



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

The Honourable Edward (Ted) Hughes, Q.C.,
Commissioner

Transcript of Proceedings
Public Inquiry Hearing,
held at the Victoria/Albert Room, Lower Level, Delta Hotel,
350 St. Mary Avenue, Winnipeg, Manitoba

MONDAY, APRIL 29, 2013

APPEARANCES

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MS. B. BOWLEY, for witness, Ms. Diva Faria

G. BRODSKY, Q.C., for witness Billie Schibler

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2 PROCEEDINGS CONTINUED FROM APRIL 25, 2013

3

4 THE COMMISSIONER: Good morning.

5 MS. WALSH: Good morning, Mr. Commissioner.

6 THE COMMISSIONER: As we start another week.

7 Yes.

8 MS. WALSH: Mr. Commissioner, I had, at the end
9 of the day on Thursday, indicated that I completed my
10 questions.

11 THE COMMISSIONER: Yes.

12 MS. WALSH: I had ended Ms. Schibler's
13 examination by asking her if there was anything more that
14 she wanted to say and at that time she said there wasn't,
15 but she has advised that she has about five sentences she
16 wanted to add which, with your indulgence, I think would be
17 all right.

18 THE COMMISSIONER: All right. It's best that we
19 hear that before the cross starts.

20 MS. WALSH: Yes, exactly.

21

22 **BILLIE SCHIBLER**, previously sworn
23 while holding the Eagle Feather,
24 testified as follows:

25

1 THE WITNESS: Good morning. Thank you.

2 THE COMMISSIONER: Good morning.

3 THE WITNESS: Well maybe it's not five sentences
4 but it's five quick points.

5

6 DIRECT EXAMINATION CONTINUED BY MS. WALSH:

7 Q Okay.

8 A One of the things that I wanted to say that I
9 really, really felt was missing in this matter and I see
10 missing quite frequently in matters is that child welfare
11 isn't a one size fits all service and quite often where we
12 seem to fail a lot of the families and the children is with
13 a lack of therapeutic services and when I say that I mean
14 the ability to really be able to assess what kind of
15 historical wounds that family carries, particularly this is
16 true with the ones that have come from the child welfare
17 system already and are becoming parents for the first time
18 without ever really being parented themselves and not being
19 able to carry those skills to, to be able to demonstrate
20 that because they haven't learned it. It's very easy to be
21 a good parent when you've had a loving, nurturing,
22 supportive environment around you and we expect people to
23 do that despite what they've lived through and I think
24 that's tragic.

25 So I just want to say like those children in care

1 are, of today are really tomorrow's parents and we really
2 need to do a better, a better job of servicing them.

3 The other thing was is just wanting to restate my
4 feelings about the OCA, the Office of the Children's
5 Advocate having an expanded mandate. I think that's a
6 really, really important thing, particularly around being
7 able to provide services and advocacy to all of those
8 children and youth who come from the other publically
9 funded services. So those publically funded services
10 shouldn't just apply to the children who are already
11 deceased, they should apply to those that are alive and
12 well and needing advocates.

13 And also one of the things that I came across
14 when I was at the Children's Advocate was that we're
15 talking more and more about the extension of, of care to
16 those children in the child welfare system who, who we have
17 legal guardianship over and bringing that extension to
18 currently age 21, yet interestingly with the transfer of
19 the mandate to, for the special investigations there was no
20 ability to be able to look at any of the deaths of those
21 children who extended into care because technically they
22 are adults. So if they die while they're in care and
23 receiving those services, there was no mechanism to be able
24 to review anything around homicides, suicides, any kind of
25 deaths. So we weren't notified of that at the OCA because

1 there was no mechanism in legislation for the chief medical
2 examiner to let us know that. So there was no ability for
3 us to be able to do an investigation.

4 And again, being able to review critical injuries
5 as well as the child deaths I think is really, really
6 important. There are critical injuries that occur out
7 there and I think that those are important to review, so
8 that we can see how we can improve the system and the
9 supports to families so that those don't occur again.

10 The other thing was again when we're talking
11 about services to families and children, I think child
12 welfare really, really needs to have two separate veins
13 that are clearly distinguishable, one being the protection
14 which of course, you know, everybody leans on because
15 that's a huge part of the mandate, but the other part of it
16 is the prevention and that is that early intervention, that
17 is that support, that therapeutic involvement with families
18 that is the work of trying to help those families to heal
19 in a really, really good way. Unfortunately, the way that
20 the funding dollars are designed right now and the funding
21 model, there isn't a whole lot of money being attributed
22 towards the support services and yet those are the critical
23 pieces. If we want to do something to make a difference,
24 we have to be able to intervene with those kinds of
25 services and the grass roots services that are out in the

1 community that provide those outside of the child welfare
2 system, every year they're vying for their funding dollars
3 and they never really know where they're going to be from
4 one year to the next and that, in itself, is, is really
5 unacceptable.

6 Q I think we're going to hear from many of those
7 agencies in phase three.

8 A Yeah. The other thing was about manageable
9 caseloads because, you know, I know that we talked about
10 that in our recommendations as we looked at the child
11 welfare system. You know, you can't expect a child welfare
12 system to be able to provide those good assessments, those
13 good therapeutic supports to families if they are just
14 running from putting out fire and fire and fire. There has
15 to be the ability to be able to be able to step back and
16 look at the family, get to know them, assess where they're
17 going on an ongoing basis in a good way and develop those
18 relationships with families. You can't do that when you're
19 overworked with your caseload.

20 And then finally, I mean for myself I really,
21 really feel that a lot of the things that were in the
22 original aboriginal justice inquiry child welfare
23 initiative that devolution was really all based on, really
24 needs to be revisited. A review of that whole report, all
25 of the things that were recommended I think really needs to

1 be reviewed because I don't see that it has actually
2 unfolded the way that it was intended to and I think it
3 would be a really important piece of movement in the child
4 welfare system in this province for that to be reviewed.

5 Q Without getting into that last point in, in real
6 detail, can you just give us like say one concrete example
7 of what you mean?

8 A I think one, one concrete example would be that
9 the whole intent of developing before child welfare
10 authorities was to be able to help move towards self
11 governance of aboriginal services, whether it's First
12 Nation or Métis. We were over represented in the child
13 welfare system. It was about allowing us to make decisions
14 for how we deliver services that would look culturally
15 appropriate and unique as we defined it, and yet the
16 funding and the mechanism to be able to do that, because in
17 legislation and the authorities act it says, you know, that
18 as authorities we must, we must design culturally
19 appropriate services, but it doesn't say you must deliver
20 them. And so unless you've got the funding that will
21 actually support that and we make the decisions as to how
22 that goes, I think that that money still sits with
23 government. There still is the control of government. It
24 really isn't -- it doesn't reflect the self-governance that
25 it was intended. It doesn't reflect where it was intended

1 to go as far as our own decision making within, you know,
2 our own services and our own families because we don't
3 control it. We have no control over that when the funding
4 sits with government.

5 MS. WALSH: Okay, thank you. I have no further
6 questions, Mr. Commissioner.

7 THE COMMISSIONER: All right. We'll start the
8 cross-examination. Mr. Ray?

9 MR. RAY: Yes, good morning, Mr. Commissioner.

10

11 CROSS-EXAMINATION BY MR. RAY:

12 Q Good morning, Ms. Schibler.

13 A Good morning.

14 Q I've been told that I'm going first and happy to
15 do that. My name is Trevor Ray. I represent a number of
16 the social workers that were involved in providing services
17 to Phoenix Sinclair, as well as the MGEU.

18 I just have a few, I think fairly simple
19 questions for you, many of which are primarily in the area
20 of clarification. And one of the things I'd like to ask
21 you about is one of the first areas you were commenting on
22 was the types of factors that were bringing, in your view,
23 bringing aboriginal children into care and you listed a
24 number of things, one of which was that you felt those
25 children were not visible in the community for people to

1 reach out to. And I'm just curious about that. I have no
2 views either way and I just would like your views. Because
3 we've heard evidence in particular about what happened in
4 Fisher River and many of the people testified about that
5 and they described Fisher River and many First Nations
6 communities as close knit, tight, people knowing each
7 other, you know your neighbours, you know your family,
8 small population. So I'm wondering if you could tell us
9 what is it about a First Nation community that would make a
10 child less visible as opposed to, given size and given what
11 we've heard.

12 A Well, I'm not an expert on First Nation
13 communities but I would say that a child can, a child who
14 is not engaged with any kind of services like day care or
15 schools, one that is not outside playing, has contact in
16 the communities, one where the health system isn't actively
17 involved with, can easily slip through the cracks and I
18 would suggest that it's not just reflective of a First
19 Nation community. I would suggest that you could easily
20 have someone living in your basement, in your home, and if
21 that child is not connected up to anybody who would know
22 that?

23 Q Okay. So when you -- maybe I misunderstood your
24 original answer. Your -- were you saying communities in
25 general or First Nations communities in particular?

1 A I'm saying communities in general.

2 Q I see.

3 A When we're talking about an age group that's
4 non-verbal --

5 Q I see.

6 A -- I think it's really, really vital that we rely
7 on anyone that's connected with that family, with that
8 child. So that could be extended family, it could be
9 neighbours and it could be services.

10 Q I see. And so with respect to a First Nations
11 community then, because there is a less access to medical
12 system, less access to education, those types of
13 collaterals where we may see professionals identifying harm
14 to a child, that, that is how they may be less visible in,
15 you know, a First Nation community.

16 A And in those cases then I would expect that there
17 would be a lot more connections for the existing services
18 in that community. So if it's the child welfare system,
19 then I would assume that the supports or strengthening
20 families would come through that system and whatever
21 medical system that there is, whether it's a public health
22 nurse or a nursing station or what have you. So I don't
23 know if that answers --

24 Q No, I think so, yeah. I just, maybe I
25 misunderstood your original evidence.

1 You mentioned, I don't want to call it a
2 conflict, but between the ombudsman's office and their work
3 and the work that they do in, I guess, enforcing or making
4 sure your recommendations are implemented versus your job
5 at the Child Advocate's office to issue your reports on a
6 death of a child and if I understand, you were saying that
7 you would have hoped that it would be up to your office to
8 ensure that your own recommendations were being implemented
9 as opposed to the ombudsman's office doing it for you. Was
10 that how I understood your evidence?

11 A Kind of, yes --

12 Q Okay.

13 A -- and just for clarification, my former role and
14 my former office.

15 Q Of course, yes.

16 A I think -- I, I don't think I defined it
17 necessarily as a conflict but what I was feeling in that,
18 and if I can just kind of go back to a note that I had made
19 to myself around the expanded mandate of the, of the office
20 of the Children's Advocate, and it really talks about
21 something that's in legislation for the British Columbia's
22 Children's Advocate, or Child and Youth Advocate, and it's
23 the power and authority to monitor, to review, to audit, to
24 conduct research. They have the ability to follow up on
25 the recommendations that they make and report on that

1 publically. And so that's, it's in legislation. It's
2 stated, it's clear. And so --

3 THE COMMISSIONER: And do you support that?

4 THE WITNESS: I do support that. And I feel that
5 that was something that kind of got missed in the way that
6 the, the authority to be able to review the child deaths
7 transferred. And then when it was indicated that that
8 would become the role as well to the ombudsman, I felt that
9 that was, that was a good kind of back up piece because
10 again it would be an independent public office that would
11 be looking at that, give it a little bit, you know,
12 additional teeth, but I think that the initial piece was
13 that it should have been a power and authority that rested
14 with the Children's Advocate. Otherwise, it's almost
15 undermining.

16

17 BY MR. RAY:

18 Q And that was, that was how I understood your
19 evidence and I guess my question is, do you see the work of
20 the ombudsman's office has to do in order to take your
21 reports further, for example, as perhaps having to result
22 in duplication of much of the work that you have already
23 done?

24 A No, I think that our -- you know, I think the
25 roles are very distinct and I think that the recording on

1 it, I think, you know, what it would require of course
2 would be sitting down and talking about, okay, who's
3 actually doing what and what does that look like? That was
4 never really something that was, was given. So, you know,
5 does it mean that they focus a lot more specifically on
6 the, on the workings of the child welfare system and its
7 implementation? I suppose it does. Is that really how it
8 should be? I would rather see that exist with the OCA but
9 then of course you would need the resources to be able to
10 do that.

11 THE COMMISSIONER: Are you saying that if that
12 monitoring role for the advocate's office was in place,
13 there would not be a need for the role of the ombudsman as
14 presently constituted under the recent legislation?

15 THE WITNESS: I believe so.

16 THE COMMISSIONER: Thank you.

17 MR. RAY: Thank you, Mr. Commissioner.

18

19 BY MR. RAY:

20 Q You, you mentioned audits, the issue of audits.
21 I assume, and I think you expressed some concerns that
22 there were no formal audits conducted as Children's
23 Advocate office and regardless of who conducted those
24 audits, I assume you would agree that audits would be very
25 helpful to social workers, to their supervisors, to their

1 program managers, assistant program managers and that it
2 would be helpful because we would hopefully detect perhaps
3 lack of education or lack of training or lack of knowledge
4 about the system or the standards at a much earlier stage
5 than perhaps years through down a person's career?

6 A I would agree that that's, that's the point that
7 I was trying to make but I think that I also need to add to
8 that that unless the results of those audits are really
9 embraced by the system and understood that it's something
10 that needs to trickle down right from upper management all
11 the way to the front end and that there be means of also
12 supporting the changes that would come through the
13 recommendations from the audit, then it's going to be
14 ineffective. If it just sits with a certain layer of
15 service and it's not shared in its entirety with everyone
16 involved, particularly the front line, then it's going to
17 be ineffective.

18 Q With respect to Ms. Wright's "Best Practice on
19 Best Papers", I understand you requested that she author
20 the paper in --

21 A Yes.

22 Q -- in 2006?

23 A Yes.

24 Q And I assume you agree with her, the concepts
25 prepared in her Best Practices paper in terms of a need and

1 an emphasis on preventative services and to try to have
2 social workers engage more thoroughly with the family at, I
3 suppose, more at family services level than any other
4 levels. And I assume you agree with me that that's going
5 to require family services workers to spend much greater
6 amount of time with their families than they are currently
7 able to spend.

8 A That's correct.

9 Q And one final area, Ms. Schibler, that I'd like
10 to ask you about. You stated that many of your, or all
11 your employees I think, came with a great level of
12 integrity and commitment to doing the work of the
13 Children's Advocate office and obviously that's important
14 because of the nature of the work there, they're
15 investigating a child death that has serious consequences
16 for the system and those being investigated, right?

17 A That's correct.

18 Q And you'd agree with me that social workers take
19 that job very seriously, the ones that you oversaw in your
20 office.

21 A Yes.

22 Q And you'd agree with me that regardless of a
23 person's membership in any particular group, whether it be
24 a membership in a union, a club, a member of a small
25 community, a member of a small or large First Nations

1 community, that we would expect and you would expect a
2 social worker to exercise their duties in a professional
3 manner without regard to their personal membership in those
4 groups?

5 A Absolutely.

6 Q And if they failed to do that, if they somehow
7 deliberately skewed the results of their investigation,
8 whether it's as a member of social work team or a member of
9 your office, there would be severe consequences for that
10 social worker, I would hope.

11 A Yeah.

12 Q And you would, as former chief of the Advocate's
13 office, I assume that if you found that that was occurring,
14 you would take steps to ensure that that stopped.

15 A Yes.

16 MR. RAY: Thank you, Mr. Commissioner, those are
17 my questions.

18 THE COMMISSIONER: Thank you, Mr. Ray.

19 Ms. Harris, am I right?

20 MS. HARRIS: You are correct. Good morning,
21 Mr. Commissioner.

22 THE COMMISSIONER: Yes.

23

24 CROSS-EXAMINATION BY MS. HARRIS:

25 Q Ms. Schibler, I'm Laurelle Harris. I'm the

1 lawyer for the General Child and Family Services Authority.

2 A Good morning.

3 Q Good morning. I just have a few questions for
4 you and first, just generally and without discounting the
5 seriousness of the death of any child, would you agree that
6 the vast majority of child deaths, which were reviewed by
7 the Office of the Children's Advocate, have occurred as a
8 result of accidents from natural causes, in terms of
9 number?

10 A I, I can't speak to that at this point in time
11 because I haven't been reviewing them for quite some time
12 so I don't know where the statistics sit.

13 Q At the time you were with the Office of the
14 Children's Advocate?

15 A At the time that I was with the Office of the
16 Children's Advocate, we very rarely were looking at
17 children's, children's deaths of a child that died of
18 natural causes. They're non-accidental. It was more
19 related to having to look at the child death itself and to
20 see whether or not there was a need for our services to
21 have been engaged with that family that could have been
22 preventative, or at least if the child was dying of natural
23 causes, pre-determined illness or what have you, that there
24 was a review of whether or not the family had the supports
25 that it needed to make the child's life as comfortable as

1 possible.

2 Q What is your opinion with respect to the current
3 limitation under the Child and Family Services Act which
4 limits extensions of care for youth transitioning from care
5 to age 21 and only then with, only providing those
6 extensions of care to permanent wards?

7 A Well that is a limitation right there. I, I have
8 always supported the idea that it didn't matter what the
9 legal status was with that child. If the child was in the
10 care of the child welfare system and was requiring
11 additional supports beyond the age of majority, then it was
12 necessary to be able to provide that. There was a
13 responsibility there. So whether it's a temporary
14 guardianship or even a voluntary service, quite often that
15 means that the family's willing to work with the system but
16 has limited capacity to be able to provide for that child,
17 for whatever reason, external or internal, that there's
18 still a need for the system to remain committed to that
19 child upon the age of majority.

20 Q And would you agree that it would be better if
21 youth could receive extensions of care as is the case in
22 some other provinces to age 25 rather than 21?

23 A In some cases, yes, or at least to be able to
24 have an open door for those youth who have aged out for any
25 event that they may be faltering out there and need that

1 additional support again from the system that raised --

2 THE COMMISSIONER: Ms. Harris, just move that mic
3 so you speak into it. You're facing the witness which I
4 would I expect you to do but you weren't -- yeah, yeah,
5 perfect.

6 MS. HARRIS: Thank you.

7

8 BY MS. HARRIS:

9 Q So I take it then you would agree that it would
10 be best practice in terms of child welfare practice that we
11 provide supports to youth as they transition from care,
12 whatever those supports might be that they require?

13 A I think that we need to look at the situation as
14 we would with one of own children. You know, if the system
15 has legal guardianship over a child in whatever way,
16 temporary or otherwise, it would be, it would be a huge
17 responsibility that is a necessary responsibility to those,
18 those that are aging out. I don't see that we should be
19 giving those youth anything less than what we would give to
20 our own children.

21 Q And I take it then that you would agree that it
22 would be of assistance to youth who are transitioning from
23 care to have access to a network of supports that could
24 provide things like financial literacy training, for
25 example?

1 A Literacy, literacy training, work readiness,
2 housing, I think there's definitely a need for some type of
3 an agreement to be arranged between employment and income
4 assistance and housing and the child welfare system to
5 ensure that these young people have as much resources as
6 they need with as much support as we can provide them.

7 Q You would agree that that network would include
8 things like job search assistance, resume preparation
9 assistance?

10 A Absolutely.

11 Q Access to emotional supports and counselling?

12 A We know we need that. We've seen that with the
13 ones that we've even attempted to support in post-secondary
14 education on the tuition waiver through the universities
15 that, that they're needing and they're requiring and they
16 should have access to a different level of support than
17 what mainstream students would receive. Their needs are
18 unique.

19 Q Right. Similarly, the network that include debt
20 managing counselling or mentorship programs, that would
21 also be of assistance to youth?

22 A Absolutely, because I think what we see with a
23 lot of our youth is that they have at times gotten
24 themselves into a little bit of a quandary financially or
25 with, yeah, with their money management and we have had to

1 try and advocate on their behalf. I think it's a
2 responsibility just as we would with our own children.

3 Q And is it your opinion that if youth have access
4 to those types of support that it could actually improve
5 the outcomes for youth transitioning from care and have a
6 multi-generational impact ultimately?

7 A Certainly from the, from the research that we've
8 done, the outcomes, the successful outcomes are based on
9 building capacity on providing support, on just having
10 these young people know that there's a place that they can
11 come to that they'll always be able to have what a family
12 would be able to provide for, for youth that they may have
13 been missing.

14 Q And would you agree that that could have a multi-
15 generational impact if we can actually improve outcomes for
16 these youth in a more comprehensive fashion?

17 A Absolutely.

18 Q You would agree that it doesn't really matter
19 where the help comes from, that it could come from a
20 combination of agencies and community partners working
21 together in that network?

22 A And I think that's the operative word there is
23 working together. And we certainly at the Office of the
24 Children's Advocate work very closely with Voices: Youth in
25 Care Network as an alumni group for those young people and

1 we try and make sure that we stay engaged with them to be
2 able to refer young people to so that they've got that
3 support network that's not necessarily attached to child
4 welfare because sometimes there's a stigma for young
5 people. You know, that's one of the reasons that they want
6 to try and get out of the care of the child welfare system
7 but they still need that support.

8 Q Would you agree that youth are empowered when
9 they feel that they had have and they actually do have a
10 voice in the child welfare system that's caring for them?

11 A They absolutely must have a voice. That's why
12 it's critical that the young people are involved in their
13 own case planning and I know in Ontario it was necessary
14 for us to have the youth actually sign off on their case
15 plan so that we knew that they were part of that case
16 plane, they, they had input into the planning for their
17 future as well, so you know, we always said no decisions
18 about us without us and so that's how we, we base that.

19 Q And would you agree that engaging children and
20 youth about their own lives and the care they received can
21 actually have a positive impact in terms of best practice
22 from the workers at the agency in terms of how they
23 communicate and function with youth and how that informs
24 their own social work practice?

25 A Absolutely and I think it comes with a whole

1 spectrum of services. So when I spoke earlier about the
2 therapeutic services and that therapeutic intervention,
3 it's also about understanding the traumas that these young
4 folks have faced because it's really a series of trauma,
5 what they experienced that led them to come into the care
6 of the child welfare system. And then again any time that
7 there was a placement breakdown or, you know, having to
8 change schools with, you know, moves, any of those things,
9 a lot of them being separate from their communities and
10 their family of origin. Even though the system looks at
11 that as sometimes, you know, necessary and in the best
12 interest of their child it still creates a trauma because
13 that's that child's identity. You know that's their
14 lifeline in many ways. So it's about helping them to look
15 at it in a healthier way, helping them to heal from those
16 traumas and giving them the support to be able to do that.
17 Because they can't really move ahead well unless that's
18 been done in a good way.

19 Q Thank you. So it's fair to say that you would
20 also agree that in terms of making an impact on the child
21 welfare system itself, you would agree that engaging with
22 youth and then acting on the feedback whenever possible
23 will create a stronger child welfare system?

24 A Yes.

25 Q You spoke earlier on Thursday about the impact

1 that the Office of the Children's Advocate's reports could
2 have in terms of teaching and informing practice in future.
3 Just to reiterate, you agree that having reports shared in
4 some way or the contents of reports shared in some way
5 would create learning opportunities for individual staff
6 and for the system as a whole?

7 A I would agree with that because of the fact that
8 if you only share the recommendations with the child
9 welfare system and they don't know the context of those
10 recommendations, it's really hard for it to trickle down to
11 the front line in a way that's going to be meaningful.
12 It's very difficult for people to implement recommendations
13 if they don't know the context of those recommendations.
14 So I think summarizing the reports right from top
15 management all the way down to the front end of the
16 services and then giving them what the recommendations are
17 and allowing them again to be part of the process as to how
18 do we implement this, how does this make sense of the
19 service delivery that you provide each day.

20 Q And including the individual staff who might have
21 been involved so that they can learn from that event going
22 forward?

23 A Absolutely.

24 Q And you would agree that many times the
25 recommendations for improvement in any individual case

1 actually have application across the child welfare system
2 and not within a single agency or even within a single
3 authority; is that fair to say?

4 A I would say that all those are based on, the
5 recommendations that come forward are based on what exists
6 in the standards as bare, the bare necessities of service
7 delivery and that everything is viewed from a best practice
8 lens. So it is all about improving, that's the purpose of
9 the recommendations.

10 Q So you would agree then that if there's a
11 mechanism so that the contents of reports which can improve
12 the quality of service could be shared not only with
13 agencies but through all four authorities, you would agree
14 with that, that practice occurring?

15 A Yes, I think it's important that we all, that we
16 all understand the intent behind those recommendations.

17 Q And that would support best practice in terms of
18 the social work system?

19 A For the most part but also bearing in mind that
20 we also have distinct services under each of our
21 authorities and so it would have to also meet cultural
22 relevance within our services.

23 Q Thank you. Would you agree that training workers
24 and relationship building and then having those workers be
25 able to actually apply those skills to build collaborate

1 relationships with families would also reflect best
2 practice?

3 A Absolutely.

4 Q And where it's going to assess that children are
5 in fact safe in their homes, you would agree that screening
6 families in a manner which provides supports and works
7 collaboratively with the family represents best practice as
8 well?

9 A Yes.

10 Q And you would agree that working collaboratively
11 to keep families together where the safety issues have been
12 addressed and children are safe can help address some of
13 the systemic factors that underlie the reason why people
14 are coming into contact with a child welfare system,
15 poverty, racism, having had prior contact with the child
16 welfare system and can help ameliorate the outcomes for
17 those specific families in terms of dealing with those
18 systemic factors, you would agree with that?

19 A I know that in one of my annual reports I had
20 spoken about how do we help families to heal and it really
21 looked at the fact that we needed to do things in a very
22 different way than just apprehending a child at a time of
23 crisis when the child's in need of protection and then
24 expecting the parents to do X, Y and Z in order to be able
25 to have their child returned to them and quite often that

1 would also mean that the child sat in an alternate place
2 but there hadn't been really a therapeutic piece of it
3 delivered to the parents or to the child or children. So
4 at the time that the child was returned, yes, parents had
5 done X, Y and Z, but there was really not a whole lot of
6 emphasis put into the supports and the healing of how do
7 you now bring this family back together again because
8 you've created another trauma even insofar as having to --
9 you know keep that child protected, you created another
10 trauma by separating that family. Now bringing it back
11 together it has to have something more therapeutic in order
12 to help it succeed, otherwise you're just pulling these
13 people back together again with a crisis kind of buried in
14 the background. It's still there.

15 Q And with the systemic factors still there, the
16 poverty, the racism --

17 A Absolutely.

18 Q -- the effect on parenting skills for having been
19 in care of oneself perhaps. So just to rephrase my
20 question, what I'm asking is the approach of working
21 intensively with families when children are safe and
22 keeping the families together and providing supports at
23 that level on that preventative basis can help address some
24 of those systemic factors in terms of how they impact on
25 that particular family; would you agree?

1 A Well, yes, I would and we also know that a lot of
2 those families have lost or hadn't had the capacity to be
3 able to provide good parenting and so it really is about
4 parenting the parents as well. So doing that in a
5 supportive environment as well.

6 Q Thank you, Ms. Schibler, those are my questions.

7 MS. HARRIS: Mr. Commissioner, those my
8 questions.

9 THE COMMISSIONER: Thank you, Ms. Harris.

10 MS. HARRIS: Thank you.

11 THE WITNESS: Thank you.

12 THE COMMISSIONER: All right. Who's next?
13 Mr. McKinnon?

14 MR. MCKINNON: (Inaudible).

15 THE COMMISSIONER: Ms. Bowley?

16 MS. BOWLEY: Good morning, Mr. Commissioner.
17 With your permission I would like to ask this witness some
18 questions.

19 THE COMMISSIONER: Questions that impact your
20 client?

21 MS. BOWLEY: Definitely.

22 THE COMMISSIONER: Please.

23

24 CROSS-EXAMINATION BY MS. BOWLEY:

25 Q Good morning, Ms. Schibler. My name is Bernice

1 Bowley. I represent Diva Faria in this inquiry.

2 A Good morning.

3 Q Good morning, thank you. I'm interested in your
4 insight on certain issues that affect my client and I want
5 to draw out from you also some matters contained in your
6 reports. And first, in terms of some background, I
7 understand that during your Bachelor of Social Work degree
8 that ended with your graduation in 1989, there were no
9 mandatory courses on child development or family dynamics;
10 is that right?

11 A Nothing that would prepare you for the
12 responsibilities that you would have in the child welfare
13 system working family services in protection. It was all
14 bits and pieces, you kind of chose which courses you would
15 kind of ...

16 Q I understand, thank you. And when did you start
17 working in child welfare, was it right after graduation?

18 A Well, I did my last practicum in the child
19 welfare system, so I already had a caseload as a student of
20 over 30 cases so it just made sense for them to hire me.

21 Q And what agency hired you?

22 A It was Northwest Child and Family Services back
23 then because we were still regionalized.

24 Q Now I understand that with respect to child death
25 reports in general, it's your belief that workers' names

1 ought to be kept confidential; is that right?

2 A I feel that that would be important, yes.

3 Q And some of the reasons for that are that child
4 protection is a difficult and complex area for workers,
5 yes?

6 A I would say one of the main reasons for that
7 would be because nobody in child welfare on the front line,
8 doing the day to day service should be or making their
9 decisions independently. In order to be able to do some of
10 the more intensive work with families, that's something
11 that you should be discussing with a level of management to
12 sign off and authorize. I mean certainly you have enough
13 autonomy in your day to day work to be able to make
14 decisions but those final decisions for like closings or
15 transferring or any of those things, usually those are
16 discussed with management. So sometimes it's the -- you
17 know, if we looked up one individual worker as being
18 responsible for the outcome of a case, I think it's more
19 often not just the individual worker.

20 Q And would that also be because workers are
21 dealing with terrible cases of abuse?

22 A I'm sorry, I didn't understand the question.

23 Q Another reason for keeping their names
24 confidential because they're dealing with terrible cases of
25 abuse and they're working in a system that's ever changing,

1 would you agree with that?

2 A Well there's always, yes, there's always the
3 realities of the risks that go with, with the services that
4 you provide and certainly you don't want to see anyone
5 targeted in any way by having their identity revealed, but
6 there still needs to be a level of accountability within
7 the system. Probably through a governing body, I would
8 think, would be the best way to do that.

9 Q In the course of doing the reviews that you did
10 in 2006, you came to learn that there was a problem or
11 issues with the standards in place; is that right?

12 A To just be a little bit more -- I think --

13 Q There was no clear indication about what
14 standards were to apply; is that right?

15 A Well, I know that there was some difficulties in
16 regards to whether the standards were fully developed but I
17 would think more of our findings were in relationship to
18 how familiar were the front line services with what existed
19 in the way of standards.

20 Q There was some confusion about what existed in
21 the way of standards?

22 A And it wasn't always just confusion, I think that
23 there wasn't a real, real evidence of people's familiarity
24 with the standards.

25 Q And is that due to a lack of training on the

1 standards?

2 A I would say it's due to a lack of training. I
3 think that a lot of the support that needs to be offered
4 from within the system really should be reviewing the
5 standards. I know that at the OCA, whenever we would do an
6 investigation into a matter and we would refer it back with
7 our findings to the agencies, if there was recommendations
8 that we were making we would always relate them to what
9 exists in the standards so that they would be familiar with
10 that.

11 MS. BOWLEY: Madam Clerk, could we have page 205
12 pulled up on the screen, please?

13

14 BY MS. BOWLEY:

15 Q You have a screen in front of you, Ms. Schibler?

16 A I do.

17 Q Now in the first, in the first paragraph, you --

18 THE COMMISSIONER: No, what is this?

19 MS. BOWLEY: This is "Strengthen the Commitment"
20 commission disclosure number 3.

21 THE COMMISSIONER: Yes. And that is the order in
22 council 3C.

23 MS. BOWLEY: Yes. And it's page 20 if you're
24 using the hard copy, Mr. Commissioner.

25 THE COMMISSIONER: Page 20, thank you. And this

1 is a 2006 version you're looking at it, is it?

2 MS. BOWLEY: Yes.

3 THE COMMISSIONER: Right. All right, I have it.

4

5 BY MS. BOWLEY:

6 Q And, Ms. Schibler, I just want to refer you to
7 the first paragraph where you're talking about standards
8 and you describe them as the minimum level of performance
9 expressed in precise measurable terms; correct?

10 A That's correct. And just to be clear --

11 THE COMMISSIONER: Well, just a minute. I don't
12 see this as page 20 of the -- oh, sorry, wait a minute.
13 That's, that's the annex to the report.

14 MS. BOWLEY: Yes, this is the report itself.

15 THE COMMISSIONER: Yes, I understand.

16 All right, I have it.

17 MS. BOWLEY: Thank you.

18

19 BY MS. BOWLEY:

20 Q And, Ms. Schibler, you go on to say that:

21

22 "Communicating these standards to
23 agencies and workers is critical
24 to ensuring that these minimum
25 level performance expectations are

1 met."

2

3 A Yes, but I need to also just clarify that on this
4 particular report "Strengthen the Commitment", I was a
5 co-author, I did not take the lead in this. This was --
6 the lead of this particular report was done by Irene
7 Hamilton, the ombudsman.

8 Q Right.

9 A Okay.

10 Q You agree with this paragraph though?

11 A Absolutely.

12 Q And then would you agree with me that best
13 practices are to go above and beyond the minimal level of
14 performance set out in the standards?

15 A Yes.

16 Q And if you, if you could look at the fifth
17 paragraph on page 20, the report found that front line
18 staff saw -- or sorry:

19

20 "The review learned from workers
21 in the field in every corner of
22 the province that standards cannot
23 be met because of excessive
24 workloads and other issues related
25 to the under funding of the

1 system."

2

3 Is that something with which you agree?

4 A That it was communicated to us, yes.

5 Q Are you currently registered with the Manitoba
6 Institute of Social Workers?

7 THE COMMISSIONER: Are you through with the
8 report?

9 MS. BOWLEY: Yes, I am, sir.

10 THE WITNESS: No, I'm not.

11

12 BY MS. BOWLEY:

13 Q Were you registered as a member during your work
14 in the child welfare system?

15 A No.

16 MS. BOWLEY: All right, thank you. Those are my
17 questions. Thank you.

18 THE COMMISSIONER: Thank you, Ms. Bowley.

19 All right, Mr. McKinnon?

20 MR. MCKINNON: Thank you, Mr. Commissioner.

21

22 CROSS-EXAMINATION BY MR. MCKINNON:

23 Q Ms. Schibler, my name is Gordon McKinnon. I'm a
24 lawyer for the department and for Winnipeg CFS and I have a
25 few questions for you.

1 A Good morning.

2 Q Good morning. I'm going to start with one of the
3 last points that Ms. Bowley raised with you and you were
4 describing, and I'm just going by my notes here, she was
5 asking you about, talking to you about child protection
6 being difficult and challenging and whose responsibility
7 that was and again, according to my notes, you were talking
8 or you testified that certain things should be discussed
9 with management and you mentioned file closings and things
10 like that and you're nodding and --

11 A Yes, sorry.

12 Q So, so my question to you though is when you talk
13 about those kinds of discussions with management, would you
14 include the supervisor as part of the management for the
15 purposes of that answer?

16 A Yes, sorry, yes.

17 Q So, so again, just to make sure it's clear, when
18 we're talking about routine things like file closings and,
19 and whether or not the file should be referred to the next
20 level within the intake structure, those kinds of routine
21 questions, you wouldn't expect that to go higher than the
22 supervisor on a routine basis or on a regular basis?

23 A No, I wouldn't.

24 Q Thank you. I now want to take you back to some
25 of the evidence you gave on Thursday.

1 A Sorry, if I can just clarify that last question
2 though.

3 Q Yes.

4 A That would really also depend on how complex a
5 situation was. Because if it was something just, you know,
6 more than what you would normally see in an average
7 caseload, if there was something that was just over the
8 top, very, very complex, then I would think that there may
9 be consultation that would happen above the supervisor
10 level.

11 Q And that would be a matter that you would expect
12 the supervisor to identify and take up, for example, to a
13 program manager or an assistant program manager and seek
14 guidance and help?

15 A Absolutely.

16 Q And I accept that.

17 A Okay.

18 Q Thank you. If I can take you then back to your
19 evidence last Thursday in response to questions from
20 Ms. Walsh, you explained, and again I'm going by my notes,
21 that in 2008, as a result of recommendations in "Strengthen
22 the Commitment", the section 10 reviews that were
23 previously conducted under the Fatal Inquiries Act by the
24 Office of the Chief Medical Examiner were transferred to
25 the Office of the Children's Advocate under section 8.2.3

1 of the CFS Act. You'll recall that?

2 A Yes.

3 Q And I want to take you to the OCA annual report
4 for '08-'09 and it's CD0222 and I believe the page number
5 is 8189. I just wanted to take you to one of your annual
6 reports to put some detail around that issue.

7 MR. MCKINNON: Just give me a second to catch up,
8 Mr. Commissioner.

9

10 BY MR. MCKINNON:

11 Q In the paragraph under the heading "An Overview",
12 this is the issue we were discussing a moment ago, that is
13 the Child and Family Services Act was amended to make the
14 Children's Advocate responsible for conducting child death
15 reviews.

