services at a minimum of every two months and documents the results of that contact in the file. (emphasis added)

Equally important is the Case Monitoring Standard which is found at Section 324 of the Manual. It provides:

Case monitoring is a process through which the client's progress towards achieving goals is evaluated to ensure that services are being offered and continue to be effective and appropriate, or that they are altered if they are not.

STANDARDS

324.1 AGENCY CASE MONITORING

An agency has written policies and procedures designed to:

- identify problems being encountered in the treatment process;
- identify changes that need to be made in the original treatment plan to deal with the problems;
- identify remaining problems and to determine if these problems are coming to resolution;
- revise the service plan to account for new or as yet unresolved family problems as well as problems that have been resolved through the treatment process;
- identify changes that were made in the original treatment plan and to assess how effective they are in helping the family reach treatment goals; and
- monitor all sides of the service agreements to make sure all service providers are fulfilling their responsibilities.

324.2 MONITORING BY COLLATERAL SERVICES

Arrangements made for monitoring a suspected case of child abuse or neglect by other professionals or services are confirmed in writing by the agency and recorded on the file. Letters to collateral services include a request to be advised if the family moves or terminates services. (emphasis added)

324.3 AGENCY MANDATE MAINTAINED

The agency maintains its legal mandate to ensure the protection of the child and this responsibility is not delegated to collateral professionals or agencies. (emphasis added)

Finlay advised that there were no service agreements on file to cover services to be provided to Sinclair by collateral agencies. Finlay further advised that service agreements were not usually prepared. He was uncertain if there was a standard that covered collateral agencies.

Finlay further testified that he had told Klyne that she had to prepare yearly reports for the file, as required by the CFS (NW) standard. Finlay admitted that he knew Klyne had not prepared the yearly reports.

From the foregoing standards, it is clear that:

(1) CFS (NW) was responsible for involving and coordinating community services necessary to improve family functioning.

(2) Where a collateral resource was used to provide services to the family, CFS (NW) had the responsibility to determine whether the collateral agency would obtain and provide information regarding incidents or suspicions of further abuse or neglect and withdrawal or avoidance by family. This was to be obtained in writing.

(3) CFS (NW) was to maintain regular contact with the collateral agency providing the service at a minimum of every two months. The results of this contact were to be documented in the file.

(4) CFS (NW) was responsible for monitoring the services being provided and the progress of the family in resolving the problems of concern.

(5) CFS (NW) was responsible for confirming in writing any arrangements made with a collateral agency for monitoring a suspected case of child abuse or neglect. CFS (NW) was also to request in writing that it be advised if the family moves or terminates services.

(6) CFS (NW) was to ensure the protection of the child(ren) and this responsibility was not to be delegated to collateral service providers.

These standards are necessary and state the very minimal essentials for adequate child protection and the resolution of problems underlying dysfunctional families who put a child's welfare at risk.

The evidence raised the issue of who referred Sinclair to New Directions. Sinclair said she referred herself. Klyne testified she referred Sinclair to New Directions. The evidence is clear that Klyne did not refer Sinclair to any of the other collateral agencies with whom Sinclair had contact. In my opinion, common sense dictates that it matters not who made the referral to the collateral agency. CFS (NW) had the legal mandate to protect Sinclair's children and Klyne was the caseworker for Sinclair and her children. CFS (Central) had the legal mandate to protect Sophia. The legal mandate was not to be delegated.

By her own admission, Klyne delegated her mandate to the collateral resources. She abandoned the very essence of her duty and responsibility as a child care worker employed by CFS.

Finlay testified that he did a performance review of Klyne on an average of about once every 18 months. He stated that Klyne worked very well with individual clients and that she had a great deal of strength in terms of her assessment of individual situations. Finlay opined that Klyne worked well as a team member in that she was prepared to help out others and to support team members.

Finlay described Klyne's shortcomings as her inadequate note recording. He stated he had discussed this issue with her on numerous occasions. Despite these discussions and notwithstanding some remedial measures taken by him, such as the provision of a dictaphone and the suggestion she use it, Klyne's lack of proper note recording continued and remained a problem throughout.

Finlay further testified that he recalled reviewing Klyne's running notes prior to November 27, 1995, but did not recall reviewing Klyne's notes during any performance reviews. He stated that Klyne's notes were definitely not detailed enough and did not meet the program standard in relation to note recording.

Finlay testified that note taking is extremely important in order to retain adequate and accurate information. The history of a given file would be available for review to deal with numerous issues such as preparing social histories for collateral agencies, or for transfer of the file to a different mandated agency, or for court purposes (evidence).

The above-noted standards requiring documentation in writing and confirmation by letter serve two purposes:

1. They deal with the important issue of confidentiality; and

2. They ensure a proper and adequate record.

Klyne and Finlay had a limited understanding of the concept of confidentiality. While they understood that CFS was to keep its clients'

information confidential unless they had the clients' permission to divulge it (except in cases of child abuse), they had an unrealistic and mistaken expectation that the collateral agencies would share **all** information with CFS (NW). Of course, this did not occur because the collateral agencies treated the information they received confidentially (except where required by statute to report the information to CFS). This was necessary so that the collateral agency could gain the trust of its client, a necessary relationship in the social work process. Had CFS (NW), and in particular Klyne and Finlay, followed the proper procedures set forth in Standards 323 and 324, CFS (NW) would likely have obtained the necessary information to properly monitor Sinclair, her children and Sophia. CFS (NW) may well have received critical information such as the fact that Sinclair was drinking to relax and was feeling overwhelmed had Klyne and Finlay followed the provincial standards.

Had Klyne followed the standards for note keeping, understood the concept of confidentiality and monitored the situation, there would have been a plethora of information available for all concerned. Information would have been available to Klyne so that she could easily have convinced Oberlin, Humniski and Leonoff not to place Sophia in the Sinclair-Tanner home. The same information would have been available to Finlay for the same purpose. Because of inadequate note taking and because of inadequate monitoring, Sophia was placed in the Sinclair-Tanner home.

The mandate of CFS (NW) was to protect children. Even with the limited information Klyne and Finlay possessed, common sense should have dictated to both of them that the situation and circumstances had to be monitored and assistance provided.

In addition to the foregoing, Klyne did not provide essential information to the collateral agencies, even when requested to do so. Other information, which Klyne should have possessed, through proper monitoring and proper note recording, she was unable to share with the collateral agencies or with CFS counsel.

Klyne and Finlay ought to have known that Sinclair still had outstanding issues to deal with when she left NWTC with Wade, Jr. They failed to properly monitor her situation.

Klyne and Finlay failed to act when Joshua and Harley came into the Sinclair-Tanner home. Even without earlier knowledge of Carriere's opinion, common sense should have dictated the intervention of CFS (NW). Klyne and Finlay failed to act responsibly, professionally and in accordance with their legal mandate.

The Evidence of Ron Oberlin, CFS (Central) Case Worker

Ron Oberlin (Oberlin) was employed by CFS (Central) as a caseworker from February 3, 1993, to May 17, 1996.

Sophia was apprehended at birth, April 24, 1995, by CFS (Central). Oberlin accompanied another caseworker, Karen Petras, to apprehend Sophia. The following day, CFS (Central) filed an application in the Court of Queen's Bench (Family Division) requesting a finding that Sophia was in need of protection and an order of guardianship in favour of CFS (Central). It is to be noted that, almost from the beginning of the child protection proceedings, CFS (Central) sought a permanent order of guardianship.

On May 3, 1995, Cynthia and Sophia Schmidt's file was transferred to Oberlin from Karen Petras.

Schmidt entered Villa Rosa on May 31, 1995, and Sophia was placed with her by CFS (Central). The purpose of Schmidt entering Villa Rosa with Sophia was to permit Schmidt to learn necessary parenting skills under the tutelage of the staff at Villa Rosa. At the beginning of August, 1995, because Schmidt was doing very poorly in the program, Villa Rosa contacted CFS (Central) and requested that Sophia be removed from Schmidt. CFS (Central) complied with this request and Schmidt left Villa Rosa on August 5, 1995.

Oberlin learned from the Villa Rosa staff that, while Schmidt had learned a few parenting skills, her ability to provide consistent, long-term care to Sophia was in question.

The Evidence of Heather Leonoff, Counsel to CFS and the Court Proceedings

Heather Leonoff (Leonoff), a lawyer, was called to the Bar in 1979. Her experience in child welfare cases dates back to 1981, when she was counsel to the Churchill Health Centre. In 1985, she became counsel to Northwest Child and Family Services. In 1991, she became counsel to Child and Family Services.

Leonoff became involved in the Sophia protection file shortly before July 13, 1995, the date of the first pre-trial conference.

Leonoff testified that there were general discussions, from July to November, 1995, about the possibility of Tanner being "a legitimate option in this case". (Evidence: Vol. 36, p. 29, ll. 32-33)

In this regard, Tanner initially denied paternity. Eventually, blood tests revealed that Tanner was the biological father of Sophia. This was reflected in Leonoff's Pre-Trial Disposition Summary of September 14, 1995, (Exhibit 64, p. 109) wherein Leonoff states:

- Tanner is father
- Father supports return to Mother
- Father to be seen by S.W. and a brief done concerning his status

The September 14, 1995, Pre-Trial Conference Memorandum of Guertin-Riley, J., (Exhibit 64, p. 110) states:

> Matters agreed to: 1. Father is admitting paternity and there will be a declaration of paternity. 2. Agency will conduct an assessment of Mr. Tanner prior to the trial. (emphasis added)

In or around the time of the September 14, 1995, pre-trial conference, Tanner advised that he wanted to bring Sophia into the Sinclair-Tanner home. Sinclair told Robertson that she was supportive of Tanner's decision.

On October 3, 1995, Kevin Cadloff, counsel for Tanner wrote to Leonoff asking when the Agency wouldl commence its assessment of Tanner. (Exhibit 64, p. 40)

Oberlin testified that he received a written report and notes from Villa Rosa in October, 1995. In reviewing the material he received, Oberlin read a note which stated that Schmidt reported that the "baby's father called and threatened to kill baby". Oberlin testified that he chose to disregard the note because he believed it not to be an imminent threat, as Sophia was no longer living at Villa Rosa, but with her foster parents. Oberlin added, for the most part, it was difficult for him to determine when Schmidt was telling the truth.

Oberlin did not bring the note to the attention of his then supervisor, Ken Kroeker. Nor did Oberlin discuss the reported threat with Rob Humniski, who became Oberlin's supervisor on October 30, 1995. Oberlin also did not raise this issue with Tanner.

Oberlin also read a Villa Rosa note dated June 6, 1995, which stated: "Cynthia restraining orders re Allan Crawford and Wade Tanner". Oberlin never obtained a copy of the "restraining order" against Tanner and as of the date of his testimony at this Inquest, Oberlin had not read the order, dated June 21, 1995. The order provided that Tanner was enjoined and restrained from entering any premises where Schmidt or Sophia resided.

Oberlin testified that he had discussed the restraining order with Schmidt but he could not recall his conversation with her.

Schmidt's former worker, Karen Petras, made a note of her April 11, 1995, conversation with Schmidt. During this conversation, Schmidt reportedly told

Petras that she had obtained a restraining order against Tanner for "the agency's sake".

A further pre-trial conference was held before Guertin-Riley, J. on October 16, 1995. Oberlin attended the pre-trial conference. In her Pre-Trial Disposition Summary (Exhibit 64, p. 112), Leonoff noted the following:

> M(other) will not cooperate with Pysch Assessment - is having assessment done by Susan Tennenhouse. Assessment on F(ather)?

In her Pre-Trial Conference Memorandum (Exhibit 64, pp. 113-114), Guertin-Riley, J. notes:

> Matters agreed to: 1) Mother's assessment, which was done privately, will be available three weeks prior to trial. 2) Agency is considering court-ordered assessment of mother.

Oberlin made a note of the pre-trial conference dated October 16, 1995. This was the first note made by Oberlin in the Schmidt file. In his note (Exhibit 63, p. 90), Oberlin wrote:

> Attended pre-trial today ---. The blood tests proved that Wade Tanner is the father of Sophia, and he is now applying for guardianship <u>if Cynthia's application is denied. The Agency must study Mr. Tanner's situation for the court</u>. Susan Tennenhouse will be performing an assessment upon Mr. Tanner. (emphasis added)

As will be noted later, CFS (Central) did very little to "study Mr. Tanner's situation for the court"

<u>The Home Study Report of Susan Tennenhouse</u>

In preparation for the trial, Mr. Roxroy West, counsel for Cynthia Schmidt, retained the services of Ms Susan Tennenhouse, a social worker, to prepare a Home Assessment Report concerning the ability of Cynthia Schmidt to parent Sophia. Shortly after, Kevin Cadloff retained Ms Tennenhouse to include his client in the Home Assessment Report.

On October 17, 1995, Schmidt signed an authorization permitting CFS to forward the contents of her file to Ms Tennenhouse.

Ms Tennenhouse testified that she was <u>not</u> retained to do a Home Assessment concerning Sinclair. Ms Tennenhouse testified that <u>the object of the study was to establish if either Tanner or Schmidt had the ability to parent Sophia</u>.

The Home Assessment Report, Exhibit 46, begins as follows:

> I have been requested to provide a home study assessment on both Cynthia Schmidt and Wade Tanner. The purpose of the assessment is to establish if either party has the ability to be a parent to Sophia Lynn Schmidt . . . . In doing this assessment, the best interests of the child should be first and foremost. (emphasis added)

In preparation for the Home Assessment, Ms Tennenhouse interviewed Tanner on October 25 and 30, 1995. At page 2 of her Assessment, Ms Tennenhouse states:

> On both occasions Mr. Tanner's common-law wife, Donna (sic) Jean Sinclair was present. On both occasions I was able to observe them with her young children.

It is clear from the foregoing that Ms Tennenhouse knew that if Tanner was successful in obtaining guardianship of Sophia, Sophia would be moving into a home where Sinclair's three young children were also residing. It is also clear from the Assessment that Ms Tennenhouse did not see Tanner or Sinclair interact with Sophia nor did Ms Tennenhouse observe Tanner and Sinclair interact with the four young children together.

In her Assessment, Ms Tennenhouse describes Tanner as coming from a "very dysfunctional" background.

Further in her report, Ms Tennenhouse states: "Mr. Tanner and Ms. Sinclair have a long term relationship". She then continues:

> The couple dated for one year after they both left abusive relationships. The couple entered into a common-law relationship in July, 1995.

In my view of the evidence, the relationship between Tanner and Sinclair cannot be properly described as "long term". It is to be recalled that Sinclair resided at NWTC between September 30, 1994, and the end of May, 1995. Tanner's access to Sinclair was restricted by NWTC staff.

Ms Tennenhouse stated that she had numerous concerns. The first five concerns related to Ms Schmidt and her inability to parent Sophia or any other child. The sixth concern Ms Tennenhouse related to Sinclair and Tanner. She states:

> With respect to Mr. Tanner and Ms. Schmidt (sic), my primary concern is that a fourth child could be overwhelming to them. Ms. Sinclair has been successful in using Agencies to her benefit and this could be beneficial to her with a fourth child. (emphasis added)

Having regard to Sinclair's past history, this statement should have been of great concern to CFS.

In her evidence, Ms Tennenhouse changed the emphasis of her concern. She testified as follows:

> I said that there would be -- there would most likely be problems, that she would become overwhelmed with the fourth child added, and would need help.
>
> ---
>
> I said that they would, they would most likely become overwhelmed with a fourth child added and that's why they would need the help.
>
> ---
>
> ... and I also said in my concerns is that a fourth child could be very overwhelming .... (emphasis added)

In my view, there is a distinct difference in the language used in the Home Assessment Report and Ms Tennenhouse's evidence. Unfortunately, Ms Tennenhouse did not convey the magnitude of her concern in her Home Study Assessment. All the parties relied on Ms Tennenhouse's Home Assessment Report.

Ms Tennenhouse made the following recommendation:

> That Mr. Tanner and Ms. Sinclair be given an opportunity to parent Sophia. The couple are agreeable to any help that could be provided to them. They appear to be committed to the child and want her to become a member of their family.
>
> In conclusion, this writer believes that both parents clearly love Sophia. It is also important to note that although a parent loves their children it does not mean that they have the ability to parent. I would trust that both parties consider the best interests of Sophia. (emphasis added)

In preparing her Home Assessment Report, Ms Tennenhouse relied exclusively on the information she received from Tanner and Sinclair and her observations of them on her two visits in October, 1995. The interviews on these two occasions lasted 1½-2 hours. Ms Tennenhouse did not attempt to corroborate what she was told by Sinclair and Tanner.

Although Ms Tennenhouse spoke to Oberlin in preparation for her Report, she received no information from him concerning Tanner and Sinclair. In fact, she was told by Oberlin that CFS (Central) would be relying on her Report regarding Tanner and Sinclair's ability to parent Sophia.

Ms Tennenhouse did not receive any written information concerning Sinclair. She did not speak to Klyne or anyone at CFS (NW). She did not speak to Robertson or Carriere or anyone else from the collateral agencies who had contact with Sinclair.

It is my conclusion that Tennenhouse knew nothing about Sinclair and Tanner except what they chose to tell her. In my opinion, the Home Assessment Report was totally inadequate and did not serve "the best interests" of Sophia.

Leonoff was asked about the Tennenhouse Report. She testified as follows:

Q. You told us earlier that in your view, in your opinion, after reading the home study you thought it was lacking some detail.

A. Yes.

Q. What detail was it lacking?

A. Oh, there's lots of areas where I would have, I would have thought that some more information could have been obtained. Certainly a review normally would include much more detail from the person that you're talking about as to their criminal record, much more in depth discussion of what the offences were, when they occurred, who the victims were, that kind of information. I would have expected when -- that Ms. Klyne would have been a major source of referral for Ms. Tennenhouse and that her -- she would have been extensively canvassed which I don't think was, was in depth.

So those were the areas that I was, was hoping the Agency would supplement. Certainly the piece about the criminal record can be supplemented by Mr. Oberlin having a discussion with the father. And the piece from Ms. Klyne, well, we were attempting to supplement that by sending the report to her and getting her input.

- - -

A. Well, that's between you and Ms. Tennenhouse. I mean, there was problems with this report. I, I wasn't comfortable that it was, that it was a perfect report. Neither was the Agency representative. We sat at a pre-trial with a judge who said, Where are we going with this, ladies and gentlemen? And the answer was, where we're going is back to Ms. Klyne.

Q. I've had an opportunity to take it up with Ms. Tennenhouse. I'd like your opinion as to whether or not you feel the home study contemplated and assessed Sinclair.

A. I've already answered it to the best of my ability. It needed to be supplemented which is why we sent it to Ms. Klyne. <u>It wasn't sufficient for anybody's purposes.</u> Anybody meaning Mr. Oberlin who was ultimately in charge. And he wanted additional input. And Ms. Klyne was the obvious person to get additional input from. (Evidence: Vol. 35, p. 93, l. 5 - p. 95, l. 18) (emphasis added)

Although Ms Tennenhouse was served with a subpoena for the ensuing court proceedings, no one from CFS spoke to her after she distributed her Report. Nor did Leonoff speak to her prior to the court proceedings. Ms Tennenhouse was not called to testify at the court hearing.

On November 1, 1995, Cadloff wrote a letter to Leonoff (Exhibit 64, p. 52). In his letter Cadloff states:

> We enclose a copy of a home study report prepared by Susan Tennenhouse, dated November 1, 1995. In view of the findings we must ask whether or not your agency would be prepared to place the child in the care of our client.

> Additionally, we have recently been contacted by Ms Schmidt directly who informed us that she was ready to grant custody of the child to Mr. Tanner. We are attempting to confirm this position with Mr. West. It is therefore becoming imperative that your agency complete the assessment of Mr. Tanner at the earliest possible date. Would you please advise us as to your position in this regard. (emphasis added)

It is obvious from Cadloff's letter that he was expecting that CFS would do an assessment of Tanner; something in addition to the Tennenhouse Report.

Oberlin testified that when he first learned that Tanner had indicated he wanted custody of Sophia, it was his impression that Tanner was coming forward to take responsibility for Sophia. Oberlin testified that he made numerous attempts to obtain as much information as possible about Tanner, in addition to personally meeting with him.

On October 24, 1995, Oberlin learned that Tanner "shows up as being active with Mandisi Titi at Northwest, with another client, Nellie Berens. Writer left message on Mandisi's machine, to see if it is the same Wade Tanner." (Exhibit 63, p. 91)

On October 25, 1995, Oberlin made the following note:

> Rec'd message from Mandisi that he has not had any contact with Wade Tanner recently, and that Wade has been out of the picture for at least two years. He said that when Wade was with Norma (sic), he provided more care for the children than she did. Mandisi would not state whether the care was better, though. (Exhibit 63, p. 92)

The reference to "Norma" should have been a reference to Nellie Berens.

A further note made by Oberlin on the same date states:

> T/C from Wade Tanner. He stated he has been living with Norma Jean Sinclair (21) for over one year. He stated that she has three children, although he is not the biological father of any of them. He stated that he was previously with Nellie Berens for almost two years. He stated that he is the biological father of one of Nellie Berens' children (Ryan Berens). --- He stated he currently is not involved with Child and Family Services, except for the Cynthia Schmidt matter. ---. With respect to a criminal record, Wade stated that he has a very extensive record which includes such charges as break and enter and assaults. He stated that assaults were domestic assaults with Nellie Berens, whom he described as "crazy", but that he has not had any type of criminal charges against him since he started seeing Norma Jean Sinclair. --- .

The disclosure by Tanner that he had been convicted of "domestic assaults" and had a "very extensive" criminal record made it imperative for Oberlin to obtain Tanner's complete criminal record. Oberlin could have obtained Tanner's complete criminal by requesting Tanner to sign a consent form authorizing the police to release his criminal record to Oberlin. Oberlin made no

such request and consequently, Oberlin did not have access to Tanner's complete criminal record prior to November 27, 1995.

On November 1, 1995, Oberlin made a 1½ hour visit to the Sinclair-Tanner home. Sinclair's three children were present. Tanner again discussed his criminal record with Oberlin. According to Oberlin's note of the visit (Exhibit 63, p. 95), Tanner gave him "verbal permission" to review his criminal record. Oberlin knew that "verbal permission" would not give him access to Tanner's complete criminal record.

Oberlin's note of the visit further records that Tanner "has been with Norma Jean for the past one-and-a-half years" and that "Norma Jean has four children, none of whom are the biological children of Wade". Oberlin recorded the names and birth dates of the four children, the youngest being "Wade Hamilton Tanner, February 28, 1995".

Oberlin's note further records that Tanner told him that "Ursula Klyne will say that it would be positive for Sophia to be placed" in the Sinclair-Tanner home. Oberlin spoke to Klyne on several occasions prior to November 27, 1995. Klyne never corroborated Tanner's statement. In fact, Klyne expressed "concerns" concerning the placement of Sophia in the Sinclair-Tanner home.

The notes go on to state that Sinclair advised him that "she spent a great deal of time in the Native Women's Transition Centre" and that "all of her children have been returned" to her, except Allen.

Oberlin also noted:

> The home was very clean and well furnished, and the children were very well-behaved. Both Wade and Norma Jean said that their relationship has been positive, and that both of their lives have changed considerably since they met one another.

Oberlin testified there were a lot of different issues with regard to Tanner, both positive and negative. If Oberlin had acted responsibly, he would have sought to corroborate the information Tanner provided to him. For the most part, Oberlin did not seek to corroborate Tanner's statements.

Oberlin did not speak to anyone at NWTC and specifically, he did not speak to Carriere. If he had, he would have learned that Tanner's statement that he had been "living with Norma Jean Sinclair for over one year" was incorrect as Sinclair had lived at NWTC from November 1994, to the end of May, 1995. Oberlin also would have learned of Carriere's opinion that, in May 1995, Sinclair was not ready to parent Joshua and Harley. Oberlin would have learned that Sinclair agreed with Carriere's opinion.

Oberlin did not specifically inquire as to the circumstances surrounding the "return" of Joshua and Harley to Sinclair.

Oberlin should have been suspicious concerning Tanner's denial of paternity of Wade, Jr. Sinclair had earlier claimed Tanner was the biological father of Wade, Jr. The child was named "Wade Hamilton Tanner". Tanner was associating with Sinclair at the time she conceived Wade, Jr. Further investigation was warranted. Instead, Oberlin accepted Tanner's denial of paternity.

In any event, Oberlin knew that Tanner had been involved with Schmidt, Berens and Sinclair, all of whom had open files with CFS, all of whom had one or more of their children apprehended. Oberlin was asked the following questions and gave the following answer:

> Q. What, if anything, did that tell you about Wade Tanner that he was associated with three ladies and all three ladies had child protection files that had been open?
>
> A. Well, it tells me that this is an individual who would certainly warrant some investigation by the agency should he be actually declared as the biological father, and at that point he was. And so, therefore, we initiated the process of seeking information on him. (Evidence: Vol. 32, p. 4, ll. 19-32)

Oberlin also knew, from information provided to him by Schmidt, that Tanner was abusive to Schmidt, that she was afraid of him, that Schmidt would rather have Sophia in the agency's care than in Tanner's care and that Tanner had threatened to kill Sophia. As well, Oberlin knew that Schmidt had obtained a restraining order against Tanner.

In my opinion, Oberlin discounted the information he received from Schmidt. After hearing Schmidt's testimony and reviewing other relevant evidence, I cannot fault Oberlin for discounting the information Schmidt provided to him. However, it appears that Oberlin totally disregarded the information provided to him by Schmidt, and this he ought not to have done, especially the information regarding the restraining order.

On November 2, 1995, Oberlin spoke to Finlay who advised him that Klyne was away and that he knew very little about the case. Finlay advised Oberlin to speak to Klyne when she returned.

On November 2, 1995, Sinclair and Tanner attended a one hour visit with Sophia at the CFS (Central) office. Sinclair brought Wade, Jr. along. Oberlin "loosely supervised" the visit and said it appeared to go very well.

On November 6, 1995, a further pre-trial conference was held before Guertin-Riley, J. Her Memorandum (Exhibit 64, pp. 115-116), notes:

> Matters agreed to: The private assessment prepared by Susan Tennenhouse of both parents indicates that the father is to be preferred as custodian. However, this report was not receiving (sic) in time for any of the lawyers to have properly read it. The Agency wishes to determine if Ms Klein (sic), currently involved as a worker with the father's common-law, would support Ms Tennenhouse's recommendation. The Agency obtained a consent order for a psychological assessment of the mother; whether or not this will take place will await the position of Ms Klein (sic) and the response of the mother's lawyer to the assessment. If the Agency is satisfied that the father should be the custodian, it will withdraw leaving the parents to argue custody as between them. The lawyers hope to resolve this matter without the necessity of using the trial dates set for November 27th. (emphasis added)

Oberlin made a note of his attendance at the November 6, 1995, pre-trial conference (Exhibit 63, pp. 95-96). In part, the note reads:

> Writer attended pre-trial today. The homestudies were presented and it was confirmed that Wade's was positive and Cynthia's was negative. Cynthia stated she was contesting the matter, if Wade was going to be considered as an option. The lawyers agreed to meet before the trial to work out the matter before the trial dates. Heather Leonoff stated that this Agency would place with Wade and withdraw from the proceedings if Ursula Klyne feels its appropriate. (emphasis added)

The above reported statement of Leonoff is surprising for two reasons. First, Leonoff's statement regarding the placement of Sophia was made before Oberlin had spoken to Klyne, before Tanner's criminal record had been obtained from the police and before Tanner's second and third supervised visits with Sophia had taken place. Also, Leonoff's advice was given at a time when Oberlin was of the view that he did not have sufficient information concerning Sinclair and Tanner. Oberlin testified that his contact with Sinclair and Tanner was not sufficient to assess their suitability to parent Sophia. I conclude from the foregoing that Leonoff made the decision to place Sophia with Tanner, if Klyne approved, based solely on the Tennenhouse Report. Second, Leonoff left the ultimate decision of Sophia's placement with Klyne. If Klyne thought it appropriate to place Sophia with Tanner, Sophia would be placed with Tanner. However, the converse was also true: if Klyne thought it inappropriate to place Sophia with Tanner, Sophia would not be placed with Tanner and CFS (Central) would proceed with its guardianship application.

Oberlin was asked about his reaction to Leonoff's advice:

> Q. Feel free to disagree with me. Can we characterize this as a tentative plan to place baby Sophia with Wade provided that Ursula Klyne feels it's appropriate?
>
> A. For that day, yes.
>
> Q. Yeah. So -- but here's my question. That tentative plan, did that come somewhat as a surprise to you that you learned this on November the 6th?

A. No.

Q. Why not?

A. For a few different reasons, the first of all being that I knew the, the home, the home assessment performed by Ms. Tennenhouse was positive Mr. Tanner and negative of Ms. Schmidt, that being the first. The second matter being that my, in my discussion with Ursula Klyne she certainly did not indicate a strong position either direction with regard to Mr. Tanner and the placement in the Tanner/Sinclair home. And thirdly, Ms. Leonoff as an agency lawyer would understand what some of the -- I guess would have an opinion about what would be the most appropriate course of action, although she received direction -- like, I guess, she formulated that as a result of ongoing direction from the agency through, through discussions. I guess at that point they would have been with me.

Q. Did you have enough information yourself on Cynthia Schmidt -- well, not Cynthia Schmidt but Wade Tanner and Norma Jean Sinclair to decide whether or not that tentative plan would be appropriate in your mind?

A. As of?

Q. As of November the 6th when you learned this information?

A. I'm sorry, can you repeat the question, please?

A. Did you feel that you had sufficient information from Wade Tanner and Norma Jean Sinclair on November the 6th, 1995 that you could support his tentative plan as it's outlined here on your note of -- on page 95 from November the 6th?

A. No, actually, and that's why I sought further information from the Northwest area. (Evidence: Vol. 32, p. 35, l. 8-p. 36, l. 11)

One of the reasons Oberlin provides for not being "surprised" at Leonoff's "tentative plan" was because of his "discussion with Ursula Klyne". Oberlin had not spoken to Klyne before Leonoff presented the tentative plan. Another reason advanced by Oberlin was that through "discussions" and "directions" from him, Leonoff "would have an opinion about what would be the most appropriate course of action". Oberlin could not have provided much information to Leonoff concerning Tanner and Sinclair, because he knew very little about them. I do not believe Oberlin directed Leonoff to put forward the tentative plan, if that is what Oberlin was saying.

On November 8, 1995, Tanner and Sinclair attended the second one hour supervised visit with Sophia at the office of CFS (Central).

