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

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

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Transcript of Proceedings  
Public Inquiry Hearing  
held at the Winnipeg Convention Centre,  
375 York Avenue, Winnipeg, Manitoba

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THURSDAY, JULY 25, 2013

## APPEARANCES

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**MR. G. MCKINNON**, for Department of Family Services and Labour

**MR. T. RAY**, for Manitoba Government and General Employees Union

**MS. L. HARRIS**, for General Child and Family Services Authority

**MR. H. COCHRANE** and **MR. K. SAXBERG**, , for First Nations of Northern Manitoba Child and Family Services Authority, First Nations of Southern Manitoba Child and Family Services Authority, and Child and Family All Nation Coordinated Response Network

**MR. H. KHAN** and **MR. J. BENSON**, for Intertribal Child and Family Services

**MR. J. GINDIN** and **MR. D. IRELAND**, for Mr. Nelson Draper Steve Sinclair and Ms. Kimberly-Ann Edwards

**MR. J. FUNKE**, for Assembly of Manitoba Chiefs and Southern Chiefs Organization Inc.

**MS. M. VERSACE**, for University of Manitoba, Faculty of Social Work

**MR. W. HAIGHT** and **MS. K. BJORNSON**, for Manitoba Métis Federation and Métis Child and Family Services Authority Inc.

**MS. C. DUNN**, for Ka Ni Kanichihk Inc.

**MR. G. TRAMLEY**, for Aboriginal Council of Winnipeg Inc.

**MS. B. BOWLEY**, for Witness, Ms. Diva Faria

**MR. R. ZAPARNIUK**, for Witness, Ms. Roberta Dick

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1 JULY 25, 2013

2 PROCEEDINGS CONTINUED FROM JULY 24, 2013:

3

4 THE COMMISSIONER: Good morning.

5 MS. WALSH: Good morning.

6 UNIDENTIFIED PERSON: Good morning.

7 THE COMMISSIONER: Mr. McKinnon, please.

8 MR. MCKINNON: Good morning, Mr. Commissioner.

9 For the monitor, it's Gordon McKinnon for the  
10 Department and Winnipeg CFS. Do you have a copy of my --

11 THE COMMISSIONER: I have it here --

12 MR. MCKINNON: -- brief --

13 THE COMMISSIONER: -- yes.

14 MR. MCKINNON: -- Mr. Commissioner? Thank you.

15 Mr. Commissioner, I've taken some -- a brief  
16 moment to look at the literature on public inquiries, and  
17 there are various kinds of inquiries, as I'm sure you're  
18 familiar, but this would be characterized as an Inquiry  
19 that was intended to investigate a particular matter and  
20 report on a factual situation, and then to make related  
21 policy recommendations for changes. And those kinds of  
22 public inquiries are intended, for the most part, to be  
23 non-adversarial, and they are a search for the truth.

24 In order for you to do your job, Mr.  
25 Commissioner, we submit that it's important that the

1 witnesses and the parties that appear before you  
2 demonstrate insight into whatever shortcomings may be  
3 identified in the services that were delivered to Phoenix  
4 and her family.

5 We hope that you will agree that the Department  
6 and Winnipeg CFS have taken that responsibility seriously.  
7 We hope that you will agree that they have demonstrated  
8 insight and have been forthright in terms of acknowledging  
9 gaps in services that were provided to Phoenix and her  
10 family.

11 I can say that I was pleased to hear Ms. Edwards  
12 in her personal statement acknowledge some personal  
13 responsibility, and I was also pleased to hear Mr. Gindin  
14 acknowledge that there may be responsibility on the part of  
15 both of his clients. I think that's very important, and I  
16 won't comment further on that matter.

17 The Department and Winnipeg CFS have gone through  
18 a period of intensive self-examination. As I mentioned a  
19 moment ago, we have candidly acknowledged gaps in service  
20 and attempted to address them systemically and  
21 systematically.

22 At this Inquiry, we tried to play a role of  
23 ensuring that you have sufficient background information  
24 and context to enable you to understand how the system  
25 operated during the time that services were being delivered

1 to Phoenix and her family, and the changes that have been  
2 made since, so that your recommendations can take into  
3 consideration improvements that have been made since 2006.

4 Now, on the first day of this Inquiry at the  
5 standing application, I was instructed and Winnipeg CFS  
6 acknowledged that all of the services that were delivered  
7 to Phoenix and her family were from Winnipeg CFS. If  
8 services were not provided, Winnipeg CFS was the  
9 responsible agency. And it's important that I repeat that  
10 because I think the perception still persists that somehow  
11 an aboriginal agency was at fault, and that -- as you know,  
12 there was no evidence to that effect. Mr. Khan has  
13 addressed that issue, but it's important, I think, that it  
14 be repeated and that it be emphasized in your report, Mr.  
15 Commissioner.

16 And when this story broke in the media many years  
17 ago, all of us were operating under the same restriction,  
18 which is, we couldn't comment because all of the  
19 information was, was confidential under legislation, and so  
20 this rumour and, and innuendo persisted. So it's important  
21 that that false impression finally be laid to rest.

22 In terms of Winnipeg CFS, it acknowledges that it  
23 had a responsibility to provide the environment and the  
24 professional foundation for the delivery of effective and  
25 efficient child protection services that are consistent

1 with standards, and to the extent that it failed to do this  
2 during the time that services were delivered to Phoenix and  
3 her family, Winnipeg CFS accepts responsibility.