16 A Correct.

17 Q And under the heading "Scope of the Review" it
18 states:

19

20 "In conducting the review, the
21 scope has been broadened by an
22 amendment to the current
23 legislation to include a review of
24 the standards and quality of
25 service of any publicly funded

1 social service that was provided
2 to the child or, in the opinion of
3 the Children's Advocate, should
4 have been provided."

5

6 So you would agree with me that not only did it transfer
7 responsibility but it broadened the whole scope of those
8 reviews.

9 A Absolutely.

10 Q And under the next paragraph down, if we could
11 just scroll up a little bit, it defines publically funded
12 as,

13

14 "... a program or service is
15 publicly funded if it is operated
16 or provided by the government or
17 by an organization that receives
18 funding from the government for
19 the program or service."

20

21 Again, you would agree with me that that's a very broad
22 definition of, of publicly funded.

23 A Very broad.

24 Q Now Ms. Walsh asked you to comment on the
25 difference between investigations done by the

1 representative for children and youth in British Columbia
2 and investigations done by the OCA in Manitoba and, and you
3 commented on some of the differences between those two
4 acts. I want to invite you to comment on one other
5 difference and first I'll get you to see if you agree that
6 there is a difference here, but as I understand it, under
7 section 8.2.3 of the Manitoba act, an investigation is
8 compulsory in all cases if the child was receiving services
9 at the time of his or her death or within one year before
10 death. That is, the OCA doesn't get to decide which cases
11 they wish to investigate, they investigate them all. Is
12 that your understanding?

13 A Yes, but not all of them would require a report.

14 Q Not all of them would require as fulsome an
15 investigation then?

16 A That's correct.

17 Q Okay. And as I understand it from your annual
18 reports, many of the deaths are from natural causes, for
19 example, children could be medically fragile and that's why
20 they're in the care of the agency?

21 A That's correct.

22 Q As I read the British Columbia legislation, it
23 provides the representative for children and youth in
24 British Columbia with an option to decide which cases are
25 to be reviewed. Again, is that your understanding?

1 A Yes.

2 Q And the question I have for you is do you think
3 it would be a better use of resources to do something like
4 that in Manitoba, that is to give the OCA a discretion as
5 to which cases he or she felt were most deserving of the
6 resources of your office?

7 A In my, in my personal opinion I would say no and
8 my reasons behind that was simply because what we found
9 early on in, in doing the investigations once they had
10 transferred to us was that you can't make presumptions when
11 it's regarding a child death. Just because a child has
12 died of natural causes, just because a child may have been
13 medically fragile, it doesn't necessarily indicate that the
14 child and the family was receiving all of the support
15 services or all of the services necessary to ensure that
16 that child's life was enhanced to the best of the system's
17 abilities, the province's abilities. So quite often we
18 would still do investigations into those deaths if we felt
19 that there was evidence to suggest that, wow, you know,
20 this family could have used a lot more than what it was
21 receiving and that's child's life could have been a better
22 quality even though it was, you know, destined to be a
23 short life.

24 Q Again, and my understanding of the situation in
25 British Columbia is that the children's representative can

1 look into those things and after making those kinds of
2 inquiries decide whether or not it's worthy of a full
3 investigation. Is that something that you would think
4 again could be a useful approach is to look into it first
5 before committing to the full cost of an investigation?

6 A Well, you know, I think that it's really how that
7 wording is interpreted because I would suggest that at the
8 OCA when I was the children's advocate, we investigated
9 into the cause of death and any particular services that
10 may have been or should have been provided. That was not
11 necessarily a detailed report, as I indicated, but it was a
12 preliminary and it would be what would prompt a greater
13 review and a report. So really it comes down to almost the
14 same, it just is worded differently from my perspective,
15 that's how I interpreted it.

16 Q Thank you, that's helpful. You testified on
17 Thursday that it was your experience when you were the
18 children's advocate that it was not uncommon that child
19 death reviews were not shared with staff. You spoke about
20 that on Thursday.

21 A Yes.

22 Q I also understand from your testimony, and you
23 touched upon this very briefly, that the situation has
24 changed today with the approach that authorities and
25 agencies have towards the Office of the Children's Advocate

1 and the sharing of information contained in those reports.

2 Am I right about that?

3 A You are right about it insofar as the
4 investigator from the Office of the Children's Advocate
5 will now make a concerted effort to meet with the agency
6 staff who was involved in that particular child death and
7 the services to that child and the family but that doesn't,
8 that doesn't necessarily suggest that the reports
9 themselves and the recommendations on those individual
10 reports are making their way to other staff, other front
11 line service providers and I think that's where I was
12 intending that it would go --

13 Q Okay.

14 A -- because otherwise, you know, you're preaching
15 to the converted because that, that worker already knows
16 many of the things that we are finding in the, you know, in
17 our findings and recommendation. We need everybody else to
18 know too --

19 Q Okay.

20 A -- so that they can do prevention.

21 Q So I just -- I, I hear you and I just want to
22 clarify that point. My understanding of the current
23 protocol since, within the last few years is that there is
24 an arrangement between the Office of the Children's
25 Advocate and the authorities and agencies where these

1 reports are actually reviewed in draft form with the staff
2 involved, get their feedback, so that the staff who were
3 personally involved under the current system would be aware
4 of the contents of the report. What you're advocating is
5 it go beyond that, that all staff become aware; is that
6 fair?

7 A Yes, but I can't speak to actually what's
8 happening right here, right now. I can only speak to what
9 I've been made aware of.

10 Q Right, and --

11 A Within my own service system.

12 Q Within the Métis Authority --

13 A Yeah.

14 Q -- since you became the executive director or
15 chief executive officer?

16 A Yes.

17 Q Okay. I want to again, taking you back to an
18 issue that you spoke about on Thursday, as I understand
19 your evidence when you were the, first became the
20 children's advocate -- sorry, let me rephrase that.
21 Because when you became children's advocate you didn't have
22 responsibility for child death reviews. That
23 responsibility was transferred to your office in 2008?

24 A That's correct.

25 Q And when that happened in 2008, there was a

1 backlog that you inherited from the CME's office?

2 A That's correct.

3 Q And you've explained to us that you had to hire
4 new staff because of your expanded mandate and you
5 explained to us some of the negotiations you went through
6 for information sharing. So there was some delay,
7 necessary delay that was resulted when you assumed
8 responsibility for these child death reviews?

9 A There was a huge delay.

10 Q Right. And on Thursday, Ms. Walsh asked
11 you to comment on some of the common themes from the
12 special investigation report in your 2009-2010 annual
13 report.

14 MR. MCKINNON: And, Madam Clerk, it's CD0222,
15 it's page 8246.

16 THE COMMISSIONER: And this is from what report?

17 MR. MCKINNON: This is from the annual report of
18 the Office of the Children's Advocate. Am I correct?

19 THE COMMISSIONER: For, for?

20 MR. MCKINNON: 2009, 2010.

21 THE WITNESS: And this is, just for my
22 clarification, this is the part, because I believe that
23 report was done in two parts. I was responsible for part
24 of it and then, and then the acting --

25

1 BY MR. MCKINNON:

2 Q Your, your replacement, the acting became
3 responsible for the second part?

4 A That's correct.

5 Q And in fairness to you, this may be from the
6 second part --

7 A Okay.

8 Q -- but you did speak to it on Thursday so I just
9 wanted to clarify some of the evidence you gave on
10 Thursday. Because I think you were talking about, Ms.
11 Walsh asked you about some of the common themes from
12 special investigations and you made comments about case
13 management and accountability, and if we can scroll up the
14 page a little bit, training. So you were, you were
15 discussing these themes but just for clarification, some of
16 these words may have been written by your replacement?

17 A That's correct, but it was common themes.

18 Q But the themes were common and that's what I --
19 again I wasn't trying to trick you with, with years or
20 anything like that, just it's the themes that I was
21 interested in because the point that I'm leading up to is
22 that because of the backlog you received in 2008, some of
23 these common themes that are identified in your report
24 would be themes that arose from the cases that you were
25 reviewing that were two or three or even four years old; is

1 that fair?

2 A Maybe if we can go back up the page so I can see
3 to just come ...

4 THE COMMISSIONER: Just, just --

5 THE WITNESS: Okay, themes arising from the
6 special investigations.

7 THE COMMISSIONER: I don't understand your
8 question.

9 MR. MCKINNON: Well, the witness was identifying
10 what I would call thematic concerns or problems in the
11 child welfare system and my suggestion to the witness is,
12 I'm not disputing that those were problems, but that they
13 arose from child deaths that may have been from 2005, 2006
14 and 2007, because you were cleaning up the backlog that had
15 been left to you by the Office of the Chief Medical
16 Examiner but that's the suggestion I'm making to the
17 witness and she's nodding.

18 THE WITNESS: I'm nodding because I understand
19 where --

20 MR. MCKINNON: Yeah.

21 THE WITNESS: -- where you're going with that. I
22 would say to you that that doesn't necessarily reflect
23 that. Certainly that would be included in that because we
24 had certain investigators that were working on backlog
25 cases and we had certain investigators that were working on

1 newly assigned child deaths that we were reviewing, so
2 there would have been, it would have been reflective of
3 both.

4

5 BY MR. MCKINNON:

6 Q That's my point.

7 A Yes.

8 Q Yes, thank you. Again, on Thursday Ms. Walsh
9 asked you about who should be responsible for auditing
10 agency files and according to my notes, you thought it was
11 a good thing to have an oversight body audit agency files
12 and then you testified you thought the audit could be
13 useful if it was done internally as well as externally.
14 And again, as I noted your evidence you say you thought
15 about this issue a lot over the last several years and
16 you've come to the conclusion that that role could best be
17 undertaken by the four authorities. Am I correct in my
18 summary of your evidence?

19 A Well, at the time when the reports were
20 delivered, the authorities in their roles were relatively
21 new and, and so at the time it probably made sense to have
22 an external body like the Office of the Children's Advocate
23 be the reviewer.

24 Q Right.

25 A I'm not saying that that's not still a good idea

1 because they are an independent office, but I would suggest
2 that the capacity to do that should be developed within the
3 authorities. That's, you know, one of our responsibilities
4 is to look at compliance with respect to the standards and
5 service delivery and, you know, and quality services so why
6 wouldn't we be the ones that, that had the responsibility
7 to do those external audits so that we can build capacity
8 within our own service system.

9 THE COMMISSIONER: And take over from the
10 advocate.

11 THE WITNESS: Well, nobody's doing right now but
12 I would suggest that in hindsight that that authority to do
13 those audits should lay with the, with the authorities.

14 MR. MCKINNON: And I'm essentially agreeing with
15 that, Mr. Commissioner. I'd like to explore it just a
16 little bit more with this witness.

17

18 BY MR. MCKINNON:

19 Q And I think you've alluded to this already, in
20 2006 the authorities were relatively new entities. Since
21 then the authorities have spread their wings a little bit
22 and are assuming jurisdiction where they should assume
23 jurisdiction and one of those things that they have
24 jurisdiction over is, is mandating agencies. It's
25 authority that decides whether an agency should be issued a

1 mandate and whether they are deserving of a continuation of
2 that mandate. Is that, you'd agree with that?

3 A Yes. The decision for, for developing a mandated
4 service lies with the authority, but the funding for those
5 core services still lies with the province.

6 Q But you could -- if you thought an agency wasn't
7 doing its job, you have the jurisdiction to --

8 A Put it under administration.

9 Q Put it under administration.

10 A Yes.

11 Q Your overseeing -- now I know the Métis only has
12 two agencies but some of the other authorities have more,
13 but you're overseeing those two agencies and that's your
14 job as the CEO of the Métis Authority to make sure that
15 they're fulfilling their mandate.

16 A It's our responsibility to make sure that they're
17 fulfilling their mandate and to build the capacity within
18 them to allow them to do so.

19 Q And one of the other things that is unique and
20 important in Manitoba with our special devolved system is
21 that the, whether it's the Southern Authority or the
22 Northern Authority or the Métis Authority, that they have
23 an obligation to ensure that procedures are in accordance
24 with culturally appropriate standards, you'd agree with
25 that?

1 A The legislation, that's correct.

2 Q That's legislated and it's in fact what, what is
3 done?

4 A Rephrase the question and I'll tell you whether
5 it is.

6 Q That it's the, it's the role of the authorities
7 to ensure that, that agencies follow practices and
8 procedures that are in accordance with culturally
9 appropriate standards developed by the authority.

10 A I believe that I alluded to this earlier when I
11 first addressed the inquiry this morning and I indicated
12 that in the authorities act it does indicate that, that
13 there is a responsibility of the authority to develop
14 culturally appropriate, relevant services.

15 Q Right.

16 A But that that didn't necessarily translate into
17 the ability to have those services delivered because so
18 much of that was connected to the funding, the current
19 funding model that didn't necessarily support all of those
20 culturally appropriate services.

21 Q But the funding model, as I understand it today,
22 is based upon one to 25 case workers to protection files
23 and one to 20 case workers to prevention files. You'd
24 agree with me on that?

25 A Yes, but -- yes, I do agree with you on that but

1 that doesn't necessarily reflect into culturally
2 appropriate services.

3 Q Is it your evidence that it's more expensive or
4 requires more social workers to do culturally appropriate
5 practices and procedures?

6 A I would suggest that yes, it is, but it's not
7 just for the culturally appropriate. I think if we talked
8 about best practice services it doesn't matter which
9 culture you're from, they're still best practice and, yes,
10 it is more expensive and, yes, it is not necessarily
11 reflected in the current funding model so there would have
12 to be adjustments to that.

13 Q I want to try to separate two issues. One is the
14 funding model and if I'm hearing you correctly what you're
15 saying is that the funding is inadequate; is that what
16 you're saying?

17 A To provide the type of services for best
18 practice, I believe so, yes.

19 Q But let's talk about responsibilities. We'll
20 leave the funding aside for a moment. In terms of the
21 responsibility, my suggestion to you would be this, that if
22 -- and this arose out of our discussion of the issues of
23 audits and who's going to audit files. If the audit were
24 being done by the Child Protection Branch, which is part of
25 the province, there would be a risk that the audit would be

1 imposing standards and practices that were not culturally
2 appropriate. The better person to determine whether the
3 practices and standards that are being administered in an
4 agency is the authority that developed the culturally
5 appropriate practices and standards. That's my suggestion
6 to you.

7 A I would absolutely agree that it's the
8 authorities that know and understand how service delivery
9 needs to look for our own communities and our own families
10 and children.

11 Q And that's a fundamental change from 2005 when
12 the authorities, although they were created, were not
13 actively managing the cases yet.

14 A Yes, but I would say that the one limitation with
15 all of that is in my understanding and that's why I had
16 suggested a review for the AJI, child welfare initiative
17 was that with the devolution and the development of the
18 authorities, that the responsibilities and the roles within
19 the Child Protection Branch would decrease and with that
20 the resources that existed within that branch would be
21 allocated out to the authorities to allow them to have the
22 autonomy to be able to do that and to work on their own
23 legislation.

24 Q And, and --

25 THE COMMISSIONER: Are you suggesting,

1 Mr. McKinnon, that the change to which you refer has in
2 fact happened?

3 MR. MCKINNON: I'm suggesting that it has
4 happened and I'm just putting this witness's evidence from
5 2006, which she says she's thought about and really, I'm
6 not saying she was wrong in 2006, I'm saying the
7 circumstances have changed and I think she's saying she
8 agrees.

9 THE COMMISSIONER: But I'd like to know whether
10 the witness agrees that the change has taken place.

11 THE WITNESS: I would agree that the
12 circumstances have changed. I would not necessarily agree
13 that the change has taken place based on the fact that I
14 don't see that those responsibilities have been allocated
15 from the, from the Child Protection Branch under government
16 to the actual governance of the authorities.

17

18 BY MR. MCKINNON:

19 Q So what you're suggesting is the Child Protection
20 Branch should step back a little bit further and empower
21 the authorities more?

22 A Empower them and also shift some of the resources
23 that exist with that system because it still remains as a
24 very patriarchal system. That's not the way that it was
25 intended, from my understanding, when devolution was to

1 take place.

2 Q I just want to ask you about one final thing and
3 that's quality assurance funding. Now it's my
4 understanding and perhaps for your assistance I'll ask the
5 clerk to bring up commission disclosure 1103. It's page
6 23516. And if you could scroll down the page to table 4,
7 this, my understanding is this is the funding that is
8 provided to the, what they call core funding, that is the
9 core administration of an authority is summarized in this
10 chart. You're familiar with this chart and this funding
11 model?

12 A Yes, somewhat.

13 Q And midway down the page there's a quality
14 assurance specialist and it would indicate that the
15 Southern Authority has 2.5 positions, the Northern
16 Authority has 2.5 positions, the GA has one position and
17 the Métis Authority has one position for quality assurance.
18 You're familiar with that?

19 A Yes.

20 Q And similarly, if we go to page 23520 and look at
21 the table 8, there's a quality assurance specialist for
22 each agency. Now this one is for a small agency but even a
23 small agency is funded for one quality assurance
24 specialist.

25 A Okay.

1 Q You were aware of that?

2 A I might have been.

3 Q Okay. And I don't want to trick you, I just want
4 to make sure --

5 A Yeah.

6 Q -- that the commissioner gets the evidence.

7 A I appreciate this and I think what I'm trying to
8 say is that because I'm new to my role I'm trying to become
9 more and more familiar with the existing funding.

10 Q Fair enough. And, and my only point, and if we
11 took, look at the next page, 23521, there's funding for a
12 medium agency also includes one quality assurance
13 specialist and if we scroll up I think there's a large
14 agency on that page as well and it also includes one
15 quality assurance specialist. So my point is under the new
16 funding model there is a minimum of one and a maximum of
17 two and a half quality assurance specialists within each
18 authority and there's a minimum of one and a maximum of one
19 to be fair, there's one quality assurance specialist within
20 each agency, within core funding.

21 A Correct.

22 Q And would you agree with me then, just to bring
23 this whole thing to a close or to a loop, that those
24 individuals in the quality assurance area, would be the
25 ideal candidates to do the kind of audit we've talked

1 about?

2 A Well the internal audit, yes, if those services,
3 if that position and services are not being delivered
4 elsewhere. So speaking precisely about quality assurance
5 specialists, if their only and specific role is on quality
6 assurance, what does that mean? Does that mean just
7 specifically audits? So it's really about how do you
8 define that position because I can suggest to you that
9 under this funding that position is probably doing a number
10 of other things that relate to quality assurance.

11 Q Right. But ultimately that would be a decision
12 of the authority and the agency as to what the best use of
13 that resource would be.

14 A Yes, but it doesn't necessarily suggest that that
15 would be all that would be required in just one position
16 for the agency to do that.

17 MR. MCKINNON: Those are my questions,
18 Mr. Commissioner.

19 THE COMMISSIONER: Thank you, Mr. McKinnon.

20 THE WITNESS: Thank you.

21 THE COMMISSIONER: Now how many additional
22 counsel have questions for this witness? I'm looking at
23 the time factor. Mr. Gindin. Has Ms. Dunn got standing
24 for, for participation?

25 MS. WALSH: Mr. Commissioner, we haven't had an

1 opportunity to sort that out yet. She did pass us some
2 questions that we haven't had an opportunity to look at.
3 So really that process has to happen in advance. We can
4 have a, perhaps a brief discussion, but we haven't sorted
5 that out yet.

6 THE COMMISSIONER: Well, I'll hear Mr. Gindin and
7 then if she's the only person left other than Mr. Brodsky
8 and yourself in re-examination, we'll do that immediately
9 after the break and get on to the other witness.

10 MS. WALSH: Thank you.

11 THE COMMISSIONER: Mr. Gindin?

12 MR. GINDIN: I do have perhaps 15 minutes or so
13 of cross-examination. I would like a little break for at
14 least five minutes, if not the morning break, whatever you
15 wish.

16 THE COMMISSIONER: Yes. Well this raises the
17 question, as I understand, Ms. Walsh, the next witness is
18 from out of town and is here just for today --

19 MS. WALSH: That's correct.

20 THE COMMISSIONER: -- and it was intended that
21 she, that witness be available for, from this mid-morning
22 break on for the rest of the day.

23 MS. WALSH: That's correct. Perhaps what we'll
24 need to do is shorten the lunch break.

25 THE COMMISSIONER: Well, I'm quite available to

1 do that. So we'll take a 15 minute break now and you
2 confer how we spend the rest of the day and hopefully
3 you'll get consensus.

4 MS. WALSH: Thank you.

5 THE COMMISSIONER: Thank you.

6

7

(BRIEF RECESS)

8

9 THE COMMISSIONER: We're going to carry on, are
10 we?

11 MS. WALSH: Yes, thank you.

12 THE COMMISSIONER: All right. Mr. Gindin,
13 please.

14 MR. GINDIN: Ms. Schibler, my name is Jeff
15 Gindin. I represent Steve Sinclair and Kim Edwards. I'm
16 advised by your counsel that you wanted to make a few more
17 remarks before I cross-examine, so ...

18 THE WITNESS: Yes, good morning. Thank you. I
19 just wanted to just kind of clarify two of the questions
20 that Mr. McKinnon had asked me and one was in regards to
21 whether the authority had the authority to be able to
22 mandate an agency and, yes, as I had indicated, we do have
23 the authority to do that. However, if, and I just wanted
24 to make that point again, that if the funding for our
25 mandating authority or mandating an agency does not flow

1 and it's not the will and commitment from government to
2 have that money flow, then really it's not going to happen.
3 It's just -- we can't deliver services under a mandated
4 agency if we don't have the core funding come from
5 government to, to be able to implement that.

6 The other part of that question was in regards to
7 the positions that exist in the funding model for quality
8 assurance and yes, there is those positions earmarked, the
9 one position for each agency or authority, but I know that
10 currently, as I had indicated, you know, we, we could have
11 various duties and responsibilities for that quality
12 assurance person. Right now I can indicate that in our
13 large agency, that one quality assurance position is really
14 someone that's working consistently on looking at the CFSIS
15 system and doing quality assurance within the system for
16 that. So that would totally eliminate any ability to be
17 able to do a service audit on files, so I just wanted to
18 clarify that.

19 MR. MCKINNON: If I can have just one moment.

20 THE COMMISSIONER: All right. Mr. Gindin?

21 MR. GINDIN: I would just like --

22 MR. BRODSKY: I apologize for --

23 MR. GINDIN: I was just wondering if Mr. McKinnon
24 wanted to deal with that issue since it deals with his --

25 THE COMMISSIONER: Yeah, fair enough.

1 MR. MCKINNON: Thank you, Mr. Commissioner.

2

3 CROSS-EXAMINATION CONTINUED BY MR. MCKINNON:

4 Q Just to follow up on the two points you just
5 made, Ms. Schibler. In terms of the authority to mandate,
6 which you agree that you do have the authority, you say the
7 funding must flow. My understanding is that the funding
8 flows through the authority and the authority funds the
9 agency. Is that your understanding?

10 A Yes, it is, but the funding still comes from
11 government and it comes to us in the way that the funding
12 model has been set up and also for core funding for our
13 mandate agencies, our mandated agencies, when we set those
14 agencies up that core funding needs to flow through.

15 Q Right. And you're not suggesting that it hasn't
16 flowed through for the Métis agency or for the Michif
17 agency, you're not suggesting that?

18 A I'm not suggesting that for our two current
19 agencies, however we have been exploring another agency and
20 I don't know that that's been approved.

21 Q Okay. And in terms of the quality assurance
22 piece, you made the comment that the person at your large
23 agency is currently involved in doing quality assurance
24 work with respect to CFSIS?

25 A That's right.

1 Q That would reflect a decision of that agency and
2 that's the priority at this time?

3 A Exactly.

4 Q Thank you.

5 A Which would -- I'm sorry, which would also
6 suggest that we don't control how they determine to use
7 that position and if it's being used in quality assurance
8 around the CFSIS piece, that's obviously where they felt
9 the most pressure to address compliance.

10 Q But that would be up to each individual agency,
11 that wouldn't be a decision of the central government.

12 A No, and it wouldn't be, it wouldn't be up to the
13 authority to determine that. However that wouldn't really
14 necessarily allow for that quality assurance person to do
15 anything even broader than that simultaneously such as
16 service audits.

17 Q And I hear what you're saying. I'm just asking
18 if you would agree with me as well, that's a decision for
19 the executive director of that agency to make?

20 A That's correct.

21 Q And there's one quality assurance person funded
22 for the Métis Authority, that would be your decision as to
23 what that person does.

24 A That's correct.

25 Q Thank you.

1 A Thank you.

2 THE COMMISSIONER: All right, Mr. Gindin, we're
3 now ready.

4

5 CROSS-EXAMINATION BY MR. GINDIN:

6 Q Ms. Schibler, this morning when you indicated you
7 had some other comments to make, one of them dealt with
8 your opinion that in the child welfare system there should
9 be more of a, correct me if I'm wrong, but I think you were
10 suggesting there should be more of a separation between the
11 protection aspect and the prevention aspect. Am I correct
12 in ...

13 A I think both of them are vital to the services
14 being provided through the child welfare system, but I
15 think it's very, very difficult to go in as the protection
16 worker and still be seen as a support to that family. I
17 think that both services are necessary but it should be two
18 separate streams.

19 Q And one of the reasons, I take it, for that, and
20 we've heard lots of evidence on this, is that there's a
21 mistrust out there by families of social workers, right or
22 wrong, a certain fear and distrust of them because of the
23 image that they may have or the perception, whether it's
24 correct or not, which obviously would make it difficult for
25 these same families to accept help from family support

1 workers who are part of the same agency. Would that be
2 correct?

3 A I think that historically, particularly for
4 aboriginal people, any system that has had authority over
5 how their families or communities have progressed or not
6 progressed is -- there's, there's quite a lot of barriers
7 to being able to develop that trust for those systems. So
8 I think that in itself would hinder a protection worker's
9 ability to be able to really, really develop a supportive
10 relationship with that family on the get-go.

11 Q And that distrust that's out there would also
12 hinder the other prevention aspect because they might be
13 tainted by the same distrust, working for the same agency?

14 A Again, that's one of those areas that I've
15 contemplated quite a lot. I think that you can do both
16 roles within the system. You don't necessarily have to
17 rely solely on grassroot services to be able to develop
18 that supportive relationship with the family, but I think
19 it's more challenging for the worker who is coming in as a
20 protection worker with that family to also be viewed, who
21 may have to kind of dismantle that family temporarily to be
22 viewed as the support to that family. I think it's a lot
23 easier to be able to refer that, that family over to
24 another stream of the services.

25 Q Because certainly the social workers who come in

1 to apprehend the child are not going to be looked upon too
2 favourably by the family of that child, right?

3 A That's correct.

4 Q So that's a problem because they then want to
5 help the family in some therapeutic way and of course
6 there's this mistrust that's out there, correct?

7 A Yes.

8 Q Do you have any suggestions how that can be
9 alleviated should there be an entirely different department
10 or group that deals with the family support part of it?

11 A I think part of it can be eliminated or at least
12 addressed in a different style of intervention and one of
13 the things that I'm alluding to here would be a practice
14 that some of the agencies are, are attempting, which was
15 one that we modeled over from New Zealand and we know is
16 successful and that's in a family group conference and
17 model where you sit down with the family and all of the
18 other people who are stakeholders and where it's clearly
19 identified to that family what the concerns are and they
20 sit there with their support system as well and that
21 everybody addresses that, that concern and says how they
22 will help support the family or what the family can do
23 differently in order to keep the child safe. And I think
24 that in those situations we've seen some really good
25 successes. It hasn't been consistently a model that's been

1 funded through the child welfare system in this province
2 but we know from, from what we're seeing in other countries
3 that have delivered it that it's effective. Having said
4 that, you have to be able to sit down with the family, and
5 again that's the key piece, is you have to have a family
6 that's willing to work with the system cooperatively for
7 the strengthening their own family and for keeping their
8 child safe and recognize that there is an area of
9 limitation that they have. If you don't have that
10 willingness of the family, then you can't go ahead and
11 provide those kind of more positive interventions.

12 Q And the willingness of a family may well depend
13 on whether they trust the department --

14 A It would also depend on the approach that's used
15 with them --

16 Q Right.

17 A -- right from the get-go.

18 Q But there is a problem out there in society with
19 the perception of what it is CFS does.

20 A Yes.

21 Q Do you have any suggestions as to how we can
22 change that perception or make it better?

23 A Well, I think that's a pretty broad --

24 Q It is.

25 A -- question and I would say to you that one of

1 the suggestions that I had some time ago and still, and
2 still support is that there needs to be a truth and
3 reconciliation of the child welfare system just as there
4 has been with the residential school system. I think the
5 outcomes that we see with many of the families that have
6 been serviced historically, generationally through the
7 child welfare system and those children who have been
8 raised in that, come away with the same wounds, come away
9 from that whole piece of separation from their communities,
10 their families of origin and loss of culture and so many of
11 those other things and that that has impacted the
12 generations to come in their ability to be able to parent
13 well and feel connected. So there needs to be a truth and
14 reconciliation to that.

15 Q We've heard about the overrepresentation of
16 aboriginal families that require the services and the
17 efforts being made to provide culturally appropriate
18 services for aboriginal people and do you think there
19 perhaps should be more aboriginal social workers or more
20 aboriginal people on these various committees or boards or
21 offices like yourself?

22 A I do and one of the roles that I had previously
23 held even with Winnipeg Child and Family Services before
24 the devolution took place was as an aboriginal liaison
25 person working within a mainstream system because it was

1 seen then how the overrepresentation was and how there was
2 very little workforce reflective of that of servicing our
3 families, our aboriginal families. But it's not just a
4 matter of saying we need to have more aboriginal people
5 doing it. It's about, you know, ensuring that that
6 capacity is built that those, those workers are supported
7 in the work that they do and it's also about recognizing
8 that the education pays for a lot of our aboriginal people
9 to prepare them for working within a child welfare system
10 in itself has to have a healing component because I think
11 it's got to be recognized that many of us have been
12 generational effects from child welfare system and so we
13 have to have that healing in order to be able to deliver
14 those services well, but it's also a good piece for us to
15 know because that experience is knowledge and, you know,
16 sometimes you have to walk a mile in a somebody's
17 moccasins, right?

18 Q Now you were asked this morning by Mr. Ray, I
19 believe, he was asking you how -- you were talking about
20 children under five --

21 A Yes.

22 Q -- and how they were particularly vulnerable.

23 A Correct.

24 Q And some of the reasons for that is that of
25 course they're not verbal, right? They may not be in

1 school. And so that fact that you're dealing with a child
2 under five, should that affect the way how referrals
3 concerning those children are handled?

4 A I believe it should and I believe that, that
5 there should be an assessment of the capacity of that, that
6 parent right from the time that they are known to be
7 expecting a child and that those supports should be, being
8 delivered right then and there. But then you run into a, I
9 guess a complication again and it's the whole precarious
10 piece about being able to deliver services within child
11 welfare in a trusting way is that there's always a concern
12 that there's too much interference with the family, that
13 there is -- that it becomes very intrusive, that those
14 services become intrusive. So at what point do people in
15 service systems or in society say you know what, there has
16 to be certain services that are delivered, there has to be
17 some assurance being given that if somebody is going to
18 have a child and raise that child that they have either the
19 support system necessary to do that well or they have the
20 capacity to do that well.

21 Q So you're talking about parental capacity?

22 A Parental capacity, exactly.

23 Q And that's particularly important when the parent
24 themselves may have been a ward of CFS?

25 A Absolutely, or if there's already been concerns

1 noted with that individual that will be, you know, that
2 would be indicative, that they may struggle in their role.

3 Q But if, if a referral comes in with some sort of
4 complaint about a child that's under five, having regards
5 to why they're vulnerable that should affect, should it
6 not, the way in which those complaints are investigated to
7 some degree?

8 A Well, I mean certainly that would be a more
9 heightened call for service.

10 Q And if it was difficult to connect with the
11 actual primary caregivers, for one reason or another, would
12 it be reasonable to consider connecting with extended
13 families or known other sources?

14 A Absolutely. I mean I think that, you know,
15 anybody that has, has delivered front line protection work
16 has known what it's like to have to try and connect with a
17 family who has kind of gone underground to avoid the child
18 welfare system and when you know that there's a vulnerable
19 population there, you would go to all means and measures to
20 try to find and locate so that you could assure safety.
21 And that would be even connecting with other service
22 systems.

23 Q And whatever known sources there may be for
24 family, friends, extended family, et cetera, right?

25 A Yes.

1 Q Now I think last week, when you testified -- just
2 give me a moment -- you talked about the fact that as the
3 children's advocate you would receive a lot of calls from
4 people who were disappointed with the experiences they were
5 having, correct?

6 A Yes.

7 Q And what sort of -- and expressed a lot of
8 dissatisfaction to you I think is the way you put it. Can
9 you tell us a little more about the calls you were
10 receiving and what the complaints generally were?

11 A Well they're, you know, they're broken down in
12 different categories because some of those, those would be
13 from youth themselves who would call and voice concerns
14 around whether or not they felt their worker was returning
15 calls or attending to their needs or making decisions in
16 their best interest. Sometimes it would be from calls that
17 came from concerned people in the community. It could be
18 other service providers. It could be workers from within
19 the system that were calling with concerns about either
20 their, their own limitation to be able to provide the
21 services that they felt were really in the best interest.
22 But sometimes it was from the families who had concerns
23 either from the system's ability to respond to them and how
24 they felt their needs were in relation to their children or
25 parents who were concerned about the care that their

1 children were getting while they were in foster care of the
2 system.

3 Q So you received a lot of calls, in essence
4 complaining about these people not being called back, the
5 response they were getting, and sometimes the complaints
6 would be about the workers or other things, correct?

7 A It was a variety of things but it was always
8 pretty much service based. It was a service base from,
9 from their perspective of what they should be getting and
10 quite often we would find that there, there was a need for
11 the system to be responding to them in a different way.

12 Q And as a result of these calls that you would get
13 over the course of your, of you being the children's
14 advocate, can you tell us whether any service providers
15 were disciplined in any way as a result of the complaints
16 that you got or that you may have passed on?

17 A I wouldn't know that.

18 Q What would you do with the complaint that you
19 would receive about a, perhaps a social worker or an agency
20 or a supervisor, whatever the case may be, what would be
21 your response to that complaint, would you pass it on to
22 certain authorities or not?

23 A The -- it would always have to be in relationship
24 to service delivery and so it would be something that our
25 advocacy officers and investigators would look into. So if

1 there was a suggestion that, you know, no one had attended
2 to the needs of this family, they had been calling and
3 calling. Then our advocacy officers would look into that
4 and they would be able to see from CFSIS whether or not
5 there had been contact and to what degree, but then
6 sometimes you know maybe the CFSIS recordings weren't up to
7 date at the time, so they would make contact with the
8 agency and they would also speak to the worker that was
9 involved with that family.

10 Q Is there a record of these types of calls that
11 came in that complained and what happened to the complaints
12 and what the end result was?

13 A Those records would be kept in our office and
14 quite often they would be resolved right at the intake
15 level and it would be documented as to how this matter was
16 addressed. So sometimes it was -- and we would ask for
17 responses in writing, if it was necessary to have that in
18 writing or we would at least document what they, what their
19 response was as to how they were going to address us.

20 Q And you say responses from who?

21 A From the agency, from the worker themselves.

22 Q And would they always respond to your concerns?

23 A Always is a very big word.

24 Q Were there times that they didn't?

25 A I would say that there were times where we were

1 concerned with the compliance around understanding what our
2 role was and what their responsibilities were to respond to
3 our involvement and in which case then we would have to go
4 a little bit higher level within their organizations and we
5 would have to document that into a letter and send that
6 letter to the agencies, to the managers, and in those cases
7 we would also CC those letters to the CEO's of the
8 authority.

9 Q Okay. Well speaking of letters, there's two
10 letters here that I have that I don't think is in the
11 disclosure material but we did receive them and I'm not
12 sure if you, Mr. Commissioner, has these but they're pretty
13 brief and I just wanted to refer you to two letters that
14 you were involved in writing and I may request in the end
15 that they be marked as exhibits after they're referred to.
16 But I have a letter here dated July 26th, '06. I don't
17 know if you have that in front of you, but it's a fairly
18 brief letter. Is there a copy?

19 MR. BRODSKY: Mr. Commissioner, I can give the
20 letters to the witness if you want.

21 THE COMMISSIONER: Yes, surely.

22 MR. GINDIN: Mr. Commissioner, I intend to file
23 these two letters as exhibits and give you copies so you
24 have them. The first is dated July 26th, '06. It's a
25 letter to Mr. Jay Rodgers from this witness and Jim Newton

1 (phonetic).

2 THE COMMISSIONER: Who's the author of the
3 letter?

4 MR. GINDIN: This witness is along with --

5 THE COMMISSIONER: Oh to Mr. Rodgers?

6 MR. GINDIN: To Mr. Jay Rodgers, dated July 26th,
7 '06. I'm not sure what the next exhibit number is.

8 THE CLERK: Exhibit 45.

9 MR. GINDIN: So perhaps that could be Exhibit 45
10 which I'll hand to you in a moment. And the second
11 letter --

12 THE COMMISSIONER: You wrote that letter,
13 Witness, did you?

14 THE WITNESS: That's correct.

15 THE COMMISSIONER: All right.

16 MR. GINDIN: And the second letter is dated
17 August 3rd, 2007 and it's addressed to Ms. Caroline Loeppky
18 and it's also signed by this witness and perhaps that could
19 be Exhibit 46.