On November 8, 1995, Oberlin received information concerning Tanner's criminal record. The information Oberlin received indicated Tanner had been convicted of failing to comply with a recognizance, break and enter, assault, theft and utter threats. The information Oberlin received was not Tanner's complete

criminal record and Oberlin knew this. The information Oberlin received did not contain details of the circumstances of the offences nor the penalties imposed.

On November 14, 1995, Oberlin received a message from Leonoff in which she asked whether Sophia would be placed at the Sinclair-Tanner home. On the same day, Oberlin spoke to Finlay who repeated that he was not completely familiar with the case but that he might have some concerns with placing Sophia with Sinclair and Tanner because Sinclair's history was not completely positive.

Oberlin first spoke to Klyne on November 17, 1995, concerning the placement of Sophia. Oberlin made notes of this conversation (Exhibit 63, p. 97):

> ---, the writer spoke with Ursula Klyne, who stated that she had some concerns with the home situation of Wade and Norma Jean. She stated that Eleanor Robinson (sic), Norma's support worker from CHOW, indicated that Wade had been locking the children in their rooms. She said that each time Wade has wanted to leave Norma, that Norma had threatened suicide. Apparently, there were previous concerns with Norma in that she would abuse alcohol and drugs, and also prostitute. Also, the last time Norma was under the influence of drugs or alcohol, she hurt Harley. She apparently threw him against the wall and bruised him; moreover, she made disparaging remarks against Harley at that time ("If I could, I would kill you"). Ursula said that she feels some discomfort over the child being placed with Wade, but that she would like to read the home study and think about it over the weekend. She said she will have a response ready by Monday afternoon. The writer reminded her of the urgency of the matter.

Oberlin was asked about his telephone conversation with Klyne and he provided the following testimony:

> Q. What did Ursula tell you during that telephone conversation with regard to the concerns that she had?
>
> A. What she told me was relayed in the next several lines of that same notation.
>
> Q. Sure. So let me just read it further into the record:
>
> > "She stated that Eleanor Robinson, Norma's support worker from CHOW, indicated that Wade had been locking the children in their rooms. She said that each time Wade wanted to leave Norma, that Norma has threatened suicide. Apparently, there were previous concerns with Norma in that she would abuse alcohol and drugs, and also prostitute."
>
> There is a lot of information there in those two lines --
>
> A. Yes, there certainly is.
>
> Q. -- few lines; would you not agree?
>
> A. Yes, there is.

Q. Why did that information cause a concern for you?

A. It, it was noted as a -- I guess when I say concern, it was noted as a concern given that we -- obviously we required more information on this family.

Q. Did you confer with Eleanor Robertson of CHOW?

A. When?

Q. At any time prior to November 27, '95?

A. I don't believe I did regarding this matter, no.

Q. And why not?

A. I, I chose to retrieve my information from the mandated agency with the family who was working with Children's Home --

Q. Sure.

A. -- in addition to a number of other agencies.

Q. When you learned this information that we've just covered --

A. Um-hum.

Q. -- did you request written information on the file from Norma -- or rather from Ursula Klyne?

A. In terms of requesting actual written information I'm not certain if I did. I certainly requested their opinion whether it was an appropriate placement for the child given that they knew the situation best.

Q. Locking children in the room, threatening suicide, abusing alcohol and drugs, street prostituting, isn't that information that you'd want to know more about?

A. Yes. Well, these are issues that were apparently a former concern for Ms. Sinclair. I do not know how current this information as, and if it was current I deferred to the other mandated agency to provide information as to whether or not it would be an appropriate placement for a child in that home.

Q. But even if information of this kind was dated wouldn't it have been of importance to you?

A. Oh, very much importance. That's why I've noted it.

Q. But if it was of importance to you why not ask for the written material that Ursula Klyne may have had with regards to this?

A. I'm, I'm trying to recall what the reasoning -- what the rational was. I, I don't know if it's appropriate for me to actually take the whole written file and review it myself. But Ms. Klyne knew the situation much better than I did. She could certainly provide direction to me both in what was written in the file and what may have occurred beyond what's written in the file and she could tell me

whether these concerns were important enough that would it necessarily preclude the placement of the child in that home? As a mandated agency, as a mandated worker, like she had responsibility to provide me with as much information as possible regarding this.

Q. You as a child protection worker --

A. Um-hum.

Q. -- how would it be inappropriate for you to request, receive and review the entire file?

A. I don't know what the protocol is. I guess once again I'm deferring to her because she knew the family much longer than I did. She had long relationship with the family. I chose not to accept the file because I addressed these issues with her. She, like spoke with me on the phone about them and she knew them, that she would keep that in mind during her review of the home study as well, the home assessment.

Q. Did you feel when you had this conversation with Ursula Klyne on November 17th, 1995 that you were getting a clear picture of Norma Jean Sinclair?

A. Perhaps not an entire picture but certainly I had some ideas in terms of what the nature of the involvement of Northwest area was with Ms. Sinclair.

Q. Yeah. You knew that Wade Tanner was employed at Drummond McCall --

A. Yes.

Q. -- right?

A. Yes.

Q. You knew that there was three children in the home --

A. Um-hum.

Q. -- as of November, 1995; is that right?

A. As of November -- yes, that's correct.

Q. Did you not surmise that Norma Jean Sinclair would be the primary care giver to all the children in that home knowing that Wade Tanner was employed?

A. What I understand of Mr. Tanner is that he was not actually employed by Drummond McCall but by an employment agency and that his employment certainly wasn't secure at all. In addition, my understanding was as well that Ms. Sinclair was also involved in day -- some daily programming. So I can probably -- I can feel comfortable stating that she'd be providing more of the care but I did, did not -- I don't think I'd feel comfortable stating that she'd be providing all the care.

Q. So you wouldn't agree with the phrase that she would be the primary care giver?

A. Primary meaning more than half, yes, I would agree with that.

Q. Let's go back to page 97, the middle of that text, November 17th, picking up where I left off:

> "Also, the last time Norma was under the influence of drugs or alcohol, she hurt Harley."

Did you ask -- did you find out who Harley was; who is that to you?

A. I knew by that point that Harley was a child of Norma Jean Sinclair's.

Q. Reading further:

> "She apparently threw him against the wall and bruised him; moreover, she made disparaging remarks against Harley at that time ("If I could, I would kill you")."

That was information that you learned from Ursula Klyne during a telephone conversation of November 17th, 1995?

A. Yes.

Q. Did that raise concerns in your mind about Norma Jean Sinclair's ability to care for children knowing that she had made disparaging remarks and thrown a child against the wall causing it to become bruised?

A. Um-hum. Well, actually as a child protection worker this is a very large concern. Taken in the context of my discussion with Ursula in the, the line previous to that, it says:

> "Apparently, there were previous concerns (in that) Norma ... she would abuse alcohol and drugs, and also prostitute."

I could not ascertain whether this was something that happened before, in her words, "turned her life around", or if it's something that had occurred very recently. My impression was that these were previous concerns. And Norma had indicated to me as well that Harley had been in care for a period of time.

Q. Mr. Oberlin, isn't it fair to say that previous concerns of those kinds for a child protection worker always remain concerns --

A. ho --

Q. -- no matter how dated they might be?

A. Well, yes, they always are concerns and they always are noted on, on the file and people attempt to address those. In my understanding, those issues were being addressed with Ms. Sinclair. This is the nature of my work. Every -- I shouldn't say everybody. Many of my cases are very similar to this, if not much worse. The agency's responsibility is to work with families, to provide child protection services, but also provide advocacy and support in terms of learning appropriate child, child parenting techniques. And my understanding was she was receiving support. These were concerns obviously, yes.

Q. And what did you do about those concerns when you learned about it, specifically about the child abuse on Harley?

A. Requested, I guess, going again asking Ms. Klyne if she felt it would appropriate another child in that situation given these previous concerns.

Q. The note reads further:

"Ursula said that she feels some discomfort over the child ..."

I presume you're referring to baby Sophia.

A. That's correct.

Q.

"... being placed with Wade, but that she would like to read the homestudy and think about it over the weekend. She said that she will have a response ready by Monday afternoon. The writer reminded her of the urgency of the matter."

That's your recollection of that telephone conversation?

A. Yes, I recall that, that whole time quite --

Q. Yeah. Can you provide us with any other information apart from what you have written down here about Ursula having some discomfort over the potential placement of baby Sophia with Wade?

A. My impression at the time was Ms. Klyne did not have a strong opinion in either direction whether or not she would support the placement of the child. When I addressed the issue with her that she would have to speak against the placement of Sophia in the home in court, like to provide evidence to support the agency not -- that she would have to provide evidence to support the agency's position the child should not be placed in Mr. Tanner's home. My impression was that she didn't -- it's only -- that's only my impression, but my impression was she didn't know if she could provide that information in court. And the fact that she still wished to receive the home study and review it, it was clear indication to me that perhaps the concerns weren't as strong currently as they once were.

Q. Had you had previous dealings on other cases or files with Ursula Klyne previous to this conversation you had November 17th, 1995?

A. With relation to this specific file?

Q. No. Any other dealings that you had with Ursula Klyne on other files, other cases.

A. Yeah. As a, as a family service worker with the Redborn (phonetic) unit, no, although I believe I did speak with her and worked very extensively with her after hours in the emergency unit. I believe I may have had contact with her at that point. But only on emergency -- like a one telephone call basis and directing reports in her, her direction.

Q. When you take into account the information you learned, and I can just review it and summarize it just very briefly. Threatening suicide, alcohol abuse,

drug abuse, street prostitution, child abuse. Would it not rather -- could it rather be just a matter of style, the way that Ursula Klyne related the discomfort to you as opposed to indecision?

A. The fact that she accepted the home study and the fact that she supported -- I'm trying to recall if it was one week earlier that she supported the placement and then now she would have some concerns, it was very difficult for me to, to get a strong idea in terms of what we're doing in regard to Mr. Tanner. Central area had virtually no information on him. I made numerous requests to get information, all of which are noted here. She didn't present to me in any regard a strong position with regard to Mr. Tanner and Ms Sinclair.

Q. Little information, not provide a strong position with regards to Wade Tanner on November 17th, 1995 --- is that right?

A. Yes. (Evidence: Vol. 32, p. 40, l. 26 - p. 48, l. 9) (emphasis added)

Issues Raised by Oberlin's Testimony

Oberlin was very equivocal and inconsistent in his testimony whether or not he requested specific information from Klyne concerning Sinclair and Tanner, their ability to parent Sophia and the suitability of placing Sophia in their home. Oberlin did not request written information from Klyne, but testified that Klyne had a responsibility to provide him with as much information as possible. Oberlin testified that he told Klyne that "she would have to speak against the placement of Sophia in the home in court, like to provide evidence to support --- the agency's position the child should not be placed in Tanner's home." Oberlin testified he made "numerous requests to get information". However, nowhere in his note of his November 17, 1995, telephone conversation with Klyne or in his testimony concerning this conversation did Oberlin specifically state that he asked Klyne for information. In fact, he stated "I certainly requested their opinion whether it was an appropriate placement for this child given that they knew the situation best" and "... I deferred to the other mandated agency to provide information as to whether or not it would be an appropriate placement for a child in that home." (emphasis added)

Oberlin referred to the issues raised by Klyne as "former" concerns for Sinclair. Immediately thereafter, he admitted that he did not know how current the concerns were.

Oberlin stated that he did not know if it was appropriate for him to take Sinclair's file and review it himself. For a worker with his experience, he should have known whether it was appropriate to do so. If, in fact, he did not know, he could have turned to his supervisor for advice. Oberlin stated that he did not know the protocol for obtaining Sinclair's file. Yet, as noted in his running notes of October 24, 1995, when he required information from CFS (East) concerning Albert Bushie, he sent a fax to CFS (East) requesting the Albert Bushie case from them. Then Oberlin stated he "chose not to accept Sinclair's file because he addressed those issue" with Klyne in their telephone conversation of

November 17, 1995. This latter comment is inconsistent with his earlier testimony that information he received from Klyne during their November 17, 1995, telephone conversation caused him to conclude "we -- obviously we required more information on this family". (emphasis added)

Oberlin's testimony that "the fact that she still wished to receive the home study and review it, it was a clear indication to me that perhaps the concerns weren't as strong currently as they once were" is irrational.

While Klyne's comments that "she has some concerns" and that "she feels some discomfort" with Sophia being placed with Tanner may not have left a strong impression with Oberlin, the fact that Klyne wished to review the home study report before she offered a firm opinion on the placement of Sophia is sound, professional and common sense social work practice. No other conclusion, particularly the one Oberlin drew, should have been reached. In addition, while Klyne may not have left a strong impression with Oberlin, it should have been clear to Oberlin that Klyne's initial "opinion" was not favourable to Sophia being placed in the Sinclair-Tanner home.

As previously noted, Oberlin was asked "could it rather be just a matter of style, the way that Ursula Klyne related the discomfort to you as opposed to indecision". Oberlin's reply that "she accepted the home study and the fact that she supported -- I'm trying to recall if it was one week earlier that she supported the placement and then now she would have some concerns ..." shows that Oberlin was confused. Oberlin's first conversation with Klyne concerning this case was on November 17, 1995. Klyne had not yet received a copy of the home study report and had not read it. As of the time of their telephone conversation, Klyne could not and did not accept the home study report. As well, in view of the fact that their first contact was November 17, 1995, Klyne could not and did not, "earlier", support the placement of Sophia in the Sinclair-Tanner home.

I also found Oberlin's statement that "I made numerous requests to get information" to be an exaggeration of the facts. Oberlin spoke to Finlay twice, prior to November 17, 1995. In my opinion, on November 17, 1995, Oberlin was no longer looking to Klyne for facts, he was looking for her opinion concerning the placement of Sophia.

As previously noted, Oberlin was asked whether the fact that Tanner wanted to leave Sinclair was of concern to him. Oberlin replied affirmatively and added "that's why --- there was a decision made that the agency would open a file on Mr. Tanner, given the previously unstable nature of Ms. Sinclair's relationships ..." In my opinion, Oberlin's concern was misplaced. The instability of Ms Sinclair's relationships should have been first considered on the issue whether to place Sophia in the Sinclair-Tanner home.

On the same day, Oberlin requested a copy of the home study report from Leonoff's office. He then faxed a copy of the report to Klyne. Oberlin's Fax Transmittal Form contains the following comment:

> Here is the brief home assessment which was performed on Wade Tanner. Please contact me on Monday with your feedback. (Exhibit 63, p. 172) (emphasis added)

With respect to the home study, Oberlin was asked for his assessment concerning the amount of information provided by the home study. Oberlin replied "It provided more information than we had at that point". (Evidence: Vol. 31, p. 102, ll. 6-7) Later, Oberlin stated that the home study report provided "a lot more information --- than we already had". (Evidence: Vol. 31, p. 103, ll. 12-13) Oberlin was asked if the home study gave rise to any concerns and he replied "Not specifically. We had so little information that it did provide us with more". (Evidence: Vol. 31, p. 102, ll. 17-28) (emphasis added) Oberlin admitted that even with the information contained in the home study report, he recognized the need for more information. Oberlin testified he did not expect to solely rely on the home study report. In fact, that is exactly what he did. (emphasis added)

Klyne testified that she first learned of the plan to place Sophia in the Sinclair-Tanner home on November 17, 1995, when Oberlin called her to advise that she was to be served with a subpoena to appear at a court hearing on November 27, 1995. According to her evidence, Klyne told Oberlin during that telephone conversation, that she was opposed to Sophia being place in the Sinclair-Tanner home.

Klyne testified that she then spoke to Finlay about the home study report and advised him of her opposition to the proposed placement of Sophia.

Finlay testified that the first time he became aware of the plan to place Sophia in the Sinclair-Tanner home was when he received a copy of the Tennenhouse Report on November 17 or 18, 1995. After reading the Report, he concluded that there was insufficient information about Sinclair in the Report.

Finlay stated he knew little about Tanner. He had learned from Bella Berens that Tanner could be violent and that he had threatened her. He also knew that Tanner appeared to be somewhat controlling of Sinclair.

Finlay testified that he had many concerns about the plan to place Sophia in the Sinclair-Tanner home. He was concerned that Sinclair had little parental experience and that parenting Wade, Jr. was really her first opportunity to parent a child, with some assistance. With the addition of Joshua and Harley to the home, Finlay was concerned that things were moving too quickly for Sinclair and that Sinclair was acquiring too many children in too short a time. He was concerned that Wade, Jr. and Sophia were both very young children. Finlay was concerned that Sinclair was just establishing a new relationship with Tanner and

that Tanner had a potential for violence and was controlling in his relationship with Sinclair. Finlay was concerned that Sinclair, Tanner and the three children were living in poverty. Finlay correctly assumed that Sinclair would be the primary caregiver and he was concerned that Sinclair might regress to her old pattern of abusing alcohol to cope with her additional responsibilities and stress.

Finlay concluded that having regard to these concerns, it was not a good situation in which to bring another baby into the home and place additional child care responsibilities and stress on Sinclair.

Finlay testified that both he and Klyne disagreed with the recommendation that "Mr. Tanner and Ms Sinclair be given an opportunity to parent Sophia".

Finlay testified that he estimated the risk factor of placing Sophia in the Sinclair-Tanner home as "medium-high".

Finlay did not refer the disagreement over Sophia's placement to the service directors, as he should have. A procedure was in place at that time whereby the disputed issue of Sophia's placement could have been referred to supervisors for discussion and resolution.

Oberlin again spoke to Klyne on November 21, 1995. His note of the conversation reads (Exhibit 63, pp. 97-98):

> Spoke with Ursula Klyne, who stated she would support the child going to Wade's although she did state she has some concerns. She indicated that she would prefer a six month order of supervision, given that her impression is that Norma Jean has been stable for only seven months. She stated that she spoke with Eleanor Robinson (sic) from Children's Home, where Norma Jean gets support, and that Eleanor agreed with her concerns. Ursula stated that Norma Jean might only be agreeing because Wade is putting pressure on her to do so, as he is providing care for her three children. Ursula stated that Norma Jean might be saying yes in order to keep Wade. The writer asked her if she would become the caseworker if the child is eventually placed with Wade.

It should have been obvious to Oberlin that Robertson possessed much information about the Sinclair-Tanner home situation. Again, he did not contact Robertson.

A note made by Oberlin on November 21, 1995, indicates that he left a telephone message for Leonoff indicating "Ursula's opinion around Sophia Schmidt".

Klyne testified that after speaking to Finlay, she spoke to Oberlin and told him that Tennenhouse's Report was "skimpy" and that it had little information on Sinclair. According to Klyne, Oberlin replied that it was a good home study report and that everything was in Tanner's and Sinclair's favour. The inconsistency between Oberlin's evidence and Klyne's evidence, in this regard, is obvious.

Klyne further testified that she recalled suggesting to Oberlin that, if Sophia was to be placed in the Sinclair-Tanner home, it should be done on a six month supervision basis. Klyne could not explain why she changed from a position of opposition to one where she suggested a six month supervision order. She could not recall whether she discussed a six month supervision order with Finlay before she spoke to Oberlin, nor could she recall whether she advised Finlay that she made the six month supervision suggestion to Oberlin.

Klyne had no other recollections about any further telephone conversations she may have had with Oberlin.

Klyne had very little recollection whether she spoke to Leonoff from the time she read the home study report to the date of the court case. When she did have any recollections, her recollections were equivocal and inconsistent.

With respect to Klyne's opinion that the home study report was "skimpy", Oberlin provided the following evidence:

> Q. Ms Klyne told us that she felt that the home study was skimpy, that it had little information on Norma Jean Sinclair. ---. Did that information come to you?
>
> A. No. I received very little information.
>
> - - -
>
> Q. From whom about what?
>
> A. From the Northwest Area with regard to Mr. Tanner and Ms Sinclair.
>
> Q. And that was equally true on November 27th -- or rather by November 27th, 1995?
>
> A. That is correct. (Evidence: Vol. 32, p. 48, ll. 20-34)

Oberlin further testified:

> Q. On November 21st, 1995 were you getting a clear picture as to what Ursula Klyne's position was in relation to baby Sophia being placed with Wade?
>
> A. I don't, I don't think it was ever clear. (Evidence: Vol. 32, p. 50, ll. 18-21)

On November 21, 1995, counsel for Schmidt, Roxroy West, sent the following letter, by fax, to Leonoff:

> We note that we have not heard from you as to your position in respect to this matter. We can indicate that our client is opposed to Mr. Tanner having custody of her child. Ms Schmidt indicates that Mr. Tanner has a lengthy criminal record which includes a charge of uttering threats to kill and a charge of sexual assault.

> In any event, the trial is scheduled to commence, this coming Monday. As you can appreciate, it would have been helpful had we heard from you sooner. We understand from speaking with Mr. Cadloff that he too is in the dark about your client's position. As it stands, we are now in the position of having to issue subpoenas for potential witnesses in anticipation of defending either your client's application or Mr. Tanner's application for custody.
>
> We would appreciate hearing from you on this matter. (Exhibit 64, p. 64)

On November 22, 1995, Oberlin received a telephone message from Leonoff advising that she "will offer this plan in court to the other lawyers". The plan was to place Sophia with Tanner pursuant to a six month supervision order.

Oberlin was asked how much information he had with respect to Tanner on November 22, 1995. Oberlin replied "Very little". (Evidence: Vol. 32, p. 59, l. 15)

On November 22, 1995, Leonoff wrote a letter to West and Cadloff, a copy of which was sent to Oberlin. In the letter (Exhibit 64, p. 65) she states:

> The Agency has very little information on Wade Tanner. We know there are some difficulties with him, but he and his common-law are presently parenting three children under the supervision of Winnipeg Child and Family Services, Northwest Area. The plan that the Agency will therefore put forward at trial (if such is necessary) is that Mr. Tanner should be given an opportunity to parent Sophia under a six month order of supervision. This will allow an opportunity to assess his parenting skills. ...
>
> ... . With respect to the father, we feel he does deserve the opportunity of one chance. We do not feel there is sufficient evidence for a Court to grant any order other than the supervision order. (emphasis added)

Leonoff testified that she received Oberlin's instructions prior to writing this letter:

> Q. Where did this plan come from?
>
> A. It came from my discussions with Ron Oberlin on November 22nd.
>
> Q. What instructions did your client, Ron Oberlin, on behalf of the Agency, provide to you during those discussions of November 22, 1995?
>
> A. Exactly what's reflected in that letter. That the Agency would seek a six month order of supervision with respect to the father, would continue to oppose any return to the mother and that was, that was the instructions. (Evidence: Vol. 35, p. 53, ll. 21-30)

Oberlin stated that he first discussed the Schmidt file with his new supervisor, Rob Humniski (Humniski) a few days or a week after October 30, 1995. Oberlin's running notes do not reflect such a meeting. Oberlin testified that he met with Humniski on numerous occasions to discuss the Schmidt file. Again, his notes do not reflect this fact. Oberlin also testified he made available

to Humniski correspondence he received "from other people, including the agency counsel".

In contrast to Oberlin's testimony, Humniski testified that Oberlin first brought the Schmidt case to his attention on November 22, 1995. When this conflict in evidence was brought to Oberlin's attention, Oberlin testified that it was not possible that he first met with Humniski concerning this case on November 22, 1995. In this regard, Oberlin's notes first refer to Humniski in relation to this case on November 22, 1995, when Oberlin brought to Humniski's attention the home study report, which Oberlin received on November 17, 1995. Oberlin's lack of notes concerning prior meetings with Humniski would seem to corroborate Humniski's testimony concerning his first involvement with the Schmidt case.

Oberlin's notes of the November 22, 1995 meeting with Humniski state:

> The writer spoke with Rob Humniski as well, and he indicated he is going to speak with Lloyd Finlay and Ursula Klyne at Northwest to establish the jurisdictional guidelines. (Exhibit 63, p. 98)

Humniski was employed by CFS (NW) from 1987 to 1995, as a family services and intake worker. On October 30, 1995, Humniski became a supervisor at CFS (Central). In particular, Humniski supervised the Redboine Unit, of which Oberlin was a part. The unit was comprised of seven social workers and an administrative support person. However, when Humniski took over as supervisor of the unit, the unit was short one social worker. As of November 5, 1995, the six social workers were carrying a caseload of 287 cases. Humniski described the caseload as "extremely high" and suggested that a caseload of 15 to a maximum of 25 is a workable caseload for a child care worker. Humniski stated that Oberlin was carrying a caseload of 48 in November, 1995.

Humniski estimated that at least 60-75 per cent of the cases CFS (Central) deals with fall into the medium-high to high risk category. According to Humniski, CFS (Central) deals with a population that is made up largely of very poor people, a lot of young parents and a lot of young aboriginal families. Humniski stated that the resources they are provided are not sufficient to handle all the issues faced by CFS (Central). Humniski testified that the number of cases the workers deal with make it very difficult to give each case as much service or the quality of service that they require. The workers were always attempting to manage their time and prioritize and re-prioritize their caseload as crises and emergencies arise. He said the workers tried to manage as best they can under the circumstances.

Huminski believed that the home study was first brought to his attention on November 22, 1995. He testified this was the first time he had the opportunity to discuss this case with Oberlin. According to Huminski, Oberlin told him that the

home study was favourable to Tanner but added that Sinclair had an open file with CFS (NW).

Humniski read the home study report. He characterized it as somewhat incomplete and stated that it could have been more detailed. Humniski testified the report could have examined and detailed any criminal record of Tanner and Sinclair. He said the report did not reflect the level of involvement Sinclair had with CFS.

On November 22, 1995, Cadloff and West replied to Leonoff's letter of the same day. Cadloff advised that his client, Tanner, would consent to a six month order of supervision "in his favour". West advised Leonoff that his client, Schmidt, wanted to proceed to trial given Tanner's record.

The same day, Leonoff telephoned Oberlin and advised him that West wanted to proceed with the trial. According to Oberlin's note of the telephone conversation (Exhibit 64, p. 98), Leonoff told Oberlin "that she did not understand this position, given that this Agency has no legal case against Tanner and that Wade is allowed to parent Norma Jean's children without CFS apprehending them".

Oberlin conceded that as of November 22, 1995, he did not know the circumstances under which Joshua and Harley came back into Sinclair's care. He <u>assumed</u> that the return of Joshua and Harley had occurred under the auspices of CFS (NW).

Oberlin testified that he was not surprised by Leonoff's opinion that "this Agency has no legal case against Tanner". Notwithstanding the fact that he had "very little" information concerning Tanner, Oberlin agreed with Leonoff's opinion.

During his testimony concerning the events of November 22 and 23, 1995, Oberlin made several comments which are of concern. He stated:

> Sophia Schmidt was involved with Cynthia Schmidt with the latter being my primary client. (Evidence: Vol. 32, p. 61, ll. 13-15)

and

> It wasn't Central's case, once again, against Mr. Tanner. He was associated with an open protection file in the Northwest area of the city. Our case was solely against Ms. Schmidt. (Evidence: Vol. 32, p. 62, ll. 2-5)

These two comments demonstrate Oberlin's lack of understanding of his responsibilities and duties as a child protection worker. His responsibility and duty as a child protection worker was to ensure that Sophia was placed in a safe and appropriate home. His ignorance of the true facts does not justify his agreement with Leonoff's opinion that CFS (Central) has no case against Tanner.

His lack of effort to ascertain the true facts demonstrates that he did little to ensure the placement of Sophia in a safe and appropriate home, a placement which would be in Sophia's best interests.

Humniski thought it important to get the opinions of those who had knowledge of the Sinclair-Tanner family. On November 23, 1995, Humniski had a telephone conversation with Finlay to discuss Finlay's views of the case. It was Humniski's recollection that Finlay used a speakerphone and that Klyne was present during this telephone conversation.

Humniski testified that Finlay made it clear to him that he was concerned about the idea of introducing another child into the Sinclair-Tanner home because it had the potential of causing further stress in the home and overwhelming Sinclair.

It is important to note that Finlay provided reasons to Humniski for opposing placement of Sophia in the Sinclair-Tanner home. The placement of Sophia in the home "had the potential of causing further stress in the home and overwhelming Sinclair". This was made "clear" to Humniski.

In this regard, Humniski testified as follows:

> Q. You did have some knowledge about Norma Jean Sinclair prior to providing the instruction to proceed to permanent order to Ron Oberlin; is that fair to say?
>
> A. Just based on my discussions with Mr. Finlay, yes.
>
> Q. Fair to say that you had little knowledge about Wade Tanner prior to November 27th, 1995?
>
> A. Yes. The only knowledge I had about Mr. Tanner was probably what was in the, in the home study.
>
> Q. It was further your understanding that Northwest was not consenting to the plan as outlined in the home study; is that right?
>
> A. I'm not sure that, saying that they weren't consenting is correct, because they -- we were asking them for an opinion. I don't think it was up to them. I mean, they weren't taking the case through court. It wasn't up to them to consent or not consent. I mean, certainly, I felt that their opinion was valuable and, after I had received that opinion, I took it into consideration in terms of, in terms of the direction that was given to the worker.
>
> Q. Okay. Well, let me ask you to look at the note from Ron Oberlin from November the 23rd, 1995. I'll just read it briefly into the record.
>
> > Rob Humniski stated that he spoke with Lloyd Finlay and that the concerns of Northwest are strong enough that they will not support the placement of Sophia with Wade and Norma Jean. Would you agree with me that that's what it says there?

A. Yes.

Q. So would you -- is it a fairer characterization, then, that you knew Northwest would not support the placement, as opposed to not consent? Is that what you would want the Court to know?

A. Yes.

Q. Okay. You knew that if Baby Sophia were added to the home the way -- the Tanner/Sinclair home, that there would be four young children in total in that home, correct?

A. Yes.

Q. You knew that all four children would be five or under, correct?

A. I'm not sure of the ages of the oldest two, but, yeah, in the vicinity; four young children, anyway, yes.

Q. Sure. Fair to say that you also knew that the two youngest would both be less than a year age, a year old, as at November 1995?

A. Yes.

Q. You also knew that there was a relative situation of poverty, that there was not a great deal of resources in the Tanner/Sinclair home, November 1995?

A. Well, I would -- yeah, I mean, from the home study, I believe it indicated that Mr. Tanner was working as a casual labourer and that Norma Jean Sinclair was on some form of assistance. That's not very unusual for any of the population that we serve in the Central area.

Q. You learned that, in the estimation of Northwest, Norma Jean Sinclair could become overwhelmed prior to giving the instruction to Ron Oberlin, November 1995; would that be fair to say?

A. Yes.

Q. You knew from the home study that Wade was employed and that Norma Jean Sinclair was likely to be the primary caregiver to those four children in that home.

A. Yes.

Based on Finlay's concerns, Humniski instructed Oberlin to proceed with the application for a permanent order of guardianship on November 27, 1995.