4 Now, as you are well aware, Mr. Commissioner,  
5 and, and, and there -- it's referenced in the order-in-  
6 council creating this Commission -- there were a number of  
7 reviews conducted immediately after the death of Phoenix  
8 Sinclair, and those reviews -- in particular, now, I'm  
9 talking about the case-specific reviews -- identified a  
10 number of issues, like funding, like workload, the CFSIS  
11 information system, issues of supervision, issues of record  
12 keeping and training.

13 And the question I think you should ask yourself,  
14 and the question the Department and Winnipeg CFS asked  
15 itself, is, what do you do in the face of this tragedy and  
16 in the face of the findings in those reports? What should  
17 be the response?

18 We submit at the end of the, of the day, the  
19 solution is not merely -- and I emphasize the word "merely"  
20 -- to increase funding and to add more staff and to improve  
21 the information system, et cetera. That's part of the  
22 solution. But to just add more money and more staff, and  
23 permit the same failures as we saw in this case to be  
24 continued in the future, is no solution at all.

25 THE COMMISSIONER: I agree with you.

1           MR. MCKINNON: And what you saw in the evidence  
2 that was called by the Department and Winnipeg CFS is we  
3 did address those issues of funding and staffing and  
4 whatnot, but the more fundamental change was a revision of  
5 the practice model.

6           More people doing the same thing does not improve  
7 outcomes. Winnipeg CFS and the Department have concluded  
8 that a fundamental failing in the services delivered to  
9 Phoenix and her family are those described in paragraph 11  
10 of our brief, and this will be a recurring theme in my  
11 presentation today, Mr. Commissioner.

12           We say that the failure in the delivery of  
13 services by Winnipeg CFS to Phoenix and her family  
14 fundamentally relate to a failure to appropriately assess  
15 safety and risk. This resulted in the case not being  
16 opened at intake when it should have been, or being closed  
17 prematurely, both at intake and in the family service unit.

18           How did that happen? Why did this occur? It's  
19 the opinion and conclusion of Winnipeg CFS and the  
20 Department that this is fundamentally an assessment issue,  
21 that the assessments that were being done on this case and  
22 others were asking the wrong question, and I'll be  
23 developing that, Mr. Commissioner.

24           You will have heard evidence from numerous social  
25 workers and supervisors that they would close cases because



1 there was no noted protection concern. They were not  
2 asking themselves whether the identified risk factors had  
3 been resolved or reduced. And this approach is seen  
4 repeatedly at the various stages of service delivery, both  
5 at intake and when the file was in the family service unit.

6 And I'll pause just to remind you, Mr.  
7 Commissioner, this file was only in the family service unit  
8 on two occasions: initially in 2000, when Phoenix was  
9 apprehended at birth, and then again in 2003, when Phoenix  
10 was apprehended at the time of that drinking party. And  
11 you heard evidence from the social workers who had conduct  
12 of the file in those two periods from when it was in family  
13 services. At all other times, all of the evidence and all  
14 of the contact with Phoenix and her family was at the  
15 intake unit, either at tier one, which is called CRU or the  
16 crisis response unit, or at tier two, which is sometimes  
17 called general intake or intake.

18 It is our submission that the approach that was  
19 being adopted was fundamentally flawed in terms of the  
20 questions that were being asked, and Winnipeg CFS no longer  
21 adopts this approach to child protection. This represents  
22 a fundamental change and a significant improvement to  
23 service delivery at Winnipeg CFS and, as I'm going to  
24 develop in my argument, all other agencies in the province.

25 Mr. Commissioner, those are the opening remarks.

1 I'm now going to touch briefly upon some of the  
2 specific issues, and in the course of doing that, refer  
3 from time to time to this theme that I'm pressing upon you,  
4 which is a better way of assessing safety and risk.

5 We submit that the first step to fixing the  
6 system was an injection of funding, and let me start by  
7 saying this: that it -- I submit that the system being  
8 operated today at Winnipeg CFS and at every agency in  
9 Manitoba could not have been done on the basis of the  
10 funding that was in place in 2006. But the solution, as I  
11 said, wasn't just to throw money at this problem. The  
12 funding had to be staged in, it had to be purposeful, and  
13 it had to have -- it had to be tied to service improvement.

14 Let me briefly refresh your memory with respect  
15 to the evidence you heard about the increasing -- increases  
16 in funding. First of all, on a global basis -- and this is  
17 at paragraph 17 of my brief -- if you go from fiscal year  
18 2001-2002 to fiscal year 2011-2012, funding has increased  
19 from \$165 million to \$423 million. So there is substantial  
20 provincial commitment in increased funding.

21 Now, the question you should then be asking me,  
22 Mr. Commissioner, is whether that includes maintenance  
23 funding, and it does. So some portion of that funding --  
24 and a significant portion of it -- is going to pay the  
25 costs of children in care and I'll deal with that later in

1 my argument, but on a global basis, that's what the costs  
2 to the province are.

3           If we look -- and I've got these figures in  
4 paragraph 18 of my brief -- federal funding has increased  
5 from approximately 50 million to 124 million, and that, Mr.  
6 Commissioner, is due in part to the new funding model which  
7 was negotiated between Manitoba and Canada. And I'll be  
8 arguing throughout my brief as well that that funding model  
9 is a major breakthrough and a major achievement, not only  
10 because it committed Manitoba to funding agencies so that  
11 they could deliver good services, but it committed Canada  
12 to that, and it was, it was a significant endeavour and a  
13 significant accomplishment.