20 THE COMMISSIONER: You wrote that letter,
21 Witness?

22 THE WITNESS: Yes.

23 THE COMMISSIONER: All right, 46. Thank you.

24 THE CLERK: Would you like to mark them 45 --

25 THE COMMISSIONER: Forty-five I think is the July

1 one.

2 THE CLERK: And 46 the August.

3 THE COMMISSIONER: Thank you.

4

5 **EXHIBIT 45: LETTER TO JAY RODGERS**

6 **FROM BILLIE SCHIBLER**

7

8 **EXHIBIT 46: LETTER TO CAROLINE**

9 **LOEPPKY FROM BILLIE SCHIBLER**

10

11 BY MR. GINDIN:

12 Q Now, Ms. Schibler, referring first of all to
13 Exhibit 45, which is the first letter chronologically,
14 dated July 26th, '06, since we don't have that on any sort
15 of monitor, I thought perhaps you would simply read it to
16 us first of all and then I'll have some questions about it.

17 A Okay. So this is a letter addressed to Mr. Jay
18 Rodgers who was the acting director of the Child Protection
19 Branch at the time, dated January, or sorry, July 26th,
20 2006, regarding outstanding child protection matters.

21

22 "Further to the External Child
23 Welfare Review - Interim Report
24 meeting with Minister Melnick on
25 July 4, 2006, I am writing with

1 the recommendation that the
2 following matters which have
3 emerged during the course of our
4 review to date be given immediate
5 attention to ensure that potential
6 risk to children be addressed.

7 1. That clear procedures be
8 followed within each agency
9 to ensure that birth alerts
10 or family service alerts are
11 efficiently sent from one
12 agency to another. It is
13 recommended that these alerts
14 be copied to the Director of
15 the agency to ensure follow-
16 up, and that the service
17 agency receiving these alerts
18 verify, through an immediate
19 phone call, receipt of such
20 notices, with written
21 confirmation to follow.

22 2. That in accordance with
23 the Standards regarding the
24 transfer of service from one
25 agency to another, the

1 receiving agency provide
2 written confirmation to the
3 sending agency that the
4 receiving agency is accepting
5 the transfer, and that only
6 upon receipt of this
7 confirmation should the
8 transferring agency cease
9 service. (Sec. 1.1.6.
10 Manitoba Program Standards
11 Manual).

12 While we recognize that the
13 majority of agencies know and
14 understand this process, we have
15 come across situations where this
16 was not the case and obvious
17 service gaps existed. We trust
18 this matter will be discussed with
19 the four Authorities for follow-
20 up.

21 Thank you for your attention."
22

23 Respectfully myself and my chairperson, Dr. Jim Newton.

24 Q Okay. Now the reason that you wrote --

25 MR. BRODSKY: Copied to Christine Melnick and --

1 THE WITNESS: Copy to Minister Melnick, that's
2 correct.

3 MR. GINDIN: Okay, that's noted at the bottom of
4 the letter.

5

6 BY MR. GINDIN:

7 Q The reason that you decided to write that letter
8 was?

9 A Was that we had come across situations where
10 birth alerts were sent to an agency notifying them that
11 there needed to be follow up and that everyone assumed that
12 those birth alerts had been received and sometimes those
13 birth alerts would come by way of facts and sometimes
14 they'd be coming to communities where there may be somebody
15 else covering the admin services that day or what have you,
16 wasn't really sure what to do with them, put them into a
17 basket of incoming correspondence and of course those
18 matters weren't acted on the way that they needed to be.
19 And people made the assumption that just because it was
20 sent, just because it was delivered that obviously somebody
21 was following up on it, but that we felt that there had to
22 have been another process to that and that was doing that,
23 that actual contact and ensuring. And so it wasn't just a
24 matter of sending it to the agency but that the director
25 would also be made aware of it.

1 And as far as number 2, again it was a matter
2 where we found in our investigations that during the
3 devolution process a case was being transferred to another
4 authority, another jurisdiction and agencies assumed that
5 just because they prepared the transfer and they sent the
6 transfer that they no longer had responsibility for that
7 case and so we were emphasizing what existed in the
8 standards that unless it's been verified and confirmed that
9 the other service system has picked up services and is
10 willing to accept it, that that responsibility for service
11 still lies with you until it's gone through those final
12 pieces and we were finding that there had been situations
13 where that hadn't occurred.

14 Q When you talk about birth alerts, are you talking
15 about to parents who are already involved in the system?

16 A Or where there's already been a determination
17 that there could be potential risk with this individual
18 having a child and not receiving some additional support or
19 monitoring services. And that also included in that family
20 service alerts. So with even for my own office, we found
21 that if we were doing an investigation and something came
22 across our information that suggested that there's
23 potential risk out there for some other children, we would
24 send those alerts, those family service alerts to, to the
25 agency and again, recognize that it had to be followed up

1 with a phone call. We had to make sure that our letters
2 stated on there please call us and confirm receipt of this
3 so that we know that you've received it, so that we know
4 that now somebody is paying attention to that alert.

5 Q Did you get a response to this letter from
6 anyone?

7 A I don't recall that. I'm sorry, I do not recall
8 that. That was a long time ago.

9 Q All right. The second letter that we have marked
10 as an exhibit is dated August 3rd, 2007, so that's roughly
11 a year later, correct?

12 A Correct.

13 Q And I know that there are things in this letter
14 that you can't mention because they're redacted, but if you
15 can read out that letter for us.

16 A Okay. This was August 3rd, 2007, it was
17 addressed to Ms. Caroline Loepky, Acting Executive
18 Director to the Child Protection and Support Services and
19 it was in regards to children not seen.

20

21 "During a discussion at our
22 meeting of July 26th, I had
23 brought to your attention concerns
24 which had been raised to the
25 [Office of the Children's

1 Advocate] the OCA suggesting that
2 certain children had not been seen
3 during the Directive for face-to-
4 face contact in May 2006. In our
5 attempts to follow-up on these
6 concerns, we have heard
7 conflicting information from
8 workers regarding how they were
9 instructed to carry out this
10 directive. This information has
11 suggested that various
12 interpretations for face-to-face
13 contacted existed at that time.
14 The information received at the
15 OAC regarding these concerns
16 relates to the following
17 children ..."

18

19 And then we listed seven children, I believe, and the
20 agencies that they were receiving services from. And it
21 just said,

22

23 "Please advise my office once this
24 matter has been looked into.
25 Should you have questions or

1 require further information,
2 please contact me."

3

4 And that, your attention to these concerns, I thank for
5 that.

6 Q Okay. Now do you recall whether you received
7 some response to that letter?

8 A I'm not sure whether or not there was written
9 response to that or whether there was dialogue that
10 occurred. Somehow I do recall there being a suggestion
11 that this had been followed up on and that, but there
12 was -- that they were satisfied that these children had
13 been ultimately seen in the end.

14 Q All right.

15 A But I don't recall whether that was from a verbal
16 dialogue or whether that was from actual correspondence.

17 Q You likely would have followed up on something
18 this important, I would take it.

19 A I'm sorry?

20 Q You likely would have followed up on something as
21 important as certain children who weren't seen that should
22 have been seen.

23 A I'm going to assume so. I can't recall how that,
24 how that actually resulted.

25 Q Now I have a few more questions that relate to

1 foster homes. You told us that you, yourself, was a foster
2 parent for I think you said 24 years or something --

3 A Twenty-five, yeah.

4 Q And that you had a number of foster children
5 placed with you, I think you said something like 48 over
6 the years.

7 A That's correct.

8 Q And so I take it you would be familiar with the
9 process with respect to the placement of children with a
10 foster parent or a foster home, right? And there is a
11 process.

12 A It gives me a different view of it as well, yes.

13 Q And one of the things that is required in this
14 process is that there be a license issued to, in your case
15 it would be you, I suppose, because you were taking in some
16 children, right?

17 A That I'd be licensed by an agency --

18 Q Yes.

19 A -- to be able to do that.

20 Q Yes, that's part of the process.

21 A As a foster parent, yes.

22 Q And the process, I think, was that these licences
23 would have to renewed every year, that's what the law says
24 at least.

25 A Yes.

1 Q Right. And that's an important part of the
2 process because part of that process includes things like a
3 criminal record check, right?

4 A That's correct.

5 Q And obviously if there wasn't an annual renewal,
6 the caregiver might in fact get a criminal record
7 afterwards and the agency wouldn't know.

8 A That's correct.

9 Q And that would be very important to know.

10 A That's correct.

11 Q Another thing that goes on is that the agency
12 would want to know if the caregivers or anyone in the house
13 really was on the child abuse registry obviously.

14 A That's correct.

15 Q Yeah. And you're familiar with the process that
16 the, of being registered on the child abuse registry?

17 A Yes.

18 Q Essentially my understanding is that if someone
19 is convicted or pleads guilty to child abuse type of
20 offence, then they're automatically placed on the child
21 abuse registry.

22 A Yes.

23 Q And obviously one of the reasons for having such
24 a registry would be that you wouldn't want foster parents
25 taking in children if they're on the registry.

1 A That's correct.

2 Q And if the person isn't convicted or doesn't
3 plead guilty, there's still a process whereby the
4 allegation that was made is tested in court and the person
5 still may get on if there's a finding made.

6 A And that's usually determined by the committee.

7 Q Right, okay. Those things are very important
8 with respect to children being placed with foster parents,
9 right?

10 A Yes, and if I can just add to that. I mean you
11 ask about the annual reviewing and licensing of that home,
12 there still is an onus on the caregivers to report any
13 changes to their circumstances that may occur within that
14 year.

15 Q And there's an onus on the agency to make sure
16 the licence is renewed.

17 A That's correct.

18 Q And to follow up on that.

19 A That's correct.

20 Q Correct? Now are you familiar with the auditor
21 general's report prepared by Carol Bellringer which we're
22 heard from last week.

23 A Yes, I have some familiarity.

24 Q Okay. I'm just going to refer you to page 657.
25 Perhaps we can get that on the screen. And while that's

1 happening, perhaps I'll just introduce somewhat what I'm
2 going to asking you about. You'll agree with me that, and
3 you've expressed to us your concern about the interests of
4 children and their safety and obviously the placement of
5 children in foster care and exactly who they're placed with
6 and whether it's a safe place is obviously very important
7 to all of us, correct?

8 A Yes.

9 Q Now while we're looking for that, part of
10 Ms. Bellringer's report talked about how foster homes were
11 not being relicensed annually like they should be and
12 talked about how in some cases the licence would have
13 expired for maybe a matter of months and in some cases as
14 long as six years without the licence being renewed. Now
15 you would agree with me that type of situation can be
16 potentially dangerous.

17 A Absolutely.

18 Q And, oh I think we have it now on the screen and
19 you can see for yourself the heading "Foster Homes Were Not
20 Consistently Reviewed and Re-licensed Annually". And
21 there's a discussion there about the fact that on occasion
22 years would go by before licenses were renewed, correct?

23 A Yes.

24 Q And, and the problem with that being allowed to
25 happen is that the people involved in that particular home

1 may well have been convicted of something along the way
2 that could be serious, right?

3 A That's correct.

4 Q There could be different people in the home.
5 There could be different children in the home.

6 A Again, that would be the responsibility of those
7 care providers to report that change to the, to the agency
8 when it occurs.

9 Q And also the agency's responsibility to make sure
10 that the licenses are indeed renewed.

11 A That is absolutely correct. But I think I have
12 to also add that, you know, I know from what I've witnessed
13 over my time in this profession is that those all care
14 services, those ones that are responsible for supporting
15 and re-licensing those, those homes are really, really
16 stretched in their ability to be able to do all of that
17 well. There's not enough resources available in the
18 current system to be able to ensure.

19 Q And that's a problem.

20 A It is a problem.

21 Q And relying on the people who are the caregivers
22 who may have broken the law since the last renewal and now
23 have a record, that's pretty tenuous if you have to rely on
24 those people --

25 A Absolutely.

1 Q -- to come forward, right?

2 A That's correct.

3 Q Also in this report of hers and it goes on for
4 various pages and it's all on the record, she also talks
5 about a problem with people's names being put on the child
6 abuse registry quick enough.

7 A Okay.

8 Q You're familiar with that. It's mentioned in
9 here that that's one of the concerns that she discovered
10 when she did her audit. Now this particular report we're
11 talking about was prepared in 2006. In 2012, the evidence
12 was that she, bit of progress report and in which she told
13 us about the changes that were implemented, the ones that
14 were still being looked at.

15 A Okay.

16 Q And one of the, one of the pieces of evidence was
17 that an area where there's very slow progress still is this
18 very area that we're talking about of relicensing, making
19 sure if people's names be put on the child abuse registry
20 quicker. And so six years later the same issues seem to be
21 still present and there seems to be still very slow
22 progress and I take it that's of great concern.

23 A It is, very much so.

24 Q There's certainly potentially dangerous problems
25 that could exist when you lose track of who it is that's

1 fostering, providing foster care to certain children?

2 A Absolutely.

3 Q And whether their circumstances have changed,
4 whether perhaps they have now been placed on the child
5 abuse registry in the meantime, or should be, or have been
6 convicted of certain things, correct?

7 A Absolutely.

8 Q Now I'm not sure if you mentioned this, but I
9 think, if I recall your evidence correctly -- you can tell
10 me if I'm wrong -- I think you mentioned that in May of '06
11 the government had made an announcement that all children
12 had been tracked properly.

13 A Yes.

14 Q And I think that -- first of all, who made that
15 announcement?

16 THE COMMISSIONER: Just a minute, all children
17 what?

18 MR. GINDIN: All children had been tracked.

19 THE WITNESS: Seen for face to face contact.

20

21 BY MR. GINDIN:

22 Q Or were --

23 A That they could account for.

24 Q That they could account for all the children that
25 should have been --

1 A All the children that were in the care of the
2 system.

3 Q Who, who made that announcement, do you recall
4 exactly?

5 A That was made through the -- I believe on behalf
6 of the -- I don't know if it was on behalf of standing
7 committee or if it was on behalf of the CEOs. The
8 announcement as it read in the newspaper was made by
9 Elsie Flette who was the CEO of the Southern Authority.

10 Q And you take issue with that, I presume?

11 A Well, I think that we felt that it was a bold
12 statement. We knew how many children were in the care of
13 the child welfare at the time and, you know, we had
14 question as to what did face to face contact really
15 translate to be. And --

16 THE COMMISSIONER: Was this after the death of
17 Phoenix had been discovered?

18 THE WITNESS: Yes, yes.

19 MR. GINDIN: We're talking, I think, about --

20 THE WITNESS: It was right after actually because
21 I think what ended up happening was that, you know, the
22 question was being called by the, by the general public as
23 to were there any other children that could possibly have
24 gone undiscovered that may have fallen through the system
25 somehow and I guess particularly people were raising the

1 question as to whether or not devolution had failed and
2 they wanted to, they wanted assurance and government wanted
3 assurance that the, that the children in their care had
4 been seen.

5

6 BY MR. GINDIN:

7 Q And I think I mentioned the date being May of
8 '06, which would in fact be a few months after --

9 A That's correct.

10 Q -- Phoenix's death was discovered.

11 A That's correct.

12 THE COMMISSIONER: And who gave the assurance?

13 THE WITNESS: Well the directive was given
14 through government. I'm not exactly sure who that came
15 from, but it was a directive that face to face contact must
16 occur, that all children in the care of the child welfare
17 system are accounted for and then the response to that was
18 delivered and I as I say, I'm not sure if it was behalf of
19 standing committee or on behalf of the four authorities but
20 it was delivered in the media from Elsie Flette but again,
21 I don't recall whether or not it was the media contacting
22 her for a response or whether she had made the announcement
23 of.

24 THE COMMISSIONER: And what was her position?

25 THE WITNESS: That all of the children had been

1 accounted for.

2 THE COMMISSIONER: No, no. What position did
3 she --

4 THE WITNESS: Oh, I'm sorry. She was the CEO to
5 the Southern Authority.

6 THE COMMISSIONER: She was the CEO of the
7 Southern Authority?

8 THE WITNESS: That's correct.

9

10 BY MR. GINDIN:

11 Q And you, as I mentioned, didn't feel that was
12 entirely accurate or perhaps too bold?

13 A Well, I think we were surprised that that was
14 able to happen as quickly as it did, but there was nothing
15 at that point in time that gave evidence to the fact that
16 that might not be accurate. Those things started to
17 surface for us as we went along in our service from the
18 Office of the Children's Advocate and sometimes, you know,
19 like I mean for some it would be months and months later
20 where, you know, we may have conversation with a caregiver
21 in a community who would say, you know, when that statement
22 was made and the child that was in our care was not seen or
23 we would be going through our own records and we would see
24 children who were AWOL from their placements at the time
25 and we're going well how were they seen when they were AWOL

1 for this whole period of time. How can you be absent
2 without leave and really considered missing if you have
3 been accounted for.

4 Q So that's why you had you trouble with that
5 statement?

6 A That's correct.

7 Q Which was made only a couple of months after the
8 death of Phoenix was discovered, right?

9 A That's correct.

10 Q Okay. I just want to refer you briefly to some
11 of the annual reports that you prepared and if I can bring
12 up page 7890, and this refers to the report that you
13 prepared dated 2000 to 2001. Now at the very top of that
14 page it says:

15

16 "While investigating a complaint,
17 the agency will often look at the
18 motivation of the person who is
19 calling to complain. They do so
20 to ensure that the complainant is
21 not being malicious. The OCA
22 believes that this is a prudent
23 practice. However, we have found
24 that agencies often have pre-
25 assumptions about the callers'

1 motivations that may create bias.
2 Collateral professionals are often
3 accused of being 'over involved'.
4 Non-custodial parents are often
5 accused of attempting to create or
6 change custody agreements.
7 Adolescents who complain about
8 child maltreatment are at serious
9 disadvantage as their complaints
10 are often viewed in the context of
11 'parent-teen conflict'. Young
12 people are often accused of 'being
13 difficult'."

14

15 So tell us what you meant by that particular paragraph and
16 what it's based on.

17 A Those would have been situations that while we
18 received concerns raised to us at the, at the OCA from the
19 callers, whether it was a youth or whether it was a parent,
20 that we would go back to the agency to look into their
21 concerns and the response from the agency would be such as
22 this, you know, that while we didn't really, we didn't
23 really consider that to the depth that we might have had it
24 not have been a custody, you know, battle that was going on
25 between parents or this is a child that has been very, very

1 difficult and so therefore, you know, their call to us, we
2 just thought as being, you know, again they want something
3 done differently for their own gain, not necessarily for
4 their own best interests. So these were the kinds of
5 responses that we would have heard from staff working in
6 the services and so we became concerned with that because
7 again it would be, you know, it doesn't matter what the
8 concern is or who it comes from, everything is valid to be
9 looked into.

10 Q And the response you would get included various
11 workers admitting that they may have, they may have used a
12 little more analysis in their approach and a little more
13 thought might have gone into it.

14 A That's correct.

15 Q Right. If I can just add to that last question
16 though, I would say that that was probably more evident to
17 us in custodial and non-custodial parents because it seemed
18 to be that the system really was not sure how to respond to
19 that and we would sometimes see situations where the
20 calling parent was not often given the credence they should
21 have because of the fact that it was seen to be almost a
22 custody dispute.

23 Q Just a few more references to your annual
24 reports. The one dated 2008-2009 and 2009-2010 is located
25 at CD222 and in particular page 8158, if we can bring that

1 up briefly. Now this is a section in which you talk about
2 letter to agencies. I'm just curious as to are you
3 referring to a number of different letters that you sent or
4 what were you referring to there?

5 A By the time we got to this measure, there had
6 been a lack of response on certain matters that we were
7 investigating and a certain, for whatever reason,
8 unwillingness to provide us with the information we
9 required. And in some situations it was even an
10 unwillingness to allow us what we have the authority to
11 access and that would have been some file information and
12 we were becoming quite frustrated with those because it
13 seemed to be a reoccurring theme in some of these
14 situations. So we ended up -- I would -- and I met with
15 our legal counsel and it was determined that, you know
16 what, in the legislation there is a piece in the act that
17 says that non-compliance for these requests could be met
18 with I think a fine or something to that degree and we
19 said, well, you know what, it's not much but it is a
20 statement and if we need to get there, sad as it is, then
21 we need to let people know that we are now prepared to
22 start to do that. You know, the concern always is of
23 course is that the kind of work that you do at the Office
24 of the Children's Advocate again is pretty precarious.
25 You're not wanting to be adversarial to the child welfare

1 system because really what you're trying to do is improve
2 the services to children and families, but by the same
3 token you need cooperation and particularly when you have
4 the mandate and the responsibility then you need
5 cooperation from that system. And so when you have to
6 start pulling out the big guns and send these letters that
7 say we are going to take legal action, then you know that
8 you're almost, you're starting to work in a more
9 adversarial way. You don't really want to have to go there
10 but it's all about the children and that's where we had to
11 go.

12 Q Obviously your concerns you felt were pretty
13 serious if you're threatening legal action.

14 A Well felt that it was necessary for us to access
15 that information, otherwise we couldn't do our job.

16 Q All right. Just one other point I wanted to
17 confirm with you. You gave some evidence about the issue
18 of registration and you know what I'm referring to, there's
19 an act about to be proclaimed hopefully --

20 A Yes.

21 Q -- that would require registration of social
22 workers. And am I right that you feel strongly that that
23 is a good thing?

24 A I don't know that strongly would be the word. I
25 think it's important that there be an accountability

1 mechanism in regards to professionalism. I think that
2 there needs to be someone, a body, that is able to ensure
3 that workers are following a set of guidelines for
4 professional integrity and that that's the only way that I
5 can see that that can happen. So --

6 Q And the fact that that would include a complaint
7 procedure is a good thing.

8 A I think that that's an important thing. I think
9 that people have to have an ability just like any other
10 profession that there is an entity that can oversee the
11 integrity of that profession. I think that, you know, as
12 service recipients, families and children and so forth are
13 entitled to know that they are being serviced by someone
14 that has the knowledge, the qualifications, the ability to
15 be able to serve them well and when they don't, then there
16 should be a mechanism for them to have that looked into
17 and, and where they could challenge that.

18 Q So registration would lend more credibility to
19 the workers themselves.

20 A I believe so.

21 Q And also would help the families who, if they had
22 a problem, had a consistent method of complaining to a
23 particular body.

24 A As long as that, you know, that registered body
25 was able to be --

1 Q Fair.

2 A Pardon?

3 Q Able to be fair?

4 A Fair and also, I guess where there was, you know,
5 a clear mechanism put into place where there were
6 assurances to the public that they were going to receive
7 quality types of service delivery from that individual.
8 Because just a, you know, just being able to pay a
9 membership at this point in time and have those extra three
10 letters behind your name doesn't in itself suggest you're a
11 good worker.

12 Q In fact, am I right that you had offered to cover
13 the costs of registration to certainly members of your
14 staff?

15 THE COMMISSIONER: Offered to what?

16 MR. GINDIN: To cover the costs of registration
17 for members of her staff.

18 THE WITNESS: Well not out of my own pocket but
19 out of my budget, that's correct.

20

21 BY MR. GINDIN:

22 Q Yeah, you were that concerned, were you?

23 A Well I felt that, you know, at the very least it
24 was a statement from our office that said, you know what,
25 this is an important piece. It's important for us to look

1 at being attached to kind of a governance of the profession
2 and that we really need to lead the way in that.

3 THE COMMISSIONER: Are you speaking of the bill
4 that has being passed in the house but not proclaimed into
5 law?

6 THE WITNESS: Yes, about registering workers.
7 But this was well in advance of, this was back when I was
8 still at Children's Advocate, when we had talked about it.

9 THE COMMISSIONER: Are you familiar with that
10 piece of legislation?

11 THE WITNESS: I'm not fully familiar with it but
12 I know that there is talk of that.

13 THE COMMISSIONER: You support that kind of
14 thing?

15 THE WITNESS: Well I support that there needs to
16 be some type of registry for people in that profession,
17 again for the reasons that I stated, so that there could be
18 an accountability and there could be a complaint mechanism.
19 Because I think, you know, just as we've seen in this
20 matter that there, if there are concerns I mean, you know,
21 how do you, how do you identify one person to be
22 responsible in a whole series of concerns, but if there's
23 one instance of someone not being professional in the
24 responsibilities that they have been given in their, in
25 their role then there has to be something else.

1 BY MR. GINDIN:

2 Q Yeah. And you felt this way even before the act
3 came up for discussion and was passed?

4 A That's correct.

5 Q And one final thing, and I think you said this,
6 but you would agree that it would have been a pretty good
7 idea for the social workers involved in this matter to have
8 seen some of these reports that came out so that they can
9 learn from them, correct?

10 A Yes. I mean --

11 Q Rather than waiting for --

12 A -- hindsight is always 20-20, right? But I think
13 that knowing really what the outcome of the whole picture
14 was and where things could have been improved and where
15 things now need to be improved, I think is a really
16 important piece of quality assurance and self growth.

17 Q And particularly for the workers actually
18 involved in the matter.

19 A Absolutely.

20 Q And that's a much, that's a much better idea that
21 they would know this soon as opposed to having to wait for
22 an inquiry to be held and finding out about --

23 A That's correct.

24 Q -- things then. Yeah.

25 A That's correct.

1 Q Thank you. Those are my questions. Thank you
2 very much.

3 A Thank you.

4 THE COMMISSIONER: Mr. Saxberg.

5 MR. SAXBERG: Thank you, Mr. Commissioner. I
6 have a few questions arising from some of the questions
7 that Mr. Gindin posed.

8

9 CROSS-EXAMINATION BY MR. SAXBERG:

10 Q Good afternoon.

11 A Good afternoon.

12 Q My name is Kris Saxberg and I act for the
13 Southern First Nations Network of Care, Child and Family
14 Services Authority, the Northern First Nations CFS
15 Authority and ANCR.

16 A Good afternoon.

17 Q If we could turn up CD1189 and I have that at
18 page 25526. Now Mr. Gindin was asking you some questions
19 in relation to what I believe is marked as Exhibit 46, the
20 letter about children not seen.

21 A Correct.

22 Q And you had referenced a news release that had
23 been issued by the authorities that generated the assertion
24 that all the children had been seen pursuant to the
25 initiative to see all children and make sure that all

1 children were tracked as a result of learning about the
2 death of Phoenix Sinclair. And I'm showing you a press
3 release now that's dated August 16th, 2006 and if we could
4 just scroll down it and if you could perhaps take a moment
5 to review it.

6 A Yes.

7 Q And there's another page.

8 A Oh, okay.

9 Q Scroll down. And if I could ask the clerk just
10 to scroll it down a bit further.

11 Now is that -- does that help you with respect to
12 refreshing your memory about the press release that was
13 issued on the subject?

14 A Yeah, but this is not the one that I'm talking
15 about, but okay.

16 Q Okay.

17 A The one that I was speaking about was one that
18 came through, it was an announcement that was made on May
19 the 6th, 2006, where, where concerns around face to face or
20 where concerns around where the children and in the care of
21 the child welfare system were being addressed and that was
22 one where there was a statement made publically that all
23 children receiving services had been seen, seen and
24 accounted for. That would have been May 6th, 2006.

25 And I would suggest that there was, there was

1 dialogue already beginning with the department from myself
2 on behalf of the OCA that suggested that there were other,
3 that there were children who had not been seen. We hadn't
4 identified nor had the, nor had the authorities identified
5 how many or which children at that particular time. So I
6 began responding to the province shortly after the May 6th
7 announcement was made. This statement was made in, what
8 did we say, in August --

9 Q Yes.

10 A -- of 2006?

11 Q That's right.

12 THE COMMISSIONER: That was after your letter
13 which was Exhibit 46.

14 THE WITNESS: No, it wasn't after the letter.
15 Actually my letter came --

16 MR. SAXBERG: A year later.

17 THE WITNESS: -- I believe a year later in August
18 of 2007.

19 THE COMMISSIONER: Oh, yes, I see.

20 THE WITNESS: And so my dialogue had already
21 begun. This response came out saying no, okay, well maybe
22 we didn't see every one of the children but we saw everyone
23 possible with the exception of these three children who
24 were AWOL at the time. And it was a huge undertaking, no
25 doubt, but it was one where I think everybody felt that

1 they needed satisfaction that any children within the care
2 of the system were accountable for. But it wasn't until
3 the August 2007 letter that we had further information from
4 our dealings with the communities, with the children
5 themselves that suggested that. That's why my letter says
6 what was the interpretation of what is face to face contact
7 because we found that there were varying degrees of what
8 workers understood face to face contact to be.

9

10 BY MR. SAXBERG:

11 Q Okay, thank you. Do you have Exhibit 46 still up
12 there with you? That's the letter that you're referring to
13 from August 3rd, 2007.

14 A Yes.

15 Q And it reads in the, in the third line, that
16 you're following up on issues which had been raised to the
17 OCA suggesting that certain children had not been seen
18 during the directive for face to face contact in May, 2006.
19 Do you know when -- was that a government directive then of
20 the authorities to undertake that work?

21 A Of the face to face?

22 Q Yes.

23 A Well, I'm going to suggest it was because if we
24 go back to this August 2006 letter and if we scroll back up
25 to the beginning of it, I thought it alluded to the fact

1 that there had been a request for, for the CEOs or for the
2 authorities to ensure that their agencies had all had that
3 face to face contact.

4 Q Right. And I think it's indicating that the
5 review was announced April 4th, 2006, and subsequent to
6 that, the authorities and the agencies undertook this task
7 of ensuring that all children were seen and that there was
8 face to face contact, correct?

9 A That's correct.

10 Q And during that process, you're simply suggesting
11 that, that was an ongoing process that obviously continued
12 into August of 2006 by virtue of this press release
13 indicating that.

14 A Well --

15 Q I mean it wasn't ended on May 6th, 2006.

16 A I would hope it was an ongoing process for ever
17 and a day.

18 Q Right, exactly. But in terms of that initiative
19 to, commenced on April 4th, 2006, it was continuing as of
20 May 6th, 2006 as is reflected by this press release which
21 is reporting on it in August of 2006, correct?

22 A Well, okay, I'm really not sure I'm understanding
23 the question. If I'm interpreting it the way that I'm
24 hearing you then I would suggest what this is stating is
25 that there are standards as to how often a child needs to

1 be seen while it's in the care of a child welfare agency
2 and that there's continued work on assuring that those
3 standards are being met and that they want to just assure
4 once again that, yes, they have met with all of these
5 children during that time period when that 2004, or sorry,
6 2006 announcement was made with the exception of those
7 three. And what I'm stating is that we know that there
8 were more than just those three that have not been seen and
9 we also were aware that there was a very different
10 interpretation by the entire system as to what face to face
11 contact entailed. So making a phone call to a caregiver to
12 say just want to make sure that the child is still with you
13 and safe is not the same as actually seeing a child face to
14 face. Hearing that someone, another worker saw the child
15 out in the community was not the same thing as the assigned
16 worker actually having a face to face contact.

17 Q Okay. And you had discussions with, my
18 understanding is with Elsie Flette about these particular
19 concerns at some point?

20 A No, I wouldn't have had those discussions
21 directly with the CEOs at that particular time. We were
22 doing an investigation, we were doing a system wide review
23 and, and so my conversations and dialogue around this would
24 have been made directly to the department, whoever would
25 have been in charge at that time, or with the minister.

1 Q Okay. I was just putting to you my understanding
2 is that there was some interaction between yourself and the
3 CEO of the Southern First Nations Authority on this matter
4 at some point and you had expressed at that point your
5 satisfaction that there were no further issues with the
6 Southern Authority. That's my understanding. If you don't
7 recall it, then -- that's what I'm asking you.

8 A I don't recall ever having this dialogue with
9 the, any of the authorities and I don't recall having this
10 discussion directly with Elsie Flette from the Southern
11 Authority. I do recall this being raised in conversation
12 with the director of the Child Protection Branch at the
13 time and, and/or the minister.

14 Q Okay. I just want to ask you questions about the
15 issue of the overrepresentation of aboriginal families in
16 the child welfare system.

17 A Okay.

18 Q My understanding is that ANCR, 70 percent of
19 ANCR's clients, that's the intake agency in Winnipeg that
20 you're familiar with, are First Nations or Métis families.
21 Does that sound like something that concurs with your
22 experience?

23 A I don't know the exact numbers but I would
24 suggest that's probably right where I would have seen it.

25 Q And you'd be aware that one of the methods that

1 ANCR and the First Nations authorities are using to address
2 the overrepresentation issue is to ensure that their
3 workforce adequately reflects the clients that they're
4 serving and you're aware of that initiative?

5 A No.

6 Q That -- so you're not aware of human resource
7 policies with respect to ensuring that social workers are
8 reflective of the client base they serve, in particular at
9 ANCR?

10 A I'm not sure that I'm aware of what ANCR's human
11 resource policies are.

12 Q Okay. Does the Métis Authority have a human
13 resources policy along those lines?

14 A Yes.

15 Q And, and that is that you're going to want to
16 target to achieve a certain level of representation of
17 aboriginal social worker representation with respect to the
18 two agencies that the Métis Authority mandates, correct?

19 A Yes.

20 Q And you're just saying you're not aware of what
21 the specific policy is at ANCR or the Southern Authority?

22 A No, that's correct.

23 Q Now and I take it that you agree that it's an
24 appropriate measure to take to help -- one measure to take
25 to help to tackle this problem of overrepresentation?

1 Would you agree that ensuring more aboriginal
2 social workers is one method to help address the
3 overrepresentation of aboriginal families in the child
4 welfare system?

5 A No.

6 Q No?

7 A I can't even suggest that. What I can suggest to
8 you is that the need for child protection services may
9 exist no matter who's providing that service. I think if
10 we're all working from the same page and we're all trying
11 to provide protection services to keep the children safe
12 and to try and build healthy families we all have that
13 responsibility no matter whether we're aboriginal or non-
14 aboriginal. What I would suggest is that hiring a more
15 reflective workforce would, in my mind, work towards
16 delivering culturally appropriate services based on the
17 needs that we know our families, we know our communities,
18 we know our culture and we would try and ensure that all of
19 those things are being addressed and met just as our
20 responsibility is.

21 Q So you don't see it as a measure then that can,
22 that could help, to help better work with families or
23 better engage with families on, for instance in the
24 prevention stream if there are more social workers that are
25 more familiar with the cultural issues?

1 A I think that we can -- sometimes it helps provide
2 better relationships. I mean I also know of certain
3 circumstances where it's been a barrier, particularly in
4 small communities where workers have indicated to us when I
5 was at the OCA that it was very, very -- or sorry, families
6 would indicate that it was very, very difficult for them to
7 receive services from workers within their own community
8 because you knew each other on a personal level and it just
9 was more challenging for that family. But by the same
10 token, it's also the benefit of the agency when you have
11 family, families known to the workers who can see them for
12 all of the strengths that they also carry. So there is an
13 element of good service that can come from that. But does
14 that necessarily translate into keeping children out of the
15 care of the child welfare system? It could if there's
16 resources within those authorities to be able to deliver
17 culturally appropriate services that are an alternative to
18 those intrusive services that exist within the child
19 welfare system right now.

20 Q I think we're coming closer to agreement on this
21 point.

22 A Are we? Okay.

23 Q And who better to provide those or know about
24 those culturally appropriate services than individuals from
25 the same background as the clients. Would you not agree

1 with that?

2 A Well I think we know our, our culture and we know
3 our, we know our needs within our communities. So, yes, I
4 would agree with that.

5 Q Yeah. And --

6 A That was the whole intent of devolution though,
7 wasn't it?

8 Q Right, exactly.

9 A Okay.

10 Q And so the point is that we need, would you
11 agree, that we need to make sure that the major
12 organizations delivering child welfare services, if this
13 isn't -- in this province are reflective of the client base
14 they serve in order to move towards those objectives of the
15 Aboriginal Justice Inquiry.

16 A I would absolutely suggest that it's needed if we
17 want to do things in the true spirit of the Aboriginal
18 Justice Inquiry, Child Welfare Initiative, the whole thing
19 that devolution is based on. However, I also need to say
20 that there -- that just because you're receiving services
21 from another aboriginal person doesn't necessarily mean
22 that your services are going to be more welcomed from a
23 family. Child welfare is child welfare and child
24 protection is child protection and it's still going to be
25 seen to be intrusive initially. I think it all depends on

1 how the services actually are delivered.

2 Q Okay. I think you're qualifying, saying that
3 it's definitely something that may help but of course it's
4 reliant on a whole bunch of other factors, including
5 competence of the service that's being delivered.

6 A Correct.

7 Q What, what was, what was the percentage of
8 workers at the Office of the Chief -- of the Children's
9 Advocate that were self declared from aboriginal families
10 at the time when you started in 2005, do you know?

11 A When I started in 2005?

12 Q Right.

13 A I think there was three of us. Actually, you
14 know what, no, because one did not self declare at the
15 time.

16 Q And that was out of how many staff approximately?

17 A I think we had -- oh wait, no sorry, there was
18 four, four. One did not self declare and that was out of
19 eight.