Oberlin testified:

... the final decision that I received from my supervisor and that was because we were deferring the decision regarding Ms. Sinclair and Mr. Tanner, we're deferring to the Northwest area worker who was open to Mr. Tanner and Ms. Sinclair. They provided the indication they did not support the placement, therefore, that was my final direction to counsel.

Q. Your final -- what was the final instruction you received from Ron (sic) Humniski in attending to court November 27th?

A. From Rob Humniski the directions note on November 23rd that the Northwest area would not be supporting the placement of Sophia in the Tanner/Sinclair home and that's what I went to court understanding.

Q. Northwest didn't support so specifically what did Rob Humniski instruct you to do?

A. Well, he indicated to me -- he did not instruct me to do anything. He indicated to me their position, therefore, I called the lawyer to provide her with that direction, that lawyer being Heather Leonoff.

Q. Yeah. Rob Humniski told us that he instructed you to proceed to obtain a permanent order.

A. That's correct.

Q. That was your understanding of the instructions?

A. Yes. (Evidence: Vol. 32, p. 62, ll. 16-33) (emphasis added)

Oberlin's notes of November 23, 1995, reflect that he had left a telephone message for Leonoff advising "that the concerns of Northwest are strong enough that they will not support the placement of Sophia with Wade and Norma Jean". (Exhibit 63, p. 98)

On November 23, 1995, Leonoff wrote a letter to Oberlin and others advising that the matter would proceed to trial.

Oberlin's notes of November 23, 1995, reflect the fact that Tanner had his third visit with Sophia. Oberlin's note of the visit states: "Wade did have a full visit with Sophia today." (Exhibit 63, p. 99)

At no time did Oberlin observe Tanner, Sinclair, her three children and Sophia together.

On November 24, 1995, Oberlin received several messages from Leonoff. His notes record the following:

Several phone messages from Heather Leonoff today. Overall, she stated that she believes Northwest will not support the placement of Sophia with Wade and Norma Jean because it would become within their jurisdiction. Heather described it as a "political issue", and that she would get Ursula "to get on board".

Heather Leonoff stated that she spoke with Eleanor Robertson at CHOW and that Eleanor supports the placement "100%". She said she also spoke with Pam Gelman (sic) at the Parent Support Programme and that Pam also supports the placement. Heather stated that no judge would grant anything more than a six month Order of Supervision.

With respect to the reference to Pam Gillman, Leonoff testified as follows:

Q. Okay. The note of November 24th, 1995, Mr. Oberlin also indicating that you spoke to, it says Pam Gillman?

A. I didn't speak with Pam Gillman.

Q. So that part of the note would be inaccurate, then?

A. Yeah. I didn't speak with Pam Gillman. He's misunderstood. I think I probably left a message saying I'm trying to get hold of her, or something along those lines. But he's written it down off his voice mail inaccurately. (Evidence: Vol. 36, p. 78, ll. 12-20)

With respect to her conversation with Eleanor Robertson, Leonoff testified as follows:

Q. When did you speak with Eleanor Robertson?

A. On Friday.

Q. The 24th?

A. The 24th.

Q. How long was that telephone conversation, I'm presuming?

A. Around 20 minutes, maybe 30 minutes.

- - -

Q. Can you tell us about the discussion?

A. Yes. When I hung up from Ms. Klyne one of the things I asked her was is there anyone -- maybe I'll, I'll speak to Eleanor Robertson or something like that because her name had surfaced in the file as an individual who had quite a bit of information about the family unit.

Q. Um-hum.

A. I contacted Eleanor Robertson. I got her right away which was, which was helpful. And I went through with her, her knowledge and background of this family unit. She told me that the mother had come into the TRY program, which again, I don't need to ask her what that's all about or how it works or anything because I've called that evidence hundreds of times.

I asked her how mom was doing. Her response was that the -- I'm sorry. When I say mom I mean step-mom, how Norma Jean Sinclair was doing. She

indicated that she was attending regularly, showing effort, showing a willingness to, to make changes in her life.

She -- I asked her if she saw baby Wade Jr. She said yes, the family would come in with the little baby periodically. That she had no concerns. It looked -- the baby looked well, well cared for.

She indicated that -- I asked her if there were any -- the same questions I ask every witness. I mean, these are questions I -- these are standard questions. I use them virtually every witness I ever interview.

Q. Um-hum.

A. Any undo (sic) signs of stress or any concerns about that? She said no, mom looked, step-mom looked healthy, well cared for, baby looked well cared for. I asked her if -- I'm trying to think.

Then we got onto parent support and what -- who was involved and that the parent support program was involved. Again, I didn't need to ask her any questions about what does this mean, or what is this program all about. I know this program extensively.

She told me that parent support had started and that there had been -- working out well. She told me that they were going to increase the number of hours because if this other baby went in that would be added difficulty in the home.

She told me that she was concerned about the size of the house but that she was already looking into that.

And basically those were her issues. Again, that was the information that she had.

Q. Okay. Thank you.

A. Oh, and that the family needed supports. I don't know if I said that. She was every clear. This was a family which, which continued to need supports.

Q. So just on brief terms, can you comment as to what your overall impression was of Norma Jean Sinclair and her ability to manage on the three children at the conclusion of your telephone conversation with Eleanor Robertson?

A. I saw this as a family that was making progress and a family that was managing with the three children.

Q. Sure. The work that --

A. Can I --

Q. Go ahead, please.

A. There's one area that we talked about and that was had she seen any relationship problems because that's always a stresser.

Q. Yes.

A. And if there's relationship problems between the adults that translates into problems for kids. So I asked her, as I would in every situation, is there anything that she had noticed, any problems in the relationship? She indicated no, that they seemed to be getting on. Norma Jean had made no complaints to her about any relationship issues.

Again, these are all standards questions that I would ask. I know those questions as well as I know my name. I mean, I use them all the time.

Q. So there was no indication from Eleanor Robertson that Wade Tanner was being verbally abusive at anytime towards Norma Jean Sinclair?

A. No.

With respect to her conversation with Leonoff, Robertson testified as follows:

Q. I think you indicated to Mr. McNicol though that you had been contacted by Heather Leonoff of CFS; is that correct?

A. Yes.

Q. Was that the day of the hearing or prior to the hearing?

A. Prior to the hearing.

Q. And as I understand it, she phoned you to know how the family situation was working out; is that basically what the extent of her conversation was, how the family was doing?

A. Asking about the family, yeah.

Q. And your response to her questions were, what, that it was --

A. It was a very short call and I just let her know of my concerns about the family not being well in many ways and especially with poverty and, and no job and being on welfare and the three kids that were already there. It was a small apartment.

Q. Is it not fair to say as well though that you were very positive about the family setting, that you thought it was working out?

A. Oh, there was mention of Parent Support being involved and that was where it was left at.

Q. Okay. Do you feel from having talked to Ms. Leonoff that you would have left her with the impression that you were very supportive of the family situation as it existed in the Tanner/Sinclair home?

A. No, I didn't think that I was supportive -- 100 per cent supportive as I understand her to have said from my -- from the other people that asked questions, no.

Q. Well, would it be fair to say that you were more supportive -- you were giving more positives than negatives?

A. If that is the understanding she got.

Q. Well, what was your understanding of what you said to her?

A. I had concerns. As I stated earlier, the concerns were that the family was poor, that Wade was not there all day, that Norma Jean was responsible for the children all day. (Evidence of Eleanor Robertson, November 25, 1997, p. 20, l. 14 to p. 21, l. 19)

- - -

Q. Now, there has been reference in your evidence by both Mr. McNicol and Mr. McFetridge to the telephone conversation between you and Heather Leonoff. Who initiated that call? Who called who?

A. She called me.

Q. She called you? And it's your understanding that it was a short conversation?

A. Yes.

Q. Can you please tell us in your own words what transpired during that telephone call between you and Heather Leonoff? Can you just take us through that call to the best of your recollection?

A. I do remember her introducing herself and why she was calling and asking about the family and I cited my concerns about the family being very needy, letting her know that Wade Tanner was at work most of the time, that they were supplemented by welfare aside from the casual earnings that he was making and, and there was constant food needs and, and that they had been involved with the Parent Support Program. That was what I -- that is what I recall.

Q. What do you recall about Ms. Leonoff telling you as to why she was calling? You indicated that she said that at the outset.

A. Regarding the placement of the child by the name of Sophia Schmidt to Wade Tanner and Norma Jean Sinclair's household.

Q. During that telephone conversation was the term "100 per cent support" used by you at any time?

A. No.

Q. Was that term used by Ms. Leonoff to your recollection at any time?

A. That is what everybody says.

Q. No. But do you recall her --

A. I'm just one person. I don't, I don't -- that is not my language.

Q. Do you recall any discussion about a degree of support in putting --

A. No, I don't recall that.

Q. Okay. So you don't recall any discussion about a percentage?

A. No.

Q. Can you tell us what your impression of that telephone call was immediately after it was over?

A. Well, I, I, I felt rushed, maybe pressured, so I went straight to my supervisor and related to her what just happened and, and I was feeling very, very pressured to give an answer and I related my, my feeling to my supervisor at the time.

THE COURT: I'm sorry, I didn't hear your last --

THE WITNESS: I just had to relate my feelings to my supervisor at this time -- at that time, like letting her know that I received this call and, and that my concerns were still the same as what we had identified as a fragile situation, the household being with three children, the family very poor, Wade not being there in the day time as Norma Jean was.

THE COURT: And who was that supervisor?

THE WITNESS: Pardon me?

THE COURT: Who was the supervisor?

THE WITNESS: She spoke before. Ms. Liz Wolff.

- - -

Q. Was there anything about the manner of Ms. Leonoff during that telephone conversation that made you feel pressured?

A. Well, the call, the call had been rushed and ...

Q. Were you expecting the call?

A. No, I was not.

Q. So it was a call that came out of the blue?

A. Yes.

Q. Did you know that there was or had been a home study done of the Tanner/Sinclair home at the time you spoke to Ms. Leonoff?

A. Yes.

Q. What to you was the significance of knowing that there was a home study either done or being done at that time on the Tanner/Sinclair home?

A. I -- a home study -- the home study that was done, I guess, Norma Jean talked about it that she thought it was positive and, and I felt comforted by, by the home study. If the home study was done, if there were going to be concerns that it would be -- the home study would identify and pick up on that and so I was comforted by the home study that did not find anything problematic.

Q. Was the home study shared with you at all?

A. Except by the clients themselves.

Q. By Norma Jean and Mr. Tanner?

A. Yes.
(Evidence of Eleanor Robertson, November 25, 1997, p. 23, l. 8 to p. 25, l. 32)

- - -

Q. All right. Let's jump now to -- well, closer to November 27th. You testified that you had a conversation with Heather Leonoff, the lawyer for C.F.S.

A. Yes.

Q. You said that you felt rushed and pressured.

A. Yes.

Q. What did you mean by that?

A. Well, my workload is such that I work with a needy population and that, and that I would probably have been attending to something necessary. And this was an important phone call and I -- it was short. And I felt pressured to . . .

Q. So you felt rushed and pressured by your workload as opposed to anything that Miss Leonoff would have said to you. Do I understand you correctly?

A. Yes.

Q. You said that as -- that you -- because you felt rushed and pressured, you went to speak to your supervisor, Liz Wolff.

A. Yes.

Q. Do you recall what you told her?

A. Well, of this phone call and finding it -- importance of it and that, and that I hurriedly had stated my concerns about the situation at Norma Jean's in this phone call.

Q. Well --

A. And stated that I mentioned the Parent Support Program being active with this family in this phone call.

Q. Well, you told us previously that you had expressed your concerns or reservations about Sophia coming into the Sinclair/Tanner home.

A. Yes.

Q. And that you thought at the end of this conversation that you did not leave the impression with Miss Leonoff that the baby should be in the home.

A. Yes.

Q. All right. And in spite of the fact that your workload caused you to feel rushed and pressured, what was it that would cause you to go see Miss Wolff?

A. The importance of this call and that I did not document it. But she does recall that I had come to her regarding this.

Q. All right. So is it the case that whenever you receive a important telephone call --

A. No.

Q. -- that you go to your supervisor?

A. No. No.

Q. So what distinguishes this particular important telephone call from others?

A. There were other -- probably there were other things that I needed to talk to her about, maybe a situation that was happening, maybe -- she is my supervisor and I consult with her when I need -- when I have to.

Q. And that's understandable. But I may have missed the boat. But my understanding of the evidence was that you went to see her because of this telephone call, because you felt pressured and rushed. Am I wrong?

A. It was one of the reasons why I went to see her. I do know that we -- there were concerns regarding Norma Jean, Norma Jean's situation at the time, that another child would be too much.

Q. And you let Norma Jean -- you let Heather Leonoff know this.

A. Yes.

Q. So other than the fact that this was an important telephone call that you sometimes go to Miss Wolff about, you can't give me any other reason why you went to see her on this occasion? And again restricting it to this case, not --

A. No.
(Evidence of Eleanor Robertson, November 26, 1997, p. 73, l. 24 to p. 75, l. 23)

With respect to her concerns and the placement of Sophia in the Sinclair-Tanner home, Robertson testified as follows:

Q. Did you connect with Ursula Klyne regarding the possibility of Baby Sophia coming to the Tanner-Sinclair home?

A. We connect with our concerns. We spoke on our concerns. I can't be specific of the times we talked or the time we talked. I can't -- I don't recall the exact dates or where or how, but we did talk and we shared our concerns about this family.

Q. You shared your concerns. Did she have concerns also?

A. Ursula?

Q. Yes.

A. She had concerns. She had concerns of . . .

Q. Is it your opinion that your concerns and Ursula's concerns were, were shared; were they common concerns?

A. Yes. Even prior to Sophia.

Q. Was there any disagreement between you and Ursula Klyne on the, the concerns that each of you had?

A. No.
(Evidence of Eleanor Robertson, November 27, 1997, p. 23, l. 17 to p. 24, l. 1)

- - -

Q. I take it that the concerns you had about Norma Jean having another child to care for related to, as you told us, the family's financial situation, the size of the apartment, and the number of people that were there; is that so?

A. Yes.

Q. You certainly didn't have any concerns at the time that Norma Jean had or would be abusive to any of the children, did you?

A. No.

Q. No. So the concerns that you had didn't relate to the welfare or the safety of the baby but were general concerns about the living conditions of this family and their situation as it then was; is that fair?

A. Well, they came to the office often. They were there with their family, especially Norma Jean with the four children at a time, if she came when the young boys were at home. If she came late in the day, the young boys would be with her, Joshua, Harley, always Sophia and Wade. And they were bundled up well, taken care of, behaved like normal children, and there were no concerns cited by myself or the staff.

Q. Are you telling me, Ms. Robertson, that you had no concerns about the safety of the children before Norma Jean had Sophia come to live with her and, in fact, you had no concerns about Sophia's safety after she went to live with Norma Jean, from all of the observations that you made when you saw them?

A. No, I had no concerns.
(Evidence of Eleanor Robertson, November 24, 1997, p. 120, l. 25 to p. 121, l. 19)

- - -

Q. Now, you had indicated when you initially made this referral to the Parent Program you had no concerns about the safety or welfare of Wade Tanner Junior. I take it that now that you knew that two other children were in the home you had no concerns about them as well being in this home?

A. No, I didn't.

Q. Okay. And indeed the thought that there may even be a fourth child coming into the home, that didn't -- that was not a concern to you as well from a safety point of view for the children?

A. Not from a safety point of view, just from the impoverished family situation that existed.
(Evidence of Eleanor Robertson, November 25, 1997, p. 14, l. 28 to p. 15, l. 6)

- - -

Q. All right. I think my question focused on your evidence to His Honour yesterday that you had no recollection or note of ever telling anyone at CFS in September 1995 that you were concerned about the welfare of Norma Jean and her children if Sophia came to live in the home. And I'm --

A. Yes --

Q. -- asking you, if you had made such a call, is that not the kind of call that you would formally record in your notes?

A. Yes, I would have documented that.

Q. Right.

A. But I did not.

Q. In fact, as I understand it, in September of 1995 you supported Norma Jean in her desire to help Wade get Sophia into the home; isn't that so?

A. I worked with the family in providing supports. If this is something that would make things -- well, I knew another additional child would make things very difficult. And that was an ongoing concern that I expressed with my staff, with my staff and also with the support worker at the time, the parent support worker. And I continued to contact CFS on this matter.
(Evidence of Eleanor Robertson, November 27, 1997, p. 11, l. 17 to p. 12, l. 12)

Inexplicably, Robertson did not refer to Sinclair's having a few drinks to relax or feeling overwhelmed. Nor did she refer to her concerns, which she expressed to others, that Tanner was locking the children in their bedroom, that Sinclair wanted to leave Tanner and that she believed Sinclair was only agreeing to the placement of Sophia in the home to please Tanner.

Robertson explained her philosophy as a support worker:

Q. Yesterday towards the end of Mr. McNicol's examination of you, you said you didn't try to talk Norma Jean out of supporting Tanner in his efforts to get Sophia in spite of your, your reservations on the matter because you viewed your job as being supportive of her and that it was her decision to make and that it was your job to put supports in place to, to support the -- your client in her goals; am I correct?

A. Yes.

Q. Now, if your client's goals are unreasonable or unattainable I take it you would discuss your concerns with that goal with your client?

A. Yes, I would.

Q. But if the client after hearing from you still decided to proceed with goals which you viewed to be unreasonable or unattainable was your job still - or was it your job to provide support notwithstanding your concerns?

A. Well, talking with Norma Jean on that, that that was an ongoing topic and she maintained her stand to support Wade Tanner in, in this decision to have custody of Sophia and I know that it was going to be very hard on her because I knew that Wade was away at work all day and that she was already responsible for the three children. She said well, the two --

Q. I'm --

A. -- the two boys are aware at day care and, and, you know, she only had Wade Junior at home in the day time and that this would be fine and ...

Q. I'm trying to be more general than --

A. Okay.

Q. -- specific with respect to Norma Jean. I'm just trying to understand how you viewed your, your job, your mandate, your position. And so what I'm asking you is once you discussed a client's goal which you view to be somewhat problematic --

A. Um-hum.

Q. -- and the client -- again, I don't want to be specific but general. Generally a client says to you well, I still want to proceed with my goal, my plan of action, did you view your job as one of offering support at that time?

A. Yes.

Q. Even though your view was that it was an unreasonable goal?

A. Yes.

Q. You were going to help that client as best you could?

A. Yes, I would.
(Evidence of Eleanor Robertson, November 25, 1997, p. 32, l. 14 to p. 33, l. 26)

Leonoff further testified concerning Oberlin's note of November 24, 1995:

Well, when I spoke -- this would be Friday now, the 24th, and I had been informed that Ursula Klyne had changed her position from what I had understood it to be on Wednesday. I spoke with Ursula Klyne in detail on Friday the 24th and one of the issues that seemed to bother her was that she didn't want to supervise this order. She was very clear, I don't want to supervise this order. She was very clear, I don't want to supervise this order. So when I described it as the "political issue" it seemed to me to be a lot of who was going to do this. Was it, was it her or was it Mr. Oberlin? Was it Northwest or was it Central? There seemed to be a lot of concern on her part about who would supervise it.

She was clear to me that one of the reasons she didn't want to supervise it is that she didn't get along with Norma Jean Sinclair, she didn't think she was a good person to supervise it. So she -- that was a , a big issue for her and I was passing that on to Mr. Oberlin that we needed to get straight, or the Agency needed to get straight, if we went with this plan who was, in fact, going to do the supervision.

Secondly what I found was that we needed to be very clear about where the Agency was going. I couldn't have a situation in a courtroom with Mr. Oberlin saying, I'm consenting or I'm, I'm comfortable with this child going home and Ms Klyne taking an opposite position. I needed them to be on the same wave length, if you will.

When I spoke to Ms. Klyne on the 24th, on the Friday, I was very, very detailed in going through with her her time with this family. I needed specifics from her as to what it was that was causing her to have some second thoughts. The end of my conversation with her, I didn't have any specifics from her. So I needed her either -- well, I needed specifics from her or I, or I couldn't go anywhere farther with her, her gut concerns, her, her uneasiness. And she was expressing uneasiness. There's no question on the 24th she was expressing uneasiness. The question for me was whether I could translate her uneasiness into admissible, legitimate evidence. And I told her on the 24th that I couldn't but I asked her to spend the weekend working it through and we would reconvene on Monday and we would go through all of the details again.

Q. Can you tell us as best as you can recall, what was the length of the, I'm presuming a telephone conversation you had with Ursula Klyne on November 24th?

A. Somewhere in the neighbourhood of half an hour, I would say.

Q. Right. Any requests that were made of Ursula Klyne, apart from consider this matter over the weekend?

A. Yes. I wanted her to send me any transfer summaries or social histories she had. The reason I wanted that is because from my experience, having done this for so many years --

Q. Um-hum.

A. -- these are good summaries of the, of the contacts and of the, of the issues. And so if I had the transfer summaries or social histories, then I might have been able to help her in the -- to, to point out what it was that I wanted her to give me in evidence. And <u>she indicated to me that there were no transfer summaries or social histories at that time</u>. So I just asked her then to really turn

her mind to it over the weekend and to see if she could think about specific factual information. This is factual based system. It's an evidentiary based system. You have to testify to facts.

Q. Um-hum.

A. So I wanted her to scour her mind, if you will, to see if she could come up with any facts.

Q. So simply put, when you made a request for written material from Ursula Klyne, what was the response that you received?

A. She told me she didn't have anything.

Q. How did, how did you react to that or what reaction did you have when you learned that information?

A. My reaction is that I, I need to be able to put forward a case. So that was a, a closed door. I mean, I was looking at it from a very analytical, evidentiary point of view.

Q. Okay.

A. And on that material I – it wasn't there. Well, we had to think of another way to get evidence before the court, if it existed.

Q. Um-hum.

A. Sometimes it doesn't exist.

Q. Do you recall from the conversation of November 24th approximately when it was or how long Ursula Klyne had been involved with Norma Jean Sinclair?

A. I knew it was extensive involvement. I, I don't know, I don't know the exact date or time. We certainly talked about it. We talked about a, a child who had been severely damaged and was a permanent ward. We talked about how, how the other children had ended up with, with auntie. We talked about how the new baby was doing and, you know, Native Women's Transition Centre. I mean, we went through the history. I, I took her –

Q. Um-hum.

A. I like to work sequentially. I like to work from – in a time frame analysis and that's the way I call my evidence. I'm used to that. I'm used to, what did you do first, what did you do second, what did you do third?

Q. Um-hum.

A. And so that's the way I interview witnesses, in a very sequential fashion.

Q. You say that you understood Ursula Klyne to have an extensive history with Norma Jean Sinclair. Were you somewhat surprised, surprised – how would you characterize when you learned that there was no material given the extensive history between these two parties?

A. To me it meant that there had been some difficulties with the family but nothing extreme because extreme matters and significant matters will obviously be recorded. And that's my experience and my history with the Agency. Night duties and, and extensive interviews with clients are always recorded. Interviewing and going back with a client is an extremely important piece for me as a lawyer. I'm sure it's important to the social workers but I can only talk about why it's important to me.

If you go back in history with a client, then you get around, if you will, the hearsay objections because the client has been asked about something and we have the client's response. So extensive interviews about serious matters and these kinds of things are, are very important to me as evidentiary tools. So that's the kind of stuff I needed.

When I heard that there wasn't a lot of material, I look at that in its other way which is, then there wasn't that glaring and frightening, if you will, types of events. Because my experience is that those glaring and frightening and, and very serious matters for children are well documented by the Agency.

Q. So no news is good news?

A. It's an interesting way of phrasing it. I'll accept that, yes.

Q. Given the extensive history between the two and the inability to provide you with written material pursuant to your request, did that ever become a concern for you in formulating your legal evaluation?

A. My legal evaluation was based on the facts that I knew it and the facts that I could prove. And on the facts that I knew it and the facts that I could prove, it was my opinion that Wade Tanner would be given an opportunity to parent his child by a court.

- - -

Q. During this telephone conversation that you've told us of, November 24th with Ursula Klyne, were you getting a clear picture or otherwise as to what, if any, concerns Ursula Klyne had about placing a fourth child with Tanner Sinclair and Norma Jean Sinclair, or Wade Tanner and Norma Jean Sinclair?

A. No. Her only concern that I could get a clear picture of was the size of the house. She was worried about the size of the house and I knew that that was already being addressed by the Children's Home people, the New Directions people.

Q. Okay. Was Ursula Klyne, in your opinion, able to articulate or unable to articulate what it was that she knew, if anything, about this particular lady, Norma Jean Sinclair, or that household?

A. She was able to articulate certain information, all of which in my assessment, pointed to a family that was managing. She expressed an uneasiness, a discomfort, but when I asked her to provide specifics for why she had an uneasiness or a discomfort, her only response was, The house is too small.

Q. I've – I understand you to say that, feel free to disagree with me, Ursula Klyne could articulate some things but could not articulate other things; is that fair to say?

A. I asked her specific questions. I asked her questions like, Any complaints from public health nurse? I knew that there would be a Public Health nurse involved in this family because of the newborn baby, the other baby, Wade Jr. So I knew that there – 'cause my experience is that when you have newborn babies, Public Health always becomes involved and this is a situation where Public Health would remain involved. So I asked her if there was any complaints from Public Health.

I knew that the two boys were in day care. I asked her if there was any complaints from day care. These are the kinds of people that normally will provide us with our evidence. We call day care workers all the time in trials. We call Public Health nurses all the time in trials because they are the eyes of the community. They are seeing the family. I asked her about those particular parties.

I asked her about her own involvement, about once the other boys had gone home, anything that she had observed about the mom. Any unusual – I'm sorry, not the mom. The step-mom, Norma Jean Sinclair. Any unusual stress or any problems. She indicated no.

I asked her if she had been out to the home. She indicated no.

I asked her if she was making good – if Norma Jean Sinclair and the family was making good use of resources. That's another very important factor to me as a lawyer. I call that evidence virtually in every case. Are they making good use of resources or not making good use of resources? Either way I call it. She indicated that Norma Jean Sinclair was attending the Northend Women's Centre, looking good. She indicated that there was contact with the Children's Home, New Directions. No negative reports. She indicated that the family had parent aid from the Parents Support Program, no negative reports. That was the information that she was able to articulate quite clearly.

When I asked her why – Ursula, you've got to tell me what it is that is making you uneasy. Is there something we're missing here? Her answer was, The only thing I can think of is the house is too small. And she was quite clear with me, well – and I said to her, you know, Well if we put resources in here, is that going to work? And her concern was, I don't want to supervise this file. I mean, she was very, very clear she didn't want to supervise the file which to me was what I called the political issue and which, you know, was really not my issue and was really the Agency's issue to determine between themselves. That's a, that's a management function, nothing I was going to worry about.

Q. So if there was some difficulty to articulate, for Ursula Klyne to articulate what her concerns were on certain matters, did you draw any opinion as to what that inability to articulate might be attributable to?

A. I, finishing my interview with Ursula Klyne, had the same impression after interviewing her as I had after I interviewed Eleanor Robertson of New Directions and that is that this was a family that was making some positive gains, doing some good work. But that it was a family that needed resources, that clearly needed resources. And that's fine. The Child And Family Services Act directs that resources be placed with the family so – I said to her, Can we put some

resources in? Will that – I said to Ursula Klyne, Can we put some resources in? As long as I don't have to supervise the file, is sort of what I understood at the end of Friday, was sort of her position.

Q. When you asked Ursula Klyne a direct questions, did you always get a direct answer or otherwise?

A. Oh, yes. I would get direct answers. It was a question that I was trying to get specifics of what was causing her uneasiness. Because I can't call her to the stand to say, I have an uneasy feeling. That's not admissible or acceptable evidence. It's an opinion and that's – but it needs to be backed up with facts. And I was asking her if she could give me some facts. All of the facts that she gave me were coming from other sources and were all pointing to a family that was making some legitimate use of resources and was managing.

Q. Ursula Klyne made it clear to you that she did not wish to supervise the file?

A. Yes.
(Evidence: Vol. 35, p. 67, l. 7-p. 70, l. 10) (emphasis added)

Leonoff was asked what information she knew about Sinclair as of November 27, 1995. Leonoff replied that she knew Sinclair had an alcohol problem; that Sinclair had been placed at NWTC in the fall of 1994, and had finished the program, leaving the program in the spring of 1995; that Sinclair had three children in her care; that two of Sinclair's children were in daycare; that Sinclair was receiving services from Public Health, the TRY program, and the Parent Support Program; and that Sinclair was a regular attender at NEWC.

In fact, Sinclair had not completed the program at NWTC. She left the program several months before it was completed. Leonoff did not know the circumstances under which Harley and Joshua came into Sinclair's care. Sinclair was no longer receiving services from TRY at the relevant time under consideration. Finally, Sinclair was not a regular attender at NEWC at the relevant time under consideration.

Leonoff was unaware of the information contained in Oberlin's note of November 17, 1995. (Exhibit 63, p. 97) The information had not been shared with her. Leonoff agreed that this was relevant information concerning the case.

Leonoff testified that she did not know that Allen had Fetal Alcohol Syndrome although she did know that Allen was in permanent care because he was a special needs child. Leonoff said if she had known that Allen had FAS, it would have told her that Sinclair had a severe alcohol problem during the time of her pregnancy with Allen, but it would not have enormously impacted her decision-making.

Leonoff did not know that Sinclair had previously been a prostitute. She said the operative word was "previously". The word "previously" suggested to Leonoff that Sinclair had made changes to her life and had attempted to better

herself. Leonoff testified that the agency had lots of people parenting who were former prostitutes. Being an active prostitute is a different matter. It is a lifestyle which is incompatible with raising children.

Leonoff testified that if she had known this information, she would have explored the information to determine if it was the type of information that could be presented in court, that is, admissible evidence.