14           Now, the funding, as I mentioned, didn't all come  
15 at once. It was staged in, and I'll refresh your memory as  
16 to what those stages were. The first was the initial  
17 response, which was entitled Changes for Children, and, and  
18 Changes for Children is at Commission disclosure 1027.  
19 It's also an exhibit. That was a piece of paper, Mr.  
20 Commissioner, but it made a commitment of \$42 million, and  
21 contained in that commitment was an initial funding for  
22 workload relief in the amount of \$5 million, so almost  
23 immediately, sixty-three and a half new positions across  
24 the province for frontline child protection services.

25           This was followed by funding for 17 positions the

1 next year. And, and keeping in mind there's no funding  
2 model at this point, Mr. Commissioner, so the Department is  
3 funding authorities, the authorities are distributing to  
4 agencies using their discretion as to where the greatest  
5 needs are, but there's no model in place.

6 The other initiatives that were funded was a  
7 foster care initiative to create new foster care homes.  
8 There were -- there was funding for fetal alcohol syndrome  
9 specialists. There was funding for the creation of a  
10 staffing complement for the standing committee office, and  
11 you were asking about that yesterday, Mr. Commissioner.

12 THE COMMISSIONER: Yes.

13 MR. MCKINNON: So this is where that came. And  
14 just to provide you with a bit of background because I know  
15 it's, it's of interest to you, the systemic reviews -- not  
16 the case-specific reviews, but the systemic reviews that  
17 were conducted by -- I think the one in particular was the  
18 ombudsman's report -- recommended the need for more central  
19 planning at the authority level and recommended the concept  
20 of a secretariat for the standing committee, and that has  
21 been -- that's resulted in this funding for the creation of  
22 a standing committee office so there's now permanent staff  
23 providing central coordination.

24 THE COMMISSIONER: And that came out of a  
25 recommendation from the ombudsman's office.

1           MR. MCKINNON:     My recollection, it was the  
2 ombudsman's report, yes.

3           The next funding commitment was the creation of  
4 ten quality assurance positions in the four authorities.  
5 So again, I'm -- and that's listed, I believe, at paragraph  
6 19 of my brief.

7           THE COMMISSIONER:   Yes, it is.

8           MR. MCKINNON:     And the point there -- and, and  
9 you'll appreciate, Mr. Commissioner, due to time, I'm, I'm  
10 dealing with this at a very high level and, and I'm, and  
11 I'm simplifying to some extent.   So when I say that we  
12 identified this assessment issue as being the primary gap  
13 in, in service to Phoenix Sinclair, we didn't ignore the  
14 other things like quality assurance.   So there was funding  
15 introduced at that time for quality assurance.

16           The next major funding commitment was the  
17 introduction of what is described as either differential  
18 response or family enhancement, and that's -- the labels  
19 were sometimes used interchangeably, probably not entirely  
20 correctly, but I'm sure by now you understand what that is,  
21 and that was the additional prevention stream that you  
22 heard so much about.   That started with fifty-four and a  
23 half new positions throughout the province, and has  
24 increased since.

25           Mr. Commissioner, at paragraph 21 of my brief, I

1 make the point that in addition to this funding that I just  
2 described to you that went to agencies and authorities,  
3 there was also 45 positions -- funding for 45 positions at  
4 community-based agencies. And we submit, again, that  
5 that's important in terms of the balance that I think  
6 you're looking for, which is some primary prevention in the  
7 community, dealing with the social problems that are  
8 bringing people into the child welfare system. And Ms.  
9 Loepky spoke about those various agencies that were  
10 funded, in her evidence. My recollection is they were  
11 dealing with fetal alcohol syndrome and other social  
12 problems that are recognized as contributing to children  
13 coming into care.

14 And finally, all of this funding culminated in  
15 the new funding model which was formally an agreement  
16 between Canada and Manitoba.

17 Now, this funding model, Mr. Commissioner, is  
18 unique, and it must be unique because Manitoba is unique in  
19 that it's the only province in Canada where aboriginal  
20 agencies are mandated to provide services off-reserve. So  
21 we had to come up with a unique and creative way of  
22 funding, and that was accomplished in this new funding  
23 model.

24 What we submit is important for you to recognize  
25 is that the introduction of the funding model resulted in

1 an increase in funding to all four authorities and every  
2 child welfare agency in Manitoba. And the other thing that  
3 the funding model accomplished is that it built in, if you  
4 will, automatic adjustments so that funding would be  
5 increased if there was an increase in the volume of cases.

6 And if you remember my examination of Elsie  
7 Flette, who's the CEO of the General -- of the Southern  
8 Authority, she agreed that under the new funding model  
9 provincial dollars for every one of the nine agencies in  
10 the Southern Authority was increased, and she also agreed  
11 that federal dollars for every one of the agencies in the  
12 Southern Authority was increased.

13 I'm just going to take an aside here and comment  
14 on the argument of Mr. Funke. And I don't think I'm  
15 misstating Mr. Funke's position when I say that although  
16 Mr. Funke has criticisms of the funding model, he would  
17 acknowledge that it's better than it was before the funding  
18 model. I'll let him correct me if he disagrees, but I  
19 don't think I'm misstating his position.

20 But when he criticizes the funding model, he  
21 points that in some cases the federal model is more  
22 generous -- or the federal funding under the, under the  
23 model is more generous than the provincial funding under  
24 the model. What he fails to point out is that in some  
25 cases the reverse is true; that is, that in some cases the

1 provincial funding will be more generous than the federal  
2 funding.