20 Q And then when the function of doing the special
21 investigations moved over to the OCA and the staff
22 increased, did the number of self-declareds increase at
23 that time?

24 A It increased but it wasn't, it wasn't as high
25 numbers and percentages as what had existed prior to.

1 Q And was there a policy in place to try to
2 increase the number of aboriginal social workers that are
3 doing these child death reviews?

4 A Yes, and in our hiring process the selection was
5 weighted for preference would be given to aboriginal
6 applicants.

7 Q And you agree that it's important that, in the
8 same way that it's important that an agency that the social
9 workers be reflective of the client base, that the report
10 writers be reflective of the people they're writing
11 reports, or about the families that it's subject of the
12 reports they're writing?

13 A I have to give that one a little bit of thought
14 and I'll tell you, because you're not -- you're working
15 from the legislation, you're working from the standards.
16 It's not about individual service -- it's not about
17 services to an individual within the context of -- I'm
18 having a hard time with that one. Because I know that we
19 made every effort in our office, whether you were
20 aboriginal or non-aboriginal, to know and understand the
21 context of the family and the community and I think it was
22 very apparent in the special investigation reports that
23 were completed that all of those factors, cultural factors,
24 environmental factors, were all considered and so did you,
25 did you have to be aboriginal to be able to understand that

1 and understand what best practice and service delivery
2 should look like and know that the standards were? No, I
3 would suggest not. But, yes, we did want to try and have a
4 reflective hiring process and population.

5 Q Yeah, I wasn't suggesting that it was a
6 necessity. I was suggesting that it helps, that it would
7 help to have that group of report writers be reflective of
8 the families they're writing about and you're agreeing with
9 that?

10 A Well, you know, I suppose yes, but I will say
11 that in the context of where we really, really needed to be
12 sure of any of the recommendations or the findings and that
13 they were being given in the best context possible was why
14 I had put together the circle of wisdom and they were
15 advisors to us. They were the ones that had expertise in
16 areas of publically funded services that, that our office
17 did not have and they were also elders within the
18 community. And I made sure that we had elders that came
19 from an urban setting as well as elders, an elder that came
20 from a remote setting, so that they really could tell us
21 whether or not our recommendations and findings made sense
22 and were culturally sensitive and appropriate.

23 Q Okay, thank you for your answers.

24 A Okay, thank you.

25 THE COMMISSIONER: Thank you, Mr. Saxberg.

1 All right. Does that complete the questioning?

2 MS. WALSH: Mr. Commissioner, I have had a chance
3 to speak with counsel for Ka Ni Kanichihk and to confirm
4 that they will retain intervenor standing only for this
5 phase and for the next phase with the opportunity to ask or
6 to seek leave to ask questions from you. Advise there is
7 one question that counsel would like to ask and I'd
8 recommend that she be allowed to ask that one question and
9 then I have just a very brief follow up.

10 THE COMMISSIONER: Well, Mr. Brodsky may have
11 some questions.

12 MS. WALSH: Yes.

13 THE COMMISSIONER: But we'll take that one
14 question now then, Ms. Dunn.

15 MS. DUNN: Thank you, Mr. Commissioner.

16

17 CROSS-EXAMINATION BY MS. DUNN:

18 Q My name is Catherine Dunn and I am here on behalf
19 of Ka Ni Kanichuk, as well as taking on some role with
20 respect to the best interests of aboriginal children.

21 A Good afternoon.

22 Q Good afternoon. The question that I have for you
23 is while you were children's advocate, is it correct or not
24 correct that you did not see fewer deaths occurring in the
25 system, child deaths?

1 A Is it correct that I did not see fewer deaths --

2 Q Right.

3 A -- occurring in the child welfare system. That's
4 correct.

5 Q All right. And just as a subpoint to that, is it
6 not correct that in your capacity as the child's advocate
7 and also in your breadth of experience, that child
8 protection cases in your view at the time and now your new
9 role are becoming much more severe than they were say at
10 the beginning of your career?

11 A I'm sorry, you know what, I have to go back to
12 your first question because it almost was coming out to me
13 like a -- I did not see, I did not see fewer deaths in the
14 child welfare system.

15 Q Yes.

16 A Okay.

17 Q I (inaudible) understood the question, yeah.

18 A I'm sorry, and can you repeat this question?

19 THE COMMISSIONER: Well you didn't see fewer
20 deaths, does that mean you saw more?

21 THE WITNESS: I have nothing that suggests to me
22 that there was a decrease and I don't recall them remaining
23 stagnant, so I'm going to suggest that that is possibly
24 true. But I would have to go back and look at the
25 statistics from the reports.

1 BY MS. DUNN:

2 Q Okay. And as a subpoint of that question, I'm
3 suggesting to you that in your experience through the
4 Office of the Children's Advocate, that you found that
5 child protection cases were becoming more severe, that the
6 system was becoming more chaotic and that the types of
7 abuse directed towards children were becoming much more
8 dramatic than when you first started out in the child
9 protection field.

10 A Yes, that's correct.

11 Q Thank you. Those are my questions.

12 A Thank you.

13 THE COMMISSIONER: Yes, Mr. Brodsky, do you have
14 any questions for your client?

15 MR. BRODSKY: You were kind enough to allow her
16 to amplify what she meant to say last week and today and as
17 a result I have nothing further.

18 THE COMMISSIONER: Thanks, counsel.

19 MR. BRODSKY: I have so advised co-commission
20 counsel.

21 MS. WALSH: Thank you.

22

23 RE-EXAMINATION BY MS. WALSH:

24 Q First I want to confirm that you touched today on
25 the concept of healing and what needs to be done in terms

1 of addressing overrepresentation of aboriginal people,
2 First Nations, in the child welfare system and when you
3 come back to testify as part of the kokum elders at the
4 outset of phase 3, you're going to elaborate on that
5 evidence. So I just want to confirm that.

6 A That's correct.

7 Q Okay.

8 UNIDENTIFIED PERSON: I don't think your mic is
9 on.

10 MS. WALSH: Is it on now? Did you not hear me?
11 I think it was on.

12 THE WITNESS: Oh there you go.

13 MS. WALSH: It was on. Did you not hear me?

14 UNIDENTIFIED PERSON: We didn't hear a word.

15 THE CLERK: It was on.

16 MS. WALSH: You heard me? Okay. So it's just
17 the back.

18 UNIDENTIFIED PERSON: We didn't hear it back
19 here.

20 MS. WALSH: Okay, but my mic is on, so thanks.

21 Mr. Commissioner, did you hear me?

22 THE COMMISSIONER: I heard you. Does anyone need
23 it repeated?

24 MR. BRODSKY: I think the problem was the mic was
25 too high and not low enough.

1 THE COMMISSIONER: All right, carry on, counsel.

2

3 BY MS. WALSH:

4 Q So I just confirmed that when you come back at
5 the outset of phase 3, you and your counsel of grandmothers
6 are going to be talking more about the concept of healing
7 and, and what needs to be done to address that.

8 A That's correct.

9 Q In answering some questions this morning, you
10 were appointed to the broadened scope of the Office of the
11 Children's Advocate in terms of what it can review when it
12 conducts the child death reviews or the special
13 investigative reports under section 8.2.3 and that included
14 looking at any publically funded service.

15 A Correct.

16 Q That, however, that broader sphere or broadened
17 scope is only with respect to those special investigative
18 reviews, correct?

19 A That is correct.

20 Q So when one looks at the actual duties that are
21 allotted to the Office of the Children's Advocate --

22 MS. WALSH: I'm told that I still can't be heard
23 at the back. I don't know what else I can do for that. It
24 must be the sound system. So I'm -- so long as the monitor
25 is picking it up and, Ms. Schibler, you can hear me?

1 THE WITNESS: Yes.

2 MS. WALSH: Mr. Commissioner, you can hear me?

3 THE COMMISSIONER: I can hear you.

4 MS. WALSH: Okay, then I'm just going to carry
5 on.

6 THE COMMISSIONER: Well have we got an audio
7 person here that's --

8 MS. WALSH: Who can't hear me? Maybe just --
9 well ...

10 THE COMMISSIONER: Well carry on and when we
11 finally do break for lunch perhaps someone could look at
12 that.

13 MS. WALSH: We'll take a look at this. Okay,
14 thank you.

15

16 BY MS. WALSH:

17 Q So the actual duties of the Children's Advocate
18 that are set out in section 8.2(1) are confined -- of the
19 Child and Family Services Act -- are confined to services
20 delivered under the Child and Family Services Act.

21 A That's correct. That was a huge limitation for
22 our office.

23 Q And it remains?

24 A And it remains because again it's like if you say
25 you're the children's advocate in the province of Manitoba

1 that would suggest you have the ability and the mandate to
2 be able to advocate for all children and youth in the
3 province who are receiving any type of publically funded
4 services.

5 Q The next question I have is that there has been a
6 great deal of focus on the process to conduct special
7 investigative reviews. Do you know what proportion of the
8 resources of the Office of the Children's Advocate were
9 used to address the special investigative reviews as
10 compared to the needs of living children and families when
11 you were there?

12 A Well at the time that I was there I believe there
13 were, I think that there were about four investigators that
14 came over through a secondment or a special arrangement in
15 order to work on the backlogged cases that we inherited and
16 then I believe that there were four and a manager that
17 worked on the current investigations that were occurring
18 and as far as advocacy services, I believe there were three
19 intake advocacy officers. So that was for, you know, yes,
20 living children. And I would say that there were probably
21 at least half a dozen investigators, advocacy officers that
22 were working, advocating on behalf of those children who
23 were alive and well.

24 Q Certainly the need for advocacy and work with
25 respect to living children and families would be at least

1 as, if not probably more important than the resources
2 dedicated to doing death reviews.

3 A I'm not going to suggest that they are more or
4 less important. I'm going to suggest that they're all
5 required because the -- your role is to advocate on behalf
6 of children and youths so you want to be able to do that
7 well for those who are requiring services now. However,
8 the whole purpose of having the special investigations
9 under the expanded mandate is to be able to look at what
10 could potentially improve the services to the system,
11 through the system now to families and children. So that's
12 got to be considered extremely important. I mean you don't
13 want to repeat any mistakes and you want to make sure that
14 you can identify where improvements need to occur.

15 Q And I'll come back to that. There certainly have
16 to though as well be significant resources available for
17 the other duties beyond the special investigative reports
18 that the Office of the Children's Advocate performs.

19 A Absolutely. Particularly if you look at
20 expanding the mandate to include other publically funded
21 services and advocacy to those children and youth in those
22 services. You're going to need much more resources.

23 Q So then the last area of questioning, if we can
24 pull up Exhibit 38, please. We keep using the word
25 "recommendation", that the special investigative reports

1 make recommendations. What's your understanding of, of
2 what that means? Is it a recommendation to make an
3 improvement?

4 A Yes.

5 Q Okay.

6 A The findings are the findings and the
7 recommendations are what follows from the findings that
8 would suggest that these things need to occur in order for
9 better service delivery.

10 Q Exhibit 38 is the ombudsman's report from 2013.
11 It's the follow up report on the process for the review of
12 child welfare and collateral services after the death of a
13 child. Now if we can turn to page 19, please, and scroll
14 down. Under the heading, "Completed Special Investigative
15 Reports" it says:

16

17 "Since the publication of our
18 December 2011 Report on the
19 Process for the Review of Child
20 Welfare and Collateral Services
21 After the Death of a Child, the
22 OCA has provided our office with
23 an additional 66 Special
24 Investigative Reports, 20 with
25 recommendations, to December 31,

1 2012. In total, since the
2 transfer of responsibilities from
3 the OCME to the OCA in September
4 2008 to the end of our reporting
5 period, December 31, 2012, the OCA
6 has provided our office with 250
7 Special Investigation Reports, 75
8 of which contain recommendations.
9 Within the 75 SIRs that contain
10 recommendations, the OCA has made
11 347 recommendations to
12 Authorities, agencies, the Child
13 Protection Branch and other
14 entities in Manitoba."

15

16 My question is in the span of four years to have
17 347 recommendations made to improve the delivery of child
18 welfare services, does that seem like a lot of
19 recommendations?

20 A Yes.

21 Q And that's just from the Office of the Children's
22 Advocate, that's not from inquests or the 295 that came
23 from the reports listed in the order in council that
24 established this inquiry, for instance.

25 A No, and I would guess that out of those 247

1 recommendations, some of those --

2 Q Three, 300.

3 A Or sorry, the 347 recommendations, that some of
4 those recommendations are historic, that they've been made
5 in the past and will continue to be made just as we found
6 when we did our reviews.

7 Q Because they were matters that hadn't been
8 addressed --

9 A That's correct.

10 Q -- by the first instance?

11 A That's correct.

12 Q Thank you. Those are my questions.

13 A Thank you.

14

15 EXAMINATION BY THE COMMISSIONER:

16 Q Witness, just one question for you. You made
17 reference this morning to your view that the child welfare
18 system would benefit if there was some truth and
19 reconciliation process as part of the operation, so to
20 speak. Am I correct?

21 A That's correct.

22 Q Can you tell me how you would see that working?

23 A Well, as I looked at the truth and reconciliation
24 process in the country following the national apology to
25 those who had been recipients of the residential school

1 system, certainly I have come to see that and, you know, in
2 the teachings that, you know, that I follow that a large
3 part of your healing has to be the ability to be able to
4 tell your story and that people have stories that they need
5 to tell about their experiences in the child welfare
6 system, those who have been raised in the child welfare
7 system, those who have lost their children to the child
8 welfare system. That if we're looking at those
9 improvements, if we're looking at doing things in a
10 different way, if we're looking at, you know, what exists
11 within families, if we want to change the feelings of
12 families and always seen child welfare as adversarial
13 rather than support, that there has to be that
14 reconciliation. People have to be able to tell their
15 truths and be able to receive that reconciliation.

16 Q And that would be with respect to all people that
17 have had contact and use within the system, not just
18 aboriginal and Métis people.

19 A Well, you're right and I will give you an example
20 of that. When I was in Ontario, we had a general assembly
21 meeting for our AGM for our agency up in one of the
22 communities and what we would do is have an open mic and it
23 was open to whoever wanted to attend and we began hearing
24 from people at about seven o'clock in the evening and our
25 pilots had to go back and send fresh recruits of pilots and

1 planes into the community because we didn't stop hearing
2 from people till about two o'clock in the morning. And I
3 know at one point in time our board members had said maybe
4 we need to close this down and I said if we want to be able
5 to work effectively with this community ever, then we need
6 to be able to hear them because they are feeling that this
7 is an opportunity for them to be heard around their
8 concerns, around services that we have historically
9 delivered and they have to tell their truths and we have to
10 hear it.

11 Q And my question was with respect to what you're
12 proposing here, are you or are you not suggesting it apply
13 only to the aboriginal community or is it any person who's
14 had services from the, from the child welfare system of the
15 province?

16 A Well, I would suggest that the larger percentage
17 of that is going to be aboriginal people.

18 Q Clearly.

19 A Yes. But does truth and reconciliation need to
20 happen? I suppose if you're looking at improvement of
21 services overall, then it should be open to all.

22 Q But your primary proposal related to aboriginal
23 people and what has occurred perhaps arising out of the
24 residential school and the other past incidents of that
25 kind?

1 A That's correct and I would see that as being, you
2 know, probably hand in hand with a review of where the
3 Aboriginal Justice Inquiry Child Welfare Initiative was
4 back then in their recommendations and where we are today.

5 Q Thank you very much.

6 A Thank you.

7 THE COMMISSIONER: And you're finally finished,
8 so you've hung in very well. It's been a long morning.

9 THE WITNESS: Thank you so much.

10 THE COMMISSIONER: Longer than I expected, but
11 thank you very much.

12 THE WITNESS: Good luck.

13 THE COMMISSIONER: All right.

14 MR. BRODSKY: So there's no misunderstanding,
15 Your Honour --

16 THE COMMISSIONER: Pardon?

17 MR. BRODSKY: So there's no misunderstanding,
18 she's not finished. She still has another phase to go.

19 THE WITNESS: Oh yes.

20 THE COMMISSIONER: Oh if you -- oh when she comes
21 back --

22 MR. BRODSKY: Yes.

23 THE COMMISSIONER: -- in phase 3. Yeah, well
24 we'll, we'll look forward to your return.

25 THE WITNESS: Thank you.

1 (WITNESS EXCUSED)

2

3 THE COMMISSIONER: Counsel?

4 MS. WALSH: I'm advised that this afternoon's
5 witness has a plane to catch by 7:30 tonight. She's
6 prepared to stay until 5:00 or 5:15 but then I think we'll
7 have to release her.

8 THE COMMISSIONER: We will.

9 MS. WALSH: If I can take an abbreviated lunch, I
10 mean it's already abbreviated, but ...

11 THE COMMISSIONER: Well is an hour long enough?

12 MR. FUNKE: Good afternoon now, Mr. Commissioner.

13 THE COMMISSIONER: Yes, Mr. Funke.

14 MR. FUNKE: I can advise that given the time,
15 even if we took an abbreviated lunch and came back at 2:30,
16 it's extremely unlikely that we're going to conclude
17 Dr. Blackstock's testimony today.

18 THE COMMISSIONER: Well I think we should start
19 her.

20 MR. FUNKE: Oh, there's no question we'll start.
21 I'm just advising the commission that I think it's
22 extremely unlikely to anticipate that --

23 THE COMMISSIONER: How long do you expect to be
24 with her?

25 MR. FUNKE: Well, given that we were advised that

1 Dr. Blackstock's testimony was anticipated to commence at
2 11:00 this morning, I was satisfied that we would be able
3 to complete her today. If we're starting at 2:30 instead
4 of 11:00, I'll be challenged to complete my direct today.
5 I don't think there will be any opportunity for cross-
6 examination but ...

7 THE COMMISSIONER: You, you think you'd get your
8 direct done today?

9 MR. FUNKE: If we're prepared to sit past 5:00.

10 THE COMMISSIONER: Well, she's got to get to the
11 airport and I have some experience knowing what that's
12 about.

13 MR. FUNKE: Yes.

14 THE COMMISSIONER: I stood outside at 1:30 this
15 morning because of a taxi strike at the airport and so I'm
16 going to leave her plenty of time.

17 MR. FUNKE: Certainly.

18 THE COMMISSIONER: So --

19 MR. FUNKE: We'll do our best to complete the
20 direct today, Mr. Commissioner. I can't guarantee that
21 depending on how things proceed and with the exigencies of
22 the time situation.

23 THE COMMISSIONER: Well, we'll, we'll try to get
24 that part of it done today.

25 MR. FUNKE: Very good.

1 THE COMMISSIONER: So we'll adjourn till 1:15 and
2 we'll sit till 5:15.

3 MR. FUNKE: It's 1:15 now, Mr. Commissioner.

4 THE COMMISSIONER: Oh, I'm sorry, 2:15, yes.
5 We'll rise till 2:15 and we'll sit till 5:15 providing that
6 gives your client enough time to get to the airport.

7 MR. FUNKE: Thank you, Mr. Commissioner.

8

9 (LUNCHEON RECESS)

10

11 THE COMMISSIONER: Mr. Funke?

12 MR. FUNKE: Good afternoon, Mr. Commissioner.
13 For the record, my name is Jay Funke. I'm here on behalf
14 of the Assembly of Manitoba Chiefs and the Southern Chiefs
15 Organization and the first witness that we have to
16 present to the commission during phase 2 of the inquiry
17 proceedings is Dr. Cindy Blackstock. And I'm advised,
18 Mr. Commissioner, that Dr. Blackstock is prepared to bind
19 her conscience by affirmation.

20 THE COMMISSIONER: Pardon?

21 MR. FUNKE: She'll bind her conscience by
22 affirmation.

23 THE COMMISSIONER: Fine.

24 THE CLERK: State your full name to the court,
25 please.

1 THE WITNESS: Cindy Blackstock.

2 THE CLERK: And spell me your first name.

3 THE WITNESS: C-I-N-D-Y.

4 THE CLERK: And your last name?

5 THE WITNESS: B-L-A-C-K-S-T-O-C-K.

6 THE CLERK: Thank you. And if you could stand
7 for a moment.

8

9 **CINDY BLACKSTOCK,** affirmed,
10 testified as follows:

11

12 THE CLERK: Thank you. You may be seated.

13 THE WITNESS: Thank you.

14 THE CLERK: And, Mr. Funke, just keep your voice
15 up (inaudible).

16 MR. FUNKE: Very good, thank you.

17 Just at the outset, Mr. Commissioner, what we'd
18 like to do is introduce a number of exhibits into the
19 record. These are articles and other materials that
20 Dr. Blackstock has referred to in her research in
21 preparation for today's hearings. I've previously provided
22 copies of those materials to commission counsel and I
23 understand that you have copies before you as well.

24 THE COMMISSIONER: If they're in these blue books
25 I guess they are.

1 MR. FUNKE: They are. I can advise the
2 commission that it's not our intention, given time
3 constraints this afternoon, to refer Dr. Blackstock to the
4 documents in detail. I think that we've lost the
5 opportunity to do that because of the time constraints that
6 we're under. Instead my intention will be to have
7 Dr. Blackstock testify based on the wealth of that
8 information in broader principles and terms and then we'll
9 constrain ourselves to relying on that material with
10 respect to our written submissions.

11 In any event, I can advise that the first
12 document that we want to tender then appears at tab 56 in
13 our book of prepared materials. It's an article entitled
14 "After the Apology Why Are So Many First Nations' Children
15 Still in Foster Care?"

16 Madam Clerk, if that could be entered as the next
17 exhibit, please.

18 THE CLERK: Fifty-six is Exhibit 47.

19 MR. FUNKE: Mr. Commissioner, I'm advised by
20 commission counsel that to expedite proceedings perhaps
21 what we'll do is we'll simply enter the entire set of three
22 binders as an exhibit and that will help expedite
23 proceedings somewhat.

24 THE COMMISSIONER: Yeah, I assume you're not
25 going to refer to every tab.

1 MR. FUNKE: I'm not.

2 THE COMMISSIONER: No, well I think that would be
3 a good idea then.

4 MR. FUNKE: Very good. I can advise then that
5 we're starting at tab 55, sorry 56.

6 THE COMMISSIONER: And the three volumes will be
7 Exhibit 47.

8 MR. FUNKE: Thank you. So just for the record,
9 it runs from tab 56 through 61, then 68 --

10 THE COMMISSIONER: Just give me the numbers.

11 MR. FUNKE: They're the only materials that are
12 in those binders.

13 THE COMMISSIONER: Yes, okay.

14 MR. FUNKE: I'm just preserving the record,
15 Mr. Commissioner.

16 THE COMMISSIONER: They start at 56, do they?

17 MR. FUNKE: That's correct. They run 56 through
18 61 consecutively.

19 THE COMMISSIONER: Right.

20 MR. FUNKE: Then the next document is tab 68. It
21 then runs from tab 75 through tab 87 inclusive. For the
22 benefit of counsel who has all of my documents, those are
23 the only ones that relate to Dr. Blackstock's testimony.

24 THE CLERK: Can you just repeat that so I have
25 (inaudible).

1 MR. FUNKE: Certainly. Fifty-six through 61, 68,
2 75 through 87.

3

4

**EXHIBIT 47: THREE BINDERS OF
DOCUMENTS, RE CINDY BLACKSTOCK**

5

6

7 DIRECT EXAMINATION BY MR. FUNKE:

8

Q Dr. Blackstock, I understand that you're a member
9 of Gitxsan First Nation --

10

A Yes, I am.

11

Q -- in British Columbia; is that correct?

12

A That is correct.

13

Q And I'm just going to run very quickly through
14 your resume, sorry, through your curriculum vitae I should
15 say. And again, I apologize for doing this perhaps more
16 expeditiously than we had hoped, but given time constraints
17 I want to move on to the substance of your testimony as
18 quickly as possible.

19

With respect to your education, I understand that
20 you have an honorary doctorate of law that was awarded to
21 you by the University of Northern British Columbia in 2012;
22 is that correct?

23

A That is correct.

24

Q You also have a PhD in social work awarded by the
25 University of Toronto in 2009?

1 A That is correct.

2 Q A master's degree in management from McGill
3 University 2003?

4 A Yes, that is correct.

5 Q And a bachelor of arts and psychology from the
6 University of British Columbia in 1987; is that correct?

7 A That is correct.

8 Q With respect to your career history, I understand
9 that you currently are working with the First Nations Child
10 and Family Caring Society of Canada in the role as their
11 executive director; is that correct?

12 A Yes.

13 Q And you've been in that position since 2003?

14 A By 2002 probably.

15 Q 2002. I understand as well that you're also
16 currently an associate professor at the University of
17 Alberta in the Faculty of Extension; is that correct?

18 A That is correct.

19 Q And you've been in that position since 2011?

20 A Yes.

21 Q And prior to your position with the Caring
22 Society, you were also the executive director of the Caring
23 for First Nations Children's Society of British Columbia;
24 is that correct?

25 A That's right.

1 Q And that was from 1999 through 2002?

2 A Yes.

3 Q Prior to that you were employed with the Squamish
4 First Nation as the assistant to the social development
5 director; is that correct?

6 A Yes.

7 Q From 1995 through 1999?

8 A Yes.

9 Q And prior to that with the British Columbia as a
10 senior social worker from 1987 to 1995?

11 A Yes.

12 Q And I understand as well that you've authored or
13 contributed towards a number of publications or articles,
14 research projects, other reports and presentations; is that
15 correct?

16 A Yes.

17 Q And they're all set out in detail in your
18 curriculum vitae?

19 A Yes.

20 Q And I had planned on going through some of those
21 but for the reason I indicated earlier I'll move on.

22 I understand, however, that in addition to those
23 publications that you've also had significant involvement
24 on numerous boards, in other research and you've also been
25 a recipient of a large number of awards and honours that

1 have been bestowed upon you as well; is that correct?

2 A Yes.

3 Q And in discussing those with you I understand
4 that there are three in particular that have significance
5 to you personally; is that correct?

6 A Yes.

7 Q I understand that that's the National Aboriginal
8 Achievement Award in the area of public policy which you
9 received in 2011?

10 A Yes.

11 Q The Canadian Association of Social Workers
12 Outstanding National Service Award in 2010?

13 A Yes.

14 Q And the Assembly of Manitoba Chiefs and Norway
15 House Cree Nation Recognition Awards for your work in
16 Jordan's Principle?

17 A Yes.

18 Q I'd like to start your testimony today, if I may,
19 by going back to your first position that we talked about
20 today while you were employed with the Province of British
21 Columbia as a senior social worker and if you could, if you
22 could just explain to us what your involvement was as a
23 senior social worker with the province at that time in
24 terms of the services that you were responsible for and
25 your involvement in that system.

1 A I was employed as a fully delegated child
2 protection worker for the Province of British Columbia. I
3 worked up in -- I know you, Commissioner, are also from
4 B.C., so you'd know that I started my career in
5 Prince George, but I also worked in after hours services in
6 the downtown area on Drake and Seymour and then transferred
7 over to North Vancouver and I worked in the North Vancouver
8 and West Vancouver jurisdictions. I worked in both what
9 they would called a blended office which is where you not
10 only do child protection assessments, investigations, you
11 also carry guardianship caseloads and even do adoption
12 services. And in the latter part of my career we became
13 what's called a structural model and so my sole
14 responsibility was to do, receive child protection reports,
15 assess and investigate those child protection reports. And
16 I was called a protocol investigator because by that time I
17 had quite a bit of experience and so I was called on
18 regularly to do investigations in day cares or where the
19 allegation is made against a school official. And I was
20 also called into high profile situations, so I relieved and
21 worked with the social workers involved with the
22 Matthew Vaudreuil Gove Inquiry. So at the time when that
23 inquiry was going on I was up in Fort St. John working with
24 those workers.

25 Q And after eight years with the province, I

1 understand that you then moved on to the Squamish First
2 Nation; is that correct?

3 A That's right.

4 Q Fine. And was there anything, any reason in
5 particular that prompted you to move on to the Squamish
6 First Nation position?

7 A Throughout my career as a child protection
8 worker, I saw the dramatic overrepresentation of
9 First Nations children in the child welfare system. And
10 what I also saw was a pattern, particularly in cases of
11 neglect, where the trend in child welfare was to codify
12 what I felt were risks outside of parents, things that
13 parents could do very little about, things like poverty and
14 poor housing as strictly indicators of parental deficit.
15 And that was resulting in particularly poor parents and of
16 course First Nations families were having deeper depths of
17 poverty, being classified and substantiated for neglect in
18 ways that I didn't necessarily feel were too fair in the
19 system. I thought we had to redouble our efforts to target
20 things like poverty and poor housing, not to penalize, so
21 to speak, the family for being in that experience.

22 I also wanted to make some movement away from the
23 mainstream approach to child protection and see and explore
24 some of the cultural approaches to child protection in the
25 Squamish Nation, which was literally across the street from

1 the office that I was working in in North Vancouver. So
2 this isn't a situation where it's a remote First Nation,
3 it's a real situation where literally you're just crossing
4 a street, but as we'll get into, I'm sure, in further
5 testimony, it was a completely different world.

6 Q Before we go any further, perhaps this is a good
7 opportunity to ask you this question now. Is there
8 anything -- I know that based on our earlier discussions
9 that social work wasn't your initial career aspiration. Is
10 there anything about social work that led you to this
11 career path specifically?

12 A It was really -- I was working in a group home,
13 trying to earn enough money to go through university and I
14 remember seeing First Nations kids come into that group
15 home and two in particular I think really set me on a
16 path of how unjust what I was seeing around me. And they
17 were two girls who were removed from a remote First Nation
18 in northern British Columbia and they were fluent in their
19 language and very much tied to their traditions. They
20 didn't speak English very well and they came into the group
21 home and part of the process was is that they were to go
22 for a shower and they were in there for some time so I went
23 to check on them and they had never seen a shower before.
24 Everything around them was scary. And I heard dialogue
25 amongst the social workers and others really looking at

1 their knowledge of their language, the knowledge of their
2 culture as being a shortcoming in terms of their ability to
3 adapt into this particular world and it really struck me in
4 that moment, even though I was very young, is in child
5 welfare we're removing kids and we're really literally
6 promising them a better life is really why we do this.
7 We're trying to provide a better life for these kids and
8 I'm not sure we delivered in that situation and I'm not
9 sure that we deliver in a lot of situations. And so that
10 put me on a path of wanting to understand that better and
11 wanting to play some small role in making sure that we were
12 giving these kids a better life and if we weren't, that we
13 were honest about embracing those challenges for ourselves
14 and redoubling our efforts to correct the system.

15 Q And what was it about front line social work that
16 drew you to that particular career path?

17 A I think because that's a place where you could
18 make the most difference. Government child protection
19 systems are big bureaucracies and like any big bureaucracy,
20 they can be very slow to move and change. And at a
21 grassroots level, at the line level, you can kind of work
22 around the system, so to speak. It's not that you break
23 the standards, it's just that you're dealing face to face
24 with families and you're going to do the best thing that
25 you can on your basis of your clinical judgment and

1 consultation with social workers. So we would do that on a
2 pretty routine basis.

3 And when I was doing specialized investigations,
4 we would, just as a matter of course, we would be spending
5 our own money, for example, at the local grocery store on
6 baby formula and diapers so that we could keep kids
7 together with their families versus removing them because
8 there was no real provincial policy that would allow us to
9 provide the family with those things that they needed to
10 keep let's say for their babies. So it was kind of that
11 kind of innovative practice that you could do at the
12 grassroots level that the mainstream system didn't support
13 but you could still help in supporting with the kids.

14 Q That leads me to my next question. When you left
15 your position with the province and you joined the Squamish
16 First Nation in your new position, were there any
17 differences in the delivery of service or how you had to
18 perform your job function that you noticed when you crossed
19 the street from one office to the other?

20 A I said often to people, when I was dealing with
21 child protection in the province and I think it's the same
22 today, is many child protection workers would tell you that
23 they really would prefer to have more tools and resources
24 available to support families off reserve and certainly
25 that was my perception. But when I went on reserve, the

1 most basic of things became luxuries. So my job changed
2 fundamentally in several ways just crossing the street.

3 Number 1, the scope of my job expanded
4 significantly. Not only was I doing child protection work
5 with the families, I was also now expected to develop
6 culturally based standards because one of the reasons of
7 course I moved over there is to do cultural based social
8 work and the province at that time allowed you as a
9 First Nations agency to develop your own standards, but the
10 Department of Indian Affairs provided no funding to do that
11 and the province didn't either. So if you wanted to do
12 that you had to do that on top of your child protection
13 caseload, whereas in the province we had a whole division
14 of people who had that particular specialty.

15 The other thing that I found is I was doing
16 negotiations with the federal government and the provincial
17 government and so you're negotiating delegation and
18 enabling agreements and your funding agreements with the
19 feds on top of doing child protection work. I'd find
20 myself having to assume multiple roles in the community
21 because the allied professionals that you could normally
22 rely on just simply weren't there and even internally it
23 was basics legal counsel. We'll talk about the old archaic
24 funding formula that's still in place in some regions,
25 including B.C., directive 20-1. But that provided \$5,000

1 per annum in legal fees at 100 percent of the funding and
2 my agency was only funded at 50 percent of that level so we
3 have \$2500 in legal fees and of course that went very
4 quick. And so I would, I would literally be calling Legal
5 Aid and some of my friends were law students to try and
6 answer basic questions whereas in the province I would have
7 availability to specialized counsel. So it was on that
8 level, on a job level. It was also on the nature of the
9 needs of the clients.

10 So what I found is very poignant repercussions of
11 the residential school system. There is a
12 multigenerational impact of residential schools in that
13 community that meant that I was often working with three,
14 two generations of the same family who had significant
15 trauma issues and often those trauma issues had not
16 received the type of attention that they deserved and that
17 resulted in those being passed on to future generations.
18 So I had higher needs clients, I had less time to do social
19 work because I had this bigger job responsibility and then
20 on top of that the services available, either directly
21 through the child welfare system itself funded by the
22 federal government were significantly reduced and that's
23 how I came to know about the directive. I said --

24 THE COMMISSIONER: Did you work with Bobby
25 Joseph?

1 THE WITNESS: Yes, I did. Yes, I did.

2 THE COMMISSIONER: I've worked with him too.

3 Fine man.

4 THE WITNESS: Yeah, he is a fine man. He used to
5 be my neighbour at an office tower later on when we were
6 Caring for First Nation Children's Society.

7 So we were doing this work and the services were
8 so difficult to find and I would go to our supervisor and I
9 would say well where's this service because we're literally
10 just across the street and they would say, well, there's no
11 funding in the directive and I would say what do you mean
12 there's no funding in the directive? The directive became
13 my supervisor. Even when we clinically made a decision
14 about what was best for social work and it was in line with
15 the provincial statute, the federal government wouldn't
16 necessarily fund that if it wasn't in their perception of
17 the directive. So it really curtailed what we were able to
18 provide. And one of the examples I often tell people about
19 that is when a provincial statute in British Columbia
20 expanded to include the right to culture for indigenous
21 children as a right, there was no increase in the funding
22 for the First Nations agency to deliver on that. So I'm a
23 baseline social worker. When I was off reserve and they
24 would change the statute to that significant amount, there
25 would be some parcel of money that would go along to make

1 that a reality for kids, but on reserve there was nothing.

2 So actually I, on top of doing all the child
3 protection work, I came to realize that I would have to
4 file these complaints with the, for the children's
5 commissioner saying that really they were in breach of the
6 child welfare statute because there's this right these kids
7 have, there's no money to realize the rights and someone
8 needs to step up to the plate and before it went to
9 hearing, the British Columbia government stepped up to the
10 plate and funded two cultural workers. But it was that
11 kind of thing where you were constantly having to struggle
12 for things that I would have taken just as for granted when
13 I was working in the provincial system.

14

15 BY MR. FUNKE:

16 Q So your evidence is, is that even as a First
17 Nation woman working in the system while you're working for
18 the province, even in those circumstances you weren't aware
19 of the funding and equities and obstacles that
20 First Nations agencies faced?

21 A No, I wasn't. And we need to remember the time
22 period when I was becoming a child protection worker. In
23 British Columbia there really weren't any First Nations
24 agencies until about 1993 so when I started that wasn't
25 even an option. And the directive was only implemented by

1 the federal government in 1991 and we were just coming to
2 try to understand that thing and I had no idea the depths
3 of how much it would restrict good social work practice. I
4 had -- when I was off reserve and I could hear the
5 First Nations social workers talk about it, I'm embarrassed
6 to say it now but it was really true, I thought they were
7 over exaggerating. And then when I actually went to work
8 in the agency, I found if anything they were
9 underestimating it because they hadn't taken for granted
10 all the things that we would just normalize as being
11 regular activities and services that we could provide off
12 reserve.

13 Q So you spent five years with the Squamish First
14 Nation in that position and then I understand that after
15 that you went to the Caring for First Nations Children's
16 Society of British Columbia.