In this regard, the following exchange took place between Crown counsel and Leonoff:

> Q. If you had this information November 27th, 1995, would you have been inclined to provide different advice to your client, the agency?
>
> A. I certainly would have worked with Ursula Klyne to go through it, and say, "Ursula, let's, you know, go through these pieces. These are important. Can we prove them? What do we know about them? Are they direct evidence? Are they hearsay evidence?" I certainly would have worked with her with that paragraph, yes, had I been aware of it. I would have spent significant time working with her on that, piece by piece, sentence by sentence.
>
> Q. Now, in fairness to you, you spent a significant amount of time with Ursula Klyne over the telephone on November 24th.
>
> A. Correct.
>
> Q. But as you've told us, you didn't have the specific elements to deal with directly?
>
> A. No. No. And in fact, this is what I was trying to get from her, "Give me specifics. Give me something I can work with."
>
> Q. You did have an opportunity, as I recall your evidence from yesterday, to speak with Eleanor Robertson for 20 to 30 minutes over the telephone?
>
> A. Correct.
>
> Q. Eleanor Robertson, according to Ron Oberlin in his note of November the 17th, told Ursula Klyne that Wade had been locking the children in the bedroom. Wade had wanted to leave Norma. Norma had threatened suicide. That Eleanor had previous concerns for Norma Jean Sinclair's abuse of alcohol and drugs and prostitution. And that Harley had been injured by Norma Jean when she had been injured, and made a comment, "If I could, I would kill you." During that 20, 30 minute conversation with Eleanor Robertson that you told us of last day, none of that information came out?
>
> A. None of it.

Crown counsel asked Leonoff if she had ever seen Exhibit 58, <u>which was prepared by Klyne and Finlay after Sophia was taken to the hospital</u>. Leonoff replied in the negative. Leonoff was referred to the fourth page of Exhibit 58 and specifically the following paragraph:

Late Oct. or early Nov. we were notified by Ron Oberlin that Wade had made an application for custody of Sophia who was in the care of our Central Winnipeg Office. He faxed us a copy of the homestudy, which had been completed by Susan Tennenhouse (sic). During the course of several telephone calls both Ursula and myself advised Ron that we could not support the plan to place another infant in the care of these parents. Our reasons were:

(1) Norma and Wade were struggling to parent the three children they had in their care, even with the supports being provided.

(2) The fact that Sophia was so close in age to Wade (Jr.).

(3) Norma required more time to develop her parenting skills and work on the maintenance of her sobriety.

(4) We had concerns about Wade as he was not known to use and refused to engage with us. We were concerned that he was very controlling of Norma and therefore were not comfortable with the idea that Norma was unable to express herself and was only agreeing with the placement of Sophia to please Wade.

With respect to the foregoing paragraph, Leonoff testified as follows:

Q. Any of that information come to your attention before November 27th, 1995, from any source?

A. No.

Q. There's some new information there, would you agree, apart from what we've just looked at previously, in Exhibit 63, the notation from November 17th? For example:

> No. 1, Norma and Wade were struggling to parent the three children they had in their care, even with the supports being provided.

You'd agree that that's new information, apart from what's in that earlier paragraph we looked at ?

A. Yes. I mean, the evidence I had was to the contrary, that they weren't struggling. I mean, that they were -- that's not a fair statement. That they were using supports, and using them well. And that their children were safe in their care.

Q. And specifically, you had that information from whom?

A. Well, from everyone. From everyone who was involved in the family. Eleanor Robinson --

Q. Robertson, I think it is. It's a typo here in the other notes.

A. Robertson. Yes. yes. I always thought it was Robertson. Eleanor Robertson, Ursula Klyne. That she was making use, that the family was making use of resources, and that the children were not in any problems.

Q. So you had that information, just so I'm clear, from Eleanor Robertson, and also from Ron Oberlin.

A. Yes.

Q. Ursula Klyne, did she provide you with information that led you to believe the contrary of point No. 1 on this report here, to Norma Jean Sinclair?

A. Well, I guess the word "struggling" is the one I'm having difficulty with. I'm not sure what it means.

Q. Sure.

A. If it means that they needed supports to parent, then I agree with it.

Q. Um-hum. Well, let's jump to point No. 3, then, in fairness to you:

> Norma required more time to develop her parenting skills and work on the maintenance of her sobriety.

Was that information that you had before November 27th, '95?

A. No. The information I had was that she'd been sober for over a year, which is, in Child and Family Services, a decent period of time. We often work on three to six months sobriety, putting people in treatment programs for either a three month or six month temporary order. So over a year sobriety was considered pretty good. Obviously, something to watch. I mean, alcoholics are alcoholics for life. I mean, if you go on that, obviously something to watch, something to be concerned about. But not a reason to have a child out of the home. Children are in homes once there's some stability in the alcohol problem.

Q. You told us previously that you were aware that Norma Jean Sinclair had received treatment, counselling from supports, and continued to receive some treatment and counselling?

A. Yes.

Q. Knowing that, how does that affect the advice that you may have given the agency, when you contemplate point No. 3, in particular?

A. I'm sorry, I'm not sure if I understand your question.

Q. Let me just ask you directly, and feel free to disagree. That there were supports in place, did that give you some level of comfort that if she needed, if Norma Jean needed more time to work on parenting skills, and maintain her sobriety, that the supports would assist in that regard?

A. Absolutely. --- So the fact that this family unit was connected to a number of outside sources was extremely important to me.

Q. Point No. 2, you were aware of that fact:

> The fact that Sophia was so close in age to Wade, Junior.

A. Right. Right.

Q. That information you had. Point No. 4:

> We had concerns -- the "we" of course, as you now know, Ursula Klyne and Lloyd Finlay -- about Wade as he was not known to us ...

Would you agree with that? I think you -- as I understand your evidence from yesterday -- had little information with regards to Wade?

A. Yes. I mean, he wasn't a well known person to the agency. Yes. I agree with that.

Q. Okay. Continuing on.

A. Which is why I'd recommended at the first pre-trial that there needed to be a full assessment.

Q. Right. Just continuing on with that point No. 4, and Wade:

> ...refused to engage with us.

Was that information that you had prior to November 27th, '95?

A. The information I had was that he was engaged with Eleanor Robertson. I mean, that she had some contact with him, and that -- not that Parent Support had direct contact with him, because he would usually be out of the home when they were there, but nobody had said to me, you know, "We're trying to get hold of this guy. We want to meet with him, and he won't meet with us." That was never said to me. I had no knowledge of that.

Q. (Reading)

> We were concerned that he was very controlling of Norma and therefore were not comfortable with the idea ...

That was new information to you as well?

A. Totally new information to me, yeah.

Q. Did you ever learn from any source that there was frequent visits by Norma Jean Sinclair, both to walk-in clinics and that several Envoy doctors were attending the home, and various prescriptions were being received? That information never came to your attention?

A. No.

Q. The information that we've just discussed pursuant to Exhibit 58, and the information that Ron Oberlin has in his note of November 17th, 1995, it was relevant information, was it?

A. Yes.

Q. Help us out. Can you provide us with any explanation as to why it was, in your opinion, this information was not received by you?

A. I have no idea.

(Evidence: Vol. 36, p. 8, l. 26-p. 12, l. 34)

Exhibit 58 continues:

Ursula attended at court on November 27 and met with Heather L. and Ron. At that time Ursula advised Heather we could not support the plan to place Sophia with Norman and Wade. Heather then advised Ursula she was no longer needed and she could go.

In this regard, Leonoff testified as follows:

Q. Okay. Tell us about the discussion you had with Ursula Klyne.

A. I went to her again. I said, "Ursula, you know" -- I mean, we're, like, I knew what her position was. I said, "I need you. You're my only witness. You've got to testify on this piece. You're the only possible witness I have on this area. What are your concerns?"

All she told me, again, was the house was too small. I said to her, "Ursula, that's not sufficient for a Judge. That's not enough. You can't get an order based on the house is too small. Is there anything about it?" And I mean, and I was, I guess, pretty clear with her, I said, "Ursula, there's three kids in this home. You're going to be asked why you can have three kids in a home and not four kids in a home. You're going to be asked this question, Ursula. We need to know where we're going with this."

And basically, she was unclear, or just, really, didn't give me any information. She couldn't explain why she was okay with the three kids being in the home. She indicated that she hadn't been out to the home, because one of the questions, I said, "Ursula, if you have some problems with the fact that there are three children in this home, the obvious is, why aren't you out there?" And she said, "Well, it's not, you know, it's okay. It's going along okay. Everything seems to be okay. I see her at the Northend Women's Centre. She seems good. She seems healthy."

So I basically said, "Ursula, this isn't going anywhere." I mean, I'm not going to say that's my exact language. I mean, we were having a pleasant discussion. It wasn't heated. It wasn't upset. It was just a discussion between two professionals. And I said to her, "I can't really go anywhere with this." She said, "Well, that's fine, but I don't want to supervise this order. I'm closing my file. I don't want to supervise this order." So I said okay.

Q. Ursula Klyne told us that she was dismissed by you. Is that, in fact, how you recall it transpired?

A. Yes. I mean, once I had determined, and had gone to Ron Oberlin, and reported the conversation, went through Ron's notes with him again, and said, "Ron, I want to go through this again. Is there anything we're missing here?" He said no. I said, "Because Ursula's got nothing. And have you been out to the home?" And "Yes. Everything looked fine, everything looks healthy. I'm happy with the supports." And then I said, "Well, what do you want to do? Shall we do with Wednesday's plan?" He said, "Yeah, let's go with Wednesday's plan." And I told all my witnesses they were free to leave.

Q. Did you dismiss Ursula Klyne before or after you had had a conversation with Ron Oberlin? Do you recall?

A. After. I mean, all of them left virtually at the same time. I told them all to go, once I made -- once I had Ron Oberlin's instructions to proceed with Wednesday's plan, I sort of told them they could all go. And they all left at the same time. (Evidence: Vol. 36, p. 17, l. 12 - p. 18, l. 30)

Leonoff continued:

Q. Ron Oberlin told us that as he was attending to the court complex, he saw Ursula Klyne leaving, and had no conversation with her. Is that possible?

A. No. No. I mean, that he was coming into court, and she was already going out the door?

Q. Yes.

A. Oh, no. They were all in the -- they were all in the hallway together. No. That's not possible.

Q. Ron Oberlin told us that he had no conversation with Ursula Klyne that morning. Did you witness the contrary?

A. Oh, no. I don't remember them speaking. I spoke to one, went and spoke to the other.

Q. And just so I am clear, you spoke with Ursula Klyne first?

A. First.

Q. And then Ron Oberlin?

A. Exactly.

Q. Did Ron Oberlin leave the court complex before you physically appeared before Justice Stefanson on the 27th?

A. No. He was with us in court.

Q. Okay.

A. And I spoke with him after court.

Q. All right. What were the instructions that Ron Oberlin provided to you before you walked into the courtroom on November 27th to see Justice Stefanson?

A. To go with Wednesday's plan, which was the six month order of supervision.

Q. Did he provide you with any other instructions previously that day?

A. No.

Q. What was your understanding of the instructions that Ron Oberlin had prior to attending the courtroom on November the 27th?

A. On the Friday, I was told that the agency would try to seek a permanent order, would seek a permanent order. I was comfortable with that, as long as I had the evidence. I mean, the decision is not mine which order the agency seeks. The decision is: Do I have evidence? I was evaluating evidence, and I was passing on to Ron Oberlin my concerns, leaving telephone messages, that I wasn't getting anything from Ursula Klyne. So that's why I insisted that she be there Monday morning. She had -- I promised her she could be my first witness, but she had to be there because she was the only person that I thought might have the information that was necessary.

Q. Well, Ms. Leonoff, if I haven't asked you already, what was your understanding for the change in instruction to you, as agency counsel, from Ron Oberlin from Friday, the 24th to the early morning, November 27th, 1995?

A. Once I told him that I could not, that I didn't find any evidence, I went through it with him. I reviewed the evidence with him, asked him his opinion. He said -- I said something along the lines of "I don't think I can make this case, even close," and he said, "Let's go with Wednesday's plan," or "Let's go with the supervision order."

Q. It was Ron Oberlin's decision?

A. Absolutely. (Evidence: Vol. 36, p. 20, l. 1 - p. 21, l. 23)

When Oberlin went to court on November 27, 1995, he was expecting the trial to proceed and that the court would be asked to make a permanent order of guardianship to CFS (Central).

Oberlin gave the following evidence concerning November 27, 1995:

Q. Okay. You attended to court on November 27th, 1995?

A. That's correct.

Q. Did you speak with Ursula Klyne?

A. No, I did not.

Q. Why not?

A. Actually she left as I was walking into the -- I'm, I'm trying to recall what floor. It may have been on the second floor. But I just came up the stairs and I saw her talking to Heather Leonoff and I'm trying to recall if I went in the courtroom first or not but -- no, actually, no. Ursula Klyne left right around that point and I had entered the courtroom.

Q. I take it from your comments you, you saw Ursula Klyne and Heather Leonoff having a conversation and --

A. Yes.

Q. -- you could not overhear anything that was being said by them?

A. That's correct.

- - -

Q. Okay. You did speak with Heather Leonoff prior to court?

A. Yes.

Q. Tell us about the conversation that you had with Heather Leonoff?

A. I don't recall a lot of the conversation. My understanding was that -- well, I guess my assumption at that time that she had sent Ursula Klyne away, that Northwest had brought their final decision in terms of what their, their agency -- or their plan was, even though I had thought we had already received it. Heather just indicated that was the plan which was being presented to court. My belief was that that was following her discussion with Ursula Klyne. Ursula left court, of course.

Q. What did Heather Leonoff tell you?

A. She told me the agency would be going ahead with an order of supervision for six months and -- yes.

Q. You had instructions from Rob Humniski to proceed to a permanent order?

A. Um-hum.

Q. And went to court?

A. Um-hum.

Q. Heather Leonoff advises you that, in fact, there would be consent to a placement order?

A. Yes. Rob's directions -- direction came to me as a result of his conversation with Mr. Finlay of the Northwest area. Therefore, my assumption was that when Ms. Leonoff spoke with Ms. Klyne, Ms. Klyne left the building was there had been another decision over the weekend perhaps or -- so I believe I was not available the previous Friday.

Q. Were you at all surprised when you learned this information from Heather Leonoff as to how the court proceedings were going to proceed on that date?

A. Yes, but assuming as well that that was the direction which was being provided to us by the other agency -- or by the other area of Winnipeg Child and Family Services, given that they were the workers associated with Mr. Tanner and Ms. Sinclair. All the witnesses were at court that day. We were ready to go ahead.

- - -

Q. Mr. Oberlin, when you went to court on November 27th, 1995 when did you anticipate you would testify in the order of witnesses?

A. I don't recall.

Q. No previous discussion between you and legal counsel Heather Leonoff in that, in that regard?

A. No. Well, if there was I don't recall it.

Q. Yeah. You told us earlier before we took the break that you were prepared to proceed to permanent order as that was the instruction you were provided?

A. Yes.

Q. What were you prepared to testify?

A. I was prepared to testify against Cynthia Schmidt that the agency felt it would be not appropriate to return Sophia to her care.

Q. All right.

A. I -- I'm sorry, yes, that's right.

Q. When you spoke with Heather Leonoff after you saw Ursula Klyne leaving the court complex did Heather Leonoff tell you what Ursula Klyne had said to her earlier that day?

A. No, she did not.

Q. Did you ask Heather Leonoff about the conversation that she had with Ursula Klyne?

A. I did not ask her about the conversation. I asked her about the -- like the specific of the conversation I asked or just expressed surprise that this was the plan that was going to happen.

Q. You say you expressed surprise to Heather Leonoff; is that what I understand you to say just now?

A. Yeah. Well, expressed or demonstrated, yeah.

Q. Yeah. What did you say to Heather Leonoff when you heard of the change in, in plan?

A. I don't recall what I said.

Q. Do you recall if you said anything?

A. I recall there was discussion.

Q. And do you recall the nature of those discussions?

A. Based on the -- I just -- I'm -- my discussions with her, like I can't -- obviously I can't say specifically what that was, but my understanding was based on the information we had against Cynthia Schmidt and based on the information that Central had with Wade Tanner, the -- I guess I was expecting a permanent order and I just didn't know what was going to happen that day at court so ...

Q. You were expecting a permanent order and you did not know what was going to happen?

A. Well, yeah. I was expecting that the trial would go ahead. I just didn't, didn't know what was going to happen specifically.

Q. You didn't know how the Court was going to rule?

A. Yes.

Q. But you did anticipate that a trial would commence on November the 27th?

A. Um-hum.

Q. Almost a complete about face between an instruction to proceed to permanent order and consenting to an order of supervision; would you not say?

A. Yes.

Q. Who gave you the instruction to do that about face?

A. With the information that I provided to Ms. Leonoff the case against Ms. Schmidt and also the, the information that Central area had with, with regard to Mr. Tanner and, and also acknowledging that this had been a plan previously that there was a consideration for a six month order of supervision. Given that -- and she had also indicated previously that there -- like, I guess her words, like no judge would grant anything other than a six month order of supervision.

Q. Who was it that instructed you to change the, the order from a permanent order to one of supervision?

A. Nobody instructed me. It was -- my -- and I guess my notes reflect it as well, my notes of November 27.

Q. Yes.

A. I made an assumption there that Ms. Leonoff had spoken with Ms. Klyne and that, and that the plan which was previously stated, I think, on November 22nd or 23rd was, in fact, going to go ahead.

Q. Well, you've told us previously you made an assumption but you didn't specifically ask Heather Leonoff what was the nature of the conversation with Ursula Klyne, did you?

A. I didn't ask for specifics, no.

Q. No. But would that not be very important information to have you -- for you to have had on November 27th when you learned the change in plan from permanent order to one of supervision?

A. I, I guess I assumed with Ms. Leonoff, like the agency had their position against Ms. Schmidt fairly -- like they had a fairly good case against Ms. Schmidt with Mr. Tanner and we had information which was generally positive. Ursula Klyne was not at the courtroom. I could not confer with her anymore. My

understanding is that the lawyer, Ms. Leonoff with me, had spoken with her and made -- that was the decision from the other area.

Q. Cynthia Schmidt was your client on November 27th, 1995?

A. Yes, she was.

Q. Baby Sophia was your client November 27th, 1995?

A. That's right.

Q. You tell this court that you were prepared to go to court on November 27th and testify at a trial to seek or to obtain an order for permanent order and advise the Court why and how Cynthia Schmidt would not be the appropriate parent to care for baby Sophia --

A. Yes.

Q. -- is that right?

A. I'm sorry, I missed the very last part.

Q. You were prepared to tell the Court how it was that Cynthia Schmidt was not appropriate to parent baby Sophia --

A. Um-hum.

Q. -- right?

A. Yes.

Q. What about your client, baby Sophia?

A. Um-hum.

Q. What were you prepared to tell the Court on November 27th as to what would be best for that client?

A. Um-hum. Central area didn't have a large case against Mr. Tanner and Ms. Schmidt certainly had brought forth a number of issues to me, a lot of it hearsay or, or if truthful -- even firsthand from her but if truthful. The information we had was positive generally towards Mr. Tanner. It may seem -- I would say hindsight is 20/20 but it may seem like it may have been a natural decision at that time. Ms. Schmidt was not in the courtroom to present evidence against Mr. Tanner. Central area had positive information regarding Mr. Tanner. And when, when I say generally positive this is in a comparison to many of the cases with many of the people with whom I worked. And I'm not saying it's only a comparative analysis because obviously certain standards and child protection standards have to be met. But he certainly seemed that he may be an appropriate care giver and any, any argument against Mr. Tanner's -- for the placement of Sophia with Mr. Tanner, like Ms. Schmidt was not there to, to state the information that she had received.

Q. But how do you reconcile when you tell us that you -- it seemed that Wade Tanner would be an appropriate parent against having such little information on Wade Tanner?

A. The information I had was information that we would use in the placement of children at that time. It's -- I had a -- I interviewed Mr., Mr. Tanner. I had interviewed Ms. Sinclair. I had a criminal record check which corroborated what Mr. Tanner had indicated to me. I had observed him three different visits at the agency and he had come forward as a person who denied paternity but when he discovered he had paternity he had come forward to work in a cooperative nature with the agency. In the days following the decision, in fact, or in addition, he came to the agency looking for certain supports or resources and we certainly tried to work with him in that regard.

Q. Did you have an obligation as a child protection worker to ensure that baby Sophia's best interests were met when you went to court November 27th, 1995?

A. Yes.

Q. You say that it was unfortunate that Cynthia Schmidt left the courtroom, the court building --

A. Um-hum.

Q. --before she made her thoughts known; do you recall saying that earlier?

A. Yes, I do.

Q. Leading up to the court appearance you knew from at least two different occasions that Cynthia's Schmidt's position was she would rather baby Sophia go into foster care than go with biological father Wade Tanner --

A. Um-hum.

Q. -- right?

A. Yes.

Q. Did you learn anything that led you to believe that Cynthia Schmidt's position had changed in that regard prior to November 27th, '95?

A. I didn't, I didn't learn anything to say that her position had changed, like she had not instructed me that her position had changed. Perhaps it did but certainly she hadn't clarified that with me.

Q. That Cynthia Schmidt left the courtroom, how did that change your obligation to protect the best interests of baby Sophia?

A. At that time we felt we were protecting the best interests. This is the biological father that came forward assuming responsibility. He went through a process of meeting with me, spoke with me. I interviewed him. He met with Sophia previously. He was prepared to take responsibility going back to the, the tenants of the act, to act in the least intrusive way, like this is a person coming forward to provide care for their, to provide care for their biological child. And --

Q. It was a chance you were prepared to take?

A. Well, the fact that there were three other children living in the home as well, yes. Ms. -- and in addition Ms. Leonoff being an experienced lawyer, counsel for the agency, she had agreed that this would be an appropriate course of action. Like we said, hindsight's not perfect, like --

Q. No, I think we all appreciate that --

A. Yeah.

Q. -- here at this inquest, sir.

A. Um-hum.

Q. But are you telling us that you deferred to Heather Leonoff?

A. I did not defer to Heather Leonoff. Based on the information that we had, Central's case against Ms. Schmidt, and the information we had regarding Mr. Tanner, this seemed like an appropriate decision at the time.

Q. What do you mean when you say you respected Heather Leonoff as experienced counsel? I'm sorry, I'm not exactly sure what words you said, but what do you mean when you say that?

A. When I say that I mean she is a lawyer who has acted on behalf of the agency. She was aware of the Child and Family Services Act. She is aware of issues which present themselves to a Child and Family Services worker and she is also -- she was provided with the information regarding Wade Tanner. And not relying upon her exclusively but with the Court having that information it seemed like an appropriate move at the time.

Q. Isn't it the case that Heather Leonoff would rely upon you for your clinical assessment of this situation?

A. Absolutely. And, and we provided direction to her on an ongoing basis.

Q. Did you provide any instruction to Heather Leonoff on November 27th, '95 to proceed to trial and obtain a permanent order?

A. On November 27th?

Q. Yes.

A. My direction to her on November 23rd was that. On November 27th my understanding is the circumstances had changed. We -- Cynthia Schmidt was not in the courtroom. Her lawyer had no instruction. He couldn't oppose a permanent order or -- so, therefore, there was not a permanent order application against Ms. Schmidt. With regard to Mr. Tanner he once again, like was an individual who came forward, biological father, had met the, met the requirements that the agency would look at to see if -- like if he could be considered an appropriate care give (sic), like given his situation, the fact that he came forward, met with the worker, had spent time with the child.

Q. You did not instruct Heather Leonoff to proceed to permanent order on November 27th. When you attended the courthouse she advised you that an order of, of supervision had been -- will be consented to; is that what occurred?

A. That would be what would be considered at that point, yes.

Q. Who was the client on November 27th, 1997 (sic) to Heather Leonoff?

A. We were the - Winnipeg Child and Family Services was the client, myself being the case worker attached -- or working with regard to this case.

Q. Who was to provide the instructions?

A. I'm sorry, was that a --

Q. Who was to provide the instructions --

A. Oh, that was a question.

Q. -- to Heather Leonoff?

A. The agency provided instructions and me specifically.

Q. Did you do that?

A. Once again, with instruction Ms. Schmidt was not there to go to have a permanent order against her. We could not proceed for a permanent order against Cynthia Schmidt because she -- her lawyer had no direction, no instruction. The information we had with regard to Mr. Tanner was generally positive. (Emphasis added by the writer) (Evidence: Vol. 32, p. 64, l. 31 - p. 75, l. 14)

It is important to note that Oberlin's description of the information he had concerning Tanner changed from "very little" to "generally positive" to "positive" as he testified. In my opinion, Oberlin was attempting to rationalize the fact that he did little to investigate Tanner and his home situation. The truth was that Oberlin knew "very little" about Tanner.

On two occasions Oberlin stated that the agency could not proceed to obtain a permanent order against Schmidt because she was not in court and her lawyer had no instructions. Although this opinion touches upon the law, I am astonished that Oberlin, with the experience he had, did not know the law on this basic point as it relates to consent orders. Oberlin's opinion was wrong. And if that was Oberlin's understanding of the law, it is strange that he thought it appropriate to deprive Schmidt of the custody of Sophia by placing her with Tanner, when Schmidt was not present and her lawyer had no instructions.

Finlay stated he received a request from Leonoff to attend the court proceedings on November 27, 1995. He left a message on Leonoff's voice mail advising her that he would not be coming to court but he would send Klyne instead. He included in the telephone message the position of CFS (NW), namely that CFS (NW) did not support the plan to place Sophia in the Sinclair-Tanner home. According to Finlay, Leonoff did not return his telephone message.

Finlay did not attend court on November 27, 1995. His excuse for not attending court was that it was not necessary for two people to say "no".

Finlay testified that he discussed the Home Assessment Report with Klyne and directed her to attend court and advise Leonoff that CFS (NW) was opposed to the placement of Sophia in the Sinclair-Tanner home.

It is my opinion that Finlay should have personally attended court on November 27, 1995. He knew or ought to have known that Klyne was not a strong personality and would not be the strongest advocate of CFS (NW)'s position to oppose the planned placement of Sophia. In fact, it is my impression of Klyne, after listening to her evidence, that she was meek. Finlay also knew that Leonoff had not acknowledged his telephone message and he had not discussed the proposed placement plan of Sophia and CFS (NW)'s opposition to the plan with Leonoff.

In addition, by agreement, CFS employees treat their lawyer's request to attend court as equivalent to being served with a subpoena. Consequently, Finlay should not have disregarded Leonoff's request to attend court. Finlay should have been in court on November 27, 1995, unless excused from attending by Leonoff.

It was crucial for Finlay to attend court on November 27, 1995, with Klyne, to ensure that those concerned with the welfare of Sophia and the Sinclair family knew of the concerns of CFS (NW) and its opposition to the planned placement of Sophia in the Sinclair-Tanner home.

Just prior to court commencing, Schmidt learned that Sophia was going to be placed with Tanner in the Sinclair-Tanner home. She became upset and ran from the courtroom and out of the courthouse.

Leonoff was asked about the different options available, prior to court on November 27, 1995, in view of the apparently conflicting positions between CFS (NW) and CFS (Central). She testified as follows:

> Q. ---. Apart from the options that are available under Section 38, were there any other options discussed? For example, maybe adjourning the court case to a later date, so that better information could be obtained on Wade Tanner?
>
> A. No. Adjournments are virtually not an option in child welfare matters.
>
> Q. The court case was scheduled for five days, 27th through to the 31st?
>
> A. Right.
>
> Q. Any contemplation between you and Ron Oberlin of using the first day of trial as an investigative day, for example?

A. Oh, sure. I mean, that wasn't discussed on the 21st, because on the 21st we had the information we wanted. We thought we had all the relevant information. Ron Oberlin thought he had all the relevant information. That may have been a possibility on the Monday to say, you know what? Let's stand this case down. Let's tell the Judge we want to put this over till Tuesday.

Q. Um-hum.

A. That might have been an option. Had I felt at the time that there was some confusion, or that the workers weren't clear about where they were going, I would have done that. Had I felt that they were confused. It wouldn't have been for finding out more information, because you can't find out information in 24 hours, at least that I'm aware of. I mean, either you've got the information -- had I felt that they were confused, or unclear about where they wanted to go, I would have asked to stand the case down, either to two o'clock or the next day. I didn't personally form that opinion.

Q. Okay. I appreciate your answer. But let me just ask you again, then. On November 27th, was there any discussion between you and Ron Oberlin about those other procedural options, if you will?

A. No. No. No. I mean -- had I thought that he was unclear, or that he wanted more time to think about it, I would have made that suggestion, let's stand it down -- I probably would have said let's stand it down till two o'clock. But I didn't, because I didn't get any sense that he needed more time or didn't understand what the issues were.

Q. You say getting an adjournment in a child protection case of this kind is virtually not an option?

A. That's correct.

Q. Help us out. Why not?

A. Court of Appeal has spoken many, many times about the need to bring these matters on, and to have them heard quickly. The Court of Queen's Bench sets as a priority child welfare hearings over and above other matters, especially with babies. The agency is expected to stick to limited time lines. The Court of Appeal has recently suggested that we're being, the courts are giving us way too much latitude, and in fact, we should be prepared to prove our cases within 30 days. I hope that that doesn't become the norm. Things will be quite difficult. But that was a recent comment by the Court of Appeal. And the Judges are absolutely opposed, as a general rule, I mean, sure, adjournments happen if you can --

Q. For good reason?

A. For very good reason. But the onus is on the agency. They've got somebody's child in care, and they have to be prepared to come forward and prove their case within the time lines set by the court. And they're generally quite able to meet those time lines.

Q. Other than standing the case down, adjourning to the next day of trial, or requesting for the trial to be adjourned altogether, any other options that come to your mind, that may have been discussed between you and Ron Oberlin on the 27th?

A. No. None that I can think of. (Evidence: Vol. 36, p. 23, l. 21 - p. 25, l. 20)

In the foregoing testimony, Leonoff stated "on the 21st we had the information we wanted. We thought we had all the relevant information. Ron Oberlin thought he had all the relevant information." However, somewhat inconsistently, Leonoff further testified:

Q. So as of July, you knew that was Wade Tanner's position?

A. Right. Which is why I said we needed to have an assessment done of him.

Q. Would you have expected, or did you expect that you would have received something in writing from the agency, a new sort of summary, or case summary, dealing with Wade Tanner?

A. I would have expected a full assessment to be done of Mr. Tanner and Mr. Tanner's home. Yes, I would have expected that.

Q. Was this case unusual, that you didn't, in fact, receive such a summary in respect of Wade Tanner?

A. I would have to answer your question by saying yes, in my experience it was unusual. When a new person presents themselves as a potential to parent a child, whether it be a natural parent, a guardian, an aunt, an uncle, a grandparent, the agency conducts, or organizes and conducts -- I don't mean conducts itself -- organizes and has prepared, or conducts itself, a complete assessment of each plan that comes forward. . . . But if there's a serious plan put forward, then the obligation on the agency is to investigate all those options.

Q. And I take it when you've got that new information, if you have the time, you most likely would have prepared a new pre-trial memorandum for the Judge, to let the Judge know that, in fact, the circumstances have changed?