3           The reason for that, Mr. Commissioner, is that  
4 the federal funding is based on, on, on the population base  
5 and an assumed number of cases arising out of that  
6 population base, and I think the assumption -- is it seven  
7 percent? The assumed figure is seven percent. So reserves  
8 where the cases are less than seven percent, it will be  
9 more generous; where the, where the number of cases is  
10 greater than seven percent, it's going to be less generous.

11           THE COMMISSIONER: Being seven percent of the  
12 total population on the reserve.

13           MR. MCKINNON: Will be requiring services, yes.

14           THE COMMISSIONER: Yeah.

15           MR. MCKINNON: And what -- you also heard from  
16 Elsie Flette that in some cases the federal funding was  
17 significantly below need, and in those cases, the federal  
18 government did top up. So it's not a perfect model. No  
19 one says it's a perfect model. It's a much better model,  
20 and we were successful in getting the federal government to  
21 increase their funding significantly and the province  
22 likewise committed to that.

23           THE COMMISSIONER: And, and exists until 2015?

24           MR. MCKINNON: It does. It's a five-year  
25 agreement and there are -- I think you heard some evidence



1 on this: Already they're planning and meeting to talk  
2 about ways of fine-tuning and improving that agreement for  
3 2015. Now, no government, as you know, can commit  
4 indefinitely, but we have every expectation that those  
5 consultations will continue and the funding agreement will  
6 be renewed and improved, hopefully.

7 So that was a bit of an aside on the funding, but  
8 the point that we make, Mr. Commissioner, is, in the  
9 absence of that kind of funding, we can't do the  
10 programming and service delivery that we think -- not that  
11 we think -- that we have now accomplished and that we think  
12 is going to produce significant dividends in the welfare of  
13 children. We needed to get that funding bit fixed.

14 So let's then talk about assessments, because I  
15 told you this is a theme and, and I think now is a good  
16 time to deal with it.

17 As I mentioned, Winnipeg CFS and the Department  
18 have determined that a lack of what we call evidence-based  
19 assessment tools -- and it, it doesn't necessarily have to  
20 be structured decision making; that's one evidence-based  
21 assessment tool, but that was the one that was settled on.  
22 But what was in existence in the time that services were  
23 being delivered to Phoenix and, and her family is there  
24 were no evidence-based assessment tools. There were  
25 assessments, but they weren't evidence-based, and they

1 were, quite frankly, largely absent on Phoenix's file.

2           You heard evidence from witnesses, including  
3 Heather Edinborough, that in the era that we're talking  
4 about -- 2000 to 2005 -- assessments were highly  
5 subjective. You heard evidence the difference between a  
6 safety assessment and a risk assessment may not have been  
7 clearly understood by staff.

8           In order to address this fundamental concern, it  
9 was necessary for, for, for agencies like Winnipeg CFS to  
10 implement clear, specific, evidence-based risk assessment  
11 tools and family assessment tools, which is slightly  
12 different -- and you heard some evidence about those, as  
13 well -- to guide workers and supervisors in their decision  
14 making. And you also heard evidence that the tools are not  
15 enough, that enhanced training is necessary to enable  
16 workers to do better assessments and to engage with  
17 families.

18           So that was the task that was undertaken by  
19 Winnipeg CFS, the General Authority, with the Department in  
20 consultation.

21           And the evidence you heard is that since 2006  
22 most agencies have implemented structured decision making  
23 tools that do exactly what I describe. That is, they  
24 improve the ability of staff to do risk assessments, and  
25 that's called the probability of future harm; they've

1 improved the ability of staff to do safety assessments; and  
2 as well as comprehensive assessments for children and  
3 families, what's called the strengths-needs assessment.  
4 This suite of tools provided a consistent framework for  
5 gathering and evaluating information in order to make  
6 reliable decisions regard children and families. And these  
7 tools were very ably described yesterday by Ms. Harris and  
8 I won't try and improve upon what she said. I commend her  
9 evidence -- her submissions to you, Mr. Commissioner, when  
10 you're writing your report. I think she described them  
11 very well.

12 I would submit that with the introduction of  
13 these tools, workers and supervisors at Winnipeg CFS and  
14 all other agencies are now very cognizance of the --  
15 cognizant of the difference between safety and risk and how  
16 to appropriately assess both. And it's my submission, Mr.  
17 Commissioner, that this improvement and this approach to  
18 child welfare in Manitoba could not have been done without  
19 the funding increase, without resources, without training  
20 that I just described to you.

21 And so this comes back in terms of what's the  
22 Department's fundamental role in responding, and we say the  
23 Department's job is to provide sufficient funding and  
24 sufficient direction to enable good practice. And we  
25 submit that has been done.

1 THE COMMISSIONER: Across the province.

2 MR. MCKINNON: Across the province. And I'll  
3 talk a little bit more outside of Winnipeg in a moment.

4 In fact, I'll talk about that now.

5 THE COMMISSIONER: Where have you, you identified  
6 the province's role in the brief, or have --

7 MR. MCKINNON: I'm -- that's, that's not in my  
8 written brief. I, I'm, I'm reading from my notes.

9 THE COMMISSIONER: Okay. And what -- repeat what  
10 you accept the Department's role to be.

11 MR. MCKINNON: Sufficient funding and sufficient  
12 direction to enable good practice. And when I talk about  
13 direction -- and I'll be elaborating on this in a --  
14 further in my brief -- we're in a very collaborative system  
15 here in Manitoba so the direction is often not by dictate,  
16 it's by consultation.