17 A Right.

18 Q And became the executive director there.

19 A Yeah. We were kind of founder and developer of
20 it. It arrived to me as in a shoebox of records and from
21 there the Caring Society grew. And what it was, it was
22 really born out of the interests of all First Nations child
23 welfare agencies in the province of British Columbia at
24 that time to not only collaborate and share best practices,
25 because we were all dealing with very challenging

1 situations at the time and we were aware, we were really
2 alive to the fact that being First Nations is not enough.
3 We wanted to do better for our kids and hold ourselves
4 accountable. So should a mistake come forward we weren't
5 going to sweep it under the carpet, we really wanted to
6 embrace it and use it as a learning process and that was
7 the forum to do that. And it was also a place to deal with
8 collective policy issues such as the directive. The
9 directive was having a similar impact on other
10 First Nations agencies around the country or around the
11 province, rather, and it was regularly one of the top
12 agenda items at those, for First Nations agencies.

13 And a third thing we did is the experience of the
14 First Nations agencies in British Columbia is the graduates
15 from Bachelor of Social Work programs were totally
16 unprepared to work in child welfare. They were frequently
17 not taking child development courses, courses on aboriginal
18 peoples were an elective. Many students never took those
19 courses. There were very few courses that dealt with
20 poverty or poor housing or multi-generational trauma. So
21 the agencies asked that we develop a post-baccalaureate
22 training program. So I worked with Dr. Margaret Kovach and
23 we developed what's called the aboriginal social worker
24 training program which is about 14 weeks of post-
25 baccalaureate training that was held in various First

1 Nations communities to really prepare, better prepare
2 social workers for working with First Nations clients. And
3 that program continues to be provided today and has
4 expanded to include supervisory training and executive
5 director training and board training.

6 Q I understand that after three years with the
7 Caring for First Nations Society of British Columbia you
8 then moved on to the First Nations Caring Society of Canada
9 in 2002 --

10 A Yes.

11 Q -- at which time you became the executive
12 director of that organization; is that correct?

13 A That is correct.

14 THE COMMISSIONER: Let me just ask, that training
15 program takes in BSW graduates when they come out of the
16 UBC school?

17 THE WITNESS: That's right, or any other social
18 work school and --

19 THE COMMISSIONER: Do they have to have their
20 degree before they enter this program?

21 THE WITNESS: At the time when we were doing it
22 the BC government would allow for a couple of things. You
23 could have a combination of, of a diploma and some level of
24 experience. I can't recall exactly what that was at that
25 time. Or you could have a bachelor degree in some related

1 discipline or a BSW. In all three of those conditions
2 everyone had to go through the particular training. If you
3 had, for example, the diploma and only work experience, you
4 had to go through a longer period of apprenticeship as a
5 social worker before you would get your full letter and
6 delegation. That's how my recollection on how it --

7 THE COMMISSIONER: And how is the program
8 funded?

9 THE WITNESS: It was funded by the province
10 primarily. The federal government would make a
11 contribution.

12 THE COMMISSIONER: Still is?

13 THE WITNESS: Yes, my understanding is it still
14 is. The province funded it and then what would happen is
15 that the travel for First Nations employees to attend at it
16 would be covered through the budget of the First Nations
17 agency.

18 THE COMMISSIONER: And is it unique to British
19 Columbia?

20 THE WITNESS: Yes, it is. I don't -- I'm not
21 aware of a training program that that's comprehensive
22 operating anywhere else in Canada.

23 THE COMMISSIONER: Thank you.

24 THE WITNESS: You're very welcome.

25

1 BY MR. FUNKE:

2 Q How long does that program run, Dr. Blackstock?

3 A It runs in modules and what happens is that
4 participants will come into a classroom setting which
5 normally can be like a long house or whatever because we
6 really want to embed people in First Nations cultures. And
7 they will have about, say, a week or two weeks of training
8 and then between there they go back to their agencies and
9 they do field work and some of that might be, for example,
10 meeting with elders and learning about the culture of their
11 particular community.

12 In British Columbia we have a lot of cultural
13 diversity as the commissioner would know. Thirty of the 50
14 indigenous languages in Canada are spoken in that one
15 province. And so we certainly didn't want to be
16 presumptuous in providing a pan aboriginal education. We
17 wanted to really encourage workers to learn about the
18 distinct culture and history and context of the community
19 they would be working in. And so there was a field guide
20 and field supervision for the times when they were away and
21 we were certainly available as training staff. Should they
22 come up on a practice question when they get out, they say
23 well this is how it's working in my agency and I don't know
24 how to work it, then they and their supervisor could
25 contact us and get some support.

1 Q And was there a formal cultural component to one
2 of the modules or modules?

3 A It was threaded throughout the entire curriculum
4 and it was developed in a way that -- well Dr. Margaret
5 Kovach herself is an aboriginal person and we recruited
6 primarily First Nations writers. We were assisted by some
7 non-aboriginal experts certainly and some of other
8 non-aboriginal expert writers and it was overseen by a
9 joint advisory community of First Nations Child Welfare
10 agencies, elders, as well as representatives from the
11 province.

12 Q I'd like to move to your time with the
13 Caring Society now and ask you some questions about that.
14 Perhaps just by way of background you can tell us when the
15 Caring Society was first established.

16 A All right. It was actually established as a very
17 informal group in 1998 in a meeting at the Squamish Nation
18 and it was really, that meeting was a result of a chance
19 meeting I had with running into Elsie Flette and Corbin
20 Shangreaux from Manitoba at another conference in the
21 United States and how we talked for almost two or three
22 hours about our shared experiences working with First
23 Nations agencies and how much we began to appreciate that
24 we needed to learn from one another. So we wondered if
25 there was a national organization in Canada and at that

1 time we didn't even have a list of the First Nations
2 agencies, that wasn't available to us. So we thought well,
3 we'll take a flyer on it and we just sent out an email to
4 anybody that we knew or a fax, I guess it was in those days
5 of pre-email even in the agencies, and a group came
6 together at the Squamish Nation, said yes we want to
7 establish this national caring society. An interim board
8 was set up and then that interim board developed the
9 bylaws, et cetera, and a year, approximately a year later
10 we met on the other side of the country in Kingsclear First
11 Nation in New Brunswick where a larger group of First
12 Nations child welfare agencies assembled and they ratified
13 the bylaws and from there the Caring Society was born,
14 although we were not funded for a number of years.

15 Q Now we'll get to that in a moment. Perhaps you
16 could explain for the commissioner's benefit what the
17 mission and vision of the Caring Society are.

18 A The Caring Society really has as its primary
19 mandate to provide research policy support and cultural
20 support to First Nations child welfare agencies throughout
21 the country. We certainly respect that First Nations
22 communities are in the best position to implement their own
23 best solutions but it's our role, as we see it, to create
24 the space and make available solutions, solutions available
25 to them that they can draw down to implement changes for

1 children at their local community level.

2 Q I understand as well that it's the only
3 organization of its kind in Canada.

4 A Yes, it is.

5 Q And perhaps you can tell us, why is it so
6 important that the Caring Society be in a position to
7 provide that type of advocacy and research on behalf of
8 First Nations agencies?

9 A When I was beginning, we were trying to even
10 write the social work curriculum back in the time when I
11 was at the Caring for First Nations Children Society. The
12 number of articles and research on First Nations children
13 was almost nothing, there really was a handful out there,
14 and there was, despite the ongoing overrepresentation of
15 First Nations children in child welfare care. So there was
16 a clear need for us to know better so we could do better.
17 There needed to be not only an assembling of the research
18 and information, greater literature out there available on
19 First Nations children across Canada, but also an
20 undertaking of strategic types of research that would help
21 us make better decisions for kids. And then of course the
22 directive, as we started to create the Caring Society
23 national, we started to see that it was restraining
24 culturally based and equitable practice throughout the
25 country. And so we initially were engaging with the

1 federal government to (a) document the inequality,
2 (b) document the concordant effects of that inequality on
3 First Nations children and their families. But even more
4 importantly, to develop evidence and form solutions to
5 remedy that inequality that could be evaluated over time so
6 that we could correct course on any of the wrong
7 assumptions that we may have made on the model.

8 Q Now you've briefly mentioned funding a moment
9 ago. You said at the time of your inception you weren't
10 receiving any federal funding. How did that come to pass
11 that that was commenced?

12 A Through -- in the year 2000 there was something
13 called the joint national policy review which was a
14 committee commissioned by the Assembly of First Nations and
15 Department of Indian Affairs to review directive 20-1 and
16 one of the recommendations of that report was that a
17 national body such as ours as the Caring Society, should be
18 supported by the department and so the report with the
19 national policy review was released in June 2000. The
20 Department of Indian Affairs provided us with some funding
21 in 2002. Prior to that we had received some funds via
22 research avenues and also from a family foundation in
23 Quebec.

24 Q In addition to your work with the national policy
25 review, I understand that there are a number of other

1 campaigns and projects that the Caring Society is currently
2 operating; is that correct?

3 A Right.

4 Q I understand that the Caring Society is very much
5 involved in Jordan's Principle campaign?

6 A Very much.

7 THE COMMISSIONER: In the what?

8 MR. FUNKE: In the Jordan's Principle campaign.

9 THE COMMISSIONER: Oh yeah, um-hum.

10

11 BY MR. FUNKE:

12 Q Perhaps you can just speak to that for a moment
13 if you will, Dr. Blackstock --

14 A Sure.

15 Q -- and explain the Caring Society's involvement
16 in that.

17 A Jordan's Principle is based out of a case here
18 from Manitoba with Jordan River Anderson from Norway House
19 Cree Nation and the story there is that he was in was in
20 Winnipeg General Hospital or Children's Hospital from birth
21 until approximately two years of age when doctors were
22 ready to discharge him and from all reports, he would have
23 gone home had he been a non-aboriginal child. But because
24 he was a First Nations child, the view was that the federal
25 government should be taking on responsibility for his, the

1 care of his at-home services. Well the federal government
2 wasn't convinced of that and even if they were to take on
3 some of the services they weren't sure what department
4 would have authority to spend that. The province didn't
5 want to assume a provincial cost. And so there began a
6 series of case conferences to try and resolve who would pay
7 for Jordan's care and unfortunately the decision was made
8 to leave Jordan in the hospital while this got worked out
9 and it never got worked out. Jordan waited for over two
10 years for these negotiations to take place and to settle
11 his situation before he tragically slips into a coma and
12 passes away at age five.

13 So after that, Norway House Cree Nation, with the
14 Assembly of Manitoba Chiefs and others, wanted to work with
15 the family to ensure this didn't happen to other children.
16 And it was coincidental at the time of Jordan's death in
17 2005 we were undertaking a national research project, again
18 in this problem solving process with the federal government
19 around the funding formula and what we'll later talk about
20 is the Wen:de reports, and we actually were mapping these
21 jurisdictional disputes and we wanted to know (a) how was,
22 how was involved here, was it First Nations governments
23 that were the stall or was it the province, was it the
24 feds? Who -- in what situations are these involving? And
25 what we found is that in the 12 case studies of the

1 First Nations agencies we did, there were 393 of these same
2 jurisdictional disputes reported in that year. So it was
3 clear, it was pretty systematic and Jordan's Principle
4 evolved out of that.

5 What Jordan's Principle says is where there is a
6 government service available to all other Canadian children
7 and a First Nations children meets the criteria for that
8 service, then there should be no -- and a jurisdictional
9 dispute cross up, so the provinces say we don't want to
10 fund it or the feds say they don't want to fund it related
11 to the First Nation status, the government of first contact
12 pays for that service and they can argue about getting
13 reimbursed from the other level of government at some other
14 point. But the child's needs come first and that was
15 passed unanimously in Parliament in 2007 and unfortunately
16 the implementation has been very patchy and we just
17 recently had a federal court case that helps us better
18 understand and helps the provinces and federal government,
19 I think, better understand the true intention of Jordan's
20 Principle.

21 Q It's my understanding that the reason for that is
22 the federal government has tried to constrain the
23 application of principle to those cases involving high
24 medical needs children; is that correct?

25 A Their, their definition is they say -- their

1 federal response, I want to use the proper language, a
2 federal response to Jordan's Principle is that it only
3 applies to children with multiple disabilities with
4 multiple service providers. Now that's their public
5 position but in documents that I've obtained through access
6 to information, they do go much broader. They talk about
7 social and educational. They then say we're starting with
8 cases like Jordan's and moving out from there, but in my
9 point of view that is inconsistent with the Parliamentary
10 motion, motion 296. It was passed in the House of Commons
11 for Jordan's Principle. It does not mention children with
12 special needs. It does not mention children with
13 disabilities. It makes it very clear that First Nations
14 children should not be denied or delayed the receipt of
15 government services because of their First Nation status.

16 Q And there are a number of other initiatives and
17 campaigns that the Caring Society's involved in besides
18 Jordan's Principle. I understand there's another campaign
19 called Shannen's Dream?

20 A Yes, that's --

21 THE COMMISSIONER: What -- I just can't hear you.

22 MR. FUNKE: I'm sorry, Mr. Commissioner.
23 Sometimes I speak too quietly.

24 THE COMMISSIONER: Raise the, raise the mic up a
25 bit.

1 BY MR. FUNKE:

2 Q I understand as well, Dr. Blackstock, that there
3 are other campaigns and initiatives that the Caring
4 Society's involved in and that one of those campaigns is
5 known as Shannen's Dream.

6 A Yes.

7 Q Perhaps you could explain that for the
8 commissioner as well.

9 A Shannen, Shannen's Dream is founded by
10 Shannen Koostachin from the Attawapiskat First Nation, who,
11 when she was five years old wanted to go to school, like
12 most five-year-olds are, and the only school in her
13 community was closed because it was contaminated by 30,000
14 gallons of diesel fuel that had seeped into the ground
15 below the school in the previous 20 years.

16 The Government of Canada finally agreed that it
17 was a class one toxic waste dump and therefore closed the
18 school and then brought up portable trailers and put them
19 in the playground of that contaminated school. And having
20 been to Attawapiskat, I can share with you that that
21 kindergarten portable is just a stone's throw away from
22 that contaminated site. Now the government said to the
23 kids that this is temporary, we're going to build you a new
24 school.

25 Well the portable trailers were not meant to be

1 in those conditions for a long period of time and so it
2 wasn't very long before things started to deteriorate to a
3 point where the heat would often go off, it was very cold
4 in the classrooms. They were getting mice contamination.
5 There was black mould contamination and as Shannen would
6 later tell us that kids as young as grade five were
7 dropping out because of lack of hope. And on top of all
8 this, there was inequitable levels of funding for education
9 so getting a teacher on reserve was -- there wasn't enough
10 money for them, there wasn't enough special education.
11 There is no money in the Indian Affairs spending formula
12 for libraries or for computers. And so this young girl
13 took it upon herself to organize younger children and to
14 write letters to the government. Maybe if they understood
15 how bad it was for the kids up in Attawapiskat they would
16 make sure that new school came.

17 Well three Ministers of Indian Affairs over two
18 governments promised them a school and didn't deliver. And
19 so Shannen created a You Tube video and she sends it out to
20 the universe, hoping that non-aboriginal kids would write
21 and literally hundreds, if not thousands of non-aboriginal
22 children did write to the government to say First Nations
23 kids deserve a proper school.

24 She eventually goes down to meet with the
25 government officials themselves and she begins to take a

1 real leadership role in what was then called the
2 Attawapiskat School campaign.

3 She was nominated for the International
4 Children's Peace Prize, an award given out by the Nobel
5 Laureates for outstanding kids. She was one of 45 in the
6 world to be nominated that year and tragically she dies at
7 the age of 15 on her way back to school, attending 100
8 miles away from her family. So she never saw the school in
9 Attawapiskat built.

10 I'm glad to say that the kids, the non-aboriginal
11 kids and the First Nations kids she inspired continue to
12 write letters so that First Nations children can have
13 proper schools in her name and that campaign called
14 Shannen's Dream and the Government of Canada has announced
15 that they will build a new school, at least in Attawapsik,
16 and it's going to be called the Shannen Koostachin Memorial
17 School. But the children who she inspires the Shannen's
18 Dream know the work is not over, that there are children
19 all over the country who aren't getting a proper education
20 or proper schools and so they're going to continue in
21 Shannen's memory until every First Nations Child get a
22 proper education.

23 Q I understand there's another campaign called the
24 Child and Youth Engagement Campaign.

25 A Right.

1 Q If you can describe that briefly for us as well.

2 A Well, under the United Nations convention on the
3 Rights of the Child, it makes it very clear under article
4 12 that children have a right to participate in matters
5 affecting them and what we have found is that we really
6 want to engage First Nations children and young people in a
7 process of change and we started really there but it's
8 expanded out to include all these non-aboriginal children
9 as well as part of Shannen's Dream. So it's become a real
10 reconciliation kind of framework and educational
11 opportunity. And so we've been honoured to work with
12 elementary, secondary, university educators all over Canada
13 with literally tens of thousands of kids to help educate
14 them about the richness of First Nations cultures, the
15 current situation of First Nations children and more
16 importantly, to mentor them in peaceful and respectful
17 advocacy so that they can learn they can not only change
18 the world for themselves but they can change the world for
19 others and co-create a Canada that they want to grow up in.

20 Q There's another campaign called Many Hands, One
21 Dream.

22 A That is a coalition of numerous aboriginal,
23 First Nations, Métis and Inuit organizations working in
24 health as well as non-aboriginal organizations like the
25 Canadian Pediatric Society and we have worked, for example,

1 to create curriculum under the leadership of
2 Dr. Kent Saylor for pediatric residents across Canada on
3 the health of aboriginal children. And we also offer a
4 number of awards to recognize persons who are making
5 outstanding contributions in changing systematic health
6 policies to undermine the success of aboriginal families.

7 Q And a program that we're going to be discussing
8 later in greater depth, but I'd like you to introduce now
9 if you can, is called the Touchstones for Hope.

10 A Right. One of the things that we found when we
11 were talking to First Nations communities is there was a
12 real desire to reclaim the traditional ways of caring that
13 had predated colonization and predated child welfare,
14 because child welfare itself is a rather new invention. It
15 really started as really animal intervention. It was
16 literally the humane organization that was protecting
17 animals that then began protecting kids. So it hasn't been
18 around that long. And but one of the realities is, is that
19 through the process of colonization and residential
20 schools, the ability for First Nations to dream for their
21 own children was eroded and so there needed to be an
22 opportunity to gather together communities and reclaim and
23 revision what that dream is in their particular community
24 and develop a vision of child welfare that would help get
25 them there, taking into account their unique circumstances

1 and the needs of their children.

2 So the question is how to do it. So what we did
3 is we brought together 250 experts in First Nations, Métis
4 and Inuit child welfare in Canada and Native American and
5 Alaskan child welfare in the United States. And when I
6 used the word "experts" I'm talking about leading
7 researchers, policy makers and practitioners but also
8 elders and other traditional knowledge holders and young
9 people. And we asked them to surface through three days of
10 dialogue some principles upon which a new child welfare
11 system should be based and our process of reconciliation
12 that could help us unwind this relationship, this un -- the
13 unhealthy elements of the relationship between mainstream
14 and First Nations child welfare and reset that relationship
15 on more positive ground.

16 So out of that came the five touchstone
17 principles which are self-determination, culture and
18 language -- and I'm just going to pause here to clarify
19 that it's not only a recognition that indigenous cultures
20 and languages are important, it's a recognition that the
21 child welfare system itself has an accent. It's culturally
22 loaded. It's not culturally neutral and that was an area,
23 I think, of some trepidation in the past where well meaning
24 social workers would try to develop what they would call
25 culturally based practice. So they would take basically a

1 mainstream program and in my case throw in a totem pole and
2 say it's culturally based practice instead of really
3 rethinking what the fundamental assumptions are at the
4 model and how those are philosophically informed and moving
5 from there.

6 So we have self-determination, culture and
7 language, holistic interventions -- that's taking into
8 context the child in the context of their family community
9 but also across time understanding historical disadvantage,
10 understanding the impact of that intervention for that
11 child not just in that moment or not even just within that
12 next couple of years, but what is it going to be like for
13 them as a parent and a grandparent and so on down the line.

14 Structural interventions. Structural problems
15 are normally defined as things that create risk for
16 children that are outside of the ability for parents to
17 directly control on their own. Poverty, poor housing are
18 key factors of that. And then the other one is non-
19 discrimination which links back to Jordan's Principle and
20 Shannen's Dream.

21 And the process was a reconciliation framework
22 and the group there told us that there is four key stages.
23 First one was truth telling and that's understanding there
24 isn't just one truth. There's often multiple perspectives
25 of the same event at the same time and you know that well

1 in legal profession from having those dialogues. There
2 isn't one truth necessarily. It's a coming together of
3 different perspectives and stories. But following that
4 truth telling, which would involve, for example, the fact
5 that social workers were active agents in the removal of
6 children and their placement in residential schools. They
7 served on committees. In 1947 the Canadian Association of
8 Social Workers presented at a joint parliamentary and
9 senate committee and supported the assimilation of
10 First Nations peoples. So that's part of the truth telling
11 of our profession.

12 And also moving on to the (inaudible) of
13 acknowledging, which is, it's good to tell the truth, it's
14 good to say, yes, this was a haphazard practice in the past
15 but what's even more important is to demonstrate that on a
16 deep level we understand it and in ways that will enable us
17 to change that practice and invigilate ourselves to make
18 sure we don't slip back into those unhealthy patterns. So
19 that's the acknowledging.

20 Restoring and setting things right as best we
21 can. Some of those things you can't turn the clock on.
22 We'll never been able to undo the horrible harms to those
23 children in residential schools, but there are some things
24 that we can do to make things better.

25 And then the relating is that ongoing

1 relationship based on those principles, between mainstream
2 and First Nations child welfare, that allow us to have one
3 central focus and that is not the well being of mainstream
4 child welfare and not the well being even of First Nations
5 child welfare. It is jointly taking accountability to
6 supporting indigenous children growing up in their families
7 and cultures in ways that respect their rights and
8 realities.

9 Q I have some more questions to ask you about
10 Touchstones of Hope but before we do that I want to finish
11 off our discussion about some of the other campaigns that
12 the Caring Society is involved in and the last one I wanted
13 to talk to you about is the "I am a Witness" campaign.

14 A Right.

15 Q Perhaps you can just tell us a little bit about
16 that particular campaign and what its objectives are.

17 A Well, I hope that you're getting theme that I
18 really come from the camp that if you know better, you do
19 better for kids, especially if you have the resources to do
20 better. Fundamentally that's what we expect from parents.
21 If they know better, they have the resources to do better,
22 they can do better. And when it came to the federal
23 funding, I was -- I believe that the reason that the
24 federal government was not moving is because we had not
25 adequately documented the depth of the inequality. And

1 then I believe we needed to document the concordant effects
2 for First Nations families and then if we developed
3 evidence to inform solutions that were within the mandate
4 of the federal government to implement and within its
5 financial ability to implement, then they would do the
6 right thing for kids. I know it's naïve but that's what I
7 thought. And so I worked with other First Nations people
8 and with the federal government representatives on not one
9 but two evidence based solutions. The first one being the
10 national policy review in 2000 that we referenced before
11 and the second is a series of what we call the Wen:de
12 reports produced in 2005. Those reports involved over 20
13 leading experts, including leading economists, for example,
14 Dr. John Loxley from right here at the University of
15 Manitoba, and it provided a good evidence based corrective
16 funding regime that was based on the needs of First Nations
17 children.

18 During the time that we were sitting at that
19 table, Commissioner, we were all really alive to the fact
20 that those who are suffering from our lack of progress were
21 the children and families in those communities. And in
22 fact, the Department of Indian Affairs' own data suggested
23 between 1995 and 2001, recalling that we really began
24 planning for the NPR, National Policy Review, about 1998,
25 and finished in 2000, so roughly that same time period, the

1 number of First Nations children going into child welfare
2 care had increased 71 and a half percent.

3 So after we released the second formula, the
4 federal government agreed with the formula and then they
5 didn't implement it. We were left with a heavy choice. So
6 after -- we felt we had tried everything else and we had no
7 other option on February 27th, 2007 than to join with the
8 Assembly of First Nations who had authority of all the
9 chiefs across the country to file a human rights complaint
10 against the Government of Canada alleging that the
11 provision of First Nations Child and Family Services
12 through these flawed and inequitable funding formulas
13 amounted to discrimination on the basis of race and
14 national ethnic origin. At the time we filed that
15 complaint there was only a handful of people there at the
16 press conference in Parliament, many of whom were First
17 Nation, as you can imagine, and of course there were many
18 First Nations supports across the country but not in that
19 room. But there was nobody else there.

20 Now we could have assumed that people didn't
21 care, but what we decided to do was use it as an
22 educational opportunity and that what we would do is we
23 would create this campaign called I am a Witness where we
24 load all of the court documents of all the parties on a
25 website and we also load reports from the auditor general

1 and other independent credible groups, Unicef, et cetera,
2 on this particular issue and we don't ask people to take a
3 side, we simply ask people to watch.

4 Well as we sit here today, the federal government
5 over the intervening years has spent three million dollars
6 trying to derail the case from a full hearing on two legal
7 technicalities, but thankfully the federal court in one,
8 two, three, four different judgments has turned that back
9 and so has the Federal Court of Appeal. So as of
10 February 25th, 2013, hearing began at the Canadian Human
11 Rights Tribunal to determine whether the Government of
12 Canada is in fact racially discriminating against First
13 Nations children in its provision of First Nations child
14 welfare and if so, the tribunal has the power to order a
15 remedy to that situation.

16 There are now over 12,000 individuals and
17 organizations registered to watch the case on the I am a
18 Witness website. It is the most watched, formally watched
19 human rights case in Canadian history.

20 THE COMMISSIONER: What kind of remedy is at its
21 disposal?

22 THE WITNESS: It's a very good question. They
23 have broad discretion. What we have asked for is that they
24 update the second solution we developed to 2013 values and
25 that they implement that immediately in all regions of the

1 country. That they also fully and properly implement
2 Jordan's Principle to the benefit of all children in the
3 country. And during the time when the directive was
4 underway, it actually included an inflation adjustment
5 which the department just ignored in a formula as of 1995
6 and so we wanted a trust fund of 112 million dollars set
7 up, controlled not by the Caring Society but by an
8 independent body that could be used by families who were
9 wrongfully disadvantaged and children who were separated
10 from their families for things like substance misuse
11 treatment, culture, reunification services, et cetera.
12 There is absolutely not a dime in there for the Caring
13 Society or the Assembly of First Nations, not even legal
14 fees and that's the way it should be. We've undertaken
15 this case to simply put kids on an equal footing for
16 success.

17

18 BY MR. FUNKE:

19 Q I have more questions about that. Before we
20 proceed much further though, you had quoted a statistic
21 earlier. You had said that 71 point --

22 THE COMMISSIONER: Mr. Funke, I didn't hear
23 you.

24 MR. FUNKE: I'm sorry.

25

1 BY MR. FUNKE:

2 Q You quoted a statistic earlier in your evidence
3 where you said between 1998 and 2001 there was a 71.5
4 percent increase of First Nations children coming into
5 care.

6 A 1995 to 2001, and that was --

7 Q Sorry.

8 A Yeah. So the period we were engaged at the NPR
9 was '98 to 2000, so I was just drawing that comparison but
10 between 1995 and 2001, the Department of Indian Affairs own
11 figures for the number of children on reserve going into
12 child welfare care rose by that proportion and that amount.

13 Q And that was going to be my question, whether
14 that was all First Nations children coming into care across
15 Canada or only those children on reserves.

16 A It was only those children on reserves.

17 Q With respect to the matter before the Canadian
18 Human Rights Tribunal right now, are you in any way
19 concerned about the consequences to the Caring Society with
20 respect to that proceeding?

21 A Well, I think it's public knowledge that within
22 30 days of filing the complaint we lost all of our federal
23 core funding, as did our co-complainant, the Assembly of
24 First Nations in the Child and Family Services field.

25 THE COMMISSIONER: Well, Mr. Funke, we're not

1 going to fight the human rights case here.

2 THE WITNESS: No.

3 MR. FUNKE: We're not. This is the last
4 question.

5 THE COMMISSIONER: And I'm sure that we're
6 hearing one side of it and it's most interesting, but I'm
7 sure when it's dealt with before the Human Rights Tribunal
8 it will be two sides.

9 MR. FUNKE: I can assure you, Mr. Commissioner,
10 it's the last question I was asking on that topic.

11 THE WITNESS: Yes. So there -- we, we have no
12 evidence to directly link that to the filing of the
13 complaint other than to say that at that time it was very
14 unusual for aboriginal organizations to experience those
15 types of cuts. And we have a retaliation complaint against
16 the federal government for, well, I don't know what kind of
17 adjective to use, but rather intense monitoring of me
18 personally on my personal Facebook account, et cetera. So
19 that is currently a matter before the tribunal.

20 MR. FUNKE: And we're not going to discuss that.

21

22 BY MR. FUNKE:

23 Q Now we've already heard from a number of
24 witnesses before the commission who testified with respect
25 to their experiences within the child welfare system, with

1 a specific focus on providing services to families off
2 reserve and primarily here in the city of Winnipeg. One of
3 the biggest issues facing First Nations agencies that
4 subsequent to devolution here in Manitoba are now tasked
5 with is providing services to families such as Phoenix,
6 whether or not those children are provincially funded or
7 federally funded. And perhaps you can explain for the
8 commission, what is the process by which children are
9 determined to either be a provincial responsibility with
10 respect to funding or a federal responsibility with respect
11 to funding?

12 A The Government of Canada accepts funding
13 responsibility for those children it defines as being
14 eligible for the registry of Indian Affairs, either current
15 registry or eligible for registry and it's important to
16 back up to find out what that is. So what are the
17 criteria? And the basic criteria is a blood quantum
18 analysis. You know the Government of Canada Indian's Act
19 is really the only legislation I know of that still defines
20 a cultural characteristic by blood quantum and yet that is
21 the way that it's done. The Government of Canada will
22 measure the blood quantum of a child to determine whether
23 or not it meets sufficient blood quantum to be registered
24 as a status Indian for the purposes of the registry. And
25 then as a second step, the parents of that child, the

1 primary custodial parents of that child need to be what
2 they would call normally resident on reserve. So if those
3 two conditions are met, then the government, under the
4 First Nations child welfare funding formula, either
5 directive 20-1 or their new arrangement, the enhanced or
6 under the 65 agreement in Ontario, will accept funding
7 responsibility.

8 Q You anticipated my next question. I was just
9 going to say that before we get to the enhanced prevention
10 focused approach, which we've heard of here already at the
11 commission, previously to that funding was provided by the
12 federal government under directive 20-1, as I understand
13 it; is that correct?

14 A Yes.

15 THE COMMISSIONER: Under what?

16 MR. FUNKE: Under federal directive 20-1.

17

18 BY MR. FUNKE:

19 Q Perhaps you could explain to the commission how
20 that worked out, federal directive 20-1 operated.

21 A I think one of the major things for the
22 commission to understand is that it is not related -- it's
23 a funding formula that's national in focus but it is not
24 related to the needs of the child. It is -- it requires
25 the First Nations agencies to use provincial jurisdiction

1 but there is nothing in that formula that links to
2 provincial jurisdiction. So those are important things to
3 know at the outset. The way the formula works is that
4 there are two main funding pools. The first one is called
5 maintenance. That is with regard to the cost of children
6 in care and it's theoretically paid out at actual. So that
7 if a child is brought into care and you spend \$10, you're
8 supposed to get that \$10 back. But there is a proviso that
9 the department has ultimate authority on deciding whether
10 or not it will reimburse the agency for certain costs and
11 there's been some disagreements about things that should be
12 billed. For example, I told you about the legal fee
13 amount, how miniscule that is under the directive. Well if
14 you're doing child protection and you have to bring a
15 lawyer to go to do the child protection removal, you
16 quickly burn through \$5,000. And so some agencies were
17 billing legal fees for children in care against maintenance
18 and that was being disallowed by the department.

19 Q And that -- just I want to interrupt for a
20 moment. When you were talking about that \$5,000 limit on
21 billings for legal back when you were working with Squamish
22 First Nation, that number has never been increased,
23 correct?

24 A No, it's a fixed number. Then we have --

25 THE COMMISSIONER: No well, Mr. Funke, that's

1 obviously a federal matter. Is that -- where does that tie
2 in to what we're doing here?

3 MR. FUNKE: We're just providing context --

4 THE COMMISSIONER: Just what?

5 MR. FUNKE: Just providing context,
6 Mr. Commissioner.

7 THE COMMISSIONER: Well this is a provincial
8 inquiry, you've got to understand that.

9 MR. FUNKE: We appreciate that.

10 THE COMMISSIONER: Okay.

11 MR. FUNKE: We will address that.

12 THE COMMISSIONER: Okay.

13 THE WITNESS: So on the operation side it was, it
14 was originally intended to cover things that are page 83
15 and 84 of the National Policy Review, which spell out what
16 was the original intention the department had about costs
17 that were eligible for reimbursement. What happened
18 though, as is many systems, people lost touch of what that
19 original definition is but it was supposed to cover
20 everything you need for an agency, so the rent, the staff,
21 the prevention services, travel, et cetera. So that's the
22 way that the formula was worked. It was -- treasure board
23 authority was received by the department for the formula in
24 1989 and they implemented in 1991 and it was reviewed for
25 the first time by the Joint National Policy Review

1 Committee in 2000 and it applied throughout Canada
2 including in Manitoba.

3

4 BY MR. FUNKE:

5 Q Now I understand that the federal government has
6 since developed their new funding model, which is called
7 the EPFA.

8 A Yes.

9 Q And that's in conjunction with the province,
10 that's correct?

11 A Well it's a little bit more complicated than
12 that. The enhanced funding prevention approach was
13 developed as a, the key factors are actually based on a
14 treasury board authority that to my knowledge the provinces
15 did not have input into, nor did the First Nations in any
16 substantive way. So that this was a formula template that
17 was created out of Indian Affairs headquarters. And so
18 they came out with those authorities and then what they
19 would do in selected regions, so the directive still
20 applies in some areas of Canada, but what they would do is
21 they would have an initial conversation with the province
22 to see if they were interested in talking about the EFPA
23 and then they would engage the First Nations agencies.
24 Then would then negotiate the EFPA. But it's important to
25 know that the auditor general of Canada evaluated the

1 enhanced prevention approach both in 2008 and again in 2011
2 and found it, in both cases, to be flawed and inequitable.
3 And we haven't seen clear evidence that those fundamental
4 flaws in the EFPA have been corrected. In fact, we were
5 starting to see emerging evidence of significant problems
6 with the EFPA as it's being rolled out in other regions of
7 the country and I know it's fairly recent here in Manitoba,
8 so it's still, well we're still waiting to see if some of
9 those same patterns emerge but the government's own
10 evaluations that --

11 THE COMMISSIONER: Well, the relevance that this
12 has to this inquiry is to -- the relationship for the
13 funding to Manitoba --

14 MR. FUNKE: That's correct.

15 THE COMMISSIONER: -- and that's what, that's
16 what I want to hear.

17 MR. FUNKE: Well there's two different ways that
18 it's relevant, Mr. Commissioner. First of all, the
19 province is responsible for the administration of child
20 welfare services across the entire province.

21 THE COMMISSIONER: Yes.

22 MR. FUNKE: And as a result, whether or not
23 there's a funding sufficient to provide services to the
24 children, whether on reserve or off reserve, still impacts
25 on the province's obligation to ensure that those services

1 are provided.

2 THE COMMISSIONER: I understand. I guess what I
3 was trying to get at is rather than reviewing what's going
4 on across Canada, the real interest in this, in this
5 inquiry is Manitoba.

6 MR. FUNKE: And we are getting there.

7 THE COMMISSIONER: Okay.

8 MR. FUNKE: And what we're talking about,
9 Mr. Commissioner, right now and what Dr. Blackstock is
10 reviewing, is the development of that model and how it came
11 to be applied in Manitoba and whether or not that model is
12 appropriate for application in Manitoba based on the
13 genesis of the model and how it was developed. So that's
14 where we're going.

15 THE COMMISSIONER: And the conclusion would be
16 that it's not appropriate for Manitoba?

17 MR. FUNKE: Well, that's something that we're
18 going to ask you to consider.

19 THE COMMISSIONER: All right. If that's within
20 my terms of reference.

21 MR. FUNKE: Well, there's been a lot of talk
22 about funding that we've heard over the last few days and
23 if it's not within your ken to make that determination,
24 then I wonder why we've heard all that evidence.

25 THE COMMISSIONER: Well, I'd like the witness to,

1 or you to direct her to tell us what the relationship is
2 with respect to this funding model and, and what's going on
3 with respect to it in British Columbia and the relationship
4 -- pardon me, in Manitoba and the relationship to the
5 funding situation here.

6 MR. FUNKE: We are doing that.

7 THE COMMISSIONER: Okay.

8 MR. FUNKE: I can assure you that's where we're
9 going.

10 THE COMMISSIONER: Okay.

11 MR. FUNKE: It may not be obvious at this point,
12 but I assure you that is where we're going.

13 THE COMMISSIONER: I think it was not but if you
14 assure me that that's where we're going, we'll await with
15 anticipation.

16 MR. FUNKE: Thank you very much, Mr. Commissioner.
17 I appreciate your patience.

18

19 BY MR. FUNKE:

20 Q Now as part of the Wen:de report, you had
21 identified a number of specific concerns with respect to
22 federal funding at that time --

23 A Right.

24 Q -- and you had made recommendations with respect
25 to ensuring that the next model that was going to be

1 developed would address those concerns.