A. If we get new information from the agency, we do updated pre-trial memos as a matter of course. We keep the Judges informed, if we have information to pass on to the Judges. In this case, I didn't have any additional information to pass on to the Judges, because the assessments on Mr. Tanner and his family weren't done, being done. (Evidence: Vol. 36, p. 92, l. 5 - p. 93, l. 11)

In fact, CFS (Central) had very little information concerning Tanner, Sinclair and their circumstances, either on November 21 or November 27, 1995. As Leonoff conceded, she expected CFS (Central) to do a full assessment of Tanner and his home. That was not done. In addition, Oberlin did not use the information he possessed to further investigate Tanner, Sinclair and their circumstances. He instead relied on a home study report, which he knew to be inadequate, and the opinion of CFS (NW) as to whether Sophia should be placed in the Sinclair-Tanner home. According to Leonoff, the contrary opinion of CFS (NW) could not be articulated as admissible evidence.

Leonoff continued her testimony:

Q. Was it an unusual situation that four days before the actual trial, the complete circumstances of the case had changed, that in fact, something that had been presented throughout the pre-trial to the Court as something, whether you were talking about a placement with the Tanner home, when it's all automatically changed, so now you were going to be opposing it?

A. On the Friday?

Q. Yeah.

A. That's very unusual.

Q. Would it be normal in that type of situation that you would maybe go back before the Court, and say, "My Lord, we have a completely new situation here"?

A. If I felt that there was evidence to present, or that there was something that I could hang my hat on, yes. I would have done something with that. But I didn't have that. I didn't have an evidentiary base. I didn't have a sense, when I spoke to all of the witnesses on the Monday, that there was a lack of clarity. Ms Klyne advised me that her, that she understood that she had three children in the home, and that was a relevant factor, her, if you will, big concern to me was, "I don't want to supervise this."

With Mr. Oberlin, I went to him following my discussion with Ms. Klyne, I passed on my discussion with her. ....

When I went to Mr. Oberlin, and told him, this is, look at, I don't know where to go with this, he understood, and said, "Okay. If we don't have the evidence, let's go with Wednesday's plan." So if I had a sense, or more particularly, not if I had a sense.

If Mr. Oberlin was uncomfortable, and was feeling -- and this happens. Workers are confused, not knowing where to go, we certainly have the option of standing things down to the afternoon, or putting them over to the next day. And had Mr. Oberlin said to me, "I'm lost here. I don't know where to go with this," I would have said, "Well, you know, let's put this down till two o'clock. Let's, you know, try and get everybody on track." Had I had any sense that that was the situation, that would have been the way I would have proceeded. I didn't have that sense come Monday morning.

- - -

Q. When you indicated to Mr. Oberlin on the 27th Ursula Klyne's position, did Mr. Oberlin ever indicate to you, "That's fine, but I'll have to check with Mr. Humniski, my supervisor, as to whether or not this is okay"?

A. No.

Q. <u>Is it your understanding from working with the agency that before any decision is made on a plan for a child under protection or in need of protection, that they require the supervisor's okay before there's a change?</u>

A. Yes.

Q. Did you suggest to him, "Perhaps you should contact your supervisor"?

A. I didn't. I don't remember suggesting that to him. Again, had he said to me, "I need some time," we would have found him the time.
(Evidence: Vol. 36, p. 93, l. 12 - p. 95, l. 20) (emphasis added)

In my opinion, both options should have been pursued.

While I recognize that adjournments in child welfare cases are not easily obtained and that CFS (Central) had sufficient time to investigate Tanner and Sinclair's circumstances, it is not impossible to obtain an adjournment. An adjournment is a matter to be decided in the trial judge's discretion. Given the changing positions and instructions of CFS (NW), given the history of Tanner and Sinclair, as then known to Oberlin and Leonoff, given the fact that an assessment of Tanner had not been done and given the position taken by CFS (NW), an adjournment ought to have been sought, either with the consent of all parties (which was not explored) or upon a contested application before the trial judge.

Failing the obtaining of an adjournment, a recess until, at least, the afternoon ought to have been sought so that the supervisors, Finlay and Humniski, could have been brought into the picture and consulted. Oberlin had no authority and ought not to have countermanded Humniski's instructions, even with Leonoff's advice that there was no case to make against Tanner. Leonoff conceded, in her foregoing testimony, that she knew "that before any decision is made on a plan for a child under protection or in need of protection, that they require the supervisor's okay before there's a change". She also knew that Oberlin did not get Humniski's "okay" to change the plan.

Of great concern is the fact that Leonoff and Oberlin were not of one mind when the decision, whoever made it, was made to proceed to a consent order.

In this regard, Leonoff testified:

---. I mean, once I had determined, and had gone to Ron Oberlin, and reported the conversation, went through Ron's notes with him again, and said, "Ron, I want to go through this again. Is there anything we're missing here?" He said no. I said, "Because Ursula's got nothing. And have you been out to the home?" And "Yes. Everything looked fine, everything looks healthy. I'm happy with the supports." And then I said, "Well, what do you want to do? Shall we go with Wednesday's plan?" He said, "Yeah, let's go with Wednesday's plan." And I told all my witnesses they were free to leave. (Evidence: Vol. 36, p. 18, ll. 14-23) (emphasis added)

And as previously quoted:

Q. Well, Ms. Leonoff, if I haven't asked you already, what was your understanding for the change in instructions to you, as agency counsel, from Ron Oberlin from Friday, the 24th to early morning, November 27th, 1995?

A. Once I told him that I could not, that I didn't find any evidence, I went through it with him. I reviewed the evidence with him, asked him his opinion. He said -- I said something along the lines of "I don't think I can make this case, even close," and he said, "Let's go with Wednesday's plan," or "Let's go with the supervision order."

Q. It was Ron Oberlin's decision?

A. Absolutely.
(Evidence: Vol. 36, p. 21, ll. 12-23) (emphasis added)

Clearly, it is Leonoff's testimony that, after advising Oberlin of the substance of her conversation with Klyne, she received instructions from Oberlin to proceed with the plan to place Sophia in the Sinclair-Tanner home under a six month order of supervision.

On the other hand, as previously quoted, Oberlin testified as follows:

Q. Tell us about the conversation you had with Heather Leonoff?

A. I don't recall a lot of the conversation. My understanding was that -- well, I guess my assumption at that time that she had sent Ursula Klyne away, that Northwest had brought their final decision in terms of what their, their agency -- as their plan was, even though I had thought we had already received it. Heather just indicated that was the plan which was being presented to court. My belief was that following her discussion with Ursula Klyne. Ursula left court, of course.

Q. What did Heather Leonoff tell you?

A. She told me the agency would be going ahead with an order of supervision for six months and -- yes.

Q. You had instructions from Rob Humniski to proceed to a permanent order?

A. Um-hum.

Q. And went to court?

A. Um-hum.

Q. Heather Leonoff advises you that, in fact, there would be consent to a placement order?

A. Yes. Rob's directions -- direction came to me as a result of his conversation with Mr. Finlay of the Northwest area. Therefore, my assumption was that when Ms Leonoff spoke with Ms. Klyne, Ms. Klyne left the building was there had been another decision over the weekend perhaps or -- so I believe I was not available the previous Friday.

Q. Were you at all surprised when you learned this information from Heather Leonoff as to how the court proceedings were going to proceed on that date?

A. Yes, but assuming as well that was the direction which was being provided to us by the other agency -- or by the other area of Winnipeg Child and Family Services, given that they were the workers associated with Mr. Tanner and Ms. Sinclair. --- .
(Evidence: Vol. 32, p. 66, l. 6 - p. 67, l. 7) (emphasis added)

Oberlin continued:

Q. Who was it that instructed you to change the, the order from a permanent order to one of supervision?

A. Nobody instructed me. It was -- my -- and I guess my notes reflect it as well, my notes of November 27.

Q. Yes.

A. I made an assumption then that Ms. Leonoff had spoken with Mr. (sic) Klyne and that, and that the plan which was in previously stated, I think, on November 22nd or 23rd was, in fact, going to go ahead.

Q. Well you've told us previously you made an assumption but you didn't specifically ask Heather Leonoff what was the nature of the conversation with Ursula Klyne, did you?

A. I didn't ask for specifics, no.

Q. No. But would that not be very important information to have you -- for you to have had on November 27th when you learned the change in plan from permanent order to one of supervision?

A. I, I guess I assumed with Ms. Leonoff, like the agency had their position against Ms. Schmidt fairly -- like they had a fairly good case against Ms. Schmidt with Mr. Tanner and we had information which was generally positive. Ursula Klyne was not at the courtroom. I could not confer with her anymore. My understanding is that the lawyer, Ms. Leonoff with me, had spoken with her and made -- that was the decision from the other area. (Evidence: Vol. 32, p. 69, l. 25 - p. 70, l. 16) (emphasis added)

And finally:

Q. You did not instruct Heather Leonoff to proceed to permanent order on November 27th. When you attended the courthouse she advised you that an order of, of supervision had been -- will be consented to, is that what occurred?

A. That would be what would be considered at that point, yes.
(Evidence: Vol. 32, p. 74, ll. 24-29)

Oberlin's testimony was contradictory to that of Leonoff's. Oberlin's evidence was that he was not told of nor did he ask for the specifics of Leonoff's conversation with Klyne. If Oberlin is correct in his recollection of the events of November 27, 1995, then he wrongly assumed that Klyne had brought instructions from CFS (NW) to proceed with the placement of Sophia in the Sinclair-Tanner home. On such a crucial issue, this was an assumption he ought

not to have made. Again, if Oberlin's recollection was correct, his failure to ask Leonoff about her conversation with Klyne approaches neglect of his responsibilities.

In addition to the foregoing, it was Oberlin's testimony that he was advised by Leonoff that the matter would proceed by consent to a six month supervisory order.

On this very crucial decision, Oberlin and Leonoff were not of one mind. Leonoff and Oberlin proceeded through this crucial decision-making process from two very different perspectives.

Leonoff discussed other options that were available to CFS (Central):

> Q. What were the other options that you discussed?
>
> A. Well, on the 21st, on the Wednesday, once Ursula Klyne had reported back, we just had a general discussion, "What do you want to do? Where are we going on this?" I need to let counsel know, because counsel were a little bit anxious to know where the agency was going with this. One of the options that we briefly discussed is, you know, are you looking towards a temporary order? That's an option where you feel that you're going to do more work with the family. In this situation, because of the age of the family, Mr. Oberlin didn't suggest that as the way he wanted to proceed on this matter.
>
> Q. Okay.
>
> A. When you're dealing with young children, it's a push and pull. I mean, there are sort of conflicting views that come into play. If babies are going home, you want them home as quickly as possible, because the sooner that they get in the home, the less difficulty the child has with bonding. On the other hand, you've got to make sure it's a safe home before you make that choice. So it was a push and pull. And his determination was no, to go with the six month order of supervision, and try this child in this home. (Evidence: Vol. 36, p. 31, ll. 8-29)

With respect to a temporary order, while I acknowledge that it is preferable to place a young child in the home as quickly as possible to allow for bonding to occur, Leonoff was absolutely correct when she stated, "On the other hand, you've got to make sure it's a safe home before you make that choice." Oberlin knew very little about Tanner and Sinclair. Having regard to the fact that Oberlin did almost nothing to investigate the Sinclair-Tanner home, and the fact he was relying on a home study report which he knew to be inadequate, the choice of a temporary order was a very viable option.

The Day of Court: November 27, 1995

As of November 27, 1995, ss. 38(1), (2), (6) and (7) of the Child and Family Services Act, provided as follows:

> **Orders of the judge.**

38(1) Upon the completion of a hearing under this Part, a judge who finds that a child is in need of protection shall order

(a) that the child be returned to the parents or guardian under the supervision of an agency and subject to the conditions and for the period the judge considers necessary; or

(b) that the child be placed with such other person the judge considers best able to care for the child with or without transfer of guardianship and subject to the conditions and for the period the judge considers necessary; or

(c) that the agency be appointed the temporary guardian of a child under 5 years of age at the date of apprehension for a period not exceeding 6 months; or

(d) that the agency be appointed the temporary guardian of a child 5 years of age or older and under 12 years of age at the date of apprehension for a period not exceeding 12 months; or

(e) that the agency be appointed the temporary guardian of a child of 12 years of age or older at the date of apprehension for a period not exceeding 24 months; or

(f) that the agency be appointed the permanent guardian of the child.

Consent orders.
38(2) Where all persons who have received notice under subsection 30(1) consent a judge or master may, without receiving further evidence, make an order respecting the child in accordance with clause (1)(a), (b), (c), (d) or (e) and a person who was served but does not appear or who by an order under subsection 30(4) was not required to be served shall be deemed to consent.

Right to enter home.
38(6) Where a judge or master makes an order under clause (1)(a) or (b) any representative of the agency under whose supervision the child is placed has the right to enter the home where the child is to provide guidance and counselling and to ascertain that the child is being properly cared for and maintained and any person who obstructs the representative in so doing is guilty of an offence punishable on summary conviction.

Further apprehension of child.
38(7) Where an agency that is authorized pursuant to subsection (1) to exercise supervision over a child finds that the child is not being properly cared for and maintained or that the child is in need of protection, the child may be apprehended notwithstanding the order made under subsection (1).

Counsel for CFS (Central), Schmidt and Tanner appeared before Stefanson, J. on November 27, 1995. The following is what occurred in court (Exhibit 64, pp. 151-156):

Ms. Leonoff: Good morning, My Lord. My name is Heather Leonoff, I appear on behalf of Winnipeg Child and Family Services. Mr. West is here on behalf of the mother, Cynthia Schmidt, and Mr. Cadloff is here on behalf of the father, Wade Tanner.

I can advise the Court that it is the Agency's position that it is withdrawing its apprehension, and the plan of the Agency is to place -- oh, no, we can't do that cause -- I'm going to ask to take that back, to start again.

The Court: Yes.

Ms. Leonoff: I'm asking the Court simply for a six-month order of supervision, because the Agency does want to maintain an open file, so I can't simply withdraw the apprehension.

The Court: Um-hum.

Ms. Leonoff: The plan is to place with the father --

The Court: Um-hum.

Ms. Leonoff: -- and I'm asking the Court to pronounce a six-month order of supervision.

The Court: Um-hum.

Ms. Leonoff: And I'll let Mr. West and Mr. Cadloff deal with any of their little issues.

Mr. West: Simply to the Court, my name is West on behalf of Ms. Schmidt -- is not present here. Ms. Schmidt is simply taking no position.

The Court: Okay.

Mr. Cadloff: My Lord, Mr. Tanner consents to the six-month order of supervision. I would ask that any access to be exercised by the mother be arranged by Child and Family Services. He does not want to have to exercise access or have Ms. Schmidt at his house.

Also, I'm wondering if Your Lordship can grant an order of custody on the family -- under The Family Maintenance Act file in favour of Mr. Tanner. We have not at moment filed an answer, although I have one prepared and will do so shortly. However, the files, I believe were ordered to be joined by the pre-trial conference judge.

The Court: I didn't see that on the memo, but I didn't -- but in any event, there is a problem, and I'd hear from Ms. Leonoff, that even if it is only an order of supervision, normally the Court doesn't grant a custody order between the parents while the Agency is still involved. And normally that order wouldn't take place until the expiration even whether it's --

Mr. Cadloff: I understand it, My Lord. The reason I ask for it --

The Court: Maybe that might -- may not be true about orders of supervision --

Ms. Leonoff: It isn't, My Lord. The Agency has no guardianship in an order of supervision.

The Court: Okay.

Ms. Leonoff: So somebody needs to be the official, legal guardian.

The Court: Okay.

Ms. Leonoff: If we return to the father, he becomes the de facto custodial guardian, but I certainly have no problems with the Court granting an order, but it's really not my issue.

The Court: No.

Mr. Cadloff: The difficulty I have is that there was an interim order granting custody in favour of the mother, so that's the only existing order at the moment.

Mr. West: Is that true?

Mr. Cadloff: Didn't you have that?

Mr. West: I thought it was just a restraining order.

Mr. Cadloff: Was it?

The Court: Maybe if I could see the file?

The Clerk: Family?

The Court: The family file, yes.

Mr. Cadloff: I thought we consented to, to custody at the beginning.

Mr. West: No -- was under apprehension.

Mr. Cadloff: You sent me --

Mr. West: The order, My Lord, it's my understanding, is a restraining order.

The Court: That's all -- the order of June the 21st, that's all it is.

Mr. West: That's right. It's only a restraining order which was consented to on our friend. I think Your Lordship is absolutely correct. It would have been presumptuous of us to even seek an order of custody or pending the resolution of this matter.

My guess -- I guess, the problem that I have at this conjuncture is Mr. Cadloff, on behalf of his client, has not filed an answer in these proceedings, and he says he proposes to do that now, and then to jump the gun without even filing a proper notice of motion for custody, to ask the Court to grant an order of custody.

I'm quite prepared to advise the Court that in regard to the child protection proceedings, my clients take no position, and I don't think that my client is in a position to oppose the Agency's case. I do think, however, that there are issues under The Family Maintenance Act that was filed on my client's petition many moths ago. It's not just something that we just filed a couple of, a couple of weeks ago and asked for an order of joinder. That petition was filed a long time ago, and the fact that we have an interim order pursuant to that petition demonstrates that.

So I would prefer that this Court not make, at this point, an order of custody and let Mr. Cadloff file his motion before the Court. The Court, and under the order of supervision, will have de facto custody of this child in any event. I don't know if it's proper for all of a sudden to --

The Court: I have no hesitation in saying -- well, I was uncertain about the jurisdiction of the Court to make an order of custody initially when we were talking about an order of supervision, and upon reflection I'm satisfied that clearly the Court can deal with custody when the only order is one of supervision as opposed to guardianship. If there's an order of guardianship, in my view, then the whole matter was put off until that order terminates.

But the other issue about granting relief that has not been sought, I think the Court of Appeal has been very clear to trial judges that we should not be granting relief that has not been sought. In this case there has been a petition filed by the mother. At this point, there's still no answer filed. There's no notice of motion requesting custody, and, quite simply, I don't know how I can grant an order of custody without those steps being taken.

Mr. Cadloff: Very well, My Lord, I'll file the necessary papers and I'll withdraw that request.

Mr. West: Thank you.

The Court: But there will then be a six-month order of supervision granted, and Mr. Cadloff can then proceed.

I would just comment very briefly that if this had not happened, then we were here today going to trial. I don't know what we would have gone to trial on without the documentation under The Family Maintenance Act being clarified, in any event, or being filed in any event. That is not an issue now because of what has taken place. I just caution counsel in the future to make sure that in these cases where we have the child protection agency involved and then there's a dispute of some sort between the parents, to have all the necessary documentation filed concerning the family court proceeding as opposed to the child protection proceeding.

In any event then, there will be a six-month order of supervision granted.

Ms. Leonoff: Thank you, My Lord.

Mr. Cadloff: Thank you, My Lord.

A "Supervisory Order" was not filed with the Court of Queen's Bench until February 7, 1996. The Order provided:

THAT the Petitioner, WINNIPEG CHILD AND FAMILY SERVICES (Central Area), shall have an Order of Supervision of the child, Sophia Lynn Schmidt, born April 24, 1995, for a period of six months, up to and including May 27, 1996.

Was the "Best Interest" Test Applicable?

As of November 27, 1995, ss. 39(1) of the Family Maintenance Act stated:

Joint rights of parents in children
39(1) Subject to subsection (2), rights of parents in the custody and control of their children are joint but where the parents have never cohabited after the birth of the child, the parent with whom the child resides has sole custody and control of the child.

Tanner and Schmidt never cohabited after the birth of Sophia.

In this regard, Leonoff testified as follows:

> Q. Now with respect to the case that we're dealing with in these proceedings, what is your understanding as to what action Child and Family Services took upon the birth of baby Sophia?
>
> A. She was apprehended at birth.
>
> Q. So what does that mean in terms of birth mother having legal custody of the child? How have the courts interpreted that?
>
> A. It's certainly, from my experience, and this has come up previously, when a child is apprehended at birth the child never resides with either parent. The child is apprehended at birth so that neither parent ever gets de facto custody of that child. There is no custody order. The person that has custody, control if you will, of the child, is the Agency. So when a child is apprehended at birth neither parent, in the facts we're dealing with, ever obtained custody of this child. (Evidence: Vol. 35, p. 12, ll. 12-28)

A legal issue arose during the course of the inquest. If CFS could not discharge its onus to prove that Sophia was in need of protection from Tanner, did CFS (Central) have an additional onus to show that it was in the best interests of Sophia that she be placed with Tanner?

In its submission on behalf of Winnipeg Child and Family Services, counsel chose to frame the issue as follows:

> Where the parents of a child are not married and have never cohabited, and the child is found to be in need of protection from one parent, what is the onus on CFS and the test to be applied by the Court in placing the child with the other parent, where that parent has never had custody of the child and where no order of custody has been made in respect of the child?

In his response to the submission of Winnipeg Child and Family services, counsel for the Child and Family Support Branch of the Department of Family Services stated that the Child and Family Support Branch accepts the above quoted statement "as an accurate statement of the issue your Honour asked the parties to address".

Although the subject matter of this inquest was resolved by way of a consent order pursuant to s. 38(2) of the Child and Family Services Act, because the issue was raised, because the parties who addressed the issue take different positions to resolve the issue raised and because the issue will certainly arise in

the future, as it has in the past, I will comment upon the issue. In order to do so, I will briefly restate the relevant facts:

1. Sophia was born on April 24, 1995, and was apprehended at birth by CFS (Central) on the basis that she was in need of protection from her mother, Schmidt.

2. On April 25, 1995, CFS (Central) filed a Petition in the Court of Queen's Bench, Family Division, seeking a finding that Sophia was, at the time of apprehension, and continued to be in need of protection. The Petition sought various orders from the Court, pursuant to ss. 38(1) of the Child and Family Services Act, including a permanent order of guardianship.

3. Schmidt filed a separate Petition under the Family Maintenance Act seeking an order of custody of Sophia and a declaration that Tanner was the biological father of Sophia.

4. Schmidt and Tanner were never married to each other nor did they ever cohabit at any relevant time.

5. Tanner initially denied he was the biological father of Sophia, but later admitted paternity and expressed a desire to have custody of Sophia. He never filed an application for custody of Sophia.

6. The matter came on for hearing on November 27, 1995, and pursuant to ss. 38(2), a consent six month order of supervision was made by the Court of Queen's Bench, Family Division, pursuant to clause 38(1)(a) of the Child and Family Services Act.

7. On November 28, 1995, CFS (Central) placed Sophia with Tanner in the Sinclair-Tanner home

Leonoff and Mr. McNicol, inquest counsel for Child and Family Services, agree that neither Schmidt nor Tanner ever had custody of Sophia as of November 27, 1995. Both counsel also agree that, because Schmidt and Tanner had never cohabited after the birth of Sophia and because Sophia had been apprehended at birth and had therefore never resided with either parent, neither parent had gained custody, solely or jointly, of Sophia pursuant to s. 39(1) of the Family Maintenance Act.

Leonoff and Mr. McNicol are also in agreement that Schmidt and Tanner, as Sophia's biological parents, had equal rights to custody of Sophia and that their respective right to custody of Sophia had not been terminated in any way. Therefore, Leonoff and Mr. McNicol submit that CFS (Central) had the onus to prove that Sophia was in need of protection from both Schmidt and Tanner.

While CFS (Central) and Leonoff believed it could prove Sophia was in need of protection from Schmidt, they also believed CFS (Central) did not have sufficient evidence to prove Sophia was in need of protection from Tanner. Mr. McNicol agreed with this assessment of the circumstances and evidence available as at November 27, 1995.

It is at this point that the opinions of Leonoff and Mr. McNicol diverge.

It is the submission of Mr. McNicol on behalf of Winnipeg Child and Family Services that natural parents have a *prima facie* right to custody of their children unless that right has been terminated by court order or operation of law (s. 39(1)) of the Family Maintenance Act. Mr. McNicol further submitted that there is a presumption in law that it is in the child's best interests to be in the custody of the natural parents, whether or not the parents previously had custody. Where neither parent had custody of the child, as in this case, and where the child is found to be in need of protection from the mother, the next issue to be determined by the court is whether the child is in need of protection from the father. Absent such a finding, the father has a right to custody of his child, which is presumed to be in the best interests of the child.

Mr. McNicol submitted that in this case, CFS had the onus of proving Sophia was in need of protection from both the natural mother and the natural father. Only after the court has found that Sophia was in need of protection from both parents that the best interest test applies in determining the appropriate order to be made pursuant to s. 38(1) of the Child and Family Services Act. As of November 27, 1995, neither Schmidt nor Tanner had had custody of Sophia and neither parent had their custody rights terminated. They both had equal rights to custody of Sophia.

At pp. 32-33, paras. 80-81, Mr. McNicol concludes his submission on this issue as follows:

> In conclusion, the law is clear that where parents have never cohabited and the child has never lived with either of them, they both have the right to custody of their child and the Court is to consider whether the child is in need of protection from each parent separately. Only if the child is in need of protection from both parents should the Court move to a consideration of the orders under s. 38(1) and the best interests test.
>
> It is submitted that in the circumstances relating to Sophia, absent the consent order, the Court would have been required to first determine whether Sophia was in need of protection from each of Ms. Schmidt and Mr. Tanner. Assuming that a finding would have been made that Sophia was in need of protection from Ms. Schmidt, then in order to prevent Sophia from being placed with Mr. Tanner, CFS would have been required to prove, by way of cogent evidence, that Sophia was in need of protection from him as well. Absent such evidence or finding, Mr. Tanner was entitled to custody of Sophia. At no time did CFS have the onus of establishing what was in the best interests of Sophia. (Emphasis in the original document)

What is unclear from Mr. McNicol's submission is the effect of the court's finding that the child is in need of protection from the mother. Section 38(1) of the Child and Family Services Act provides that "a judge who finds that a child is in need of protection shall order" one of the listed orders. If, as Mr. McNicol submits, Tanner is *prima facie* entitled to custody of Sophia because his custodial rights had not been terminated and because there was insufficient evidence to prove that Sophia was in need of protection from him, was Tanner not entitled to have the case against him dismissed and Sophia placed with him? In this circumstance, no order would have been made pursuant to s. 38(1) of the Child and Family Services Act. Or, because the court was able to make a finding against Schmidt, could Tanner only obtain custody of Sophia pursuant to an order made under s. 38(1)? The latter situation would entail a consideration of the best interests tests, which Mr. McNicol rejects. I therefore conclude, that Mr. McNicol's submission means that the case against Mr. Tanner would be dismissed, Sophia would be given or placed with Tanner, without conditions, and no order would have been made pursuant to s. 38(1).

With regard to the same issue, Leonoff testified as follows:

> Q. And if you haven't told us already, Baby Sophia, at the time of the hearing, was in need of protection from whom and/or what?
>
> A. Well, in my opinion, clearly, Baby Sophia was in need of protection from her natural mother. With the consent of both counsel, nobody put me to the test of proving whether Baby Sophia was in need of protection from her natural father. There was an agreement that she was in need of protection from her natural father. The issue became what was in her best interests at that time, by the consent of both parents' counsel.
> (Evidence: Vol. 36, p. 50, ll. 3-13) (emphasis added)

There was no evidence called at the inquest to suggest that Leonoff, Cadloff and West agreed, prior to court, that Sophia was in need of protection from her natural father. In fact, Mr. West, counsel for Schmidt, advised the court that his client was not present, that Schmidt was taking no position regarding the protection proceedings and that he did not think his client was in a position to oppose the agency's case. As well, ss. 38(2) of the Child and Family Services Act, as it is written, does not specifically require the parties to the protection proceedings to agree that a child is in need of protection from parents as a pre-condition to consent.

Leonoff's foregoing evidence also brings into play the best interests test in that she states that the best interests of Sophia were considered by both parents' counsel prior to their consent to the order made on November 27, 1995.

Later in her testimony, in discussing the case of *Winnipeg Child and Family Services (East Area) v. D.(K.A.)*, 13 R.F.L. (4th) 357, a decision of the Manitoba Court of Appeal, delivered May 1, 1995 (*D* case), Leonoff testified:

A. Let me tell you about the "D" case, sort of what its effect was on the law. Okay?

Q. Because it changed things, didn't it?

A. It changes things. It changed things, yes. Prior to the "D" case, you will see the way the trial Judge approached it. The Court of Appeal says that's wrong. Okay? The way the trial Judge approached it was the way we thought the law was. All of us. Including all the trial Judges. Until such time as the Court of Appeal said we were all wrong. What we would always do is treat parents, whether they were custodial or non-custodial, identically.

Q. Right.

A. All right? We didn't -- "we" meaning the Judges, agency counsel and, in fact, all of the lawyers who regularly appear in our court. That collective "we" always treated custodial and non-custodial parents exactly the same. We determined that we had to prove that the child was in need of protection against each of them. And only if we could do that did you get on to the next step. All right? And you can see a discussion in this case saying the trial Judge approached this wrong. And in fact, counsel, who appeared on the appeal for the father, says the error the trial Judge made was in finding the child was in need of protection against me, and the Court says no, no, no, no, no. Even the argument you're making in the Court of Appeal is wrong. So we were all wrong for 15 years, at least. So what the "D" case did was it changed the status between custodial and non-custodial parents, so that the agency, actually, now has a bit of an easier time in one sense, because we only need to prove the child's in need of protection against the custodial parent.

Q. Right.

A. <u>And then it's a best interest test.</u> - - -
(Evidence: Vol. 36, p. 84, ll. 1-32) (emphasis added)

Again, Leonoff was of the opinion that the best interests test is to be considered by the court in placing the child with a parent where the child is found to be in need of protection only from the custodial parent.

In this regard, Leonoff's opinion differed from Mr. McNicol's submission on this point. However, in this case, neither parent had custody of Sophia as submitted by Leonoff and Mr. McNicol.

Counsel for the Child and Family Services Support Branch, Mr. McFetridge, took a position different from both Leonoff and Mr. McNicol. After referring to the <u>D</u> case, Mr. McFetridge states at p. 16, para. 57 of his written submission to the inquest:

> It is submitted that at the time of hearing, Wade Tanner was a non-custodial parent. Although WCFS did not feel that Baby Sophia was in need of protection from Wade Tanner at the time of the hearing, he was not automatically entitled to legal custody of her simply because he was her biological parent. Wade Tanner and Cynthia Schmidt were not living together at the time of Baby Sophia's birth

> and never lived together after her birth. Wade Tanner had never had custody and control of Baby Sophia after her birth. He had no custodial rights. (emphasis added)

At pp. 2-3, paras. 6-7 of his response to the submission of Winnipeg Child and Family Services, Mr. McFetridge continues:

> . . . The Branch also takes no issue with WCFS' submission that where both parents have legal custody and they are not cohabiting, "*The Child and Family Services Act ("C&FSA")* requires the agency to prove that the child is in need of protection from both parents. If Wade Tanner had legal custody, the agency would have had to show that baby Sophia was in need of protection from him.
>
> However, it is submitted that Wade Tanner had no custody rights as of the date of the hearing and the agency had no obligation at the hearing to prove the child was in need of protection from him. In that regard, it is submitted that the agency is not correct when it states, at p. 28 of its submission, that "--- [t]he law is clear that where parents are not cohabiting, the Court must make a finding that the child is in need of protection from each parent, before it has jurisdiction to make an order under s. 38(1)." As stated, this is only correct when both parents have custodial rights.