17 Now, I know, Mr. Commissioner, you're concerned  
18 about what's happening with authorities other than the  
19 General Authority and agencies other than Winnipeg CFS.

20 THE COMMISSIONER: Yes.

21 MR. MCKINNON: One of the reasons that the  
22 evidence with respect to that issue is limited is because  
23 this was an Inquiry into the services delivered to Phoenix  
24 and her family. They were in Winnipeg at the time, so most  
25 of the evidence is focused on what's been done to improve

1 service delivery in Winnipeg. That's why you heard so much  
2 about Winnipeg and so much about the GA.

3           However, there was evidence that other  
4 authorities have embraced structured decision making. I  
5 make reference to that in paragraph 30 of my brief and I  
6 footnoted it to the evidence because I anticipated your  
7 concern about that point.

8           So if you look at paragraph 30, I note that the  
9 tools are in use at all agencies in the Southern Authority,  
10 I cite the evidence of Ms. Flette; the Métis Authority, and  
11 I cite the evidence of Billie Schibler; and, of course, the  
12 General Authority, which you're well familiar with, the  
13 evidence of Jay Rodgers. The evidence also indicates that  
14 the Northern Authority has begun implementation, and I cite  
15 the evidence of Ms. Hastings. But you didn't hear a great  
16 deal about those other authorities because it didn't --  
17 wasn't directly related to Phoenix.

18           THE COMMISSIONER: And was centred on Winnipeg  
19 Child and Family Services and the General Authority.

20           MR. MCKINNON: Right. The other point I want to  
21 make about the structured decision making tools is that I  
22 would submit that, with rare exception, the evidence of the  
23 social workers -- and when I say "rare exception," there  
24 may be no exception, but I, I'll be cautious and say rare  
25 exception.

1           The evidence of the social workers, the  
2 administrators, and the academics -- when I say  
3 administrators, I'm talking about child and family service  
4 administrators -- and the academics who testified before  
5 you all indicated that these assessment tools represent a  
6 significant improvement in the way in which decisions are  
7 made in the delivery of family services in Manitoba.

8           I also want to briefly touch on -- I'm not going  
9 to describe them in any detail, but touch on the -- what we  
10 call the signs of safety practice techniques. And part of  
11 the way in which services are being delivered in Winnipeg  
12 is this new strategy of engagement with families. And  
13 that's called signs of safety practice techniques, and this  
14 is an approach that's designed particularly for families  
15 that might otherwise be reluctant to cooperate with CFS.  
16 And that also was described very ably by Ms. Harris when  
17 she talked about the engagement approach to child  
18 protection and the engagement approach to family  
19 enhancement or prevention, and how they relate to one  
20 another and the interweaving streams. I, I couldn't  
21 improve upon that description. But that is a new  
22 development at Winnipeg CFS that we submit -- and, and you  
23 heard a lot about it in the evidence of Karen McDonald and  
24 Alana Brownlee where they were describing how they train on  
25 these techniques.

1           THE COMMISSIONER: Is there reference to that in  
2 your brief?

3           MR. MCKINNON: The reference to that is in  
4 paragraph 31 of my brief.

5           THE COMMISSIONER: Thank you.

6           MR. MCKINNON: And you, you heard anecdotes from  
7 Karen McDonald about the feedback they're getting from  
8 social workers and families as to how much better this  
9 technique is working over the techniques that were being  
10 employed in the old days.

11           I now want to turn to the issue of training. And  
12 this is back to my theme, Mr. Commissioner, that the same  
13 -- more workers doing the same things the same way doesn't  
14 improve outcomes.

15           So what Winnipeg CFS and the Department  
16 determined is that training had to be significantly  
17 improved. Let me commence by saying that the Department  
18 and Winnipeg CFS acknowledge that there was insufficient  
19 training for workers and supervisors during the period of  
20 time that services were delivered to Phoenix and her  
21 family. That's, that's where we want to start.

22           THE COMMISSIONER: And, and do you carry that one  
23 step further by acknowledging that some of the shortcomings  
24 in the services that were delivered might well be  
25 attributing to that factor?

1           MR. MCKINNON:     Certainly the training factor,  
2 that, that if workers are not trained to do particular  
3 tasks, it can affect, it can affect service delivery. I  
4 don't want to say a particular task; that would be too  
5 difficult. But, in general, we accept that principle, and  
6 if we want to improve outcomes, we've got to invest in  
7 training.

8           So you heard evidence that following the receipt  
9 of the external reviews the, the Department did establish  
10 infrastructure to support the authorities in implementing  
11 training programs in their agencies -- and again, this is  
12 unique in Manitoba -- and it was determined that it wasn't  
13 for the Department to run these training programs because  
14 that would be encroaching upon the autonomy and the aim of  
15 AJICWI, which is to allow culturally appropriate services  
16 to be delivered.

17           So the service and the -- I mean, they can all  
18 agree on structured decision making but they may approach  
19 service delivery differently, and that comes back to the  
20 difference between the tool and the way workers are trained  
21 to use the tool. So the training programs were run by the  
22 authorities, and you heard evidence from Ms. Loepky that  
23 there was significant new dollars for training at the  
24 authorities.

25           The Department introduced funding for a joint



1 training team consisting of five individuals assigned to  
2 the four authorities, and they could work independently and  
3 collaboratively. The Department also provided funding for  
4 ten quality assurance specialists assigned to the four  
5 authorities, and as you heard from Mr. Rodgers, he used  
6 those quality assurance specialists to train.