2 A Right. And it wasn't, I should say it wasn't
3 just me. It was a team of researches and the entire report
4 was approved by the Department of Indian Affairs including
5 regional representatives from Manitoba, as well as First
6 Nations agency representatives, including First Nations
7 agency representatives from Manitoba. And so those
8 recommendations are really collectively owned as being key
9 factors that should be integrated into any new model and we
10 were very clear in saying that there should be an abundance
11 of caution for someone just to cherry pick those
12 recommendations and roll them out in a new model.
13 Everything was very scientifically developed so that it
14 would work as an inter-dependant package.

15 Q One of the things that you have discussed at
16 length in your various articles and reports, is the
17 discrepancy between the equality and equity in funding.

18 A Right.

19 Q And perhaps you could explain that for the
20 benefit of the commissioner this afternoon.

21 A Well that takes us to looking at the needs of
22 First Nations children. What we know in a research from
23 the Canadian Incident Study on Reported Child Abuse and
24 Neglect, is that at every point of contact in child welfare
25 up and from the place of reports being made to the case

1 being substantiated to the children going into child
2 welfare care, First Nations children are overrepresented
3 dramatically. So just to give you an indication, at the
4 level of the report it's four times more likely that a
5 First Nations child will be reported and by the time you
6 get to removal and placement and court-ordered services,
7 it's about 14 times more likely to be placed than a non-
8 aboriginal child and then when you look at kinship care,
9 it's about 11 times. So we see this multiplier effect.
10 And the reason that these kids are being removed from their
11 families is neglect but that is an important issue for
12 conversation about what the definition of neglect actually
13 is and I know that we're going to talk about that a little
14 bit more because there's good research that says that
15 should be a significant area of conversation and I know
16 Dr. Trocmé is going to follow me and that will hopefully be
17 an area that he can expand on.

18 But nonetheless, when we looked at the factors,
19 so what we're able to do in this research study is collect
20 data at the level of the child, collect data at the level
21 of household and try to determine what factors actually
22 contribute to neglect and what the factors are for First
23 Nations children is poverty, poor housing and substance
24 misuse. Those are the factors that feed into neglect and
25 cause the largest portion of the overrepresentation.

1 THE COMMISSIONER: Poverty, poor housing and
2 what?

3 THE WITNESS: And substance misuse. Thankfully
4 those are things that we can do something about. But
5 getting back to your question about equality and equity, if
6 we were to do just, for example, a dollar and dollar
7 comparison, if you were to take a non-aboriginal child who
8 typically has lesser needs and compare them with a
9 First Nations child and we say that our standard is the
10 same in the statute, if safety and well being of the child
11 is a paramount consideration, it's reasonable to assume it
12 may take more money to bring the First Nations child up to
13 that standard because they suffered a greater level of
14 disadvantage. That to me is substantive equity. That's
15 what we should be going for. The standard in the
16 legislation says that the safety and wellbeing of the child
17 is of paramount consideration, thus the investment in
18 children with higher needs to bring them to that standard
19 should necessarily just be a part of the fabric of the way
20 that was understand the equality rights of children
21 involved in the child welfare system.

22

23 BY MR. FUNKE:

24 Q In addition to that is, does the research
25 indicate that there is a cultural bias that exists within

1 the system that operates to the disadvantage of First
2 Nations families when they come into contact with the
3 system?

4 A Unfortunately we're getting into areas where
5 there's a lot of depravity in terms of the level of child
6 welfare research that we have available in Canada, but
7 certainly there are reliable reports to say that many
8 social workers are not receiving the training that they
9 need on multi-generational impacts of residential schools
10 or on the role that things like poverty, poor housing and
11 substance misuse play in terms of the constitution of
12 neglect. You see where neglect really differentiates
13 itself from other forms of maltreatment in my view, is that
14 that attribution is very difficult, attribution of
15 responsibility. And in fact, it's so difficult that in the
16 United States, several jurisdictions, for example, Arkansas
17 and the District of Columbia are two such examples, that
18 they modified and clarified the definition of neglect so
19 that it assumes that it's not poverty related. You
20 actually have to prove that you aren't removing the child
21 for a poverty related issue because too often what happens
22 is that social workers, untrained on poverty and this
23 intersection with neglect, will mistake the neglect or
24 poverty as being neglect without really doing anything
25 about the poverty issues. So that's an important part of

1 the process is being able to better train social workers on
2 that.

3 THE COMMISSIONER: Is that course that you talked
4 about in British Columbia, does it go some distance to
5 remedy that problem you just discussed?

6 THE WITNESS: It does but I just want to be
7 clear, Commissioner, it's been some years since I've looked
8 at the curriculum and certainly there's been some really
9 good progress made in jurisdictions around how to better
10 understand neglect and equally importantly, for example,
11 well some people might say well --

12 THE COMMISSIONER: No, but I'm focusing on the
13 training of social workers.

14 THE WITNESS: Yeah.

15 THE COMMISSIONER: You said that many social
16 workers are not getting the training today that they need.

17 THE WITNESS: That's right.

18 THE COMMISSIONER: I'm asking you, I'm interested
19 in that program in British Columbia if it were extended
20 across the country, particularly to Manitoba, would, would
21 that go some distance to, to remedy what you say is the
22 inadequate training that's being provided today?

23 THE WITNESS: I think that something similar
24 certainly would be of great benefit. We found it to be a
25 great benefit in British Columbia. It helped workers

1 better understand the situation of aboriginal peoples.

2 THE COMMISSIONER: But you're not too much in
3 touch with it today, I gather.

4 THE WITNESS: I'm not. It's been several years
5 since I've --

6 THE COMMISSIONER: Who's leading the program out
7 there?

8 THE WITNESS: Linda Lucas is at the current time.
9 She's the executive director who took over the project
10 after I, I left.

11 THE COMMISSIONER: And is she at UBC or?

12 THE WITNESS: No. She's -- the organization is
13 -- the Caring for First Nations Children Society still has
14 carriage of the program.

15 THE COMMISSIONER: Is it on a -- yes.

16 THE WITNESS: So it is a non-profit organization
17 and it's based in Victoria.

18 THE COMMISSIONER: Oh in Victoria?

19 THE WITNESS: In Victoria, yes.

20 THE COMMISSIONER: All right. I, I hadn't heard
21 of it and I live there so --

22 THE WITNESS: Well there you go.

23 THE COMMISSIONER: -- I'm deficient to that
24 extent, but thank you.

25 THE WITNESS: You're very welcome.

1 THE COMMISSIONER: I'm interested in that.

2 THE WITNESS: And we -- certainly they have on
3 line copies of the training manual so they're available.

4

5 BY MR. FUNKE:

6 Q Dr. Blackstock, dealing with the issue of
7 overrepresentation, you've often been quoted as saying that
8 currently there are more children in care at this time than
9 there were in the Indian residential schools at the height
10 of its operation. The latest figures indicate that there's
11 as many as three times that many currently in care in
12 Canada. How did you arrive at that conclusion?

13 A First of all I should say that one of the things
14 we really need in Canada is a national data collection
15 system on child welfare. We cannot, with any confidence,
16 really tell you how many kids are in child welfare care at
17 any given time in Canada which to me is very problematic.
18 There have been some efforts for the provinces to
19 collaborate on administrative data but in the United
20 States, for example, they have federally funded data
21 collection systems that help us answer these questions much
22 better. So the only thing we can go upon is relying on
23 piecing together administrative data from the provinces.
24 We do know from the historical records that around 1949,
25 according to John Malloy, the historian and researcher for

1 the Royal Commission on Aboriginal Peoples, there were
2 about 8,900 First Nations children attending residential
3 school at that time. When we were doing an estimate of how
4 many First Nations children are in child welfare care we
5 came up with a raw figure of 27,500. Now some people say
6 that might be high. We won't know exactly until we have
7 this data collection system in place, but I think it's
8 probably about the ballpark. If we take British Columbia
9 and Alberta alone, for example, those two provinces have
10 over 10,500 First Nations children in care in those two
11 regions alone.

12 Q And you were talking earlier about issues
13 surrounding neglect.

14 A Right.

15 Q And one of the things that you talked about in
16 the past is simply difficulty around defining the term
17 neglect.

18 A It is because there has been a tendency in child
19 welfare to codify poverty as neglect. Many of the
20 structured decision making tools used to assess neglect
21 don't really parcel out those things for which families can
22 actually change on their own and have the ability to change
23 from those things that are societal factors which social
24 workers and others should be collaborating on change. And
25 so -- and this is an important issue because the vast

1 majority of child protection reports, not only for First
2 Nations but for all kids including here in Manitoba, are
3 neglect. It's the leading type of maltreatment and we're
4 not even really clear on what it means. And so that's
5 where I was going by suggesting that a couple of important
6 developments in the United States in particular. One is
7 Kathleen Earle Fox is a Native American researcher and she
8 wanted to go out and canvass Native American tribes to see
9 if the definitions of maltreatment are similar to those we
10 find in any given statute in Canada or the United States
11 and in fact they are very similar except for
12 Native Americans would not view poverty as being a reason
13 that children should be removed from their homes. It
14 should be a calling to communal systems of care. And in
15 fact, the mainstream U.S. system is starting to get on
16 board with this. I cited those two examples of Arkansas
17 and the District of Columbia that have amended their child
18 welfare statutes to say that neglect is when a parent has
19 the knowledge and ability to make changes that's not
20 undermined by income issues. And they've gone a step
21 further and they've developed -- there's a wonderful
22 program in the United States, actually two wonderful
23 programs I'll just call attention to and I apologize if
24 they're redundant for the commission, but there's something
25 called the National Centre on Child Welfare and Housing and

1 that was really brought together to show how child welfare
2 itself could actually tackle housing issues and they have
3 federal money that can be transferred down to the States,
4 so very much like our Indian Affairs funding gets
5 transferred to agencies of the provinces that are child
6 welfare. But they had convinced the federal government to
7 augment those funds and allow for them to be deployed to
8 child welfare agencies to provide, for example, rent
9 monies, renovation monies for families and what they found
10 is that for every investment that they would make in
11 families they would save \$30,000 in child welfare costs and
12 the number of children going into child welfare care
13 decreased significantly. In fact, the state of Connecticut
14 has invested an additional 70 million dollars in these
15 types of programs and is saving money doing it because
16 they're saving the expense of children going into child
17 welfare care and all of the ancillary costs that are with
18 that. So that's one good example that I think we in
19 Canada, and including here in Manitoba should embrace.

20 A second example is this idea of substance misuse
21 because I think I was sharing with you earlier,
22 Commissioner, one of the factors that was certainly coming
23 to play when we developed that training program is that
24 social workers were routinely getting zero training on
25 substance misuse, not how to assess it, not what the

1 impacts are on parenting and most importantly, not how to
2 really help families be able to mediate that program or
3 that issue. So we included a module in our training
4 program on that but also the United States has a centre on
5 substance misuse and training and actually you can get it
6 online, there's actually a training manual that they
7 developed for child protection workers and substance
8 misuse. And they talk about different types of substance
9 misuse programs that can be tied in to families who are
10 co-existing with poverty and other housing concerns and how
11 those could be mediated.

12 So I'm a big believer that child welfare can in
13 fact tackle these larger issues. They certainly can't do
14 it on their own, but given that poverty, poor housing and
15 substance misuse are the leading risk factors for First
16 Nations children, in my view it's negligent of a system to
17 not do what it can as many states are doing in the United
18 States to tackle those issues.

19 Q This may seem self-evident, but many people will
20 accept that poverty and poor housing are factors that are
21 often outside the control of any particular family but some
22 people may struggle to understand how the issues with
23 respect to substance abuse are not matters of personal
24 choice and something that we can hold the family or parents
25 accountable for and perhaps just explain for the commission

1 why that's not always so.

2 A All right. I think for the -- in the context of
3 First Nations families --

4 Q Particularly in the context of First Nations
5 families.

6 A -- we have to consider the historical
7 disadvantage from residential schools. The Truth and
8 Reconciliation Commission of course is completing its work
9 but I think what's abundantly clear to any of us who have
10 been following those proceedings is the prolific abuse and
11 neglect and of course the deaths of at least 3,000 children
12 that occurred there. And those children, I think, is
13 important to understand when they would be released from
14 residential school they weren't getting counseling for
15 post-traumatic stress or any of that other stuff and it was
16 echoing forward. And so we see, again without good
17 national data which we should have around substance misuse,
18 that there is a tendency for people who have unresolved
19 trauma and depression relating to residential schools
20 turning to substance misuse.

21 Now it is in that -- it is in some ways a
22 personal domain for change, but it requires access to
23 culturally based services. And in Canada I think one of
24 the areas that we can do much better development is not
25 only for individual persons who are misusing substances,

1 but to look at it much more holistically and provide family
2 based substance misuse because that's where child welfare
3 becomes involved. We need to treat the whole family and in
4 some cases that has to extend to a community and public
5 health model to the entire community. And there are
6 examples of programs in Canada as well as around the world
7 that have tackled that particular approach and found that
8 when the program is delivered holistically along with
9 something like the housing subsidies we talked about at the
10 National Centre for Child Welfare and Housing, that you can
11 make a significant difference in the lives of children and
12 reduce the number of kids being brought into care and help
13 reduce the length of time for those children who have to be
14 brought into care, make sure that they go home safely in a
15 shorter period of time than otherwise would have been the
16 case.

17 MR. FUNKE: Mr. Commissioner, I note that it's
18 now 20 to 4:00. Would it be an appropriate time to take a
19 brief recess?

20 THE COMMISSIONER: Yes. How are you getting
21 along?

22 MR. FUNKE: I think okay.

23 THE COMMISSIONER: Oh good, notwithstanding the
24 interruptions.

25 MR. FUNKE: Notwithstanding the interruptions.

1 THE COMMISSIONER: All right. Well we'll take a
2 15 minute break and then carry on and I know your problem
3 and when you have to go, you have to go and we'll make that
4 possible.

5 THE WITNESS: Thank you.

6 THE COMMISSIONER: Anything else, Ms. Walsh?

7 MS. WALSH: No.

8 THE COMMISSIONER: We'll have to figure out a
9 date for return.

10 MS. WALSH: Well in talking with Ms. Blackstock's
11 counsel, it's not looking that likely, so I'm hoping that
12 we can finish with this witness. My understanding is you
13 can stay until 5:30?

14 THE WITNESS: I could stay later. Like I could
15 stay till about 6:15, if necessary.

16 THE COMMISSIONER: To get a 7:30 flight?

17 THE WITNESS: Yeah.

18 THE COMMISSIONER: Well are the taxis back
19 running today? I guess they are.

20 MR. FUNKE: We've made arrangements for private,
21 a private car for her, so.

22 THE COMMISSIONER: Okay. Well that's very good
23 and if we can finish so much the better.

24 MR. FUNKE: I can also advise you,
25 Mr. Commissioner, that I'm moving much more rapidly through

1 my direct than I had anticipated so that we can try and
2 conclude Dr. Blackstock's testimony today.

3 THE COMMISSIONER: I'm pleased to give you your
4 15 minute break.

5 MR. FUNKE: Thank you.

6 THE COMMISSIONER: All right. We'll adjourn for
7 that period of time.

8

9 (BRIEF RECESS)

10

11 THE COMMISSIONER: All right, Mr. Funke, please.

12 MR. FUNKE: Thank you, Mr. Commissioner. I've
13 been warned once again that people are having a hard time
14 hearing me. I may be coming down with something. If I am,
15 I blame Mr. Paul for that, but in any event, I'll do my
16 best to try to keep my voice up so everyone can hear me.

17 THE COMMISSIONER: We'll give him equal time to
18 answer that.

19 MR. FUNKE: Hopefully not. We'll be here all
20 night if that's the case.

21

22 BY MR. FUNKE:

23 Q Just before we move on to the next area of your
24 testimony, Dr. Blackstock, one of the things I wanted to
25 ask you about was whether or not in the course of your

1 research you've identified what the primary factor is in
2 identifying whether or not children are likely to come into
3 care.

4 A Income. Income levels are the biggest predictor
5 of child welfare involvement.

6 THE COMMISSIONER: Well, this -- I've just got
7 one question to ask this witness between now and when she's
8 through, and it's right on this subject. Do you want to
9 ask yours next?

10 MR. FUNKE: No, Mr. Commissioner, I've just been
11 told that all my best material has been wasted because the
12 court report machine is not on.

13 THE WITNESS: Oh.

14 THE CLERK: It's on.

15 MR. FUNKE: Oh but we have no time showing on the
16 clock.

17 THE COMMISSIONER: Do you mean since we came
18 back?

19 THE CLERK: No, it's on. I don't know why the
20 clock's not on. I can hear it so I know it's on.

21 MR. FUNKE: It's still working? Oh good, all
22 right.

23 THE COMMISSIONER: Did you miss something?

24 THE CLERK: No, I didn't miss anything. I can
25 hear it.

1 MR. FUNKE: No, Madam Clerk tells us that it's
2 recording everything.

3 THE COMMISSIONER: Okay, ask your further
4 questions on this matter of income --

5 THE CLERK: I'm just going to see if it's not
6 plugged in or something.

7 THE COMMISSIONER: -- and I'll ask mine after.

8 MR. FUNKE: No, that's okay, Mr. Commissioner,
9 you can go right ahead and ask.

10 THE COMMISSIONER: You've told us today that the
11 three principle reasons that children are taken into care
12 are poverty, inadequate housing and substance abuse.

13 THE WITNESS: For First Nations children, that's
14 correct.

15 THE COMMISSIONER: For First Nations children,
16 yes.

17 THE COMMISSIONER: And you've also confirmed what
18 we've heard from other witnesses of this very
19 overrepresentation of First Nations children in the system.

20 THE WITNESS: That's correct, Commissioner.

21 THE COMMISSIONER: Now I know that there are a
22 number of prosperous reserves in this country. You and I
23 come from British Columbia know about Osoyoos and we know
24 about Westbank. But I spent over 50 years of my life in
25 Saskatchewan where I know there are reserves that have no

1 economic base --

2 THE WITNESS: Um-hum.

3 THE COMMISSIONER: -- and I think there are many
4 of them across the country.

5 THE WITNESS: Yes.

6 THE COMMISSIONER: So if First Nations people are
7 being raised in communities where there's no economic base,
8 isn't poverty and inadequate housing and substance abuse a
9 likely fallout from the lifestyle that is there when there
10 isn't an economic base on which they can move forward,
11 i.e., the income that you just referred to?

12 THE WITNESS: I think that's another issue of
13 attribution. We have First Nation communities situated on
14 reserves not of their choosing but as a construct in policy
15 of the way that Canada evolved with the provincial and
16 federal governments. And they're still subject to the
17 Indian Act which, as you know, has significant restrictions
18 around First Nations and what they were able to do in terms
19 of economic development. I -- my view of this in terms of
20 a child welfare context is this, is that child welfare is a
21 public service. When I was delivering child welfare in the
22 British properties, I wasn't asked to ever get the rich
23 people in that area to subsidize it. When I was working in
24 the downtown eastside or in other poorer areas, even of
25 mainstream B.C., it wasn't a question of kind of saying

1 well it's, this is kind of a choice that you're making, I
2 guess, of being here. It was that I was responsible for
3 the safety and wellbeing of that child, that's what we were
4 jointly responsible to with a client. And if there were
5 things that I could do in child welfare that would help
6 remedy that issue of poverty or income deprivation I was
7 going to do that and certainly we wanted to work with other
8 allied stakeholders who could work with us to overall
9 improve the community conditions so that we could help the
10 children in greater levels.

11 THE COMMISSIONER: But how are you going to
12 generate the income you've referred to without there being
13 an economic base for it to come from?

14 THE WITNESS: Well my experience, and I'm not an
15 expert in this area so I don't want to -- I'm not an expert
16 in economic development for First Nations communities, but
17 in many areas I do see prospects for economic development
18 and I'll just give you, I'm just a lay person in this area
19 but I just give you a very fundamental example. We talked
20 about Shannen's Dream recently and there's a diamond mine,
21 De Beers diamond mine 60 K down the road from that
22 community and if the children in that school were given an
23 opportunity to graduate with the proper and adequate
24 education, then they would have an opportunity to take
25 advantage of the economic development opportunities in

1 their area. And I would argue that these inequalities that
2 exist for children in social, health and education on
3 reserves, undermine their ability to take a full grasp of
4 the economic opportunities, both in traditional ways of
5 life and in western ways of life and western careers.

6 THE COMMISSIONER: What do you say those factors
7 were?

8 THE WITNESS: The factors are the poverty, poor
9 housing and substance misuse.

10 THE COMMISSIONER: Yes.

11 THE WITNESS: And the inequalities in public
12 funding for education, health and child welfare on
13 reserves. And I don't know if you've ever read -- there's
14 a great book that I often refer people to, it's called
15 "The Spirit Level" and it's --

16 THE COMMISSIONER: Just a minute, before you go
17 into that, you're saying that, that if there was more
18 funding that would go into education and into what else?

19 THE WITNESS: Child welfare.

20 THE COMMISSIONER: On the reserve?

21 THE WITNESS: On the reserve, health --

22 THE COMMISSIONER: And that is child welfare
23 preventative services, I assume.

24 THE WITNESS: Yes, because where I'm going with
25 this, Commissioner, is that we know from good research that

1 for every dollar you invest in a child you save six to
2 seven down the line as a government. It's the best, one of
3 the very best economic stimuli you can make. And the
4 reason for that is that you maximum the opportunities of
5 raising a generation of children who not only are proud of
6 their traditions and their peoples, but are also best
7 prepared to be able to implement the career of their dreams
8 and take full advantage of the opportunities that are
9 presented to them.

10 THE COMMISSIONER: And you -- just a minute.
11 But you said that in your view the funding is inadequate
12 for education, for child welfare and what was the third
13 one?

14 THE WITNESS: Health.

15 THE COMMISSIONER: Health.

16 THE WITNESS: So we're looking a things and --

17 THE COMMISSIONER: And where does housing come
18 into that?

19 THE WITNESS: Housing would come in under the
20 general idea of public health.

21 THE COMMISSIONER: Yeah, okay. And the third one
22 is health?

23 THE WITNESS: Right. And it's not just my view.
24 It's based on reports, for example, from the auditor
25 general of Canada, who just in a recent omnibus report in

1 2011 found that levels of funding are not where they should
2 be. And also equally as important, that the funding needs
3 to be structured so it actually responds to the needs of
4 the community.

5 THE COMMISSIONER: Yeah, well I'm sure we're
6 going to hear from the Province of Manitoba about their
7 view of the funding and, and the feds aren't part of this.

8 THE WITNESS: No, that's right.

9 THE COMMISSIONER: But, but I'm interested in
10 getting your views on the question I put to you and I
11 appreciate your response and I'll let your counsel carry
12 on.

13 THE WITNESS: You're very welcome.

14 MR. FUNKE: Thank you, Mr. Commissioner.

15

16 BY MR. FUNKE:

17 Q Incidentally, Dr. Blackstock, that leads directly
18 into the next line of questioning I was going to ask you
19 about and before we turn to the Touchstones of Hope,
20 because that's the next logical area to examine, I wanted
21 to ask you if there were any examples in Manitoba of what
22 you and Nico Trocmé in your article Pathways have referred
23 to as sustainable community development approaches towards
24 finding these types of holistic solutions.

25 A Well, one that the West Region Child and Family

1 Services have, it's kind of a wrap around program for
2 families that would, in multi-generational ways appear for
3 neglect and it included issues of cultural programming,
4 parenting programming, employment types of programming, and
5 supports and that was, I've been made aware that that was a
6 very effective program but was only pilot funded and
7 therefore discontinued.

8 There's also some good examples of where
9 communities have used the circle of care model here in
10 Manitoba and that type of model, which brings, which
11 understands that these structural factors are there and
12 therefore need to be incorporated into planning is really
13 key, but in order to implement those models effectively,
14 you need these silos of funding. So, for example, I just
15 talked about how the United States has opened up its child
16 welfare funding to allow rent subsidies. Well why not when
17 that's the key, one of the risk factors for kids. It's
18 that type of thinking that also needs to go into the circle
19 of care model so that we allow people to pool their
20 expertise and pool their financial resources to deal with
21 these cross-cutting issues.

22 Q And we will be hearing from witnesses, if not
23 later this week then early next week with respect to models
24 here in Manitoba who have implemented the circle of care
25 program.

1 So if we can turn back then to your earlier
2 discussion of the Touchstones of Hope program. You
3 described it briefly when we were talking about the various
4 initiatives that the Caring Society has undertaken. Can
5 you talk to us a little bit about where the Touchstones of
6 Hope program has been implemented and what successes you've
7 had with respect to that program.

8 A Right. I think where I left you off is saying
9 that from that gathering in Niagara Falls we came up with
10 the five touchstones principles.

11 Q That's correct.

12 A Again, just as a reminder: self-determination,
13 culture and language, structural interventions, not
14 discrimination and holistic response, centered within a
15 framework of reconciliation where there's this truth
16 telling, the acknowledging which is really the learning
17 about what we've done in the past in ways that allow us to
18 not replicate it in future if it was a wrong practice and
19 to build on it if it's a good one. The restoring, making
20 things right as much as we possibly can and the relating
21 which is this new relationship.

22 Now that's great to have a piece of paper like
23 that but what do you do with it is the next question. So
24 we were welcomed in to northern British Columbia whereby
25 nine different First Nations, who were serviced by five

1 different First Nations child welfare agencies, ranging
2 from the Carrier Sekani Tribal Council which is right,
3 services all around Prince George, so that's the most urban
4 area you have in northern B.C., to some of the remote
5 areas, so Haida Gwaii, for example, or even north of
6 Terrace. And we were -- and the provincial government who
7 said, you know what, we have 80 percent of the kids in care
8 in northern British Columbia are First Nations. We've
9 tried a variety of things through the years that have not
10 worked and we keep hearing the first nation say that they
11 want to go to this model of self-determination, but we
12 don't even know what it looks like. So again this
13 Touchstones of Hope program get us there. And then at the
14 time I have to give them credit because it was a bit of a
15 flyer. We were going to try a very new approach with them
16 and do a code learning process as we went through but this
17 is how it went.

18 So at the initial process what we did is we
19 worked with these First Nations communities and the
20 province to identify the leaders in child welfare. You see
21 it in a broad sense. And when I say leaders, it wasn't
22 just executive directors of agencies or the RDG of the
23 ministry. It was sometimes that guy, you know, who's out
24 there helping the kids, round them up, make sure that they
25 all get to bed on time. It's that person who's the

1 baseball coach, it could be the elder, could be the
2 teacher, could be an RCMP officer, definitely the child
3 protection staff and we brought them these leaders together
4 and would ask them to leave their titles outside of the
5 room because with each of these titles came a
6 presupposition of child welfare and the structures and we
7 wanted to be open minded, pressing the refresh button.

8 And we presented the best evidence that we know
9 in child welfare so things that we talked a little bit
10 about today, so the fact that poverty, poor housing and
11 substance misuse are the main factors, the fact of all of
12 those income is the biggest predictor, what do we know
13 about self-determination and the research backing that, et
14 cetera. And then we brought these folks together to dream
15 what a healthy First Nations child in northern British
16 Columbia would look like.

17 You know, that's always been the missing
18 ingredient to me in child welfare is we've talked about all
19 the deficits but how can we get there if we don't know what
20 a healthy child is in that particular context? So we would
21 use the planning alternative Tomorrows with Hope program,
22 something that's used widely here in Manitoba. It's very
23 cheap and easy to do and it can be done with a variety of
24 literacy levels and indigenous languages. And we would mix
25 the groups up so that we had non-aboriginal and First

1 Nations in the group and some diversity even with that, so
2 we wouldn't put all the agency people in one group, we'd
3 put them an elder, a young person, maybe a gas station
4 owner in a group and we would ask them to describe that
5 vision of what healthy children and families was for them
6 and then to identify the indicators, so just to give you an
7 example. So what routinely would come up in these dreams
8 parts is every First Nations child, knowing their own
9 indigenous language as well as English or French, and so in
10 order for every child to know their language has to be
11 enough teachers would be one of the first indicators. So
12 you do that piece and then you go to where we are now
13 because what you want to do is use that as a building block
14 to get to where we need to get to, not as the only place
15 where you can imagine. And then we do what are the
16 resources we needed to implement that model? What are the
17 next pragmatic steps we could take together? And that was
18 all a simulation. We would take them through the
19 simulation and we would say to the communities we've taken
20 you through a simulation of what we would like to do in
21 each distinct First Nation community because as you know,
22 Commissioner, they've culturally diverse up there, that's
23 where my community is. So you can't come up with this
24 pan-aboriginal thing, you have to go into communities. But
25 we want you to respect that this is about self-

1 determination and we -- you, the province, we want you to
2 go back and talk internally too because what we're asking
3 you to do here is to engage with us in a sustainable long-
4 term movement where we recalibrate child welfare in a way
5 that's in the best interests of children and that's going
6 to take some adjustments on everybody's part.

7 So in that group they all came back and they said
8 yes, they want to do it. So we set up this joint advisory
9 committee of First Nations and members of the Provincial
10 Government and we then hosted a train the trainers group.
11 We have the First Nations and the government identify
12 people who are just good facilitators, they're in every
13 community, you know the people who can help facilitate
14 these sessions. And then we went into the communities and
15 we did that same visioning but instead of what is a healthy
16 child in the north, it would be what is a healthy Gitxsan
17 family and child look like.

18 And we employed an evaluation of research model
19 with the participation of the First Nations and the
20 province and their permission. We conducted a
21 participatory action research model so we could identify
22 themes that would emerge across these communities that
23 would help inform positive policy change and if necessary
24 legislative change. And also we could see whether the
25 model was actually having any changes in difference. And

1 what we found is that this model is (a) really cost
2 efficient to do and (b) was leading in some very promising
3 differences in the way that child welfare was understood
4 and practiced in Northern British Columbia within a
5 relatively short period of time.

6 Q You said that the program was very cost
7 efficient. What did you mean by that?

8 A Well number 1, we are the designers of this
9 program, so we actually have not only designed along with
10 those 250 delegates at the Niagara Falls gathering the
11 Touchstones of Hope principles and process, but with the
12 input of First Nations and the government officials in
13 B.C., we've developed an entire tool kit on how to run this
14 model which begins with how would you even begin discussing
15 it when your provincial government or with your First
16 Nation about what this model is to what is the budget
17 template for running that first regional session. What
18 does a sign look like? How do you -- what are the
19 PowerPoint presentations you take people through for the
20 evidence? What are some of the learning resources you
21 have? How do you evaluate it? All of that is on a DVD
22 which we give away for free because we're a national
23 nonprofit and the Caring Society for a long time has
24 believed that we will not deprive anyone of information
25 that benefits a child because of their ability to pay. And

1 so it's a model that we hope First Nations will take up and
2 be able to use in their communities.

3 And the other thing that was really wonderful in
4 these dreams is that one would have the dream up there and
5 you'd have all the kids and families and everybody in the
6 grassroots community engaged in that dream. We'd see a
7 couple of things happening. Number one, a lot of the
8 mainstream social workers would say this is the type of
9 child welfare we want to practice, because remember our
10 question was not what is the kind of child welfare we want,
11 it's what kind of healthy child. So it's a very holistic
12 vision and within that are real programs that child welfare
13 could intervene. And I hope you'll bring me to the
14 woodcutter example which I'll talk about in the middle, in
15 a minute. So you get this buy in. For the first time the
16 Province and the First Nations can see, have co-created
17 this dream that makes sense to them.

18 And when we look at the model we can actually
19 identify there. We go through and we say which of these
20 items on our dream, and there will be many things on there,
21 which of these things do we need any money for and there
22 will be things on there that you don't need any money for.
23 And then we'll say what are the things that you need any
24 statutory permission for and there will be things on there
25 that you don't need that for either. So community members,

1 grassroots citizens with no cash and no ability to do
2 statute can actually action on these items to make their
3 kids safer right away. And then, yes, there are items that
4 require those types of other reforms that we would put in
5 places processes to address those.

6 THE COMMISSIONER: Well is the long-term
7 objective to bring the balance more into equilibrium with
8 respect to non-aboriginal children and aboriginal children?

9 THE WITNESS: Yes. And it's also to really
10 promote healthy families and communities and re-engage
11 everyone in the community.

12 THE COMMISSIONER: But, but this is a proposal to
13 attack the overrepresentation problem, is it?

14 THE WITNESS: That's one of the -- that's a
15 symptom of the problem that we want to get at. What we
16 want to get at is restoring healthy families and
17 communities in First Nations.

18 THE COMMISSIONER: Yes.

19 THE WITNESS: And as a result of doing that, the
20 numbers --

21 THE COMMISSIONER: But if you do then you're not
22 going to have the children going into care --

23 THE WITNESS: That's exactly right.

24 THE COMMISSIONER: -- with the same numbers.

25 THE WITNESS: That's exactly right.

1 THE COMMISSIONER: And how long has the program
2 been going?

3 THE WITNESS: Well, it's -- we started it in
4 about 2000 and -- I'm trying to remember the date we
5 started, about 2007 we started that initial conversation
6 and it ran full bluster up until about a year and a half
7 ago but then there was a change in provincial
8 administration, so they defunded some of the key positions
9 and so it's not been as well supported as I would have
10 hoped since that time.

11 THE COMMISSIONER: Has there been an evaluation
12 done?

13 THE WITNESS: Yes, by the University of Toronto
14 we had an independent evaluation done of the Touchstones
15 Hope model.

16 THE COMMISSIONER: In northern B.C.?

17 THE WITNESS: Yes. And what the evaluation
18 showed is that there were significant differences reported
19 by not only provincial social workers but of the First
20 Nation social workers in their understanding of the
21 historical disadvantages that were affecting families and
22 the strengths in those communities, the respective
23 strengths in the communities that were being brought to
24 play and could be leveraged for the safety of children.

25 There was also a real shift in the relationship

1 and I don't think I'm speaking out of turn here to say that
2 the relationship at the time we began this was, I think
3 both the Province and First Nations would agree, was very,
4 very stressful. They had just gone through a process that
5 did not lead to very good outcomes for First Nations kids
6 and so it was really not at a good place. And yet within
7 two years of doing this joint work there was a delegation
8 of aboriginal people from Australia who wanted to come and
9 look at some of the best practices we had in Canada and we
10 sent them up to see the B.C. government and the First
11 Nation in northern B.C. two years after we started the
12 model. And I ran into them at the airport here and I said
13 what was the best thing you saw when you were doing these
14 visits across the country, most surprising thing, and they
15 said the most surprising thing was the relationship between
16 the Province and the First Nations in British Columbia. We
17 had never seen a relationship that from both parties was
18 totally focused on doing what's best for kids. All of
19 those bureaucratic we can't do it, we don't have authority,
20 all of that drifted away because people were centered on a
21 vision. Not to say, I don't want to romanticized it too
22 much, those who were still there in place, but I think what
23 we saw was a joint working towards the visioning of what
24 could happen in that evaluation.

25 And we also have done in the evaluation, which I

1 believe you filed, Jay, so the commissioner can refer to it
2 later, but remember I said with the permission of the
3 communities we captured the dreams and did the thematic
4 analysis across those five communities and that's actually
5 included as an appendices there. And one of the great
6 things that we've had is, like I'll talk about the
7 woodcutter example, for example. So there was a gentleman
8 in one of the northern First Nations communities and he
9 would just do this as a matter of course. He used to take
10 his pickup truck and go and cut wood for the elders and
11 soon enough the word got around the community and so many
12 elders wanted his services that he had to recruit some help
13 so he recruited the young people in the community. So when
14 you take a whole pile of the youth out to the bush, they'd
15 be cutting the wood. They stop off at each elder's home.
16 It was building relationships between the elders and the
17 youth. They were learning different stories about their
18 culture. They were doing, learning about giving and all
19 those good values. And then the woodcutter lost his job,
20 so he wasn't able to afford the fuel out of his own pocket.

21 Now in the past, had the woodcutter gone to the
22 Province of British Columbia and said could I get a \$100
23 Esso certificate so I can keep cutting wood with the youth
24 for my, with the elders, they would have said no, that's
25 not a child welfare program. But having participated in

1 this program, the Province realized that this is the
2 cheapest youth engaged program that they have and it's one
3 of the most effective for a hundred bucks a month. So they
4 gave the guy a \$100 gift certificate, it he came recognized
5 as a child welfare intervention. And really when you step
6 back it's in line with some of the very best research of
7 what we know works for kids. So that's an example of the
8 types of things that we're seeing.

9 And there also was a group of women elders who
10 were already doing a good job of trying to tackle some of
11 the, some of the issues in their communities, domestic
12 violence and other things, but through this process they
13 developed a whole network. So they have a whole network
14 now where they continue to work together on insuring the
15 safety of children within their respective First Nations.
16 So those are examples of natural caring mechanisms that now
17 social workers, child protection workers now know about.