In fact, the disputed statement was made by Mr. McNicol on the basis that both Schmidt and Tanner had equal rights to custody of Sophia.

At p. 4, para. 13 of his response, Mr. McFetridge states:

> It is submitted that the intent of s. 39(1) is to vest custodial rights in the residential parent. Ms. Schmidt was clearly the residential parent. Were it not for the superceding apprehension, baby Sophia would have resided with her. Ms. Schmidt had physical custody of baby Sophia when she was living at Villa Rosa (from May 31, 1995 to August 2, 1995); although it was not unfettered in that it was subject to the overriding apprehension of the agency under *C & FSA*. Baby Sophia also physically resided with her at the hospital.

The effect of Mr. McFetridge's submission is that Schmidt had sole custody of Sophia pursuant to s. 39(1) of the Family Maintenance Act. Conversely, Tanner's right to custody of Sophia had been terminated by the provisions of s. 39(1) of the same Act. Once the Court made a finding that Sophia was in need of protection from Schmidt, it would have had to make an order under s. 38(1) of the Child and Family Services Act, in the best interests of Sophia. Tanner could have applied for custody of Sophia pursuant to s. 39(2) of the Family Maintenance Act, but as of November 27, 1995, he had not done so.

Mr. Rutherford, counsel for New Directions, expresses an opinion similar to that of Mr. McFetridge.

At p. 3, para. 4 of his written submission, Mr. Rutherford states:

> The biological mother had, by virtue of giving birth to the child, custody of the child albeit for a very short period of time until apprehension was made by the

> mandated agency. She also had a continuing uninterrupted desire to have custody of the child. The biological father did not have custody of the child at any time up to the hearing of the mandated agency application. Therefore, it is submitted that he would have to bring an application to obtain custody. The mandated agency only has to prove the child is in need of protection from the only parent that was involved when the child was apprehended, as that is the parent who is seeking return of the child if the application of the mandated agency fails. In the instant case, it would have to be proved that the child was in need of protection from the biological mother only. The best interests of the child are not a factor when the court is determining whether or not a child is in need of protection [see Section 2(1) of the Act]. Once the court finds a child to be in need of protection, the question becomes: *What living situations out of the available options are in the best interests of the child?* In considering this issue in the instant case, placement in the family of the biological father would be one of the living situations to be considered, but determination would have to be made as to whether or not placement in the house of the biological father was in the best interests of the child. Even in the situation where there is a joint recommendation, the court should make sufficient inquiry of the parties to the application to satisfy itself that a thorough home study of the living situation into which it is intended to place the child has been done. There must be sufficient affirmative evidence to justify the placement and the court should be pro-active in this area as the court is seen as the ultimate protector of the best interests of the child.

In summary, Leonoff testified that Tanner, as the biological parent of Sophia, had a right to custody of Sophia; that CFS (Central) had the onus of proving that Sophia was in need of protection from him; and that in determining whether he should obtain custody of Sophia, the best interests test had to be considered by the court.

Mr. McNicol agreed with the position advanced by Leonoff except, he disagreed that the court had to consider the best interests test if CFS (Central) could not prove that Sophia was in need of protection from Tanner. If CFS (Central) could not discharge its onus, Tanner, as the biological father, was entitled to custody of Sophia.

Mr. McFetridge submitted that Schmidt had sole custody of Sophia and that Tanner's right to custody had been terminated by the operation of s. 39(1) of the Family Maintenance Act. Once a finding was made by the court that Sophia was in need of protection from Schmidt, the issue of what order to make under s. 38(1) of the Child and Family Services Act had to be determined on the best interests test.

Mr. Rutherford came to the same conclusion as Mr. McFetridge with the exception that Mr. Rutherford did not directly state that Tanner lost his right to custody by virtue of s. 39(1) of the Family Maintenance Act.

These differences of opinion are important and significant as they affect the onus to be discharged by a mandated agency. The importance and

significance of these differing opinions is partly explained in the *Winnipeg Child and Family Services (East Area) v. D.(K.A.)* case.

In the *D* case, the father and mother were married and there were two children of the marriage. The mother left the family home and took the two children with her. She subsequently obtained a divorce from her husband and an order of sole custody to the two children of the marriage.

Subsequently, the two children were apprehended by Winnipeg Child and Family Services (East Area). The father knew nothing about the events leading up to the apprehension of his children. When the father was served with the agency's application for permanent guardianship, he applied for custody of his two children.

At trial, the judge found the children to be in need of protection from both the mother and the father and granted permanent guardianship of the two children to the agency. The father appealed on the basis that the trial judge erred in finding that the children were in need of protection from him.

Speaking for the unanimous court, Twaddle, J.A., stated at pp. 361-363:

> In his appeal from the order of permanent guardianship, the father relies primarily on what he alleges to have been error on the trial judge's part in finding the children to be in need of protection from him. He may well be right in that regard, but that is not determinative of the case if the trial judge asked herself the wrong question. Instead of asking herself whether the girls were in need of protection from their father, should she not have asked herself whether it was in their best interests to be placed in their father's care?
>
> A child protection proceeding is a two-step process. The first step is to determine whether the child is in need of protection and the second, assuming the child has been found in need of protection, to decide which of the orders authorized by s. 38(1) of *The Child and Family Services Act*, S.M. 1985-86, c. 8 (hereinafter "the Act") should be made.
>
> The first step of the process involves a determination of whether the child was in need of protection at the time of apprehension and remains in need of protection at the time of the hearing. The phrase "a child in need of protection" is defined by s. 17 of the Act both in a general definition and by way of illustrations. Both the definition and the illustrations are couched in the present tense, but must be read in the past tense when dealing with the time of apprehension and in the future tense when dealing with the time of the hearing.
>
> The use of the past tense for dealing with the time of apprehension is obvious enough. Not so the use of the future tense when dealing with the time of the hearing. The need for the future tense at the time of the hearing arises because the child is then either under apprehension or in the custody of an agency pursuant to an order of temporary guardianship. The danger to the child which gave rise to the proceedings has thus been at least temporarily removed. The question is whether the child will be placed back in danger if he or she is returned to the person in whose care, custody, control or charge the child was in.

Indeed, in the case of a subsequent hearing, s. 40(1) of the Act states the question to be "whether the child would be in need of protection if returned to the parents or guardian." In my view, the use of the word "returned" indicates that, in referring to "parents or guardian," the legislature intended to refer only to those who, but for the protection proceedings, would have been entitled to custody of the child. This would not include a non-custodial parent whose natural rights have been terminated by an order of sole custody in favour of another.

Such a non-custodial parent has, of course, a right to be served with notice of the proceedings and to appear and participate in the proceedings. In particular, he or she may advance a claim for custody, but this should not be dealt with until it has been determined whether the child would be in need of protection if returned to the custodial parent. Only then will it be known whether the custody issue will be between the parents themselves (as it would be if the child is found not to be in need of protection) or between the non-custodial parent, the custodial parent and the agency (as it would be if the child is found to be in need of protection).

By virtue of s. 2(1) of the Act, the court may not give paramount consideration to the best interests of the child in determining whether the child is in need of protection. This is because the state has not assumed the right to decide what is in the best interests of a child in a contest between the state and a custodial parent or guardian. That is not to say that the best interests of the child are not to be considered in a protection case. They are, but only after the court has determined that the child would be in need of protection if returned to the custodial parent or guardian and has moved on to the second step requiring it to consider which of the several orders it can make is most appropriate.

Of course, if the court finds the child not to be in need of protection, it must still deal with any custody application which has been made as between the parents. The issue on that application is solely between the parents and must be decided, in the usual way, on the test of the child's best interests.

This test is also applicable to the determination of what order should be made after a finding that the child is in need of protection. In a case such as this, in which each parent seeks custody, the court's options are these:

(1) Return the child to the custodial parent under the supervision of the agency and subject to the conditions and for the period the judge considers necessary.

(2) Place the child with the non-custodial parent with or without transfer of guardianship and subject to the conditions and for the period the judge considers necessary; (under s. 38(1)(b)) (see p. 364)

(3) Extend the previous order of temporary guardianship for such period, up to the maximum allowed by the statute, as the judge thinks right; or

(4) Make an order of permanent guardianship in favour of the agency. (emphasis added)

One of the main differences between the opinions advanced by Leonoff and Mr. McNicol, on the one hand, and Mr. McFetridge, on the other hand, is whether or not Tanner had his custodial rights terminated prior to November 27,

1995. If Tanner's right to custody had been terminated, the words of Twaddle, J.A., in the *D* case would be applicable: "This would not include a non-custodial parent whose natural rights have been terminated by an order of sole custody in favour of another." (p. 362, para. 19). To that I would add a non-custodial parent whose rights have been terminated pursuant to s. 39(1) of the Family Maintenance Act.

If Mr. McFetridge was correct in his submission that Sophia resided with Schmidt at the time of her birth at the hospital and at Villa Rosa, then by operation of s. 39(1) of the Family Maintenance Act, Schmidt would have obtained sole custody of Sophia and Tanner's natural right to custody of Sophia would have been terminated. The *D* case would be applicable on November 27, 1995, in that Tanner would have been "a non-custodial parent whose natural rights have been terminated". The onus on CFS (Central) on November 27, 1995 would have been to provide evidence that Sophia was in need of protection only from Schmidt. If successful in this regard, as CFS (Central) surely would have been, the court would then have moved to the next step: what order should be made, in the best interests of Sophia.

Mr. McFetridge's submission has some appeal when one considers the ordinary meaning of the word "returned" as it is used in clause 38(1)(a) of the Child and Family Services Act and the words of Twaddle, J.A., in the *D* case, at p. 362, para. 19:

> In my view, the use of the word "returned" indicates that, in referring to "parents or guardian", the legislature intended to refer only to those who, but for the protection proceedings, would have been entitled to custody of the child.

Having regard to this comment, Sophia could only be returned to Schmidt. However, the *D* case has a different factual basis and did not concern children apprehended at birth. In the *D* case, the mother had sole custody of the two children pursuant to a court order. In the instant case, the issue of whether or not Schmidt had obtained sole custody of Sophia therefore resulting in the termination of Tanner's natural right to custody of Sophia must be determined by answering the question whether Sophia resided with Schmidt prior to November 27, 1995.

On the facts before this inquest, I cannot conclude that Sophia resided with Schmidt at either the hospital or at Villa Rosa. In my assessment of the evidence, Sophia was apprehended at the instant of her birth and her placement with Schmidt at Villa Rosa was for the purpose of attempting to teach Schmidt parenting skills. In that limited sense, Sophia was not residing with Schmidt. It is, therefore, my conclusion that Tanner did not have his natural right to custody of Sophia terminated by operation of s. 39(1) of the Family Maintenance Act.

With respect to the differing opinions expressed by Leonoff and Mr. McNicol as to whether the best interest test is to be applied in determining the

placement of Sophia, I believe the answer lies in the principle often enunciated by courts of all levels. Twaddle, J.A.'s words in the *D* case, are illustrative of that principle. At p. 362, para. 20, he states:

> By virtue of s. 2(1) of the Act, the court may not give paramount consideration to the best interests of the child in determining whether the child is in need of protection. This is because the state has not assumed the right to decide what is in the best interests of a child in a contest between the state and a custodial parent or guardian. (emphasis added)

Although Twaddle, J.A. uses the words "custodial parent", in my view, the words "a non-custodial parent whose natural rights have not been terminated" may be substituted without changing the meaning of above quoted words.

Assuming that Sophia was in need of protection from Schmidt and that CFS (Central) could not discharge its onus of proving that Sophia was in need of protection from Tanner, based on the above-noted principle that "the state has not assumed the right to decide what is in the best interests of a child in a contest between the state and" a parent whose natural rights have not been terminated, Tanner would have been entitled to receive Sophia on November 27, 1995. The best interest test would not have applied. This, of course, is the position advanced by Mr. McNicol and as previously stated, it leaves unanswered what order the court "shall" make pursuant to s. 38(1) of the Child and Family Services Act because of the court's finding that Sophia was in need of protection from Schmidt.

Alternatively, since Tanner was a non-custodial parent, the question must be asked whether Tanner had to apply, pursuant to s. 39(2) of the Family Maintenance Act, to have custody of Sophia. If Tanner was required to proceed in this way, the best interest test would have been applied in determining whether Tanner was to obtain custody of Sophia.

In addition to the foregoing, there is the issue of whether Sophia should be "returned" to Tanner pursuant to clause 38(1)(a) or "placed" with Tanner pursuant to clause 38(1)(b) of the Child and Family Services Act.

I do not think it is a purpose of my report to definitively decide the legal issues just discussed, for two reasons. The first is because it is more important to point out to the Minister the somewhat confusing state of the child welfare laws. This is clearly evident from the fact that three very experienced counsel offered three different opinions on the same set of facts considered under the same child welfare laws in this province. While it is not surprising that lawyers often have diverse opinions when considering a legal issue, the three experienced counsel, one who acted for the Child and Family Support Branch, one who acted for Winnipeg Child and Family Services at the inquest and one who acted for CFS (Central) on November 27, 1995, should have approached the legal issues from relatively the same perspective, namely, the welfare of the

child, the rights of parents and the duties and responsibilities of the mandated agency. In my opinion, the legal issues should always be resolved in the child's best interests. As can be seen from the foregoing discussion of the legal issues, depending upon whose opinion is correct, the child's best interests are not necessarily the ultimate determinative factor under the then existing or presently existing laws in Manitoba.

The second reason I do not find it necessary to definitively decide the legal issues is because the parties to the November 27, 1995, court proceedings disposed of the matter by consent pursuant to s. 38(2) of the Child and Family Services Act. In my view of the evidence, Leonoff and Mr. Cadloff consented to the six month supervisory order on behalf of their respective clients and Schmidt was deemed to consent to the order by virtue of her non-appearance at the court hearing. Although Mr. West "appeared" on behalf of Schmidt, he appeared without instructions from Schmidt and was not in a position to either consent or oppose the order. The legal issues previously discussed were not argued before the presiding judge on November 27, 1995.

However, the fact that Leonoff consented to the order on behalf of CFS (Central) raises an interesting question: What were the issues CFS (Central) had to consider before it concluded it could consent to the six month supervisory order and place Sophia with Tanner?

The Child and Family Services Act does not specifically answer the question. Subsection 21(1) and 25(1) speak to the case of a child under apprehension. Clause 7(1)(e) provides that the "agency shall protect children". The Declaration of Principles at the commencement of the Act provide, *inter alia*:

> 1. The best interests of children are a fundamental responsibility of society.
>
> 4. Families and children have the right to the least interference with their affairs to the extent compatible with the best interests of children and the responsibilities of society.
>
> and
>
> 9. Decisions to remove or place children should be based on the best interests of the child and not on the basis of the family's financial status.

Section 2(1) of the Act provides:

> **Best Interests**
> **2(1)** The best interests of the child shall be the paramount consideration of the director, the children's advocate, an agency and a court in all proceedings under this Act affecting a child, other than proceedings to determine whether a child is in need of protection and in determining the best interests of the child all relevant matters shall be considered, including
>
> (a) the child's opportunity to have a parent-child relationship as a wanted and needed member within a family structure;

(b) the mental, emotional, physical and educational needs of the child and the appropriate care or treatment, or both, to meet such needs;

(c) the child's mental, emotional and physical stage of development;

(d) the child's sense of continuity and need for permanency with the least possible disruption;

(e) the merits and the risks of any plan proposed by the agency that would be caring for the child compared with the merits and the risks of the child returning to or remaining within the family;

(f) the views and preferences of the child where they can reasonably be ascertained;

(g) the effect upon the child of any delay in the final disposition of the proceedings; and

(h) the child's cultural and linguistic heritage.

Subsection 38(2) is silent on this issue and only requires that "all persons who have received notice under subsection 30(1) consent". In fact, ss. 38(2) does not explicitly require the consent of the agency, but this is to be inferred from the provisions of the Act.

Based on common sense, it would seem to me that an agency, in deciding whether to consent to an order under ss. 38(1) of the Act, must go through the process of determining and satisfying itself whether the child is in need of protection. In the instant case, CFS (Central) and its counsel would have had to determine whether Sophia was in need of protection from both Schmidt and Tanner, assuming the legal opinions of Leonoff and Mr. McNicol are correct. If Mr. McFetridge's opinion is correct, CFS (Central) and Leonoff would only have had to determine and satisfy themselves that Sophia was in need of protection from Schmidt.

On a strict interpretation of ss. 2(1) of the Act, it can be reasonably argued that the above-noted process is part of "the proceedings to determine whether a child is in need of protection".

Assuming that the agency and its counsel determined that the child was, in their opinion, in need of protection, the question whether or not the agency should go on to consider the best interests of the child was again dependent upon the legal interpretation of the issues addressed by counsel. In the opinion of Mr. McNicol, the agency would not have had to consider the best interests of Sophia because Tanner was entitled to custody of Sophia as her natural parent. In the opinions of Leonoff and Mr. McFetridge, the agency had to go on to consider the best interests of Sophia. I therefore assume, based on Leonoff's opinion of the law, that CFS (Central) should have determined whether the placement of Sophia with Tanner was in Sophia's best interests.

It would appear that all counsel are in agreement that the agency's determination whether Sophia should be placed with Tanner was based on counsel's understanding of what the law was as of November 27, 1995.

The legal issue of whether the placement of Sophia should have been pursuant to clause 38(1)(a), clause 38(1)(b) or otherwise is not answered by the the D case. In D, the natural father's custody rights had been terminated and the Court of Appeal suggested that, in those circumstances, if the children should be returned to the father, it should be done pursuant to clause 38(1)(b). In the instant case, Tanner's right to custody had not been terminated. Leonoff testified that Sophia was properly returned to Tanner pursuant to clause 38(1)(a). The use of the word "returned" in clause 38(1)(a) and the comments of Twaddle, J.A., in the D case make the placement under this latter clause somewhat incongruous with the language used. However, Leonoff testified that clause 38(1)(a) is the authority judges of the Queen's Bench have used to return a child to a non-custodial parent whose custody rights have not been terminated. Finally, Mr. McNicol submitted that neither clause had to be used to return Sophia to Tanner. It is his position that since CFS (Central) could not prove Sophia was in need of protection from Tanner, Tanner was entitled to obtain Sophia pursuant to his right to custody as a natural parent.

Again, it is my opinion that this inquest is not the appropriate forum to resolve these legal issues, but rather it is sufficient for me to point out the uncertainty of the law.

It is also worth noting that Stefanson, J. refused to grant custody of Sophia to Tanner because Tanner had not applied for custody of Sophia pursuant to ss. 39(2) of the Family Maintenance Act. As well, the supervisory order filed by the agency was silent as to custody and the return of Sophia to Tanner.

It is speculative to consider whether Tanner would have succeeded on an application for custody of Sophia pursuant to ss. 39(2) of the Family Maintenance Act. In deciding such an application, the best interests of the child is the paramount consideration of the court (ss. 2(1) of the Family Maintenance Act).

Sophia could not be given to Tanner pursuant to either clause 38(1)(a) or clause 38(1)(b) of the Child and Family Services Act.

The fact that an order of supervision was made by the court, upon the consent of the parties, was important for two reasons. Firstly, CFS (Central) retained the responsibility and duty to supervise the care of Sophia. Subsection 38(6) of the Child and Family Services Act provides:

> Where a judge --- makes an order under clause 1(a) or (b) any representative of the agency under whose supervision the child is placed has the

> right to enter the home where the child is to provide guidance and counselling and to ascertain that the child is being properly cared for and maintained --- .

The second reason is provided in ss. 38(7), which provides:

> Where an agency that is authorized pursuant to subsection (1) to exercise supervision over a child finds that the child is not being properly cared for and maintained or that the child is in need of protection, the child may be apprehended notwithstanding the order made under subsection (1).

On December 4, 1995, a meeting was held at which Klyne and Finlay of CFS (NW) and Oberlin and Humniski of CFS (Central) attended. At this meeting, it was decided that Klyne would prepare a closing summary to Sinclair's file and transfer the file to CFS (Central). As of the date of Sophia's death, Klyne had not completed a closing summary and had not transferred the file to CFS (Central).

Klyne testified that she knew a closing summary would contain a social history, background information on Sinclair, a social history of each child and the reasons for the transfer. Klyne conceded in her testimony that the file contained information that was important for CFS (Central) to have so that the agency would understand the historical background and the importance of monitoring the placement of Sophia in the Sinclair-Tanner home.

Klyne also testified that when a case is transferred, the new agency does not take over the matter until the file is transferred. She further testified that until the file is transferred, the responsibility for the subjects of the file remained with the transferring agency. Klyne did not speak to nor see Sinclair and her children between November 27, 1995 and January 26, 1996, even though she knew CFS (Central) would not monitor Sinclair and her children until it received the transferred file.

The responsibility for supervising Sophia in the Sinclair-Tanner home was that of CFS (Central). Oberlin did not attend the Sinclair-Tanner home after he left Sophia in the home on November 28, 1995.

CONCLUSIONS AND RECOMMENDATIONS

It is my opinion and conclusion that the child welfare system failed Sophia Lynn Schmidt.

A brief summary of my reasons for so concluding is as follows:

1. As of February 27, 1995, Norma Jean Sinclair had given birth to three sons: Joshua Berens (October 15, 1990), Harley Coleman (May 1, 1992) and Allen Coleman (March 23, 1993). All three sons were apprehended at the time of or shortly after birth. Subsequently, guardianship of Joshua and Harley was granted to Bella Berens and Allen was made a permanent ward of CFS.

On February 28, 1995, while she was residing at NWTC, Sinclair gave birth to her fourth son, Wade, Jr.

At the end of May, 1995, before completing the NWTC program, Sinclair and Wade, Jr. left NWTC and moved in with Tanner.

On July 9-10, 1995, Sinclair obtained Joshua and Harley from Nellie Berens.

After parenting Wade, Jr. for nine months and Joshua and Harley for four months and three weeks, Sinclair became responsible for parenting Sophia. In the space of 283 days, Sinclair went from a woman with no children in her care to a mother with four children in her care. Joshua was 5 years, 1 ½ months old, Harley was 3 years, 7 months old, Wade, Jr. was 9 months old, Sophia was 7 months old and Sinclair was 21 years old.

These statistics speak for themselves. It is incomprehensible to me how the child welfare system would permit such a situation to occur. In so stating, I acknowledge that the CFS caseworkers testified that in the Northwest and Central areas of Winnipeg, this was not an unusual situation. I find that difficult to accept.

Any husband and wife of such young ages and with no prior child care experience risked being overburdened and overwhelmed if put in the same situation as Sinclair was placed. Having regard to Sinclair's dysfunctional background and history, which CFS knew, and even with the limited resources and help Sinclair was receiving, it is my opinion that it was reasonably foreseeable that Sinclair would become overburdened and overwhelmed caring for the four young children. Common sense dictates this conclusion. In this regard, I wish to expressly state that it is not my conclusion that it was reasonably foreseeable that Sinclair or Tanner would physically abuse the children or kill Sophia. It is just that CFS permitted an unreasonably onerous situation to occur which it ought not to have permitted.

2. Ursula Klyne failed to follow either the Provincial Standards Manual or the CFS (NW) standards manual. Klyne failed to keep proper notes. As a consequence, she was unable or failed to provide essential and crucial information to CFS (Central) and Leonoff. Klyne was unable or failed to articulate her "concerns" to CFS counsel, Heather Leonoff, so that she would be a useful witness on November 27, 1995.

Klyne failed to reply to letters and other requests for information and she failed to adequately communicate with the resource agencies providing support to Sinclair. Klyne failed to obtain from the resource agencies an agreement in writing to report necessary information. Klyne failed to adequately monitor Sinclair and her children, and she failed to act appropriately when she learned

that Sinclair had Joshua and Harley in her care. Klyne failed to complete the transfer of Sinclair's file to CFS (Central) after Sophia was placed in the Sinclair-Tanner home and knowing that CFS (Central) would not monitor the situation until after the file was transferred, Klyne failed to monitor the Sinclair-Tanner home.

3. Lloyd Finlay failed to properly supervise Klyne. He failed to ensure that Klyne kept proper written notes. He failed to ensure that the Provincial Standards Manual or the CFS (NW) standards policy were followed by those he supervised. Importantly, Finlay failed to attend court as required on November 27, 1995. Finlay also failed to ensure that Klyne completed the transfer summary and transferred Sinclair's file to CFS (Central). He also failed to ensure that Klyne monitored the Sinclair-Tanner home after Sophia was placed in the house.

4. Ron Oberlin failed to properly investigate Tanner in spite of his numerous stated intentions to do so. He failed to contact Eleanor Robertson, Pam Gillman, Adrienne Carriere and Eric Mellon, all of whom possessed important and relevant information concerning Sinclair and her family. Oberlin failed to obtain an assessment of Tanner despite his stated intention to do so. These failures occurred notwithstanding Oberlin's concession that he knew "very little" about Tanner. Oberlin relied almost exclusively on the Tennenhouse Report, a report which he knew to be inadequate. Oberlin failed to properly assess the Sinclair-Tanner home situation and the effect of placing a fourth young child in the care of Sinclair. Oberlin deferred the decision to place Sophia in the Sinclair-Tanner home to the "opinion" of CFS (NW). Oberlin failed to follow the instructions of his supervisor at the November 27, 1995, court hearing and he failed to consult with his supervisor when a change in plan was considered on November 27, 1995. Oberlin failed to monitor Sophia after she was placed in the Sinclair-Tanner home.

5. CFS employees failed to comprehend the importance of the principle of confidentiality and had an unreasonably high expectation of what the non-mandated social agencies would report to them. The CFS employees also failed to understand the treatment philosophies of the non-mandated agencies.

This inquest received evidence from Klyne and Finlay which, at times, showed they were misinformed and uninformed. At other times, they spoke in generalization, again betraying a lack of knowledge. Generally, I found their evidence to be equivocal, defensive, inconsistent or incorrect.

With respect to Oberlin, I found his evidence to be evasive, defensive, inconsistent and equivocal.

In addition to the foregoing, I find that Eleanor Robertson of New Directives failed to communicate vital and crucial information to Pam Gillman and Eric Mellon. She failed to tell Gillman and Mellon of Adrienne Carriere's letter,

the August 25, 1995, note concerning Sinclair drinking to relax and that Harley had been apprehended because of an allegation of violence. No reason was provided for Robertson's failure to do so.

Except for her statutory duty to report to CFS circumstances which led her to believe that a child was in need of protection, Robertson had no guidelines as to when or what information to communicate to CFS. However, having made the decision to cooperate with CFS and to share her concerns regarding Sinclair and her family, she should have communicated all relevant information to CFS. Robertson intentionally or unintentionally failed to pass on relevant information to CFS. Notwithstanding this failure to pass on relevant information to CFS, I find that Robertson did not breach her statutory duty to report to CFS. I also find that Robertson was well meaning but that at times, she had lost objectivity. While the philosophy of New Directions and Robertson was to support their clients in attaining their goals and to provide resources to aid their clients, it is not beneficial to the clients if the worker looses her objectivity and supports the client in trying to attain unreasonable goals. Perhaps Robertson was blinded by her hope and desire to see Sinclair succeed.

In expressing the above opinions and conclusions, I emphatically state that, with the exception of Sinclair and Tanner who have been found guilty of charges relating to the death of Sophia, I do not express an opinion on or make a determination with respect to the culpability of any person in regard to the death of Sophia.

In its written submission, p. 34, para. 84, CFS states:

> CFS submits that it should be afforded full access to any information that may be relevant to a child protection matter. The protection of children should be the paramount consideration and should override an individual's right to privacy.

In general, I agree with this submission, particularly where it applies to criminal records and information.

CFS seeks access to three types of information which it states are important sources of information in child protection cases:

> (1) Information relating to criminal charges, convictions and other information that may be available to police;
>
> (2) Information governed or protected by the Mental Health Act; and
>
> (3) Government information, including data from social services.

Prior to the death of Sophia, CFS had very limited access to information in the possession of the police.

On February 2, 1998, the Child and Family Services Act was amended by adding ss. 18.4(1.1) which provides:

> An agency may request from a peace officer, and the peace officer shall provide, any information in the officer's possession or control that the agency reasonably believes is relevant to an investigation under subsection (1).

In addition to the foregoing amendment, the Act was amended to provide:

> **86.1** If a provision of this Act is inconsistent or in conflict with a provision of The Freedom of Information and Protection of Privacy Act, the provisions of this Act prevails.

While this amendment improves the access CFS has to criminal records, CFS, in its submission, points to several deficiencies in the existing legislation.

First, ss. 18.4(1.1) is limited by the provisions of ss. 18.4(1). Subsection 18.4(1) provides that where an agency receives information that causes it to suspect that a child is in need of protection, the agency shall immediately investigate the matter. Therefore, the provision of information by the police is limited to the investigation by CFS to determine if a child is in need of protection.

As CFS points out, ss. 18.4(1.1) would not enable CFS to obtain information from the police in cases where an assessment is being made as to whether or not the child would be in need of protection if returned to or placed with the parents or another person. It would also not permit CFS to obtain information for the purpose of determining if the placement of the child is in the best interests of the child. CFS submits that it would not have been able to rely on ss. 18.4(1.1) to obtain further information and particulars relating to Tanner's criminal history prior to the placement of Sophia.

I agree with the submission of CFS that ss. 18.4(1.1) is deficient to the extent above noted.

Second, CFS submits:

> ---, ss. 18.4(1.1) refers to a peace officer providing information that the agency believes is relevant to an investigation. Without knowing what information may be in the possession of the police, it remains to be seen whether CFS will be afforded access to all information the police may have in order to determine its relevance. (Submission of CFS, p. 36, para. 93) (Emphasis in original)

This issue is not unique to child welfare matters. This issue has arisen before in relation to access to third party records, generally. It involves a careful balancing of an individual's right to privacy and a child's right to be protected from abuse and neglect. On the one hand CFS should have access to relevant information. On the other hand, CFS should not be permitted to proceed on a "fishing expedition".