7 THE COMMISSIONER: And your first category before  
8 the quality assurance trainers were --

9 MR. MCKINNON: It was, it was the joint training  
10 team. That's at paragraph 34 in my brief.

11 THE COMMISSIONER: For eight -- for agencies  
12 falling under the General Authority.

13 MR. MCKINNON: No, that was for all four  
14 authorities.

15 THE COMMISSIONER: Oh, for all five authorities.

16 MR. MCKINNON: Five trainers to provide training  
17 at the direction of the four authorities.

18 THE COMMISSIONER: Individually or collectively?

19 MR. MCKINNON: Five for the group. Correct?

20 So the total there is five in the joint training  
21 team and ten in the quality assurance team, and the  
22 authorities then can use those resources as they see fit.

23 And Karen McDonald, who gave evidence at the  
24 Inquiry, was one of the individuals that came under the  
25 quality assurance team at the General Authority. Her task

1 -- her sole task, and that of one other person, if I recall  
2 her evidence -- was to train Winnipeg CFS workers. So  
3 again, the authorities have the resources; they can decide  
4 how they want to use those resources to train and to  
5 monitor to see that the work is being done in a way that  
6 meets the expectations of the agency and the authority.

7           You heard evidence in particular from Jay Rodgers  
8 that there was no comparison between the training available  
9 today and the training that was available in 2000-2005, and  
10 on this rare occasion I'll adopt the evidence of Janet  
11 Kehler, the staff representative from the MGEU, who  
12 acknowledged that since 2006 training at Winnipeg CFS was  
13 much improved. In fact, I think she said they're getting  
14 no complaints from their members about training. It's a  
15 non-issue.

16           You also heard evidence, Mr. Commissioner, that  
17 Winnipeg CFS now has its own ten and a half day orientation  
18 training for new employees. This includes training on  
19 legislation, provincial standards, policies.

20           Just want to comment very briefly on one point  
21 related to training, and that was the suggestion made at  
22 this Inquiry that training should be provided before  
23 workers receive a caseload, and, and that, that suggestion  
24 was put to a number of witnesses and they acknowledged  
25 that, that they started a caseload before they had their

1 formal training. Winnipeg CFS deliberately staggers the  
2 orientation training throughout the first year of a  
3 worker's being on the job, and the theory there is  
4 retention.

5 THE COMMISSIONER: At, at what stage is that ten  
6 and a half days?

7 MR. MCKINNON: It's, it's, it's orientation, so  
8 it's within the first year.

9 THE COMMISSIONER: Right.

10 MR. MCKINNON: But the evidence of Karen  
11 McDonald, and I, I believe, Alana Brownlee, was that they  
12 found if they do the training right at the beginning, it  
13 doesn't stick, that it works better if they've got some  
14 cases, they can work on their cases in training, and they  
15 can, they can stagger that training. And, and you heard  
16 very detailed evidence about that.

17 So it's at the front end, but it's not before  
18 they take on cases. I, I, I would think, Mr. Commissioner  
19 -- because I've attended some training sessions -- it's  
20 very difficult to apply that knowledge if you don't have a  
21 case to apply it to.

22 THE COMMISSIONER: I would agree.

23 MR. MCKINNON: Now, Mr. Ray made a comment that  
24 under the new funding model, just when -- I'm on a bit of  
25 an aside here. What Winnipeg CFS does is in the first year

1 they restrict the caseload of new workers to 20 cases, so  
2 it's a reduced caseload. And Mr. Ray made a comment that  
3 under the new funding model the, the worker to staff ratio  
4 is 20 to one in any event so he didn't see what that was  
5 all about, so I want to just explain that to you so that  
6 you're not confused.

7 I think there's two areas in which Mr. Ray,  
8 perhaps, incorrectly described the funding model to you.  
9 He said that the funding is 25 to one for protection and 20  
10 to one for prevention, which is correct. But he then went  
11 on to equate what family service workers do to prevention,  
12 and that's not correct. Prevention is not the traditional  
13 family service work.

14 So protection work, which is what family service  
15 workers do, is funded at 25 to one. What's, what's funded  
16 at 20 to one is the family enhancement work, which comes at  
17 the front end of service when lower risk cases are diverted  
18 from ANCR into that prevention stream that you heard  
19 described yesterday by Ms. Harris.

20 THE COMMISSIONER: So you're saying the family  
21 service workers are on the protection side.

22 MR. MCKINNON: The family service workers are on  
23 the protection side, and they're funded at 25 to one.

24 THE COMMISSIONER: Yes.

25 MR. MCKINNON: There's one other thing that I, I

1 have to correct. Again, if you recall Ms. Brownlee's  
2 evidence, even though the funding ratio is 25 to one, that  
3 doesn't necessarily mean the caseload is 25 to one. And  
4 the reason for that is that agencies like Winnipeg -- and  
5 you heard this from other agencies as well -- might have to  
6 take some of their workers and they might be doing foster  
7 home work, or they might be doing what we call -- is it  
8 auxiliary care, auxiliary services?

9 UNIDENTIFIED PERSON: (Inaudible).

10 MR. MCKINNON: Alternate -- altcare, they call  
11 it. So some of the workers are not doing family service  
12 work, they're doing foster home work, for example.

13 And so with a funding ratio of 25 to one you can  
14 get caseloads of 30 to one because --

15 THE COMMISSIONER: Bearing in mind the family  
16 service worker that was in the home during or around the  
17 time of the second apprehension, what, what is -- what are  
18 the, what are the training requirements or, or, or hiring  
19 qualifications for a service worker vis-à-vis a frontline  
20 social worker, or are service workers in the home  
21 considered frontline social workers?