18 And the other thing that was starting to happen
19 is that -- and I don't think this is unusual to B.C. but
20 child protection workers are usually squirreled away in
21 their office and if you're lucky you get to come out and
22 see the child maybe once a month, but isn't it better if
23 you have 30 eyes on that family during the time when the
24 child protection worker can't be there? You have a whole
25 community who has said to itself and reminded itself that

1 it has a responsibility for the care and protection of
2 kids? I think that that's certainly true and that's what
3 we're seeing with our Native Americans friends who have
4 implemented the model in Alaska with similar results. And
5 I think it's important to understand that Alaska is, you
6 know, can be, is a very remote area. It's got a lot, a
7 high population of Native American people, but they're
8 finding the same thing there where they're able to invoke
9 the traditions and the strengths of the community and I'll
10 give you one example that was just communicated to me by
11 Terry Cross, the National Indian Child Welfare director.
12 There was a family, they had done a Touchstone Hope thing,
13 so people in the community were now on board with that, as
14 was the state and the troopers in that area, Alaska State
15 Troopers, and there was a family that was without heat in
16 the middle of winter in Alaska. They had run out of oil.
17 Now before Touchstones of Hope, the state child protection
18 agency would have chartered a plane and gone in and got
19 those kids at a cost of \$10,000 just for that initial
20 intervention. Because of the Touchstones of Hope, the
21 state bought a thing of oil, somebody put on his Ski-Doo
22 and took it over to the family, prevented that \$10,000
23 expenditure and then were able to work around the reasons
24 why is it that you ran out of fuel in the first place. So
25 those are just pragmatic examples of how this thing works.

1 It's also being used in Taiwan and Australia and
2 it's been cited as a best example by the United Nations and
3 we're beginning to pilot it throughout Saskatchewan, in
4 fact we were just at a gathering there last week.

5

6 BY MR. FUNKE:

7 Q One of the things that you had referred to
8 earlier, Dr. Blackstock, was you had talked about
9 implementing this program in First Nations communities.
10 I'd just like you to, if you can for a moment, talk about
11 its application not only with respect to First Nations
12 communities in the traditional sense many of us think of in
13 terms of reserves, but the application of the program with
14 respect to First Nations communities in more urban
15 settings.

16 A Right. It works in a very similar way. So we
17 didn't do the full distance of the model as we did at the
18 First Nations in the communities. We only got until, these
19 funding cuts kind of came in place, we started the work
20 with the urban communities. I did a presentation with the,
21 for example, the friendship centres and the urban
22 communities in Vancouver as well as one in Prince George.
23 But I think what we had were people coming in very
24 skeptical that we could ever make anything work that would
25 actually account for the diversity of people. But by the

1 end of the process, people were coming to see the natural
2 caring systems and leverages that they have in their
3 community. People were starting to realized (a) man, I
4 didn't know that service was there, or (b) I didn't know
5 that natural caring system was there, or (c) I didn't know
6 that was a problem and there was something that I could do
7 to help. And then not only that there's something I can do
8 to help, it's my responsibility as a person living in this
9 community to reach out and help these kids. So it was
10 starting to do that but we, in fairness we did not have
11 that evaluated and we did not see the end of completion of
12 the model. But I think it certainly has potential and the
13 Native Americans have used it in urban centres and we've
14 seen it used in other urban contexts throughout the world.

15 Q And was there a measureable impact on the number
16 of children coming into care as a result of that program?

17 A It's always difficult to do causation when you
18 see fluctuations of children in care and I need to just put
19 that out there. But the reports to us by the Province were
20 that within about three years of implementing the model,
21 the number of children going into care in that area of the
22 country was being held level for the first time since they
23 were really could ever remember. It always grew year to
24 year and since the Touchstones of Hope was left, it was
25 holding constant. And that on its own isn't always a good

1 indicator because, but I think when we contextualize it and
2 what we found in that independent evaluation by the
3 University of Toronto and certainly in the feedback we were
4 getting from the provincial workers as well as the First
5 Nation citizens and First Nations agencies, I think we can
6 say that there was good potential for seeing those types of
7 outcomes we had all hoped for, had them all been
8 sustainably supported.

9 The one other piece I should say is we did
10 develop along with that tool kit a whole course for
11 universities that they could teach the Touchstones of Hope
12 as part of an accredited university course. I have my
13 Ph.D. in social work so I'm able to teach university social
14 work courses. And when we were working with the First
15 Nations there, they'd go to their local university, would
16 say we're cash strapped, we can't develop new a course. So
17 we undertook it ourselves. I undertook it myself to write
18 the course and then we would say to universities we'll
19 offer to work with you to identify a qualified aboriginal
20 instructor in your local area so that even before the
21 people appear at the doorstep of the agencies, they're
22 being taught about the Touchstones of Hope as a core
23 element of their academic training.

24 Q And has that been implemented by any university
25 in Canada?

1 A Parts of it have been implemented but not the
2 full course but it's certainly available and again it's
3 something we provide free of charge, so if someone was
4 wanting to look at they'd be more than welcome to contact
5 us and we could provide it.

6 Q One of the things that you had touched on briefly
7 earlier in your testimony I'd like you to turn your mind to
8 it a little more in depth at this point, is the
9 identification of self-determination --

10 A Yes.

11 Q -- and how that impacts on overrepresentation and
12 why that's such a crucial component, particularly with
13 respect to First Nations child welfare.

14 A Right. Well I think, you know, one of the things
15 that we need to do is tread through a little bit of history
16 here and I'll try not to go too deep because I know that
17 you've already been through these waters. But I think it's
18 important to remind ourselves that the very best time that
19 we know in history that First Nations children were
20 properly cared for by their families was before there was
21 western intervention. And then there are laws and
22 traditions within these different communities that allow
23 for the protection of children. It wasn't -- there wasn't
24 a utopic sense that everybody is going to conduct
25 themselves in a way that we would all hope. There was

1 always protective mechanisms in place. And in fact that's
2 why, I think, in many ways First Nations communal care
3 systems would allow for if there were parents who were
4 unable, for whatever reason, to care for their child, that
5 you have another envelope of people around them, being the
6 extended family, the clan or the kin that children were
7 collectively cared for which provided increasing envelopes
8 and circles of support.

9 It's interesting though, you know, Commissioner,
10 in all my analysis and questioning of indigenous peoples
11 worldwide, they all have words for children. They even
12 have words that would symbolize like different family
13 members caring for children, but not one of them has a word
14 that would approximate removal, i.e. the severing of the
15 parental bond. There was always an understanding that that
16 relationship was important. There might be limitations
17 around that relationship that needed to be augmented by
18 other community members, but the idea of severing it as we
19 have in statutory removal and particularly when kids become
20 permanent care wards, too often we're closing the family
21 service files which I think is a really wayward policy,
22 given that we know that most kids end up back with their
23 families when they leave care anyway. But nonetheless,
24 there isn't that piece.

25 So we know that that was their tradition. We

1 know that sadly the intervention of western, not only
2 social work but governments in general were, as
3 David Nahwegahbow said, to place themselves as governments
4 between First Nations children and their families. And we
5 don't need to go through in a room such as this the
6 devastating results that's had that resulted in a prime
7 minister's apology, Justice Kimelman's reports and others.

8 So I think we need to say we've got to come back
9 to what works. But here's some of the research around
10 self-determination that I think we should be considering in
11 that approach because I think I said earlier on, being
12 First Nations is not enough. We don't want to just take it
13 over as First Nations and assume we won't make mistakes.
14 We have to hold ourselves accountable to the very best
15 evidence.

16 So when we look at, for example, the Cornell and
17 Kalt studies, they, there's something at Harvard University
18 that you may already be familiar with is the American
19 Indian Project at Harvard. And these two researchers were
20 interested that you have Native American communities and
21 Alaskan Native communities throughout the continental U.S.
22 and some were doing very well and others were struggling.
23 So what was the difference in those communities? And what
24 they found is that the higher the degree of sovereignty in
25 those communities, the better the socio-economic outcomes

1 for the community itself. And Cornell testified in
2 parliament after examining the First Nations context here
3 in Canada and he testified that that's probably true here
4 as well.

5 More specifically, to the interests of children,
6 in 1998 a study was published by Michael Chandler from the
7 University of British Columbia, a psychologist, and
8 Christopher Lalonde, a psychologist from the University of
9 Victoria, who had jointly undertaken a research project on
10 the suicide rates amongst First Nations in British
11 Columbia. And what they had found is that just on the face
12 of it, so if you look at them as a collective, then the
13 suicide rates are very disturbing, youth suicide rates.
14 But then they began to disaggregate and what I mean by that
15 is they began to see well is that rate uniform amongst all
16 these First Nations or are there differences in these
17 communities and when they disaggregated the data, they
18 found that 90 percent of these youth suicide were
19 tragically happening in 10 percent of the communities. In
20 fact, they were communities for which there was a zero
21 percent suicide rate. So how is that possible? Well being
22 good researchers, they're skeptical. They think maybe
23 they're in denial in that community, they're just not
24 reporting it. So they triangulate the data with coroners'
25 reports and they find that, no, that's roughly true, that

1 still holds true.

2 So they looked at all the different factors, they
3 threw some factors into the model, and what they found is
4 that the higher the self-determination of the community,
5 the lower the suicide rate as expressed by the following
6 factors, and I hope I'm remembering them all right. So it
7 was women in government, which I'm proud to say because
8 that was our traditional systems and a lot of the First
9 Nations communities in the west. First Nations progress in
10 a self government or assertions at self government. In
11 British Columbia it was the B.C. treaty process, so the
12 further along you were in that the better. First Nations
13 control over fire and police services. First Nations
14 control over child welfare services. And First Nations
15 control over education. If you had those five factors you
16 were one of those communities enjoying a zero percent
17 suicide rate or a very low suicide rate. If you were one
18 of those communities that did not have those five factors,
19 then your children were tragically, you were going to too
20 many funerals.

21 Q And what is it about the First Nations experience
22 or the sense of First Nations identity that makes self-
23 determination a unique factor in those children's lives?

24 A What, what the two researches said is that really
25 the reason for this, and it just makes sense, I think, you

1 know when you really step outside the box, when children
2 and young people, even living in difficult circumstances,
3 are able to see adults in their community who are like
4 them, being able to make change in a direction that they
5 self determine, being able to have control over your own
6 life as a collective, that that increases and reaffirms
7 their identity. It gives them more sense of agency. So
8 even if they're feeling hopelessness, they're thinking, oh,
9 okay, yeah, well things aren't very good right now but I
10 can see out there that you can move in a direction of
11 positive change.

12 Chandler and Lalonde said that's particularly
13 important for First Nations children, who form their
14 identities referentially -- referentially to their
15 ancestors, to the land, to other people in relationship
16 because they're a communal societies. So the more messages
17 they can see in relationship about people being able to
18 make decisions that impact the future of the way that they
19 understand themselves and the way that they want to be, the
20 higher the level of self-esteem that child or young person
21 would have.

22 Q So how do we connect that then to these larger
23 social problems that you were talking about before which
24 are the predictors of whether or not children will come
25 into contact with the agency as a result of neglect,

1 poverty, poor housing, substance abuse? How does that
2 connect back to this notion of self-determination and
3 community based solution?

4 A Well, I think we see some of those programs
5 emerging even in that U.S. example when you say to
6 communities, really it's unimportant in some ways what we
7 consider to be inside the child welfare budget. When
8 you're down there at the grassroots level and people know
9 that this family does not have housing and there's a pool
10 of government money available, let's just say it's communal
11 money, I don't even need to put it in a government pocket.
12 Why not use it to alleviate that concern, knowing
13 particularly that it's the not only the best thing for that
14 kid and her family -- because the other thing I think is
15 important for the commission to understand is that there's
16 not good evidence to say that children to do better in
17 child welfare care. You know, there's something, this
18 assumption, and I know I was a child protection worker
19 myself, and you do walk into some very difficult
20 circumstances, but there is not good evidence that would
21 suggest that being in child welfare care is better for
22 kids. It's better for some kids, I'm not a utopian
23 thinker. Some of our kids need to be in child welfare
24 care, but the studies are very uneven in showing that
25 there's actually a better situation for kids in that

1 process.

2 So if we can use those housing funds to prevent
3 that child from going into child welfare care, then all the
4 better or to save the lives of the family in that way. And
5 in the woodcutter example, there's a youth program for a
6 hundred bucks that emerges out of the self-determination of
7 the community and supporting that self-determination, not
8 trying to redefine it, not saying well the kids need
9 wilderness training before they can send out the \$100 gas
10 certificate, but getting behind and supporting those
11 natural caring systems will help alleviate that while we
12 tackle some of the bigger issues.

13 Q The next question I wanted to ask you is about
14 diversity and whether or not that's a factor in how the
15 need for First Nations derived solutions and community
16 based solutions, whether or not that has an impact on
17 success or efficacy of those programs.

18 A Certainly when we looked at the Touchstones of
19 Hope, rather, so we were backing up to that, we had a whole
20 diversity of communities involved there. We had different
21 culture, different languages, different geographic
22 locations, variances in terms of where they were in the
23 self government process and yet it worked in each of those
24 contexts because we weren't importing a process from
25 somebody else. We were engaging the community to emerge

1 the process from the group that was there and that wasn't
2 just the First Nations folks that had invited in all these
3 other allied stakeholders.

4 So I think if you really work at a pragmatic
5 level, be that of First Nation or a neighbourhood in
6 Winnipeg and you allow for that to happen, then that self-
7 determination is there. The ownership to those types of
8 visions and solutions and responsibilities is there and the
9 ability to detect problems as they might emerge. Because
10 you might think it's a good idea but it's the people on the
11 ground who are experiencing it, the global level who are
12 going to get those early indications that things aren't
13 working. Those are the people that you need to hear from
14 and do those course corrections with in any kind of
15 intervention.

16 Q Perhaps I can ask you a question that maybe helps
17 illuminate it on a micro level, but if you have a First
18 Nations community on reserve and another First Nations
19 community in an urban setting, they may both suffer from
20 the same factors of poverty, poor access to housing and
21 substance abuse. Will the solutions that are necessary to
22 address those problems in both communities going to look
23 the same in implementation?

24 A No, they're not because there is unfortunately
25 the regimes of the Indian Act in place. There is the

1 inequities in funding that we talked about earlier. So
2 although the general principles might apply, there would
3 have to be different levers and partners available.

4 But the important thing for all of us to come
5 back to, because these jurisdictional issues sometimes can
6 feel overwhelming, is that the statutes, including the one
7 in Manitoba, are clear, the paramount consideration is the
8 safety and wellbeing of the child and as far as I'm aware,
9 the cultural component of that is also enfranchised in
10 Manitoba legislation.

11 We need to be very careful that we don't allow
12 jurisdictional issues, i.e. we're going to wait for the
13 feds to fund that or we're not going to wait for the feds
14 to fund that or whatever, to usurp that fundamental
15 principle. These are still children, they have that
16 statutory standard of care, and in my view we need to
17 mobilize whatever services are required with the best
18 knowledge that we have using some of the examples, both
19 that are emerging right here in Manitoba as well as those
20 from other jurisdictions to make sure that we're redoubling
21 our efforts to give those kids that best opportunity.

22 Q In that regard, what can you say about the
23 application of culturally appropriate tools in the
24 application of child welfare?

25 A I talked a little bit about that when I was

1 introducing the Touchstones of Hope principle, culture and
2 language. We had an excellent debate in our circles, in
3 that Niagara Falls gathering around that, like what is
4 culturally appropriate? And as I say, you know, it started
5 really as a well meaning venture. I'm just talking in
6 generalizations here in the social work community when
7 there was this, you know, people could no longer ignore the
8 overrepresentation of First Nations people in the child
9 welfare system. So what to do about that? Well folks
10 started to integrate some of the practices, maybe a healing
11 circle, for example, but they didn't take full account of
12 the different philosophies and world views that made that
13 healing circle work or the family conferencing circle work.
14 And so some of these efforts have really been tokenistic,
15 quite frankly. So I think that what we really want to see
16 is an emergence of new thinking that brings the best of the
17 traditional First Nations or Métis or Inuit ways of caring
18 for children and augments that with the best of what we can
19 take from other types of traditions going forward on the
20 culture and language thing, but we need to invigilate that.
21 We need to understand when we're making a compromise on a
22 program and on a tool and too often what I have seen that
23 concerns me is the development of a tool with a specific
24 population of people and this happens often in medicine.
25 We get these medications that are developed on the basis of

1 a population very different than us, right. Same thing in
2 child welfare. Many of the studies up until 1998, for
3 example in Canada the first study to include First Nations
4 children in national data collection was a Canadian
5 incident study in 1998. Up until that point, many of the
6 child welfare tools were based on the populations of other
7 children, both in Canada and in the United States. And so
8 we have to be very cautious because the needs and, and the
9 situations of First Nations versus other children are so
10 distinct that we don't apply a tool wholesale without
11 accounting for the different situations and context of
12 First Nations children.

13 Q And are there key areas of concern in that
14 regard?

15 A Well one of the things that I think is becoming a
16 real, there's a trend right now in child welfare, are
17 structured decision making tools or risk assessment tools
18 that are being deployed in a variety of jurisdictions. And
19 I'm old enough to be the pre-decision making tool. So I
20 know that that's probably not the best way of practicing
21 either is, you know, where you went out and you did child
22 protection, you collect all the data from your collateral
23 contacts and others, and then in the collaboration with the
24 family and with other experts and your supervisor, you come
25 up with an assessment of the safety of the child. Well

1 over time people were saying that that kind of approach can
2 work with a good, experienced worker and sometimes uneven
3 with others. So they wanted to standardize that process.

4 So they would come up with the structured
5 decision making tools and these were primarily based out of
6 the United States. They, they claim to be evidence
7 informed and I don't dispute that but I want to underscore
8 how little research we actually have in child welfare to
9 say the way things work. For example, I've told you we
10 don't even know, we can't even say, how many children are
11 in child welfare care in Canada. If I walked into a First
12 Nations family or any family when I was a child protection
13 worker and the allegation was neglect and I said how many
14 kids do you have and someone said about three, I would have
15 interpreted that as a warning sign for neglect, but in fact
16 that's all of the child welfare system who removes kids.
17 From a national perspective we can't even answer that
18 question, we can say about this number.

19 So getting back to these tools, they're based on
20 the evidence that's available but they're not -- we need to
21 do much more to ensure that they're evidence based. And
22 many of the structured decision making tools do not
23 differentiate between some of those factors we were talking
24 about. Remember, I said even in the United States there's
25 growing awareness that poverty too often gets conflated

1 with neglect and that what we need to do is separate out
2 those things for which parents and caregivers should be
3 responsible for change and those things for which we should
4 be re-tooling our child welfare systems and other systems
5 to be able to target those issues.

6 Structured decision making tools in almost all
7 the models I've ever seen codify those structural problems
8 as parental deficits. There is no requirement or no
9 reflection on where this thing is actually sourced.

10 So and they will -- some of the questions will
11 disadvantage First Nations families. I'll give you an
12 example. In many of the structured decision making tools
13 they include things like previous history of abuse. Well
14 we know from the Truth and Reconciliation Commission that
15 many First Nations families are going to be ticking off
16 that box because of the experience in residential schools.
17 Now that's not any fault of their own but that is going to
18 happen more often for First Nations families. We also know
19 on some of the income measures that First Nations families.
20 So right out of the starting blocks, because of the
21 historical disadvantage, you're going to be scoring higher
22 on these decision making tools.

23 So what we encourage is (a) that there be good
24 critical analysis of the research that underscores each one
25 of these things in a decision making tool. Who was the

1 population studied for that particular research study? Was
2 it white, middle class kids, which is fine, but we need to
3 exercise a lot of caution if it's, if it's a different
4 population. And then let's look at how robust that
5 research is, how thematic it is. Like how much weight
6 should we give to, if we tick one of these boxes? Do we
7 really have enough weight to say that it should be an equal
8 factor in this decision making? And then to test those
9 models out, you know, accounting for the differences of the
10 population they're going to be applied for and to pilot
11 test them to really look at whether they work in another
12 context with another population. And to be alive that that
13 evaluation shouldn't just be a one time incidence, that we
14 should be alive that this is a tool, it's not a decision
15 maker. No tool that we have in child welfare is a decision
16 maker. It's an aid to decision making and it's important
17 that we contextualize these tools in that regard. And also
18 my experience is with the good researchers that develop
19 these tools that they will often say these are all the
20 limitations of this tool that you need to be alive to
21 should you choose to use it. And unfortunately sometimes
22 that gets lost in translation to the practitioner but I
23 think it's really important that we make those limitations
24 aware to the model and that we properly implement the
25 model. People are given the training to do it and the

1 support to do it properly.

2 Q Is there a concern with respect to, again getting
3 back to this notion of the population base upon which the
4 research focused, is there a specific concern with respect
5 to reliance on population bases in the United States versus
6 Canadian research populations?

7 A I'm just talking in generalities here. There are
8 -- if you look at the U.S. Native American population, they
9 account for about three percent of the population. Of
10 course the United States has a much bigger population than
11 we do, 320 million, but if you look in Canada, those
12 numbers are slightly higher. But because of the way
13 colonization happened in the United States, there are
14 certain states where there is a population of Native
15 Americans by percentage that would echo slightly how it is
16 here in Manitoba, for example. So like Oklahoma is a state
17 where a lot of First Nations people were pushed out of the
18 northwest, or northeast of the United States into the state
19 of Oklahoma and also Alaska. They have comparable
20 proportions of Native American population but there are
21 some states where it's negligible and in other cases it's a
22 much smaller percentage. So we'd want to look at those
23 populations and we'd want to just consider the context.
24 It's not to say those tools shouldn't be used but it's just
25 that we need to do the good critical analysis before we

1 employ those things.

2 Q And you're not suggesting that those tools can't
3 be adapted for use effectively and properly in a, in an
4 area other than where they were developed?

5 A No. It's just that we need to understand the
6 basis under which they were developed, understand the
7 limitations of those models, understand what the purpose of
8 those models was and what applications they were developed
9 for. And then we need to look at what we actually are
10 wanting to use the model for, who is going to be impacted
11 on that, what are the differences or similarities with the
12 populations over here and what adjustments would need to be
13 made, if any, to respect the different population that
14 we're applying this tool to and how would it be evaluated.

15 Q And does it matter the background of the
16 individual or the team that is being utilized to adapt that
17 tool from the population base upon which the research was
18 based for use in another different demographic?

19 A Well, I think you would want to see -- it's like
20 anything. You'd want to have experts in that particular
21 area being able to judge whether or not something is
22 transferrable on that. So ideally what I would want to do,
23 and I'm just talking just in my approach, would be to have
24 the developers of the tool, along with experts in the areas
25 of the population or group for which it was going to be

1 applied, having an initial discussion about all of these
2 pieces I just talked about, what were the underlying
3 research that led that to the development of the tool?
4 What are the limitations of the tool? What weight should
5 be given to these various measures? You have maybe 10, 15
6 measures on here, are they all equal in weight? If they're
7 not all equal in weight, then how do we do this? And what
8 does the end number mean? And what would it mean if you're
9 applying it out of a population that out of the gates is
10 already going to score higher on that? Is there any
11 adjustment factors there? Those are all things that I'd
12 want to do and I'd want to have experts on both sides,
13 those who develop the tool and those for whom the tool is
14 going to be impacted doing that type of joint dialogue and
15 assessment.

16 Q Now when you talk about experts who are engaged
17 in that process, do you mean people who have subject matter
18 expertise in the sense that if the tool is being used for
19 application of social work, you're talking about people who
20 are experts in social work or are you talking about people
21 who are experts in terms of the research analysis that has
22 to go into the development of the tool?

23 A It's difficult to say, you know, an abstraction
24 without seeing the tool, but I'm a big believer in both. I
25 think experts can be people who on the ground have, you

1 know, are able to provide important knowledge. Certainly
2 that's been my experience through the years. But you
3 definitely do want to have researchers as a part of that
4 team because these models are, are supposed to be based on
5 evidence base, supposed to be based on research and so it's
6 very useful to have someone there who understands research
7 methods and is able to evaluate the quality of their
8 research and understand what research questions may need to
9 be answered in order to judge whether or not this program
10 is (a) worth transferring over for a given purpose in a new
11 jurisdiction, (b) what studies or information do we need in
12 order to adapt it in any meaningful way, and (c) what types
13 of research and a quality of the research do we want to
14 deploy in that type of analysis.

15 Q And the consequences of misapplication.

16 A Well, you know, if I am coming to a hospital and
17 I am presenting for a certain issue and I am given a tool
18 developed for somebody else for another issue, the
19 consequences can be quite significant. I mean we can't
20 underestimate the impact that child welfare has on the
21 lives of people.

22 You know, some people say that the greatest
23 interference in individual freedom in Canada is arrest and
24 I'm not going to argue that that's an important piece, but
25 I would actually suggest that we need to think of child

1 welfare removals in that same firm. I mean it is such a
2 significant power the state has. I use the state
3 generally, those who are authorized to do those removals
4 but we're literally going into families and removing
5 children from their families. And I would want to make
6 sure that we are really alive to the benefits and
7 limitations of any tool and process that we bring forward
8 and that we are not haphazardly generalizing the use of one
9 tool to a population that's quite different. You know it's
10 important in child welfare and it's important in the
11 context of this review as well because this very, very
12 tragic case with Phoenix, when we look at the profile of
13 all children coming to the attention of child welfare in
14 any given year in Canada, the Canadian incident study says
15 only about three percent of them will require medical
16 treatment and of that subset, even a smaller number, thank
17 heaven, will, will be fatalities related to that child
18 maltreatment.

19 In fact, in the First Nations collection of data
20 of the Canadian incident study in 2008 and I'm just going
21 to -- I don't want to put provisos around here because I
22 don't want to suggest at all that First Nations children
23 don't perish in child welfare care, they do. But when they
24 assessed for that three month period 85,000 investigations
25 there wasn't one fatality of a child. And so the profile

1 of children in that situation needs to be understood and
2 honoured for what it is, but the profile of most children
3 presented to the child welfare system is completely
4 different or very different, I shouldn't say completely
5 different, very different. And so we need to make sure
6 that our recommendations that are specific to the context
7 of the experience of that particular child focus on other
8 children in similar circumstances, but that we are alive to
9 the concern about providing generalizations based on this
10 very unique case to a general population of children who
11 have a different experience.

12 Q The good news is we're almost done. I just have
13 a few questions to ask you on some topics that have arisen
14 from evidence we've heard from other witnesses previously
15 in the inquiry and one of the topics that we heard evidence
16 from earlier this week is on the -- sorry, earlier last
17 week, I apologize -- is on the issue of accreditation with
18 respect to social workers and do you have any comments or
19 concerns to make with respect to that issue?

20 A Well, first of all off the top, I absolutely
21 believe in that we all need to be accountable for the very
22 best practice that we can do. But when it comes to
23 accreditation standards, what are we -- to what standard
24 are we accrediting? Is it the current way that child
25 welfare works with the overrepresentation that we're

1 seeing? What is the, what is the research that would
2 underlie the various accreditation standards and how would
3 those apply in a First Nations context with a First Nations
4 agency, for example, versus others?

5 I, I would like to see, and I haven't done this
6 detailed work, but if we're going to go down the route of
7 accreditation, it should be based on the very best research
8 that we have about what works for kids and based on what we
9 know about the particular profile of the needs of children
10 and families coming into contact with child welfare. So,
11 for example, if we're seeing an accreditation framework
12 devoid of any kind of reference or understanding in a
13 meaningful way to child poverty, then I'm not sure where
14 we're going with this thing. You know, we need to really
15 keep in mind to build up from the best research on
16 accreditation models and many of the accreditation models I
17 see don't account for those particular differences, aren't
18 -- our imports generally from health care provision into
19 other areas of social wellbeing such as child welfare.
20 It's not to say there aren't some good standards there that
21 could be pulled over, but it's the same conundrum that we
22 find with the use of tools. It needs to be done in a very
23 deliberate way, in a way that understands the research and
24 in a way that understands the context in which we want to
25 apply those standards. But it is an easy fix to say we're

1 going to take on accreditation. You can easily do that and
2 not make meaningful differences at those fundamental levels
3 where if we were to make progress, I think we could make
4 huge gains in healthier families and healthier kids.

5 Q On that topic, if there's a move towards
6 accreditation, in the interests of ensuring that social
7 workers receive adequate training to prepare them for front
8 line social work, and if part of that is recommended
9 because the idea is that what will ensure better outcomes
10 and ensure that children who are in need of protection
11 receive the intervention that they require, wouldn't that
12 seem to suggest that there needs to be some mechanism
13 through that accreditation process to ensure that those
14 workers or those individuals who are being presented for
15 accreditation receive training specific to that area?

16 A Yeah. I've, I've been a person who's argued for
17 multidisciplinary teams. So, for example, I would love to
18 see a substance misuse expert on every child protection
19 team, a mental health expert on every child protection
20 team. We've seen pockets of that, examples of that. For
21 example, way back when I was doing night duty in after
22 hours services in Vancouver, we actually had teams, so like
23 a social worker who is with a police officer deal with
24 domestic violence, we had a social worker with a mental
25 health officer, we had a social worker with a substance

1 misuse worker, but that was just isolated to that
2 particular service context. I think what we know from the
3 research is that we really need people who have got, can
4 draw from a multidisciplinary understanding of how to
5 address some of these issues. If we had, for example, an
6 expert -- I'm just thinking back to my days of doing child
7 protection -- an expert on substance misuse, that person
8 could have accompanied us out on those visits where that
9 was a presenting concern to more accurately assess what was
10 going on with that particular family, assess what the
11 impacts would be on parenting and help us work with that
12 family to address the substance misuse and to provide the
13 most meaningful and sustainable treatment for that person.

14 So I think when we look at who should be doing
15 child welfare, again it needs to be linked to what are the
16 needs of the people, what is the best evidence about the
17 factors that are driving any hardship and then what are the
18 skills and knowledge that one would need in order to best
19 respond to that? Certainly having a bachelor of social
20 work degree, if you had adequate training in aboriginal
21 peoples, in child development, in child protection, all of
22 those by the way in many courses are elective even up until
23 today and in poverty and poor housing and those kinds of
24 things, that could prepare you for that job, but we need to
25 look back, go beyond the surface of saying X, Y, Z degree

1 does it all, to looking again at the needs of the families,
2 what is the knowledge that you need to have to best respond
3 to that and then who or what cadre of people would be in
4 the best position to, to work in that situation?

5 Q The last area that I want to talk to you about
6 today is on the idea of whether or not prevention workers -
7 - sorry, I apologize -- whether or not child protection
8 workers, whether if the worker who is responsible for
9 apprehending the child should also be the worker
10 responsible for then providing family services to the
11 family after the apprehension and whether or not there
12 should be a dual role model or whether that combined
13 service within the same individual is a model that you
14 endorse. Do you have any thoughts that you can offer on
15 that?

16 A Well, I'm going to answer your question directly
17 in a minute but I want to step back from that to say that
18 if we employed a child protection model that better
19 supported families with neglect, better understood what
20 neglect was in the first instance, better supported people
21 from that place, we wouldn't end up at that conundrum that
22 you're talking about so often.

23 I did child protection work in North Vancouver
24 and we actually engaged a model, thanks to a very
25 innovative supervisor, that cost nothing, that was all

1 about community liaison work and what we found is we were
2 able to do much better work and keep the numbers of kids in
3 care lower and actually free up our time from the cases we
4 couldn't do much about to those severe cases that really
5 needed our attention. So you can work with families. I
6 find that many families get frustrated with us because we
7 provide irrelevant services. We'll walk into a neglect
8 situation and we'll provide parenting courses when we know
9 what the real factors are, poverty, poor housing and
10 substance misuse. And it's not to say that parenting
11 courses aren't valuable, they are. But if you ignore those
12 other factors things are not going to improve very much for
13 families. So we need to provide those relevant services at
14 the front end. In those cases where we have to remove the
15 child, again I am taking the statute at its word that
16 really where we need to get to is that that is the last
17 resort, then, yeah, I think it is too difficult of a
18 situation to ask families to readjust, in the midst of
19 everything else they're dealing with, to readjust their
20 perception of the relationship with the worker.

21 Some families, in my experience, were okay, they
22 actually wanted you to keep on going with them, right,
23 because you may have worked with that family for a long
24 period of time and they know, you know their story and all
25 the rest of it and, yes, you did the removal but we'd

1 rather have you than somebody else, but there are also
2 families for whom, you know, that is one of the most
3 traumatic days in their life. And my goal is to make the
4 kids safe. If that means bringing in a fresh person with a
5 new relationship for that family, will help them get there
6 faster, then I think the system should accommodate that.

7 Q Very good.

8 MR. FUNKE: Excuse me for just a moment,
9 Mr. Commissioner.

10

11 BY MR. FUNKE:

12 Q Those are the questions that I had for you
13 Dr. Blackstock. Are there any concluding comments or
14 messages you would like to leave with the commissioner
15 today?

16 A I think I'll go back to where I started, if we
17 know better and we can do better, we should do it. For
18 First Nations children we know the factors of poverty, poor
19 housing and caregiver substance misuse. We've talked today
20 about a few of the examples of good, promising approaches
21 to addressing those problems and I don't want people to
22 walk away from this and thinking that this is an unsolvable
23 issue, it's not. And we must get down to work and actually
24 doing the business. We know enough to do better. Can we
25 solve all the problems? No. But we know enough to get at

1 those fundamental issues that are driving disadvantaged for
2 not only hardship for families needlessly, but also First
3 Nations kids going into care.

4 Q Thank you, Doctor. Those are my questions.

5 A Thank you.

6 THE COMMISSIONER: All right. Now you think you
7 have nearly an hour. Is it realistic to think we can get
8 through in that period of time?

9 UNIDENTIFIED PERSON: Yes.

10 THE COMMISSIONER: All right. Who's going to
11 come first, Mr. Paul? Mr. McKinnon? No?

12 MS. WALSH: Sorry, Mr. Commissioner, as per our
13 rules and what I outlined last week unless --

14 THE COMMISSIONER: Oh, yes, you're next.

15 MS. WALSH: -- you want to do otherwise,
16 commission counsel goes next --

17 THE COMMISSIONER: Yes.

18 MS. WALSH: -- where we've had a witness and then
19 everyone else and then commission counsel again gets the
20 last word.

21 THE COMMISSIONER: Yes, you're right.

22 MS. WALSH: So is that all right for today?

23 THE COMMISSIONER: Yes, it is.

24 MS. WALSH: Yes, okay. Good, thank you.

25 THE COMMISSIONER: I read them and you're

1 absolutely right.

2 MS. WALSH: All right, thank you. But I'm happy
3 to know --

4 THE COMMISSIONER: No.

5 MS. WALSH: -- how much, in terms of cross-
6 examination, how much counsel think. Ten minutes and none
7 and ... Okay, okay. All right. And you want ten, all
8 right. Here we go.

9

10 CROSS-EXAMINATION BY MS. WALSH:

11 Q You're okay to keep going without a break?

12 A Oh, yes, absolutely.

13 Q Okay, all right.

14 A Thank you.

15 Q Well thank you. You have given us -- first of
16 all, can you -- there we go. Am I on now?

17 A Yes, you are.

18 Q Okay. You've given us much to consider and in a
19 very concentrated way and so we have all of your documents
20 and we'll be able to review them with having heard the
21 benefit of the highlights of your evidence.

22 If we could pull up -- Madam Clerk, you've got
23 these documents, Exhibit, what is this, Exhibit 47, you've
24 got it on the computer?

25 Mr. Commissioner, if you can go to tab 58 of

1 Exhibit 47.

2 THE COMMISSIONER: Tab 58, yes. Yes.

3 MS. WALSH: You've got that.

4

5 BY MS. WALSH:

6 Q Dr. Blackstock, do you have a hard copy in front
7 of you?

8 A No, I don't have any materials.

9 Q Okay. So we're at the, at the mercy of our
10 electronics.

11 THE CLERK: I have one here. I just, I can't
12 find the copy (inaudible).

13 MS. WALSH: My concern is what everyone else in
14 the room doesn't have. But let's, in the interest of time,
15 let's carry on and I think we should be fine.

16 THE WITNESS: Okay.

17 MS. WALSH: If you could have maybe a copy in
18 front of you, please. There has been apparently a
19 flashdrive with all of this put on it. I don't know if
20 you --

21 THE CLERK: I have the one flashdrive that I
22 always have and I don't know -- it might be on here, I just
23 don't know where.

24 MS. WALSH: Did Ms. Ewatski not give you another
25 one under AMCSCO?

1 MR. FUNKE: If it helps, Mr. Commissioner, I can
2 provide Madam Clerk with a flashdrive with all of those
3 exhibits on it in about a five minutes if we take a very
4 short break.

5 MS. WALSH: I think, I think we can carry on.
6 It's not a complicated reference.

7 There, maybe it's under --

8 THE CLERK: There we go.

9 MR. FUNKE: There you go.

10 THE CLERK: Okay, I have it.

11 MS. WALSH: Well done.

12 THE CLERK: Thank you. Now which tab?

13 MS. WALSH: Tab 58, please.

14 THE COMMISSIONER: That's it.

15 THE CLERK: That's it.

16 MS. WALSH: Good, thank you very much.

17

18 BY MS. WALSH:

19 Q This is an article that you, where you were the
20 primary author, "Community Based Child Welfare for
21 Aboriginal Children: Supporting Resilience Through
22 Structural Change".