This concern of CFS can be addressed in three ways.

First, if CFS were to obtain the person's record of convictions, it would have some information upon which to form a belief that the police possess information relevant to the matter. For example, if the person had been convicted of theft or some other property offence, the information concerning these offences might not be relevant to the matter at hand. However, if the person had been convicted of assault, sexual assault or possession of child pornography, such information would likely be relevant and CFS could request further information concerning these convictions.

Second, CFS could develop a form letter which would specifically set forth what relevant information it requires. For example, the letter could request the record of criminal convictions as well as information relating to police attendance at the person's residence in response to domestic violence calls or noise disturbance calls. The receipt of the requested information may form the basis for further requests of relevant information. The creation of such a form letter ought not to be difficult.

The third solution is suggested by CFS. It suggests that ss. 18.4(1.1) be amended to provide that the police provide any information that the agency <u>or the peace officer</u> reasonably believes is relevant to the matter, "or simply any information in the peace officer's possession or control without reference to its relevance". (Submission of CFS: p. 37, para. 96)

The latter part of CFS' submission is, in my opinion, too broad and infringes an individual's right to privacy to a greater extent than necessary. Relevancy should always be taken into account. However, the first part of the submission could be workable if the record keeper is educated as to the need for such information, that is, child protection, and CFS provides some background information to the record keeper so that he or she can determine what is or is not relevant. However, I suspect that the provision of background information to the record keeper might further strain the resources of CFS and as well, the resources of the police. Before I would make such a recommendation, I believe the parties affected by such an amendment ought to consult and consider the implications of such an amendment.

CFS, in its submission, also deals with the proposal of the Child and Family Services Branch to create the position of a "Criminal Risk Assessor". I agree with the submission of CFS in this regard:

> CFS would support the creation of a position within the Police Service for the purpose of providing information in relation to child protection matters. However, CFS has serious reservations about the effectiveness of this proposed position as described in Exhibit 69 and in particular the contemplated form of "Criminal Risk Assessment". CFS submits that its social workers and/or

> supervisors ought to be provided with the raw data from the police records in order to make their own risk assessment based on all of the available information. What may seem irrelevant to an outsider or one with limited knowledge of the case, may be of considerable import to the worker who has a full appreciation of the family circumstances and history and who is in the best position to properly assess the information. (CFS Submission: pp. 38-39, para. 99)

CFS also submits that it should have full access to government data, including data from social services, and information governed by the provisions of the Mental Health Act. CFS provides no rationale for advancing the position it should have unfettered access to government data. With respect to information governed by the provisions of the Mental Health Act, CFS states: "The importance and relevance of such information in child protection matters is obvious". (CFS Submission, p. 35, para. 90)

I am not convinced that CFS requires unfettered access to government data. And while I am able to see a connection, in some instances, between mental health and child protection, I believe CFS should be required to demonstrate the relevancy of information it seeks under the Mental Health Act. I recognize that this gives rise to the previously discussed question: "How can I demonstrate relevancy if I have not seen the information." Notwithstanding my earlier agreement that the protection of child should be given paramount consideration, there still must be a consideration given to and a balancing of an individual's right to privacy.

RECOMMENDATION ONE: Subsection 18.4(1.1) should be amended to provide that a peace officer shall provide any information in the officer's possession or control that the agency reasonably believes is relevant to any child protection matter or proceedings under Part III of the Act.

RECOMMENDATION TWO: The Child and Family Services Act should be amended by adding a provision to Part III which would allow a mandated agency to apply to the court for an order requiring a third party to provide third party information and records relevant to a child protection matter or proceedings under Part III of the Act to a mandated agency. In this regard, client-solicitor privilege should not be abrogated.

In considering Recommendation One and Two, the Minister ought to consider what, if any, limits should be placed on the individuals to whom the disclosure is made and the use that may be made of the disclosed information.

Counsel also addressed the issue of the reporting requirements under s. 18 of the Child and Family Services Act.

In this regard, CFS expressed a concern:

> Based on evidence given at the Inquest, CFS is concerned that collateral agencies, other government departments, the Winnipeg Police Service and others, may be placing a very narrow interpretation on the reporting requirements under s. 18 of the CFSA. While the importance of preserving the trust developed in a confidential relationship should be respected, it should not and need not interfere in any way with the reporting of potential risks to children. Where information is reported to an agency, the identity of the informant is to be protected, including any information that may reveal that identify. (CFS Submission: pp. 40-41, para. 105)

I do not disagree with the substantive portion of the above quoted statement. However, "Based on evidence given at the Inquest", it is my opinion, as previously stated, that CFS failed to properly investigate Tanner, Sinclair and their home situation, failed to properly monitor the home situation and failed to understand the issue of confidentiality. CFS also had too high an expectation of what ought to be reported by collateral agencies.

I endorse the following comments made by New Directions in its written submission:

> [New Directions] and other collateral organizations are in a unique position and, thereby, have an advantage to gain the trust and confidence of their clients, which is absolutely essential in delivering programs and services to voluntary participants. (New Directions Submission: pp. 1-2, para. 2)
>
> - - -
>
> Under Section 18 of the Act, there is a legal obligation imposed upon all citizens including collateral organizations to report when a child is in need of protection. In Section 17 of the Act, numerous examples are set out covering a wide variety of situations in which a child would be considered to be in need of protection. It is worthy to note that one does not need to see actual abuse, but only needs to see a situation of potential abuse to come under the legal obligation to report a child in need of protection. The key to triggering the obligation to report is the formation of an opinion, in the mind of the observer or organization observing and analyzing the situation, that a child is, or might be, in need of protection as that term is described in Section 17 of the Act. When the reasonable opinion is formed that a child is in need of protection, then the obligation to report is triggered regardless of the privacy rights of the person on whom the information is being reported. - - -. Short of forming an opinion [which is subjective, but should be based upon the objective criteria of Section 17 of the Act] that a child is in need of protection, a collateral organization, or its workers, should not be reporting private information on people unless the individual who is being reported on consents to the reporting of the information. The collateral organization could not operate any other way, otherwise the trust and confidence that must be developed between the collateral's workers and their clients in order to effectively conduct their programs and services would be destroyed. ---. (Submission of New Directions: p. 8, para. 6)
>
> - - -
>
> The issue of reporting, besides being addressed between the collateral organization and its client, should also be addressed between the collateral organization and the mandated agency when the mandated agency is involved

> with the client. Expectations of reporting as between the collateral organization and the mandated agency regarding a particular family should be addressed at the outset and confirmed in writing in a service contract with full knowledge of the particular client who is involved. If the organization cannot meet the expectations of the mandated agency, then that should be known before the service is engaged. The worst possible situation is when the mandated agency has an expectation of a collateral organization reporting something when the collateral organization was unaware of the expectations. One should not be left to be guessing or assuming what someone else is expecting. (Submission of New Directions: pp. 6-7, para. 8)

Finally, on this topic, CFS states:

> CFS submits that the Support Branch should undertake an educational program geared to all persons having contact with families with respect to the scope of the reporting requirements and the identification of child abuse. Further consideration should be given to expanding the circumstances under which a duty to report may arise. (CFS Submission: p. 42, para. 110)

I endorse the first part of CFS' submission. Section 17 of the Child and Family Services Act defines when a child is in need of protection.

While a "child in need of protection" is clearly defined in ss. 17(1) and illustrations are provided in ss. 17(2), the practical application of s. 17 is more difficult and, as Mr. Rutledge pointed out, the observer's opinion is subjective. An educational program aimed at doctors, health care workers, collateral and resource agency workers, teachers and others who have a direct association with child care, health and schooling would aid in the practical application of s. 17. The educational program should also be directed at the reporting requirements of s. 18 of the Act; not only from the perspective of the duty to report but especially, what type of information needs to be reported.

RECOMMENDATION THREE: That the Minister undertake an educational program directed to doctors, health care workers, collateral and resource agency workers, teachers and others who have a direct association with child care, health and schooling with respect to the scope of the reporting requirements under s. 18 and the identification of children in need of protection pursuant to s. 17 of the Child and Family Services Act.

With respect to CFS' submission that "consideration should be given to expanding the circumstances under which a duty to report may arise", I am not persuaded that such an expansion is necessary. The expansion of the duty to report would be subject to the frailties which exist under the present system. Education is the answer, not expansion.

RECOMMENDATION FOUR: That the Minister ensure that the Competency Based Training Program curriculum contains a section to educate mandated agency workers on the principle of confidentiality and the need for collateral social agencies to employ that principle in order to gain the trust and confidence

of their clients, which is absolutely essential in delivering programs and services to voluntary participants.

RECOMMENDATION FIVE: That the Minister immediately ensure that a service contract or a written confirmation is employed in every situation where there is an expectation on the part of a mandated agency that a collateral agency or service provider will report information and/or provide services. The service contract or written confirmation shall contain the mandated agency's reporting requirements and expectations as well as the collateral agency's or service provider's agreement to report the required information. In the case of the provision of service, the service contract or written confirmation shall contain a description of the service to be provided. The mandated agency should be required to include all essential conditions in the service contract or written confirmation.

To this point in my Report, I have dealt with the circumstances surrounding the death of Sophia. However, I feel compelled to deal with more general issues which infect our child welfare system.

This is not the first inquest report that has been written concerning the death of a child in the care of the child welfare system. Nor, I suspect, will it be the last.

While we live in a country, province and city which stands, relatively speaking, at the top of the economic ladder and we enjoy one of the highest standards of living in the world, unfortunately, we also live in a country, province and city where some do not enjoy the majority's economic benefits, standard of living and the benefits of appropriate and loving child care.

There are those who are born into poverty stricken and dysfunctional families. Unfortunately, this cycle of poverty and dysfunction often perpetuates itself, generation after generation.

In families where alcohol abuse, substance abuse, sexual and physical abuse run rampant, far too often the products of these homes give birth to unwanted or unplanned children. And the cycle continues.

It is to be noted that Sinclair, Schmidt and Nellie Berens gave birth to 17 children. All but one, Sophia, were apprehended by the child welfare system. Tanner had fathered children with each of these women and had not taken responsibility for any of the children, although he expressed a desire to parent Sophia. Sinclair's own children were fathered by three different men.

We learn to be parents and the necessary parental skills from our parents. If our parents have no parental skills because their parents had none; if our parents are alcoholics and substance abusers; if our parents sexually and physically abuse us, it is more likely that we will grow up without parenting skills.

It is more likely that we will abuse alcohol and drugs at some point in our lives. It is more likely that we will treat our children as we were treated. It is more likely that we will have more children than we can adequately parent. It is more likely that we and our children will live in poverty and be dysfunctional.

I am not saying that only the poor, only the dysfunctional come into contact with the child welfare system. Economic well-being does not ensure one will be a good parent. Economically advantaged people have had their children apprehended and will continue to come into contact with the child welfare system.

I acknowledge that the foregoing is a broad generalization. I also acknowledge that I am not an expert in this field. I am not a sociologist. I am not a child care specialist. I speak only as a Provincial Judge with 25 years experience on the Bench.

As a Provincial Judge, I have presided over this inquest and heard the evidence of many witnesses. I have heard Sinclair and others describe her all too familiar dysfunctional and poverty stricken background.

Over the years, I have presided over youth, adult and family court matters. I have, all too often, seen the product of these poverty stricken and dysfunctional families. I have read thousands of pre-sentence and pre-disposition reports. The majority of these reports describe backgrounds of offenders which are all too similar to Sinclair's. The backgrounds are so similar that one need only change the name at the top of the report for it to be applicable to the offender standing before the Court.

The majority of families and children that come into contact with the child welfare system come from these impoverished and dysfunctional backgrounds. These families and children come into the child welfare system with the most severe, debilitating issues which need to be addressed by the child welfare system. They come in numbers far too great.

We are a country, a province, a city with finite resources. There are many competing demands for these resources. I do not view it as my responsibility and duty to advise the Minister and the Government how to prioritize these competing demands. However, it is my duty and responsibility to highlight an ongoing and serious problem affecting the child welfare system, which in my opinion, indirectly and directly contributed to the tragic death of Sophia. In order to address this ongoing and serious problem, I will quote extensively from the submissions of counsel.

In Part V of his submission, Mr. McNicol states as follows:

PART V
SIGNIFICANT ISSUES AFFECTING CHILD PROTECTION SERVICES

A. WORKLOADS AND PROGRAM STANDARDS

Existing Workloads and Standards

129. In the course of the Inquest, a considerable amount of evidence was received concerning the issue of workloads and the resulting inability of social workers and supervisors to comply with Program Standards, both generally and in relation to the Baby Sophia case. In addition to the evidence of the witnesses, CFS produced a number of documents pertaining to this issue [see Exhibit 88, Tabs 29 to 45].

130. It is submitted that the overwhelming and uncontroverted evidence is that the workloads of child protection workers and supervisors at CFS in 1995/96 were and continue to be at a level where compliance with Program Standards is impossible. At the same time, it is undisputed that the Program Standards are minimum expectations and that the ultimate responsibility for compliance with the Standards rests with the Support Branch.

131. While attempts to reduce workloads through programs directed at reducing the number of children that come into to care or the number of days they remain in care are very important, this does not address the ongoing, long-standing reality that child protection services in Winnipeg are being compromised by the lack of sufficient staffing resources to directly address the existing workload crisis. CFS submits that a reduction in workloads can only be accomplished by providing appropriate funding to increase the numbers of child protection workers and supervisors. CFS further submits that it is making every effort to effectively manage and deploy its current workforce and to make efficient use of resources, such that any further improvements that may be achieved in this way are nominal and will not solve the problem.

132. The potential consequences of continuing to operate with excessive workloads are extremely serious and far-reaching. From the public perspective, by representing that there are prescribed minimum standards of service being delivered to protect children in Manitoba, when those standards cannot practically be achieved, creates unrealistic expectations. From the perspective of CFS, the stress imposed on workers and supervisors of having to make choices and judgment calls on matters affecting the well-being of children is unacceptable. The practice has necessarily become one of "crisis management" rather than proper social work practice. More importantly, the protection of children is at risk.

133. When a child is harmed or dies, the reality is that it is the conduct of the individual workers and supervisors that is placed under a microscope and judged on the basis of compliance with the Program Standards. This is what occurred in the case of Baby Sophia. And, it is the workers and supervisors who shoulder the responsibility and at whom the blame is directed when something goes wrong. CFS submits that all participants in the system ought to work together in a cooperative, risk sharing manner aimed at problem solving rather than fault finding. [see Ex. 88, Tab 35, Brief, p. 14]

134. During their testimony at the Inquest, Messrs. Fenwick and Goodman from the Support Branch made repeated reference to the "complexity" of the workload issue, usually in response to direct questions as to why it has not been addressed. While the underlying reasons for increasing workloads may be complex, as are the ways and means of addressing that problem, the workload

issue as it relates to workers and supervisors is relatively simple and is capable of analysis and resolution. Manitoba is not unique in that respect. Appropriate levels of workloads have been analysed, identified and implemented in jurisdictions throughout North America and there is a wealth of information and experience at the disposal of the Support Branch on the topic.

135. An analysis of the evidence given at the Inquest by the witnesses on behalf of the Support Branch and CFS reveals that there is substantial agreement on most of the significant facts and aspects of the workload issue and Program Standards. In particular:

(a) The Program Standards are minimum expectations for service delivery by mandated agencies and compliance with them is mandatory;

(b) The existing Program Standards were developed in about 1987 and implemented by the Support Branch in 1988. At that time, the caseload standards of the Child Welfare League of America were known and available, but no workload or caseload standards were incorporated into the Manitoba Program Standards [Ev., Vol. 41, p. 28];

(c) When the Program Standards were developed, no consideration was given to the time required to comply with them and/or the number and mix of caseloads that a worker or supervisor should be expected to maintain. The Support Branch could not offer a logical explanation for this. [Ev., Vol. 42, p. 27, 73];

(d) With the introduction of the Program Standards in 1988, the expectations and workloads of workers and supervisors increased [Ev. Vol. 42, pp. 72-73];

(e) The optimum number of cases that a worker ought to have at any point in time depends on the mix and type of cases and the workload associated with those cases. Having said that, none of the witnesses supported a caseload in excess of 30 for a worker and that would be with an appropriate mix of low to high intensity cases. With more complex cases, the number should be lower [Ev. Vol. 49, p. 9-10];

(f) The Support Branch does not have a position on the appropriate workload that a worker ought to have in Manitoba in order to comply with the Standards, but the recommended workloads of the Child Welfare League of America are generally accepted as best practice and the goal to be achieved [Ev. Vol. 41, p. 52; Ev. Dol. 42, p. 35, 37; Vol. 49, p. 9]

The Child Welfare League standards [Ex. 88, Tab 34] provide for a supervisor to have direction for no more than seven experienced and trained workers, which is reduced to five when the worker lacks professional education and/or experience (para. DD.2.04). For child protection workers, paragraph DD.2.05 provides that the caseload size is to be adjusted for complexity and the other factors set out therein, but in no case is a worker to have caseloads which exceed:

"(i) 15 cases involving intensive intervention or investigation or less;

(ii) 30 case coordination, continuing services, or follow-up cases or less; and/or

(iii) a proportionate mix of the above."

(g) The total number of protection cases being handled by Mr. Oberlin as of January 31, 1996 was 44 and by Ms. Klyne was 37. [Ex. 88, Tab 44] While the makeup of those cases was not analysed at the Inquest, the total numbers far exceed the highest maximum proposed by any authority, even if the worker had all low intensity cases. Mr. Goodman conceded that if it was established that workers generally carried in excess of 35 active protection files with high risk features, that would certainly be an issue for the Support Branch [Vol. 49, p. 11];

(h) The Support Branch does have a position on the acceptable ratio of supervisors to number of child protection workers, which is 6.5 to 1.0. It does not have a position on the caseload of individual supervisors, except for the extrapolation based on a maximum of 30 cases per worker multiplied by 6.5, which equates to a maximum of 195 cases [Ev. Vol. 49, p. 10-11];

(i) With respect to the workloads of the supervisors involved with the Baby Sophia case, the evidence disclosed that Mr. Humniski was responsible for 322 cases and Mr. Finlay for 297 cases. Mr. Barber testified that it would be extremely onerous for a supervisor to be expected to be cognizant of cases approximating 300 [Ev. Vol. 47, p. 51];

(j) Although workers and supervisors are required to comply with the Standards, it is recognized that this cannot always be done and that the onus is being placed on individual workers and supervisors to make choices as to which Program Standards they can comply with and to set their own priorities. The Support Branch recognizes that this is what is happening on a day to day basis in the field [Ev. Vol. 42, p. 29];

(k) The Support Branch has the ultimate responsibility for Program Standard compliance and for ensuring that the appropriate resources are available to meet those Standards. [Ev. Vol. 41, p. 24; Vol. 42, p. 30]

(l) The only way for workers and supervisors to comply with Program Standards is for there to be sufficient funding for staff and appropriate management [Ev. Vol. 42, p. 31];

(m) At no time since 1988 when the Program Standards were introduced has the Support Branch undertaken any analysis of existing workloads, the optimum workload to comply with the Program Standards or the relationship between workloads and standards [Ev. Vol. 42, p. 32; Vol. 48, p. 113; Vol. 49, p. 8-9].

(n) The increases in funding to CFS over the past many years are attributable in large part to increased costs associated with high or special needs children. In the past four years, there has been an increase of 49% in days care for just Level 5 children, the most acute category in the system [Ev. Vol. 41, p. 59; Vol. 47, pp. 13, 24-25, 82]. Mr. Barber further pointed to an increase in the number of permanent wards and a change in the mix of days care as factors contributing to increased costs, in addition to the increased acuity and intensive treatment required for children in care. These factors also result in significantly increased workloads [Ev. Vol. 47, pp. 24-26].

136. The workload issue has been raised with the Support Branch and the Government repeatedly over the years by CFS, the Unions and the opposition in

the Legislature. It has also been raised by the Support Branch's own investigators. In the Standards Compliance Review conducted by the Support Branch in 1996, a recommendation was made to "undertake further analysis of the relationship between program standards compliance and workload" [Ex. 79]. The witnesses from the Support Branch confirmed that no steps have been taken to address the recommendation contained in the Review. [Ev. Vol. 42, pp. 18-19; Vol. 49, pp. 8-9]

137. The Standards Compliance Review conducted in 1996 was the only review that the Support Branch has undertaken to analyse compliance with Program Standards [Ev. Vol. 42, p. 21]. That Review was province-wide and was subject to a number of limitations, including sample size, audit instrument, preparation of auditors, scope of the audit, and limited time frame (one month). The Review was not intended to be an indepth audit or analysis. [Ev. Vol. 42, pp. 14-15] It is submitted that the failure to conduct other Program Standard compliance reviews reflects the recognition of the Support Branch that with existing workloads, agencies cannot comply with the standards.

138. On March 3, 1999, the Honourable Judge Guy released his report from the Inquest into the death of Brian Thompson, a copy of which is appended hereto under Tab A. In the report, Judge Guy found that while the Program Standards are understood and based on sound, practical experience, "workload demand does not enable the workers to do the job properly and the way the standards envisage it being done" (at p. 10). He further stated that the Program Standards "appear impossible to adhere to without adequate people and resources" (at p. 9). Judge Guy therefore recommended, *inter alia*, that caseloads be decreased to more acceptable levels and that Standards be adhered to or be changed to reflect the reality of the situation.

139. As in the Thompson Inquest, CFS submits that in the case of Sophia Schmidt, workload had a significant impact on the ability to achieve Program Standards. CFS further submits that workload and compliance with Program Standards are directly related to staffing resources. The evidence in both Inquests suggests that the relationship between workload and Standards is a systemic problem within the child welfare system.

140. CFS submits that this Honourable Court should issue a strong recommendation that the relationship of workloads and the Program Standards be addressed and resolved. CFS further submits that this should be done through funding specifically directed at increasing workers and supervisors. Such funding should be flexible to permit CFS to respond to fluctuations in workloads. If the Government determines that funding will not be forthcoming, then the only alternative is to relax the requirements for compliance with Program Standards. The Support Branch cannot have it both ways.

New Program Standards

141. The Support Branch provided CFS with draft proposed Program Standards on October 1, 1998 [Ex. 93, Tab 18], which was the culmination of work that had been ongoing for about 1 ½ years [Ev. Vol. 48, pp. 103-104]. CFS was not consulted or approached to participate in that process [Vol. 48, pp. 103-104]. There are now ongoing discussions with the agencies in relation to the proposed new Standards, but those discussions relate to the model already adopted by the Branch [Vol. 48, pp.103-104]. CFS submits that those who are required to follow and apply the Program Standards ought to be involved in their

development. This is reflected in the recommendations submitted by CFS herein.

142. While CFS considers the proposed Program Standards to be better than the existing Standards, there are a number of issues that will need to be addressed. One of the main issues is the impact that the new Standards will have on workloads. As with the existing Standards, no analysis has been undertaken by the Support Branch to date to determine workload requirements, although on March 12, 1999 a letter was sent from Mr. Goodman to Mr. Barber advising that test sites will be used to assess the impact. No mention is made as to whether or not funding will be provided to address any increases in workloads that may be identified. [Appendix "C" to Support Branch Submission].

143. The new Standards do not change the majority of the time frames within which work must be completed. They also introduce some new time lines that previously did not exist. The new Standards envisage a much greater degree of supervisory involvement in cases, which will definitely result in increased time commitments for supervisors. Supervisors will be expected to know the cases of their workers. [Ev. Vol. 48, pp. 106-109]. It is not known where the extra time required to comply with the new Standards will come from, or whether funding will be made available to hire more supervisors to comply with the Standards.

144. CFS intends to use its best efforts to incorporate the new Standards into practice and to comply with them. However, as with the existing Standards, unless a proper analysis is conducted of workload requirements and appropriate funding is provided to enable workers and supervisors to comply with the new Standards, the quality and consistency of services to protect children may not achieve the level set out by the Standards.
(Submission of CFS: pp. 55-65, paras. 129-144)

In his submission on behalf of the Child and Family Support Branch, Mr. McFetridge states:

D. PROGRAM STANDARDS

77. One of the director's duties under section 4(1) of the *C&FSA* is establishing standards and procedures. When the Branch first developed program standards in 1987, agency representatives were actively involved in the development.

78. The Program Standards Manual were intended to reflect minimum requirements under the *C&FSA* and their content reflect both compliance standards and best practice procedures.

79. WCFS' compliance with various program standards was an issue raised by the Chief Medical Examiner ("CME") in his report arising out of the death of Baby Sophia. In that regard, the CME recommended:

a. that the Child and Family Support Branch of the Province of Manitoba perform an immediate quality assurance audit of child protection files and WCFS Northwest to ensure that program standards for case supervision and case documentation were met;

b. that WCFS comply with the program standard for social assessment respecting child protection cases; and

c. that WCFS comply with the standards of service planning (s. 322) and implementing service plans (s. 323) on all its protection cases and that WCFS review with its staff the relationship between violence and the assessment of risk for children.

80. WCFS identified heavy caseloads for both workers and supervisors as one reason why workers in the context of the Baby Sophia situation may not have met standards. WCFS maintained that while program standards are clearly necessary, compliance was unworkable in practice (Exhibit 88, Tab 7, p. 3). In that regard, after the death of Baby Sophia, WCFS developed its own set of standards which, although reflecting in content Provincial Program Standards, did change timelines for specific tasks.

81. WCFS' position is that excessive caseloads is resource related. Although Mr. Cooper candidly admitted in his testimony that the resource issue was not something that related particularly to Baby Sophia (Vol. 45, p. 76), he did say the resource issue in his mind came into play "..more generally with regard to standards and the compliance with standards." (Vol. 45, p. 75)

82. The Branch does not dispute the highly stressful and difficult crisis-oriented situations faced by child welfare workers on a daily basis. However, it is submitted that high caseloads should not in of themselves be used as a justification for the alleged inability of workers to meet program standards. Worker caseload ratios do not in of themselves provide a meaningful description of what a worker is doing or an explanation as to why standards may not have been met. Similarly, it is too simplistic to equate apparent excessive caseloads with a lack of resources. As Mr. Cooper also indicated in his testimony:

> Q: And a caseload is a meaningless statistic in itself without knowing what these people are doing, the nature of their caseload. the kind of clients that they are having to deal with; correct?
>
> A. Yes, its - I mean the number if an absolute unless you know what the number includes. (Vol. 45, p. 92).

83. The evidence is that funding to WCFS has significantly increased over years while the number of children in care have declined and the number of child in care days have remained stable. There is also no doubt that the costs of care have increased and the number of high needs children in care have increased. However, all these statistics do not address the issue of what workers are doing, how they are allocated within the agency by area or program, whether they are properly supervised or whether workers are qualified to do the work assigned. It is the responsibility of WCFS to manage its day to day operations.

84. Although caseload levels is an important and critical issue, caseloads is not simply one of numbers. An open file, however, is the only source of caseload information used by WCFS when calculating worker/caseload ratios.

85. It is submitted that it is impossible to adequately determine what is an acceptable caseload for a worker or a supervisor without information on the attributes of a file such as child/family history, the nature of service needs for individual clients or families and the client's contacts with collaterals. What is an appropriate caseload for any worker also depends on the intensity of effort needed in various situations. Cases are cyclical, with repeated openings and closings. Workers within the agency deal with a wide spectrum of situations.

Some families and children will demand intensive work for a period of time, followed by a period of reduced monitoring, and then little activity. An open file could be inactive for months or more at a time.

86. It is recognized that simply increasing resources is not always the answer and, indeed, is not possible in a society with competing demands for finite resources. Clearly the more efficient use of resources will depend on agencies and the Branch working together. Better use of technology, better organized and user friendly standards, better training for workers and supervisors and regular meaningful quality control measures can assist in achieving the goal that program standards are achievable by agencies.

87. The Branch acknowledges the need for acceptable uniform standards that apply to all agencies. In that regard, the Branch has been endeavouring to rejuvenate and reorganize the standards so that they are relevant and congruent to the needs of the field and communities served. This need was recognized prior to the death of Baby Sophia. A full review of Program Standards was already underway at the time of her death. The need for this full review had been recognized because:

a. standards had not been updated/revised for many years;

b. formal feedback (that is, quality assurance reviews, training events) indicated to the Child and Family Support Branch that the standards required revision;

c. ongoing consultation/advice from agency staff told us that standards were time worn and less than useful as practice tools because they were often repetitive; the Manual was also a ponderous document;

d. the standards had to be congruent with "soon to be enacted" legislation;

e. consistency between a number of Branch initiatives/requirements was desired (e.g. Program Standards, Competency Based Training and CFSIS); and

f. workload and standard compliance had been identified as an issue by both the Branch and the field.

88. Since the death of Baby Sophia, a Committee of experienced and qualified staff within the Branch has developed new standards. During the course of the development of these new standards, the Committee reviewed national/international "best practice" material. There was also comprehensive consultation with the agency community.

89. The first component of the new standards deals with "Case Management Standards" being the minimum required standard operating procedures prescribing how child welfare services will be delivered in Manitoba. The standards are organized by clearly defined function as follows:

a. Intake;
b. Assessment;
c. Planning;
d. Service Provision;
e. Monitor and review;
f. Transfer; and

g. Case Closure.

90. A risk estimation instrument has been integrated throughout the process.

91. The Case Management Standards consist of General Requirements as well as Specific Program Standards, where indicated, relating to services to families, child protection, and children in care.

92. Specific program standards have been circulated to all agencies with a detailed action plan that involves extensive consultation. Several Branch officials are dedicated to this process and are expected to be available to the agency working groups reviewing the standards.

93. The consultation process is designed to be responsive to field influence and to include field input in the final draft. This will and should include input respecting workloads. The newly formed agency relation teams in partnership with the agencies these teams support will also assess workload issues.

94. The goal is that the standards will become more useful, easier to use, template driven and less repetitive; the result being that less time will be required in paperwork. As Mr. Goodman indicated in his testimony and in correspondence to the agencies when the new standards work plan was introduced on October 1, 1998, the materials provided to agencies for review are ""he first best thinking" and are not the final product.

95. The review process is still on going. Since the completion of the hearings before your Honour, and after consultation with various working groups, the draft standards have been revised. The revised draft of the Case Management Standards was sent to all agencies on March 19, 1999. Attached as Appendix "B" of this submission is a copy of the letter that was sent to WCFS dated March 19, 1999, as well as a copy of the Revised Case Management Standards dated March 16, 1999.