22 MR. MCKINNON: Okay, that is -- it took me some  
23 time to learn the distinction here. So there's a  
24 distinction. That person is called a family support worker  
25 so that's not in the 25 to one. That's an additional

1 resource. So you can have a social worker --

2 THE COMMISSIONER: So that's a family support  
3 worker.

4 MR. MCKINNON: Family support worker --

5 THE COMMISSIONER: And what, then, is a family  
6 service worker?

7 MR. MCKINNON: Family service worker would be  
8 Stan Williams. It would be ...

9 UNIDENTIFIED PERSON: (Inaudible).

10 MS. WALSH: Greeley.

11 MR. MCKINNON: Delores Chief-Abigosis.

12 MS. WALSH: Greeley.

13 UNIDENTIFIED PERSON: (Inaudible).

14 MS. WALSH: Greeley.

15 MR. MCKINNON: Kathy Greeley or ...

16 MS. WALSH: Kerri-Lynn.

17 UNIDENTIFIED PERSON: (Inaudible).

18 MR. MCKINNON: Kerri-Lynn Greeley and Kathy Epps.

19 THE COMMISSIONER: All, all trained social  
20 workers.

21 MR. MCKINNON: All trained social workers.

22 THE COMMISSIONER: And, and what, what's --

23 MR. MCKINNON: The family support worker was  
24 named, and I, I know she --

25 MS. WALSH: Belanger --

1 MR. MCKINNON: -- changed her name.

2 MS. WALSH: -- Pickering.

3 MR. MCKINNON: Belanger and Pickering.

4 THE COMMISSIONER: Yes.

5 MR. MCKINNON: She was much -- she has less  
6 training.

7 THE COMMISSIONER: Yes.

8 MR. MCKINNON: If we draw the analogy to the, to  
9 the medical system, the social workers are like nurses and  
10 the family support workers are like homecare workers. They  
11 have some training but they're not generally professionals,  
12 and they're performing lesser functions, which is really  
13 training on -- educating on how to care for a child hands  
14 on, in the home.

15 THE COMMISSIONER: And they don't necessarily  
16 need a BSW.

17 MR. MCKINNON: They are typically not BSWs, and  
18 they are over and above -- they're, they're paid out of  
19 another budget. So the, the, the 25 to one ratio would not  
20 include that service. That service is provided by another  
21 division of government, and the agency would phone and  
22 request that service and it would be supplied.

23 THE COMMISSIONER: And is Winnipeg Child and  
24 Family Services still operating on that --

25 MR. MCKINNON: Yes, and Winnipeg --

1 THE COMMISSIONER: -- structure?

2 MR. MCKINNON: -- still has that -- I'm being  
3 corrected. The workers are with the agency, but they're  
4 not attached to the unit. So the, the unit may say, We  
5 need a family service worker. The next day that worker  
6 could be in another unit. So they're all using the same  
7 resource --

8 THE COMMISSIONER: Unit --

9 MR. MCKINNON: -- the same pool.

10 THE COMMISSIONER: Unit, unit being what?

11 MR. MCKINNON: The, the family service units  
12 are --

13 THE COMMISSIONER: Oh. Unit sometimes --

14 MR. MCKINNON: -- typically one supervisor with,  
15 with, with five or six workers, and then there's another  
16 pool of resources called family support workers, and that's  
17 where someone like Ms. Pickering Belanger comes from.

18 THE COMMISSIONER: And when you say the family  
19 support workers are -- come from, come from or are financed  
20 by another division of government, I think you said.

21 MR. MCKINNON: And, and I misspoke. Another --  
22 it's, it's, it's not -- it's another pot of money.

23 THE COMMISSIONER: But within the --

24 MR. MCKINNON: Within the agency.

25 THE COMMISSIONER: Within the budget of the



1 agency.

2 MR. MCKINNON: That's correct.

3 THE COMMISSIONER: Okay. That's been helpful to,  
4 to straighten that out for me.

5 MR. MCKINNON: And, and while we're on that  
6 topic, our submission is that's a very important and  
7 valuable resource.

8 THE COMMISSIONER: That's what?

9 MR. MCKINNON: A very important and valuable  
10 resource and --

11 THE COMMISSIONER: I would think so.

12 MR. MCKINNON: And, and, and can do the kind of  
13 work in the home at a more cost-effective -- more cost-  
14 effectively than having a social worker helping with the  
15 basics of --

16 THE COMMISSIONER: And probably takes a very  
17 practical person --

18 MR. MCKINNON: Changing diapers and --

19 THE COMMISSIONER: -- not necessarily one with  
20 an --

21 MR. MCKINNON: Right.

22 THE COMMISSIONER: -- academic background.

23 MR. MCKINNON: Changing diapers and warming  
24 bottles, and making sure that the mother is able to care  
25 adequately.

1 THE COMMISSIONER: Yeah.

2 MR. MCKINNON: So I, I briefly described to you  
3 the new emphasis on orientation at Winnipeg CFS. It's,  
4 it's covered in more detail at paragraphs 38 to 40 of my  
5 brief.

6 THE COMMISSIONER: Paragraphs?

7 MR. MCKINNON: Thirty-eight to 40.

8 I'm going to move on and talk about the 12  
9 modules of training on the GA practice model. That's at  
10 paragraph 41 of my brief.