23 A Yes, along with Dr. Trocmé.

24 Q Yes. And I understand it was also published in,
25 in March of 2005. This is dated October 9th, 2004, but I

1 believe it was published in a New Zealand Journal of Social
2 Work as well --

3 A That's true.

4 Q -- in 2005. If we can turn to your conclusions
5 at page 24 of the article, please. There should be the
6 heading "Conclusion". That's it. Well done, thank you.

7 So this is -- I'm interested -- what you said in
8 this conclusion, which was something that I had flagged
9 before we heard you testify, seems to me to sum up much of
10 what you said today. So I just wanted to review it again.

11 A Okay.

12 Q You say:

13

14 "The overrepresentation of
15 Aboriginal children in the child
16 welfare system is a growing and
17 complex problem rooted in a
18 pervasive history of
19 discrimination and colonization.
20 Provincial and territorial child
21 welfare authorities have made some
22 nominal attempts to reverse this
23 pattern of discrimination,
24 however, the continual increase in
25 placements points to the pressing

1 need for bolder action at
2 community and structural
3 levels. Aboriginal children
4 disproportionately come into
5 contact with the child welfare
6 system because of problems
7 associated with poverty and
8 substance abuse, not because of
9 higher rates ..."

10

11 If we can just turn the page please,

12

13 "... of physical or sexual
14 violence towards children.
15 However, the likelihood of
16 improvement is limited, as long as
17 the problems are defined within
18 the narrow scope of child
19 protection systems and inequitable
20 access to social support services
21 persist. Stronger communities
22 equipped with the governance
23 structure and the resources to
24 address child poverty, inadequate
25 housing and substance abuse are

1 required to stem the tide of
2 Aboriginal children coming into
3 the child welfare system.
4 Resilient Aboriginal communities
5 provide the best chance for
6 resilient, safe and well
7 Aboriginal children, young people
8 and families."

9

10 I think that's, that's very much what you were telling us
11 today.

12 A Right. And I think the promising note is that
13 there have been further developments and further growth
14 within the child welfare systems, particularly in the
15 United States, some of the examples I showed, where child
16 welfare is tackling some of those issues in a more vigorous
17 way than was present when we published this article in
18 2004-2005.

19 Q Does that refer to experiences in Manitoba or are
20 you referring to evidence that you've seen coming out of
21 other jurisdictions?

22 A Out of other jurisdictions primarily. Although
23 there's been good models here but I think what it needs to
24 be is much more systemic and much more deliberate and much
25 more sustainably focused in my view.

1 Q So we'll come back to the response of the child
2 welfare system in this context with respect to structural
3 and community changes in a minute. The first question that
4 I had after reading that conclusion was do those statements
5 that you make in your conclusion, do they apply to
6 communities both on and off reserve? Because of course the
7 reason that I ask that is that this inquiry is contextually
8 based on the circumstances of services delivered to Phoenix
9 Sinclair and her family and, and someone situated in her
10 circumstances and she lived off reserve.

11 A Right. So the data upon which we did this
12 analysis was the Canadian incident study data that would
13 have been, I'm just thinking of the different cycles, 1998
14 and then 2003. So they would have been either the '98 or
15 2003 cycle and at that point we weren't out of place where
16 we could desegregate data on and off reserve. So our
17 findings in terms of identifying the factors is you see
18 them there, poverty and poor housing and substance misuse
19 and a need to structurally address those both within child
20 welfare and using allied support services would have been
21 based on evidence that was collected both on and off
22 reserve.

23 Q So those statements would equally apply to the
24 significance of, of developing community resilience off
25 reserve?

1 A Absolutely. And I think it's really important
2 that we look at that, not only, by the way, for First
3 Nations families. I did a study in Nova Scotia where I
4 looked at the trends of kids in the child welfare system
5 for five years after they were removed, so a retrospective
6 study. What I found is regardless of race, if you looked
7 at the incomes of the families that had their children
8 removed, 95 percent of them made less than \$15,000. And
9 then when we looked at homeownership, it was triangulated
10 in some a way that reinforced that. So the issue of the
11 prevalence of poverty starts across the child welfare
12 clientele and my hope is that by developing innovative
13 approaches that address it for First Nations children, be
14 they on and off reserve, that that would hopefully inform
15 solutions for other children in similar circumstances.

16 Q Another way of looking at that would be to say
17 that if Manitoba as a province works to develop community
18 capacity generally, universally, that that is going to have
19 a beneficial impact on aboriginal children off reserve as
20 well as non-aboriginal children.

21 A And that, you know, it's not only even that
22 limited --

23 THE COMMISSIONER: Do you agree with that
24 statement?

25 THE WITNESS: Oh, yes, I do. Even the best

1 research actually builds on that though. It says in that
2 book "The Spirit Level" I was talking about later which is
3 best on a meta-analysis of outcome data throughout the
4 world, it says if you want to be a society that has a
5 robust economy, highly educated people, low incarceration
6 rates, low teen pregnancy rates, and good health outcomes,
7 you need only do one thing and that is to reduce the
8 relative inequalities in your own country. So to the
9 degree that we can close the gap between the rich and the
10 poor children by equalizing opportunity, we are going to
11 put in play a whole series of factors that would uplift the
12 quality of life for all people in Manitoba. And there's a
13 website gapminder.org where you can see all the empirical
14 research that underlies that supposition and it really has
15 held up in good analysis of the research around the world,
16 including data that has been specifically analyzed for
17 Canada.

18

19 BY MS. WALSH:

20 Q And we have heard evidence from, for instance,
21 Dr. Alex Wright in the paper that she prepared for the
22 inquiry on best practices, that the research that has
23 studied the association between poverty and involvement
24 with the child welfare system, is not meant to -- it
25 doesn't say that there's something inherent about being

1 poor that leads to maltreatment but rather that the
2 circumstances of living in poverty create stressors that
3 put children and families at risk.

4 A That's right. And one other innovative program
5 in the urban context that might be worth mentioning here is
6 in Australia there was aboriginal peoples and low income
7 groups came together because they understood that payday
8 loan operations were operating in such a ways that further
9 debt deepened the levels of poverty of the poor. So
10 instead of tackling the payday loan operations, the
11 families coming into contact with that system, they engage
12 the National Australian Bank and the Bank of New Zealand to
13 offer credit to the poor, micro-loans for things like, for
14 a washing machine. So if you're a single mother with three
15 kids, having a washing machine is going to significantly
16 increase your quality of life. So they provided those,
17 those same loans but at prime plus just a couple of percent
18 and they built in there life coaching and income management
19 and mentorship and social supports and what they found is a
20 dramatic decrease in the stress of families, because the
21 financial woes are a significant stress on any family and
22 the degree to which you can get in there with an innovative
23 program like that, which costs the child welfare system
24 nothing other than walking over and having a conversation
25 with the bank, has really shown that it has a significant

1 benefit for the kids.

2 Q All right. Similarly, I think we're going to
3 hear evidence in phase 3 that, providing something like
4 accessible child care is a solution for enabling parents so
5 that they can get back into work or into their substance
6 abuse treatments and it's not a complicated solution that
7 ultimately though enables families to build capacity and
8 not be at risk for coming into contact with the child
9 welfare system.

10 A Right. Early, early child development programs
11 are critical and also early interventions in the families
12 who may be at risk of coming into the child welfare system.
13 But we know from our very limited, as I say, I'd like to
14 see a lot more research in child welfare, but from the
15 research studies we see is those interventions in families
16 who have just become parents, who may have a series of risk
17 factors for coming into contact with the child welfare
18 system. If you can get in there early, before the
19 caregivers establish neglectful patterns and before the
20 child adapts to that neglectful pattern, because children
21 adapt to dysfunction in their family homes. They
22 themselves become parents, they get the failure to thrive,
23 all these adaptations will happen. Before those become
24 entrenched, you can make significant gains for kids and
25 keep them safe over the longer run of their entire

1 childhoods.

2 Q So in that conclusion that I just read to you
3 from, you say that,

4

5 "... the likelihood of improvement
6 is limited, as long as the
7 problems are defined within
8 the narrow scope of child
9 protection ..."

10

11 And I'm interested in exploring with you briefly, the
12 relationship between the role of the child welfare system
13 and the role of other systems in the structure, the
14 community --

15 A Right.

16 Q -- whether government or non-government, to build
17 capacity in families.

18 A Right. So number one, I think what we need to do
19 is look at moving on those good practices where child
20 welfare can do it. Because too often we kind of throw our
21 hands up and say unless we have these other partners at the
22 table there's nothing we can do, when I've shown you a
23 number of examples where people are moving forward with
24 addressing those factors even within the narrow scope of
25 child protection and that's been a very positive

1 development since we wrote this article. But there's an
2 absolute requirement in order to really tackle this in a
3 meaningful way for collaborations across programs, across
4 provincial programs and with the federal government. Also
5 with the non-profit sector. We need to be educating those
6 programs that are having interactions with families about
7 the important factors that are most undermining them and
8 recalibrating the design of those programs to assist
9 families with those risk factors. So that type of cross-
10 collaboration in across the voluntary sector, the corporate
11 sector and the public sector and the citizen sector are
12 going to be really critical to making long-term sustainable
13 gains in these areas.

14 Q I guess I also have, I would like to hear from
15 you a little bit more. Your counsel asked you about could
16 this same worker respond to prevention or deliver
17 prevention and protection services and the notion of sort
18 of disentangling those aspects of service delivery is
19 something I'm interested in. In the context particularly
20 of how we define who is in need, like a child in need, or
21 how we define protection might be another way of speaking
22 to it and for instance again, Dr. Wright did her Ph.D.
23 thesis in service delivery, child welfare delivery or not
24 child welfare delivery, service delivery to children in
25 Scotland where the legislative definition of a child in

1 need was much broader than simply a child in need of
2 protection, it was a child in need of a variety of
3 supports. So that the response to that child in need was
4 not merely a protection response. Or, as I said, if we
5 redefined protection to mean something beyond simply
6 safety, but -- and I know the legislation does speak of
7 wellbeing, but for whatever reason there doesn't seem to be
8 a lot of emphasis on that. So I guess the question that I
9 have is can, can the same agency or should the same agency
10 deliver both prevention services, upstream services if you
11 like, and protection services when all else fails?

12 A That's a difficult question to answer because in
13 order to --

14 Q And I appreciate that and I don't expect you to
15 have a pat answer.

16 A But I think, I think the considerations in
17 answering that, rather, is number 1, I really believe that
18 clients should get a choice because as I say, there are
19 some clients who just want to stick with the same worker.
20 They don't want to have another change. It just works best
21 that someone who knows their story and knows their
22 situation. But I am a big believer in bringing the very
23 best that we have to families and I can only say to myself
24 that in my training, I would not have the training
25 necessary to tackle a substance misuse issue. So I would

1 want someone who has that special knowledge and access to
2 services and assessment ability to be part of the team that
3 goes in and provides that particular service to that
4 family, either on that initial primary prevention service
5 where we're talking about healthy families and all the
6 precursors of addiction to dealing with the actual
7 addiction as it's playing out say in a child removal. So
8 too with the other factors. I think we need to go to this
9 place of bringing the teams of people available who have
10 the knowledge and the skills to best assist that family
11 with addressing the source risk that's placing their
12 children in harm's way. And that may be the child
13 protection worker but it's likely to be an allied group, a
14 consortium of service providers using something and
15 networking all that service in a coordinated way using a
16 family conferencing model or something similar to that.

17 Q And how does a child welfare system look that
18 focuses equally on wellbeing as on purely safety?

19 A I think we're still searching for it worldwide
20 but this could be the first example. I mean if we
21 really -- unfortunately if we look at jurisdictions around
22 the world, and their interactions with indigenous children,
23 it hasn't been that inspiring. Even though we've had a
24 better understanding in Australia, the United States and
25 Canada, for example, of the factors that drive kids into

1 care -- I'll just use Canada for an example and I do key
2 notes and I do them quite regularly, even amongst child
3 protection officers I will say who here in the group, just
4 as a straw poll, does child protection? Say a hundred
5 people put up their hands. Who here has had more than a
6 half day of training on substance misuse, its impacts for
7 parenting and what you can do about it as a child welfare
8 worker? And I think in all the times I've done that, and I
9 would suggest maybe it's 20, 30 times, all over the
10 country, maybe, maybe two, three percent of the people put
11 up their hands.

12 Q So a focus on wellbeing of a child would involve
13 factors such as service providers who have skills and
14 knowledge in child development and substance abuse?

15 A And culture.

16 Q And culture. It would also involve ensuring that
17 there are supports in place for those underlying risk
18 factors that you say need to be separated from actual
19 neglect?

20 A Right. So rapid housing programs, for example,
21 that will ensure family stability and housing, those types
22 of things are really key to that wellbeing factor. And
23 just really engaging the natural caring mechanisms in any
24 given community. So going beyond looking at the formulized
25 services to really leveraging the strengths that that

1 family or the community can bring together. So because the
2 reality is service providers can only be in there a certain
3 period of time. What you want to do is build up a healthy
4 community where healthy families are there and that can
5 provide a safe netting for the kids.

6 Q Since I have you here in front of me, I'm going
7 to ask you about this. The declaration of principles
8 that's set out in the Child and Family Services Act is,
9 it's a very important set of principles about the
10 importance of children and the importance of families.
11 From what we can see there aren't similar declarations of
12 principles about the importance of children in any other
13 pieces of legislation in our province. I don't know what
14 your experience is in other jurisdictions but do you have
15 any thoughts on that in the context of being as a province,
16 as a community, structurally an entity that places emphasis
17 on children and their wellbeing across the board?

18 A Canada and by virtue of Canada, also Manitoba,
19 ratified the United Nations Convention on the Rights of the
20 Child.

21 Q Yes.

22 A And the United Nations Convention on the -- or
23 Committee on the Rights of the Child further developed
24 general comment 11 on the rights of indigenous children,
25 aiding state parties and others in how to interpret that

1 convention for its particular application for indigenous
2 children. Unfortunately those principles have not been
3 embedded in all legislation that touches on the lives of
4 children and families. Even though it's the most
5 universally adopted human rights instrument in the world,
6 in fact there's only two countries, I believe, that have
7 not ratified it, one being the United States and the other
8 being Somalia.

9 Q Somalia, yes.

10 A So I think it would be very good to encourage
11 other groups like housing, who may not really necessarily
12 think of their role with children's lives, to redouble
13 their efforts to educate themselves on the convention on
14 their responsibility under the convention and how their
15 work touches on the lives of children and how they could
16 leverage what they're already doing in a direction of
17 wellbeing of children. I think it's absolutely critical.
18 And the other thing I would love to see is actually
19 ministers of provincial governments, federal governments
20 and First Nations leaders all being very fluent in the
21 Convention of the Rights of the Child and using that as a
22 basis for the evaluation of public policy that will be
23 deployed that will have an impact on children.

24 Q And of course if, if there were domestic
25 legislation which did have provisions that mirrored the

1 provisions, some of the provisions in the United Nations
2 Convention on the Rights of the Child, then that would be a
3 lens by which public policies and programs would be
4 evaluated in the interests to ensure that they were being
5 implemented in the interests of children.

6 A That's right. And especially with the augmented
7 value of already having the United Nations Committee having
8 adopted general comment 11, which allows for that, because
9 I know not every child in Manitoba of course coming into
10 contact with child welfare is from that population, but
11 allows you to interpret that convention through the lens of
12 an indigenous child. And there are further general
13 comments, for example comments on children with
14 disabilities, et cetera, that could be deployed to further
15 evaluate that for programs of children with different types
16 of situations.

17 Q Sure. And the convention itself addresses rights
18 of the child that are not specific solely to indigenous
19 children.

20 A That's correct. It is the only United Nations
21 convention of the binding conventions that specifically
22 recognizes the rights of indigenous children in article 30.
23 But of course since the development of the UN convention on
24 the rights of the child, we also have the United Nations
25 declarations on the rights of indigenous peoples and just

1 for the information of the commission, I just recently
2 finished working with Unicef in New York and the United
3 Nations permanent forum on indigenous issues and the United
4 Nations permanent forum on indigenous issues youth caucus
5 and we have developed a youth friendly version of that UN
6 directive that will be launched in New York in May. So
7 that's a further lens to be able to evaluate the human
8 rights situations and the public policy provisions for
9 children in Manitoba and all other regions.

10 Q I think those are my questions. I mean I could
11 keep you for longer, but I think you've addressed the
12 specific issues that I wanted to hear from you from. Thank
13 you very much.

14 A Thank you.

15 THE COMMISSIONER: Mr. Paul?

16 MR. PAUL: Good afternoon, Mr. Commissioner,
17 Dr. Blackstock. My name is Sacha Paul. I am a lawyer for
18 the Department of Family Services and Labour and for
19 Winnipeg Child and Family Services. I just have a few --
20 actually two areas of questioning which shouldn't take that
21 long, Mr. Commissioner.

22

23 CROSS-EXAMINATION BY MR. PAUL:

24 Q The first point, as I understand your evidence,
25 Doctor, you are supportive of a national data collection,

1 I'll call it computer system, to track children in care and
2 child welfare issues generally; is that correct?

3 A I wouldn't say just limited -- yeah, I would go
4 with your second piece about child welfare issues
5 generally. To really collect data on the situation of
6 children and families who are at risk or in contact with
7 the child welfare system and then over a longitudinal
8 basis, for those children that are in the child welfare
9 system. Of course, any such system should respect, for
10 example, the CIHR provisions around ethical guidelines for
11 the research with aboriginal peoples given the
12 overrepresentation of aboriginal children throughout the
13 country in the child welfare system.

14 Q And of course you'd agree with me that this data
15 can have much more, a wider application than simply
16 research. It actually can and does have an important role
17 to play in terms of child safety and child protection.

18 A In fact we know from, unfortunately it looks like
19 the Canadian incident study on reported child abuse of
20 neglect, which I've relied on during much of my testimony.
21 It is normally held within five year cycles. It is a
22 cross-sectional study, meaning it collects data a certain
23 snapshot of time over five year cycles but it will not be
24 run in 2013, so it's going to be discontinued. It's really
25 our only national data collection source that we have in

1 the country. So it's really critical that these types of
2 things be set up.

3 Q And if we can look just locally here to Manitoba,
4 we have a computer system called CFSIS that collects data
5 about what I'll call are child protection issues generally
6 and I guess you'd be supportive of the concept of people
7 uploading information to that system on a regular basis.

8 A Not to a particular system. I don't know the
9 CFSIS system in particular or how the data is used --

10 Q Any, any computer system. I don't want --

11 A Yeah.

12 Q But you'd be supportive of the concept for child
13 protection that people upload information to a child
14 protection computer system so that agencies can have the
15 ability to keep children safe for the best information that
16 they can have.

17 A In general but in keeping with the guidelines,
18 the ethical guidelines around the research of aboriginal
19 peoples and the OCAP principles. I think it's really
20 important to emphasize that because I don't want to go too
21 far down the track without having known what this
22 particular information system is.

23 Q And that's fair.

24 A The type of system I was talking about is the
25 equivalent of what we would find the NCAN system or the

1 ACAR system in the United States that allows for the
2 collection of national data, the research for that, and
3 you're quite right, that can change. Like the Canadian
4 incident study --

5 Q Um-hum.

6 A -- when those findings came out, First Nations
7 agencies and several examples re-profiled their services to
8 be able to go after those factors, so it is very useful but
9 there needs to be all these guidelines around how the data
10 is collected, what data is being collected, how it's being
11 analyzed and where it will be deployed for use.

12 Q Regardless of the research guidelines, I would
13 suggest that if there is a potential conflict between child
14 protection concerns and research guidelines it would be
15 your expectation that the child protection concerns would
16 win the day in that particular instance.

17 A When I -- my knowledge of the research guidelines
18 that I'm speaking about, the CIHR guidelines, et cetera, I
19 would see no conflict in those guidelines as long as the
20 research tool was developed in concert with that. So, for
21 example, with the Canadian incident study, they set up a
22 First Nations advisory committee that guided every level of
23 the research project with respect to the data collection
24 analysis and dissemination on data regarding First Nations
25 people. So I would look to something very similar, that

1 same kind of good practice, being rolled out at any data
2 collection system where data is being collected on First
3 Nations children or on other children.

4 Q My second area, and I'm wondering if we can pull
5 up the Child and Family Services Act. Unfortunately I
6 don't have a specific reference.

7 THE CLERK: I can get that.

8

9 BY MR. PAUL:

10 Q And I'm looking at the pre-amble. You can see
11 the declaration of principles on the first page. Do you
12 see that, Dr. Blackstock?

13 A Yes, I do.

14 Q And you can see principle 9 that in the Manitoba
15 Child and Family Services Act: The decisions to place
16 children should be based upon the best interests of the
17 child and not on the basis of the family's financial
18 status. Do you see that there?

19 A Yes.

20 Q And of course you would accept that when child
21 welfare agencies are going out to assess the safety of a
22 child, they are looking at the immediate safety risks and
23 not the income levels per se of the individual family?

24 A I don't think we have good research to suggest
25 that that's always as deliberate as you would put it out

1 there. The one thing that I would like to see actually is
2 the definition of neglect in the act. These are guiding
3 principles but is that actually further delineated within
4 the definition of neglect and in the assessment tools used
5 by social workers and in the programs that are available to
6 help address, differentiate between those income issues
7 that may put kids at risk and those issues that are within
8 parental control.

9 THE COMMISSIONER: Well then do you not agree
10 with that proposition as it's written, number 9?

11 THE WITNESS: Number 9? No, I do agree with
12 that, but what I've seen before is guiding principles that
13 are not threaded through the other provisions of the
14 legislation. So when we get to a guiding principle that,
15 for example, safety and wellbeing is the paramount
16 consideration, we'll find in practice that's not always the
17 case and so what I would be looking for, I think this is a
18 very good thing but we'd want to make sure that it's
19 consistently interpreted in the definitions of neglect, the
20 policies, the tools that are being used and the services
21 provided to families.

22

23 BY MR. PAUL:

24 Q And again, my understanding of your evidence was
25 in terms of the issue of poverty, you were looking at

1 studies I believe in Arkansas or other American
2 jurisdictions, correct?

3 A No, I was pointing to statutes in those
4 jurisdictions that have differentiated that. The basis for
5 my conversations around poverty is the Canadian incident
6 study on reported child abuse and neglect and a whole cadre
7 of research done in Canada, including the Canadian incident
8 study done on children in Manitoba.

9 Q My understanding, in terms of the practice and
10 we've seen this particularly in the Phoenix Sinclair case,
11 is that in the event that there is no food in the house
12 we've seen an incident in this case and I believe generally
13 that emergency food hampers would be delivered to that
14 family short of apprehension and I take it you would agree
15 with that practice.

16 A I think it's important to alleviate it but not to
17 leave it right there. There needs to be a further -- for
18 example, in one -- there's a program where they do do that,
19 but they also redouble their efforts by engaging in family
20 support services to ensure sustainable long-term food
21 security for that family. So it's not just -- it is
22 important to alleviate the risk immediacy so that the child
23 isn't in a difficult situation. But we also need to do
24 that backdrop piece which is how do we further address that
25 factor so that it doesn't reoccur for that family and that

1 child.

2 Q So to open a long-term protection case so that an
3 agency can work with that family to address issues such as
4 access to food, et cetera, short of apprehension?

5 A There is a, there is other provisions. Like you
6 don't necessarily have to open a protection case. You
7 could open a family support case and provide that same type
8 of provision. The tool mechanism is really, in my view,
9 irrelevant. The important thing is that we're assessing
10 properly and responding appropriately.

11 Q And the important thing, as I understand your
12 evidence then, is that steps are taken, whether it's a
13 protection case or whatever you name the case, something
14 short of actually taking that child out of the home?

15 A There are -- I, I said in my evidence that there
16 are situations where children need to be removed. But my
17 evidence is, is that we don't have good research that
18 suggests that the outcomes for children in care are better
19 than the outcomes for children and their families in most
20 situations. Of course there's always exceptions for that.
21 There's some children that need to be in child welfare care
22 because the family situation is too difficult.

23 The vast majority of children though, if we
24 intervene by providing structural interventions that target
25 the risk that put those kids in place, we can keep them

1 safely in their family homes and that is the objective, not
2 only consistent with the UN Convention on the Rights of the
3 Child but consistent with your own statute.

4 MR. PAUL: Mr. Commissioner, those are my
5 questions.

6 THE COMMISSIONER: Thank you, Mr. Paul.

7 Ms. Harris?

8

9 CROSS-EXAMINATION BY MS. HARRIS:

10 Q Good afternoon, Dr. Blackstock.

11 A Hi.

12 Q My name is Laurelle Harris. I'm counsel for the
13 General Child and Family Services Authority and I just have
14 a few questions for you with respect to the SDM tools that
15 you touched upon earlier. If I were to summarize your
16 evidence, and you can tell me if I'm correct in the
17 summary, your basis concerns with the use of SDM tools are
18 firstly whether or not those tools are being used "off the
19 shelf" or whether or not they've been adapted for the
20 appropriate circumstances so that they're culturally
21 appropriate.

22 A And even before that that we critically analyze
23 the research underlying those tools, that we understand
24 appropriately the given weight of those tools and that we
25 understand the limitations of those tools and then from

1 that basis we then do that secondary analysis you're
2 talking about.

3 Q And then also to clarify secondarily it sounds
4 like one of the concerns is that the tool will be used as a
5 replacement for clinical judgment as opposed to being an
6 aid to assist in clinical judgment; is that a fair summary?

7 A I think that we need to -- knowing what the
8 limitations of any research or any tool is, is very vital
9 to being able to use it appropriately. If we know what the
10 limitations are, we'll know that we need to augment that
11 knowledge or supplement that knowledge, either with
12 clinical judgment or with consolation or perhaps with
13 another tool. But it's important that the tool is not over
14 asked to do more than what it was designed to do and more
15 and with a population for which it was not designed.

16 Q Thank you. The use of structured decision making
17 tools is actually now being rolled out in Manitoba. I
18 don't know if you're aware of that fact.

19 A I heard that structured decision making tools are
20 being rolled out here. I haven't taken a detailed look at
21 the situation or the instrument.

22 Q Would it provide comfort to you to know that the
23 development and the piloting of those structured decision
24 making tools took place over a number of years with a major
25 component of research, a major component of evaluation at

1 an academic level and on the ground and then significant
2 training of staff in terms of the use of that tool, would
3 that provide comfort in knowing that the tool was not being
4 used inappropriately?

5 A Not necessarily, because I would want to know
6 what the tool was, what the tool was based on, what was the
7 research. What was it intended to use for? All those
8 things you're talking about could be good practices but
9 they also could be good, could be just good methods for
10 implementing a bad tool in a wrong -- or a good tool in a
11 wrong situation. I'm saying that we have to do all of
12 these things, it involves a good critical analysis at all
13 of these levels. What was the information it was based on?
14 What are the populations upon which those studies were
15 studied? What is the purpose of the tool? What are the
16 limitations of the tool? Those are really, really
17 fundamental things, before we can begin having these other
18 important conversations.

19 Q But you have no knowledge of how or whether that
20 process has taken place in Manitoba prior to the use of the
21 tool?

22 A No, I don't.

23 Q Okay.

24 A I would hope so, but I don't.

25 Q And are you aware that in the development of the

1 tools for use in Manitoba part of the process to roll out
2 SDM tools was that the original tool was adapted for,
3 specifically for use in Manitoba so that it would be
4 responsive to the needs of workers in Manitoba and the
5 families that are being serviced?

6 A No, I don't and I'd be interested in knowing how
7 that testing was going, but no, I don't know.

8 Q And were you aware that in order to use the SDM
9 tools here in Manitoba specific training is required of
10 every worker planning to use that training and in fact not
11 only do we have training, we have onsite specialists which
12 assist workers day to day in case files to use those tools
13 and apply them correctly. Would that provide comfort to
14 you in knowing that the tool was perhaps or more likely
15 being used appropriately?

16 A Again, it depends if the training integrated
17 those pieces that we talked about. Is part of the
18 discussion with the workers the limitations of the model
19 such as those that were, the original designers said were a
20 part of the model? No model is perfect, there's going to
21 be limitations with every model. So what you don't want to
22 do is go out there and just sell it as a tool and how to
23 implement it. You want to educate people about the context
24 in which this thing can be most properly used and in those
25 areas when we need to really give it a double look, when it

1 may not be appropriate reviews for the particular
2 constellation of families or families. So, yes, training
3 is always a good thing but it's also really important to
4 know what we're training people on.

5 Q Were you aware that the training which is being
6 provided in Manitoba is not only extensive but it is
7 specifically geared to training workers that the use of the
8 tool absolutely does not replace clinical judgment, it's
9 only intended as a tool to assist in the application of
10 clinical judgment?

11 MR. FUNKE: Mr. Commissioner, I'm just going to
12 rise for a moment. I appreciate that Ms. Harris not trying
13 to give evidence but I'm querying whether or not the
14 authority is going to be providing a witness that is going
15 to provide the evidence that Ms. Harris is referring to in
16 her questions.

17 MS. HARRIS: Absolutely.

18 THE COMMISSIONER: She said that --

19 MS. HARRIS: I said absolutely, Mr. Commissioner.

20 THE COMMISSIONER: Yes.

21 MR. FUNKE: As long as that's the case then I
22 have no objection.

23 THE COMMISSIONER: Right. Thank you, Mr. Funke.

24 THE WITNESS: So, sorry, I lost track of your
25 last question, so ...

1 BY MS. HARRIS:

2 Q So did I.

3 A Yeah, okay, good. There we are. We'll give you
4 a minute.

5 Q If I don't, if you don't mind.

6 So then you're not aware that the tools, the
7 tools which are being used in Manitoba have been adapted
8 specifically not only for use in Manitoba, as I said
9 earlier, but that the tool has its own risk assessment
10 matrix which was developed specifically for use in
11 Manitoba. You weren't aware of that?

12 A No. And again, I don't want my no to go as being
13 an endorsement of the tool because I just simply don't have
14 the knowledge to say what this particular tool was built on
15 or the quality of the different types of programs being
16 used after that and I think that's an important piece for
17 another witness much more familiar with the actual
18 application and design of the tool to be able to speak to.

19 Q Thank you. And again, just to be clear, you, you
20 are not aware or were not aware that there is room in the
21 Manitoba tool, the Manitoba version of the tool to adjust
22 assessment scores based on certain individual factors so
23 that the circumstances of particular family constellations
24 might be taken into account when coming up with an
25 assessment score?

1 A I think I've already said that I haven't looked
2 at the tool in detail so I appreciate that you're asking me
3 to become more specific about my knowledge of the tool but
4 really I've already said I don't know about the tool. So I
5 just don't want to, to go down a trail where I'm
6 increasingly hypothesizing instead of acting on what I
7 know.

8 Q Okay. You would agree that it's possible though
9 that, assuming that the research that underpins the use of
10 the tool was sound, as you've indicated that's a concern,
11 that those types of adaptations would render the tool to be
12 more individualized and perhaps more appropriate for the
13 different groups of people, whether they be aboriginal or
14 non-aboriginal or of some other ethnic group.

15 A I think when you're adapting a tool, first of all
16 we want to make sure that those adaptations themselves are
17 based on good evidence and good consultation and that we're
18 also not assuming that that adaptation was a fix, that
19 we're evaluating that over the longer run and having that
20 done independently. So that we're alive through good peer
21 review literature as to whether the adaptation is in fact a
22 benefit or if it's a wash or if it in fact is something
23 that should be, should be amended in any given model. So
24 to say that something's been adapted is to assume that the
25 quality research on the adaptation side is quality and if

1 that's the case, if we have good quality research and good
2 evaluation framework, good training, good use of the model
3 and the regulations, et cetera, support that, then that's
4 something that could be positive as one very small element
5 in the child protection regime. But if we don't get the
6 basics right of addressing poverty, addressing poor
7 housing, addressing substance misuse, addressing the
8 inequalities in service outcomes for First Nations kids, it
9 doesn't matter what tool you use, it's going to be
10 shuffling deck chairs on the Titanic.

11 Q Those are all my questions. Thank you. Thank
12 you.

13 A Thank you very much.

14 THE COMMISSIONER: Thank you, Ms. Harris.

15 MS. HARRIS: Thank you.

16 THE COMMISSIONER: Anyone else?

17 Ms. Dunn?

18 MS. DUNN: I just have one question,
19 Mr. Commissioner.

20 THE COMMISSIONER: All right, one question, we'll
21 hear it.

22

23 CROSS-EXAMINATION BY MS. DUNN:

24 Q My name is Catherine Dunn, Dr. Blackstock, and
25 I'm representing an aboriginal based community agency

1 called Ka Ni Kanichihk in this inquiry. You had -- and I
2 just have one follow up question to something that
3 testified. When you were directed to what is on the screen
4 now which is the declaration of principles in the Child and
5 Family Services Act, you were directed specifically to
6 number 9 in those declarations of principles that says, for
7 example, decisions to place children should be based on the
8 best interests of the child and not on the basis of the
9 family's financial status and you were saying as a
10 principle that's good but you would be interested in
11 knowing about the threads of the legislation as to whether
12 that particular principle went through the actual, I guess,
13 teeth of the legislation. So I'm going to refer you to --
14 if you could just scroll up to section 2(1) in this act and
15 this is called --

16 A This is so nice that there's someone skilled who
17 does the scrolling for me.

18 Q I know. This is -- so we can just keep going to
19 section 2(1) where it talks about best interests. Right
20 there -- can you just --

21 THE COMMISSIONER: Back.

22 MS. DUNN: -- scroll down a little bit.

23 THE COMMISSIONER: There we are.

24 MS. DUNN: There we are.

25

1 BY MS. DUNN:

2 Q And do you see that, Dr. Blackstock, where it
3 says "Best Interests" and then there's 2(1) in there?

4 A Yes.

5 Q So I'm just going to indicate what it says there:

6
7 "The best interests of the child
8 shall be the paramount
9 consideration of the director, an
10 authority, the children's
11 advocate, an agency and a court in
12 all proceedings under this Act
13 affecting a child, other than
14 proceedings to determine whether a
15 child is in need of protection,
16 and in determining best interests
17 the child's safety and security
18 shall be the primary
19 considerations. After that, all
20 other relevant matters shall be
21 considered, including ..."

22

23 And then it goes down to number (h) there,

24

25 "(h) the child's cultural,

1 linguistic, racial and religious
2 heritage."

3
4 So what that appears to be saying is that in
5 child protection proceedings, the issue of a child's safety
6 and security is paramount even to cultural considerations,
7 although that's something to be considered. If that is the
8 case, can you comment or are you able to comment on that
9 type of philosophy in terms of what you have been
10 testifying about this afternoon, that is the integral
11 thread of the importance of self-determination of cultural
12 factors in keeping aboriginal children and families healthy
13 if that very factor is excluded in dealing with best
14 interests in terms of child protection?

15 A Well, I'm a big believer in the interdependence
16 of rights as set out in the United Nations Convention on
17 the Rights of the Child. And my personal view is that when
18 doing assessments of safety, it also includes assessments
19 of cultural safety and protection, that that is something
20 you can't parcel out in that particular definition. No one
21 would hear the arguing that a child should be left in an
22 unsafe situation. But it's about including in that
23 analysis the lack of, the repercussions for the child and
24 the harms to the child that could come from a disruption in
25 culture. And I'm going to give you a very pragmatic

1 example. Let's look at the sixties scoop in Manitoba. So
2 Justice Kimelman undertook a review of that process and
3 although the people of the period would have argued that
4 they were removing those children from the immediate safety
5 concerns, Justice Kimelman's understanding of that in my
6 reading of his report, "No Quiet Place", summarizes the
7 practice as surmounting to cultural genocide because of the
8 long-term hardships that were experienced by those children
9 who were removed from the families. So I'm just making the
10 argument here that it's part of the interdependent
11 considerations that one must assess in being able determine
12 the safety of a child.

13 Q And that report of Judge Kimelman was made about
14 1985; is that correct?

15 A 1983 I think is the right date, but the right
16 ballpark, yeah.

17 Q Thank you, those are my questions.

18 A Thank you.

19 THE COMMISSIONER: Thank you, Ms. Dunn.

20 Mr. Funke?

21 MR. FUNKE: I have no further questions arising
22 from the cross or from Ms. Walsh's questions.

23 THE COMMISSIONER: Thank you.

24 Ms. Walsh?

25 MS. WALSH: I have nothing further.

1 THE COMMISSIONER: Thank you, Witness. We got
2 you through in time.

3 THE WITNESS: Thank you very much, Commissioner.

4 THE COMMISSIONER: We appreciate you coming and
5 contributing to the work of the inquiry.

6 THE WITNESS: Well thank you and I wish you the
7 very best in this very important work.

8 THE COMMISSIONER: Thank you. You can leave the
9 stand.

10

11 (WITNESS EXCUSED)

12

13 THE COMMISSIONER: All right, I guess we're
14 through till 9:30 tomorrow morning?

15 MS. WALSH: Yes.

16 THE COMMISSIONER: All right. We'll stand
17 adjourned as now.

18 MS. WALSH: Thank you.

19

20 (PROCEEDINGS ADJOURNED TO APRIL 30, 2013)