96. Furthermore, as indicated in a letter dated March 12, 1999 from Mr. Goodman to Mr. Barber, the Executive Director of WCFS, three test sites (urban, rural and northern) will be used to "...to get a reading on how the revised standards will impact on service delivery and workload." Attached as Appendix "C" of this submission is a copy of the letter dated March 12, 1999.
(Submission of Child and Family Support Branch: pp. 22-27, paras. 77-96)

In his reply to the CFS Submission, Mr. McFetridge states:

C. **WORKLOADS**

26. WCFS maintains the position that child protection services in Winnipeg are being compromised by the lack of sufficient staffing resources to directly address the existing workload crisis it says is being faced by its workers.

27. The WCFS submission frequently mentions increased caseload responsibilities resulting from factors such as the length of time children remain in care, complexity or acuity of cases and excessive numbers of cases carried by both workers and supervisors. While the Branch acknowledges there may have been an increase in the complexity of some cases, documentation filed by the Branch on caseload statistics for WCFS does not support the view that

caseloads have increased overall. (Exhibit 93, Tab C., Document 6 and Tab H, Document 23).

28. Document 6 provides a funding/caseload analysis by category for the fiscal years 1992/93 to 1998/99 inclusive. This information was collected through statistical reports provided by WCFS during that period of time. The overview of caseloads during this period shows that not only have the number of children in care and the numbers of families receiving care slightly decreased over this period, but also that the total number of care days have remained fairly stable. The evidence is that WCFS provided 713,952 days care in 1992/93. In 1997/98 WCFS provided 757,975 days care in 1997/98. This was an increase of only six per cent over the six-year period.

29. The same table shows that funding levels increased during this period from $45,659,000 to $68,975,900; an increase of approximately 50 per cent.

30. As Mr. Cooper indicated in his testimony, it is the aggregate days in care on which funding is based. (Evidence, Vol. 43, p. 26-27) In that regard, the funding for children in care has increased at a much greater rate than the actual days care provided by the agency. Therefore, it would appear that the complexity and acuity of cases play a much greater role in the increased cost of care than a volume increase in days care.

31. WCFS also submits that child protection services in Winnipeg are being compromised by the lack of sufficient staffing resources. However, financial information filed by the Branch with respect to staffing levels would suggest otherwise. (Exhibit 93, Tab C, Document 6.) The table provides an overview of funding received by the agency for the fiscal years 1992/93 to 1998/99 inclusive. The table clearly shows that funding for agency staffing has increased significantly from 1992/93 to 1998/99 as follows:

a. **Central Support/Program** - Funding for salaries and benefits for the agency's executive management and program delivery staff (supervisors and workers) as well as operating costs increased from $16,404,600 in 1992/93 to $21,886.00 in 1997/98, an increase of approximately 30 per cent. This increase occurred during a period of time when the agency's caseloads were slightly declining.

b. **Volume Management Staff** - Funding provided through the provincial Family Support Innovation Fund and the agency's child maintenance funds began in 1994/95, prior to the death of baby Schmidt, and have continued to the present. These funds have enabled the agency to increase staffing levels by more than 40 positions for the delivery of early intervention and prevention services. (Exhibit 93, Tab H, Document 23, p. 4.)

32. The agency also submits that reductions in workload can only be accomplished through the Branch providing appropriate funding to increase the number of workers and supervisors. It also suggests that current efforts by WCFS to make more efficient use of resources will not solve the problem. As was stated in the Branch's previous submission, it is still the responsibility of agencies to manage their day to day operations. The issue of workloads cannot be addressed by simply applying ever-increasing resources. Clearly, how resources are being used has to be examined not only at the Branch level but also at the agency level.

33. Mr. Lance Barber, Chief Executive Officer, testified that WCFS was undergoing a major restructuring. WCFS is to be commended for its concerted effort to reorganize the agency to address longstanding organizational and service delivery issues through its strategic planning process. In that regard, the agency provided the Branch on April 7, 1999 with a copy of its reorganization report dated April 1999, entitled, "Program Management Reorganization Plan" (a copy of which is attached as Tab 1 to this submission). This report indicates in more detail how the agency plans to restructure its service delivery, moving from an area-based to a program-based model. Reorganizational highlights listed on page 5 and 6 of the report include the following statements:

a. Maintenance of centralized community-based Family/Protection service teams with a 20% reduction in average caseload(s) and an enhanced capacity for Family Services Work.

b. A 25% (31 positions) increase in front line, case-carrying

c. As a result of the reorganization, 92.3% of all Agency staff positions are allocated to service programs. Of these, 488.7 positions, 74.5% are dedicated to the provision of service, 14.3% to the provision of administrative support services, and 11.2% are supervisory/management positions.

34. The agency's own concerned efforts since the death of baby Sophia as outlined in its evidence at the Inquest and the subsequent Program Management Reorganization Plan indicate that it is also within the control of individual agencies to manage and address what workers are doing and how they are allocated within the agency by area and program. It is therefore submitted that while recommending more funding may be the simple answer to workload issues, it is not the only answer.

35. WCFS has also indicated in its submission at paragraph 137 under the heading "Workloads and Program Standards" that the Standards Compliance Review conducted in 1996 was the only review that the Branch has undertaken. It is submitted that statement is not correct. As indicated in the Branch's submission, quality assurance is an important and ongoing component of the work of the Branch. The significant number of quality assurance reviews that have taken place since April 1994 of not only agencies, but also residential care facilities, are designed to ensure compliance with the Standards. All the reviews conducted have involved an analysis of standards compliance by the agency being reviewed. (See: Exhibit 93, Tab G, Document 22.)
(Reply of Child and Family Support Branch: pp. 8-12, paras. 26-35)

In his reply to the reply of the Child and Family Support Branch, Mr. McNicol states:

Section C - Workloads

The position of CFS with respect to the issue of workloads has already been set out in detail in its Submission and will not be repeated. However, it should be noted that the Branch Response frequently refers to "caseloads" in circumstances where the Submission of CFS related to "workloads". This is an important distinction.

For example, in paragraph 27 of the Response, the Branch states "[t]he WCFS submission frequently mentions increased caseload responsibilities resulting

from factors such as the length of time children remain in care, complexity or acuity of cases and excessive numbers of cases carried by both workers and supervisors" (emphasis added). CFS raised these and other factors in specific reference to increased "workload" responsibilities.

In paragraph 27, the Branch goes on to say that while it acknowledges there may have been an increase in the complexity of some cases, "documentation filed by the Branch on caseload statistics does not support the view that caseloads have increased overall". While there is some dispute with respect to the accuracy of those statistics, to say that the statistics show that caseloads have not increased overall implies that they were previously at an acceptable level. This is not borne out by the evidence.
(Reply of CFS: p. 3)

Competency Based Training & Orientation of New Workers

145. CFS fully supports the Competency Based Training being undertaken by the Support Branch and submits that every effort should be made to complete the training of existing workers and supervisors as soon as possible.

146. CFS experiences a high turnover of child protection workers, no doubt due largely to the inherent stresses of the position and the high workloads. This means that new workers are hired on a regular basis and must be trained in the specialized area of child protection work, which they do not receive in the general social work program. At present, when new workers are hired the demands of the workloads and lack of adequate staffing require that they be given near to full caseloads at the outset.

147. At the Inquest, Mr. Fenwick testified that the orientation period through competency based training to acquire the specialized skills required of child welfare workers is "critical" to the delivery of child welfare in Manitoba. [Vol. 41, p. 47]

148. The Competency Based Training Tool Manual adopted by the Support Branch sets out the workloads that should be given to new workers during the first six months' of the worker's employment [Ex. 82, p. xiv]. The Manual provides that workers should maintain a reduced caseload, starting with three cases after the first 9 to 10 weeks and sequencing in new cases so that the worker will be responsible for 14 to 16 families, the recommended maximum for a child welfare worker, at the end of the six month period.

149. Mr. Fenwick testified that while the Manual sets out the training model the Support Branch thinks is appropriate, he recognized that the Support Branch does not "fund the agency ... at a level that would look at 15 cases as being the maximum caseload that anybody would have". [Ev. Vol. 42, p. 35]

150. CFS submits that the Support Branch should allocate appropriate funding to enable agencies to implement the recommended gradually increasing caseloads set out in the Competency Based Training Manual for the orientation period of new workers.

Other Factors Affecting Workloads

151. In addition to dramatic increases in the acuity of cases and the corresponding increase in the level of intensive intervention and monitoring required for those cases, workloads have also increased due to a number of

other factors beyond the control of CFS. For example, workloads are directly affected by the level of funding and resources available to other governmental departments and private organizations, such as education and health care. In addition, a considerable amount of additional responsibilities have been imposed on CFS by recent amendments to the CFSA and Regulations thereto.

152. On March 15, 1999, certain provisions of *The Child and Family Services Amendment and Consequential Amendments Act*, S.M. 1997, c. 48 **[see Tab B]**, were proclaimed in force which have significantly shortened the time within which the agency must make applications for protection hearings returnable in Court. Previously, the agency was required to make an application for a hearing to determine if a child was in need of protection within four juridical days after the date of apprehension (s. 27(1), CFSA), which was to be returnable within 30 days of filing (s. 29(1)). Under the amended provisions, the application is now to be returnable within seven days.

153. In addition, under s. 32(1) of the former provisions, a person required to receive notice of the hearing was entitled to make a demand for particulars of the grounds which are alleged to justify a finding that the child is in need of protection. The agency was required to provide those particulars "as soon as it reasonably [could]". Under the new legislation, s. 32(1) has been repealed and replaced with a section that requires the agency to provide the particulars at the same time that notice of the hearing date is given (part of the new s. 30(1)).

154. This means that the agency's application must be heard no later than 11 days after the apprehension (barring juridical holidays), and that notice of the hearing must be given by the 8th day complete with full particulars of the grounds alleged to justify a finding that the child is in need of protection. The amendments have resulted in a significant increase in workload for CFS, particularly for intake workers who must now continue with the case pending the hearing and compile the necessary particulars. Prior to the changes, the intake worker would immediately assign a new case to a child protection worker to handle the application and all ongoing matters.

155. Another area where increased responsibilities have been imposed on agencies relates to Child Abuse Registry matters (s. 19, CFSA). Previously, the agency was only required to report to the director the names of the child and person who has abused the child for entry in the Child Abuse Registry. By reason of the amendments to the Act, the agency is now required to process Child Abuse Registry information and take certain action before the names are included on the Registry. In particular, the agency's Child Abuse Committee is required to formulate opinions relating to the abuse. Thereafter the agency is required to give notice to certain persons of the opinions and circumstances reported to it, the intention to submit the name of the person for entry in the registry and the right of the person to object. Objections are made by filing an application in the Court of Queen's Bench and the agency is responsible for responding to such applications. These activities were previously performed by the Support Branch. No additional funding was provided to CFS when it was required to assume these new responsibilities.

B. CFS INFORMATION SYSTEM

156. CFS submits that the CFS computerized Information System ("CFSIS") should be fully implemented throughout Manitoba as soon as possible. Workers are required to utilize the system and are expected to input their own case data, and it is therefore imperative that they each be provided with personal computers

with CFSIS access. To date, the ratio remains at somewhere between 1.5 and 2 workers per computer and funding has not been made available to CFS to reduce that ratio.

157. CFS provided the Court with the Joint Agency/Department Initiative for computer acquisition dated October 1997. Unfortunately, little progress has been made since that time to reduce the worker/computer ratios. Funding is required for both hardware and for operating costs. Mr. Goodman testified that a funding request made in 1998 was denied. In a recent letter to the Support Branch from the Deputy Minister dated March 25, 1999, a copy of which is attached the Submission of the Support Branch as Appendix "D", a significant increase in the number of computers deployed in agencies has been promised. However, that letter does not indicate whether the increases will meet the goal of a one to one ratio of workers to computers.
(Submission of CFS: pp. 65-69, paras. 145-157)

E. RISK ESTIMATION

97. Since the death of Baby Sophia, the Branch asked the authors of the original M.R.E.S. instrument to make several revisions/updates so the risk assessment took is more user friendly. Further, a senior Branch official was assigned the task of ensuring the production of an updated and workable instrument. As stated, a risk estimation instrument has been integrated into the revised Case Management Standards. The revisions and adjustments to the risk management system described in the Case Management Standards are being made as part of the Case Management Standards' implementation process.

98. The risk management system in the case management process will be reflected in the various "forms" which will be built into the Child and Family Services Information System ("CFSIS") system screens.

99. Furthermore, the assessment of risk is an integral part of the competency based training core curriculum that provides the basis and framework for all field staff to understand both safety and risk assessments.

F. THE CHILD AND FAMILY SERVICES INFORMATION SYSTEM

100. CFSIS is a case management system to be used by workers, supervisors and administration for recording and monitoring services. Features include:

a. timely, province-wide access to child welfare records;
b. comprehensive security;
c. prior contact and child abuse registry checks;
d. one common "person record" for clients, service providers or both;
e. case records and case categories;
f. capacity to view cases involving persons;
g. a province-wide e-mail network;
h. tracking abuse and history of investigations in a case;
i. a comprehensive events and reminders system; and
j. statistical and management reports.

101. All parties agree that the ability to have and use this system is a significant plus for the child protection system and that the goal should be that the machine-to-worker ratio be one to one. In that regard, by letter dated March

25, 1999, all agencies were advised by Deputy Minister responsible for the Child and Family Support Division of the Department of Family Services that:

> "...[t]here will also be a significant increase in the overall number of computers deployed in agencies and regions. ... The rollout of equipment is currently scheduled to begin in June of 1999, and be completed in the later fall."

Attached as Appendix "D" of this submission is a copy of the letter dated March dated March 12, 1999.

G. COMPETENCY BASED TRAINING

102. Competency-based training identifies, establishes and maintains an acceptable minimum skill level for all staff directly involved in delivering child welfare service (line staff and supervisors).

103. The "Core Competency-Based Training for Supervisors" ensures skill development in the following curriculum areas:

a. Managing within a child and family service system: leadership, administration and performance improvement;

b. Managing work through other people: diversity/change in the workplace;

c. Developing staff: the supervisors' role in improving staff performance; and

d. Developing productive work teams.

104. The "Core Competency-Based Training for Caseworkers" addresses the issue of establishing a basic skill level for line staff in the following areas:

a. Family centred child protection services;

b. Case planning and family centred casework;

c. The effects of abuse and neglect on development; and

(d) The child protection/child in care process: separation/placement/reunification.

105. As if October 31, 1998, 61% of all caseworkers and 85% of all supervisors have been fully or partially trained.

H. QUALITY ASSURANCE

106. The need for quality assurance is also recognized as an important component of ensuring that the delivery of services by mandated agencies are consistent with the legislation and approved standards. As Mr. Cooper indicated in his testimony when asked about the benefit of having quality assurance reviews done:

> Simply, the benefits are twofold, and there may be other benefits, but the two major benefits that I see and have seen are, first of all, it provides an opportunity to look at using a sample

> certainty, but look at exactly what is going on. The second benefit, I think, is that it can be used constructively, not just as a compliance exercise but depending on the makeup of the, quality assurance team, can also be used as a teaching tool with workers in a way that enables them to learn how to do their job more effectively and better.
> (Vol. 46, pp. 4-5)

107. The process and methodology of a quality assurance review is described in Tab 6 of Exhibit 93 filed on behalf of the Child and family Support Branch.

108. The number and nature of the reviews is set out in Tab 22 of Exhibit 93. (Submission of Child and Family Support Branch, pp. 27-30, para. 97-109)

D. CONSULTATION

36. WCFS in its submission makes several references to lack of consultation by the Branch and proposes a recommendation be included in your Honour's report that the Branch include and consult with WCFS in the early stages of planning, development, drafting and implementation of all matters affecting delivery of services.

37. The Branch has always taken the approach the consultation among stakeholders is essential. In that regard, the approach taken by the Branch has been to, where possible, consult with all stakeholders in the system and to collaborate with agencies and other service providers toward enhancing services to children and families in this province.

38. When the initial program standards were developed, it was done collaboratively through a committee structure involving people from the Branch as well as representatives from all the agencies in Manitoba. (Evidence of Ron Fenwick, Vol. 41, p. 22)

39. In respect of the new case management standards, when the first preliminary draft was completed, a meeting was held on or about November of 1987 at which time a representation of area directors of WCFS, as well as the Executive Directors of other agencies, were asked to review the draft standards and were provided with copies and asked for comments. Although no formal reply was received from WCFS in response, the feedback the Branch received was that the direction was positive. (Evidence of Phil Goodman, Vol. 49, pp. 30-31)

40. On September 10, 1998, a meeting took place with the senior management team of WCFS to discuss the topic of the new standards so s to make the exercise visible in preparation for the more formal consultation process. (Evidence of Phil Goodman, Vol. 49, pp. 29-30 and Exhibit 93, Tab F, Document 18, p. 3) As of that date the draft standards were still a work in process.

41. Again on October 1, 1998, Mr. Goodman wrote to all agencies outlining the process for review as well as providing draft materials respecting the proposed Case Management Standard, draft templates and forms, and a draft MRES instrument. (Exhibit 93, Tab F, Documents 18-20) Again, a representative from the Branch met with agencies throughout the province to review the proposed standards. The feedback from agencies with respect to the draft standards was generally very positive. A number of changes were made to the draft standards as a result of this consultation process.

42. Furthermore, as indicated in the Branch's previous submission, the review process is still ongoing. (Paragraphs 95 and 96)

43. WCFS has also commented in its submission on the recent amendments to *The Child and Family Services Act* and regulations thereto s being another area where increased responsibilities have been imposed on the agency, again presumably without any consultation. (Paragraph 151 at pp. 66-67 and recommendation 10 at p. 73 of WCFS submission.) Although no evidence was lead on these issues at the Inquest, the Branch can indicate that the process leading to these passage of this legislation and the proclamation of *The Adoption Act* started with a province-wide consultation in the fall of 1996 and a report submitted to the Minister of Family Services in the spring of 1997 recommending changes to legislation based on the issues identified in the consultation process. The Branch was also subsequently involved in extensive consultation with agencies and other service providers with respect to the development of the regulations and prescribed forms.

44. The Volume Management Initiative is another example of how the Branch has worked closely with WCFS in a consultative manner to develop a management plan which would address concerns over volume increases in the child welfare system. A steering committee was established with membership from the Department of Family Services, Treasury Board Secretariat, Policy Management Secretariat and WCFS to guide the development of the management plan and to develop and assess options to control expenditures. The process resulted in the establishment of the Family Support Innovations Fund and the allocation of additional funding for mandated child and family services agencies.

E. CONCLUSION

45. The Branch submits that all stakeholders have taken and are continuing to take steps to try and improve the delivery of services to families and children in this Province. Although not all these changes were as a result of the tragic death of baby Sophia, there is no doubt that her death and this Inquest have had an important impact on what stakeholders have done and are continuing to do in their efforts to improve existing policies and practices.

46. There is no dispute that there are still many critical issues affecting child protection issues that still need to be addressed, many of which were only briefly canvassed during the course of this Inquest. The Branch agrees that all stakeholders must continue to work together with the goal of improving the system.
(Reply of Child and Family Support Branch: pp. 12-15, paras: 36-46)

There is no doubt that counsel for CFS and counsel for the Child and Family Support Branch raise valid and serous concerns about the child welfare system. These concerns have their roots in the classic struggle of funding versus efficiency and competency: too many children in need of protection and not enough money. But in the real world, not in the courtroom, not in the boardroom, life proceeds and children in need of protection must be properly cared for.

At this point, I think it appropriate to repeat some of counsel's submissions:

> It is recognized that simply increasing resources is not always the answer and, indeed is not possible in a society with competing demands for finite resources. Clearly the more efficient use of resource will depend on agencies and the Branch working together. Better use of technology, better organized and user friendly standards, better training for workers and supervisors and regular meaningful quality control measures can assist in achieving the goal that program standards are achievable by agencies. (Submission of Child and Family Support Branch: p. 24, para. 86)
>
> - - -
>
> The Branch submits that all stakeholders have taken and are continuing to take steps to try and improve the delivery of services to families and children in this Province. Although not all these changes were as a result of the tragic death of baby Sophia, there is no doubt that her death and this inquest have had an important impact on what stakeholders have done and are continuing to do in their efforts to improve existing policies and practices.
>
> There is no dispute that there are still many critical issues affecting child protection issues that still need to be addressed, many of which were only briefly canvassed during the course of this Inquest. The Branch agrees that all stakeholder must continue to work together with the goal of improving the system. (Reply of Child and Family Support Branch: pp. 14-15, paras.: 45-46)
>
> - - -
>
> When a child is harmed or dies, the reality is that it is the conduct of the individual workers and supervisors that is placed under a microscope and judged on the basis of compliance with the Program Standards. This is what occurred in the case of Baby Sophia. And, it is the workers and supervisors who shoulder the responsibility and at whom the blame is directed when something goes wrong. CFS submits that all participants in the system ought to work together in a cooperative, risk sharing manner aimed at problem solving rather than fault finding. (Submission of CFS: p. 56, para. 133)

I endorse these comments. I also acknowledge that CFS and the Child and Family Support Branch "have taken and are continuing to take steps to try and improve the delivery of services to families and children in this Province".

After considering the evidence adduced at this inquest and the submissions of counsel, I can state that we have a working child welfare system, but I cannot state that we have a child welfare system that works. The fingerpointing and casting of blame by CFS and the Child and Family Support Branch is symptomatic of serious and ongoing problems affecting the child welfare system. These problems existed before Sophia was apprehended. These problems were highlighted by the death of Sophia. And while it has been several years since the evidence at the inquest was concluded, I am not confident that the problems with the child welfare system have been resolved. Nor am I confident that the Minister and the mandated agencies alone can

resolve the very serious and longstanding issues affecting the child welfare system.

RECOMMENDATION SIX: That the Minister establish an independent inquiry or commission to comprehensively inquire into the present child welfare system with a view to recommending appropriate and manageable standards of practice and workloads for child care workers and supervisors. The inquiry or commission should be required to make recommendations regarding the level of competency and training to be required of all child care workers and supervisors. In addition, the inquiry should examine the present Child and Family Services Information System to determine if it is appropriate for the purposes intended. The inquiry should also examine and make recommendations in this regard. The inquiry ought to examine the present structure of CFS to determine whether its present structure is the most appropriate and efficient way of protecting children and delivering services. Mandated agencies should be consulted with a view to determining what other issues ought to be placed before the inquiry. In this regard, I adopt the following recommendation of CFS:

RECOMMENDATION SEVEN: That the Support Branch include and consult with CFS [and other mandated agencies] in the early stages of planning development, drafting and implementation of all matters affecting the delivery of services by CFS [and other mandated agencies]. Such matters should include, but would not be limited to, revisions to Program Standards, the Act and Regulations, the development of or changes to training and education programs, and the development and adoption of risk estimation tools and criminal risk assessment methods.

Once the inquiry makes its report, it will be incumbent on government to implement those recommendations it thinks appropriate. At the very least, the government and the mandated agencies will have established base lines for the protection of children and the delivery of services. Perhaps, then, the wasted energy of fingerpointing and blame casting will cease and the energy will be directed to child protection and service delivery.

I have made the recommendation to establish an inquiry or commission partly because it is beyond the scope and competence of this inquest to determine issues such as workloads, competency based training and delivery of services. Expert evidence will be required in this regard. I have also made this recommendation because the child welfare system and the government have not been able to satisfactorily resolve these issues.

The present child welfare system is inherently adversarial because of the mandated agency's authority to apprehend children and seek temporary or permanent orders of guardianship. The need for such authority is self-evident. Nevertheless, the parent or parents are, in most cases, threatened by this authority and often see the mandated agency and the child care worker as "the

enemy". The child welfare system is also adversarial because, ultimately, child protection matters are resolved in court. Our court system is an adversarial system.

It is imperative that the child welfare system recognize that an adversarial system is not the best system to protect children; is not the best system to deliver services; is not the best system to ensure that the ideals set forth in the Declaration of Principles, which underlies the Child and Family Services Act, are capable of practical application and do not remain idealistic principles which attempt to balance the sometime competing principles of the best interest of children, the family unit and the parents right to parent.

A holistic approach must be adopted by the child welfare system. Only then can it truly be said that the child welfare system seeks to heal dysfunctional families and keep children protected within the family unit. CFS has, in my view, taken the first step in this direction by having one office handle intakes and the other offices deliver services. However, mandated agencies must go much further. Perhaps, the child welfare system has to be converted to an interrelated two tier system, one with the jurisdiction to apprehend, if necessary, and seek orders of guardianship; and the other providing services in a non-threatening and holistic manner. Again, it is beyond the competence of this inquest to make recommendations as to how to end the adversarial system and adopt a holistic approach. Others will have more expertise in this regard. But, it must be recognized by the child welfare system and government that the present adversarial system is not the best system to protect children. A holistic approach is more appropriate.

I now come to the last topic of this report: consent orders.

As previously noted, ss. 2(1) of the Child and Family Services Act provides:

> **Best Interests**
> **2(1)** The best interests of the child shall be the paramount consideration of the director, the children's advocate, an agency and a court in all proceedings under this Act affecting a child, other than proceedings to determine whether a child is in need of protection and in determining the best interests of the child all relevant matters shall be considered, including
>
> (a) the child's opportunity to have a parent-child relationship as a wanted and needed member within a family structure;
>
> (b) the mental, emotional, physical and educational needs of the child and the appropriate care or treatment, or both, to meet such needs;
>
> (c) the child's mental, emotional and physical stage of development;
>
> (d) the child's sense of continuity and need for permanency with the least possible disruption;

(e) the merits and the risks of any plan proposed by the agency that would be caring for the child compared with the merits and the risks of the child returning to or remaining within the family;

(f) the views and preferences of the child where they can reasonably be ascertained;

(g) the effect upon the child of any delay in the final disposition of the proceedings; and

(h) the child's cultural, linguistic, racial and religious heritage.

The words above underlined have been the subject of many judicial comments. Examples of a few will suffice.

In Hepton v. Maat (1957) S.C.R. 606, Cartwright, J., speaking for the majority of the Supreme Court of Canada, stated at p. 615:

> --- I regard it as settled law that the natural parents of an infant have a right to its custody which, apart from statute, they can lose only by abandoning the child or so misconducting themselves that in the opinion of the Court it would be improper that the child should be allowed to remain with them, and that effect must be given to their wishes unless 'very serious and important reasons' require that, having regard to the child's welfare, they must be disregarded.

In the D case, Twaddle, J.A., speaking for the unanimous Manitoba Court of Appeal, stated at p. 362:

> By virtue of s. 2(1) of the Act, the court may not give paramount consideration to the best interests of the child in determining whether the child is in need of protection. This is because the state has not assumed the right to decide what is in the best interests of a child in a contest between the state and custodial parent or guardian. That is not to say that the best interests of the child are not to be considered in a protection case. They are, but only after the court has determined that the child would be in need of protection if returned to the custodial parent or guardian and has moved on to the second step requiring it to consider which of the several orders it can make is most appropriate.

In Children's Aid Society of Winnipeg v. M. and C., 15 R.F.L. (2d) 185, Friedman, C.J.M., speaking on behalf of a unanimous Manitoba Court of Appeal, stated at p. 188:

> The right of a natural parent to the care and control of a child is basic. It is a right not easily displaced. Nothing less than cogent evidence of danger to the child's life or health is required before the court will deprive a parent of such care and control.

And finally, in Children's Aid Society of Winnipeg v. Olson and Olson, 5 Man. R. (2d) 75, Huband, J.A., speaking for the majority of the Manitoba Court of Appeal, stated at p. 83:

> But even if I were of the view that it was in the best interests of the child that an order of permanent wardship be made, I would make no such order. In my view, before the state can interpose itself between parent and child against the will of the parents, it must shown that the child is in need of protection.

When a child protection case proceeds to a hearing, the mandated agency must adduce evidence in order to discharge its onus of demonstrating that the child is in need of protection. Then the court, in the best interests of the child, will make one of the orders provided by ss. 38(1) of the Child and Family Services Act.

In this circumstance, I am satisfied that issues of "a child in need of protection" and "the best interests of a child" are judicially determined by the court, based upon the evidence adduced.

However, ss. 38(2) of the same Act provides that where all parties consent to the order, the court need not hear "further evidence" and may make one of the prescribed orders. In this circumstance, who determines if a child is in need of protection? Who determines whether the order consented to by the parties is in the best interests of a child? Is the mandated agency required to determine whether a child is in need of protection and that the order is in the best interests of a child before it consents to an order?

In my opinion, the mandated agency should be required to make those determinations before it consents to an order. In an ideal world, the mandated agency would garner sufficient information to reasonably make these determinations. In the real world, in the world of Sophia, that did not occur. CFS (Central) consented to the supervisory order without carrying out a proper investigation. It consented to the order based on "very little" information and it consented to the order based on a home study report which it knew to be "inadequate" and "lacking". Workloads and incompetency cannot and should not be permitted as a rationale for the loss of a child's life.

In the present state of the child welfare system, we ought not to leave to chance whether the child care worker is competent. We ought not leave to chance whether the child care worker's workload is unmanageable. We ought not leave to chance whether a proper investigation will be done and determination made of the child's best interests. "Plea bargaining" may be appropriate in the criminal justice system. It is not appropriate in the child welfare system.

RECOMMENDATION EIGHT: That ss. 38(2) of the Child and Family Services Act be amended to require a mandated agency to adduce sufficient evidence, oral or written, to permit a judge to determine whether a child is in need of protection, and if so determined, that the order being consented to is in the best interests of a child. In the event the mandated agency determines, after a proper investigation, that the child is no longer in need of protection and is to be

returned to or placed with a parent or guardian pursuant to clause 38(1)(a) or 38(1)(b) of the Child and Family Services Act, then the mandated agency shall be required to adduce sufficient evidence, oral or written, to permit a judge to determine whether the child no longer is in need of protection and that the order being consented to is in the best interests of the child.

I recognize this will create a greater workload for the mandated agencies, the lawyers and the courts. Perhaps the timelines for bringing child welfare matters before the court should be expanded. In my opinion, workloads and timelines are of little weight when balanced against a child's best interests and a child's life.

In conclusion, it is important for all who are a part of the child welfare system to heed the words of the Supreme Court of Canada:

> This appeal emphasizes once more, ---, that the law no longer treats children as the property of those who gave them birth but focuses on what is in their best interests.
>
> - - -
>
> - - - it is the parental tie as a meaningful and positive force in the life of the child and not in the life of the parent that the court has to be concerned about. As has been emphasized many times in custody cases, a child is not a chattel in which its parents have a proprietary interest; it is a human being to whom they owe serious obligations. (per Wilson, J. for a unanimous Court in *Racine et al v. Woods*, (1983) 2 S.C.R. 173 at 174 and 185)

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

"Original signed by Judge Conner"

Arnold J. Conner, P.J.