11 THE COMMISSIONER: Yes.

12 MR. MCKINNON: The GA practice model.

13 THE COMMISSIONER: Yes.

14 MR. MCKINNON: That was -- you heard a great deal  
15 of evidence about that, Mr. Commissioner, from Ms. Brownlee  
16 and Ms. McDonald. This is a major initiative of Winnipeg  
17 CFS and the General Authority. Others are doing their own  
18 training, I've cited that later in my brief, but this is a  
19 major training initiative and it, and it supports the  
20 theory that I'm advancing, which is you can't just  
21 introduce new tools, you can't just introduce new  
22 standards, you can't just, you know, enact from Broadway  
23 Avenue, or Garry Street in this case, where the head office  
24 of the department is. You have to train to those.

25 And so you heard a great deal of evidence of the

1 training that's going on, teaching social workers how to  
2 use these new tools, how to use these practice techniques.  
3 They -- that was well-described by Ms. Harris, so I won't  
4 repeat it. But there's a new focus on assisting social  
5 workers on how to engage with families. That's critical.

6 I mention in my brief at paragraphs 42 -- at  
7 paragraph 42, that there's also -- still the province  
8 offers what's called competency-based training. That's  
9 still there. It's been improved since 2006. I also  
10 mention that with respect to this GA practice model,  
11 supervisors take it twice: once so that they'll learn it  
12 and once with their staff as their staff learn it. So that  
13 the supervisors are ahead of their staff, they get the  
14 training twice. So a real significant emphasis on training  
15 staff and supervisors to these new practice techniques.

16 Now, how does all of this make a difference? And  
17 I think that the best way for me to answer that, Mr.  
18 Commissioner, is if you look at the evidence of Alana  
19 Brownlee and Karen McDonald. They reviewed how the Phoenix  
20 Sinclair case would have been handled today under this new  
21 practice model. And it's in our Exhibit 63 at pages 68 to  
22 79. It's footnoted at, at paragraph 44 of my brief.

23 THE COMMISSIONER: Yes.

24 MR. MCKINNON: But our submission is this: that  
25 with this new approach to practice, the Phoenix Sinclair

1 case would have been handled very differently. It would  
2 not have been closed when it was closed; it would have been  
3 open when it wasn't open. So that's, in a nutshell ...

4 And, and, and I'm repeating myself, but I'm back  
5 to the theme. The problem we see on this file is that it  
6 was closed when it shouldn't have been closed, and it  
7 wasn't opened when it should have been opened, and that's  
8 the change that comes from all these changes that I've been  
9 describing to you. So we say there's a foundation there  
10 that didn't exist before.

11 I'm now moving on to the issue of workload. Let  
12 me start with paragraph 50. Let me start, Mr.  
13 Commissioner, by emphasizing this point: Workload in the  
14 child welfare system is a national problem. It's not  
15 unique to Winnipeg. It's not unique to Manitoba. It's --  
16 as, as I think it was Mr. Rodgers indicated, it's in the  
17 literature throughout Canada and it may be a worldwide  
18 issue.

19 We acknowledge that workload was identified as an  
20 issue by many of the social workers who testified,  
21 including many of the management personnel. And as, as I  
22 did with training, I acknowledge that workload can have an  
23 impact on the administration of any CFS file. There's no  
24 doubt about that.

25 At paragraph 51 and 52 of our brief, we outline

1 the additional staff that have been added to agencies and  
2 to authorities, and I won't, I won't go through them. I've  
3 briefly described them in the funding description, but you  
4 will see that there are many initiatives that have resulted  
5 in increased staffing for agencies and authorities all  
6 across Manitoba. And I took -- I think it was Ms. Loepky,  
7 and to some extent the other authorities through that same  
8 point, to illustrate the increase in staffing that has been  
9 introduced since 2006.

10 At paragraph 53, I make the point, Mr.  
11 Commissioner, that Winnipeg CFS has had a 32.8 percent  
12 increase in frontline positions, with only an 8.6 percent  
13 increase in cases, so there is real improvement.

14 The question then arises, Mr. Commissioner, as to  
15 whether workload was a factor that contributed to the death  
16 of Phoenix Sinclair. In our brief at paragraph 58, Mr.  
17 Commissioner, we make the point that no worker testified  
18 that workload was a factor in their decision not to open  
19 the file at CRU or intake, or to close the file after it  
20 had been referred to family services. So while we  
21 acknowledge that workload was a general systemic issue in  
22 2000-2005, the evidence suggests that workload did not have  
23 an impact on the key decisions made with respect to the  
24 delivery of services to Phoenix and her family.

25 Now, in our brief, Mr. Commissioner, we go on to

1 cite specific evidence -- this is paragraphs 59 through 69  
2 -- specific evidence from a number of witnesses who  
3 provided services to Phoenix and her family to the effect  
4 that caseloads were manageable or did not impact on  
5 services provided to Phoenix. And I won't, I won't repeat  
6 that. It's there for you to look at.

7           Mr. Ray, on behalf of MGEU, takes exception to  
8 this evidence. He goes on to cite other evidence -- and he  
9 did this at some length in his oral submissions to you, Mr.  
10 Commissioner -- other evidence from each of the workers in  
11 question that indicated that they were always busy, and  
12 that if they had more time they would do more. And I, I  
13 can't disagree with that. Workers were always busy, and  
14 workers, if they had more time, could always do more. So  
15 no one is -- no one disputes that point.

16           Mr. Ray pointed out a number of workers said they  
17 had to prioritize (phonetic) their files. Of course, they  
18 had to prioritize the files. Unless you have only one file,  
19 you're always going to have to prioritize to determine which  
20 file requires your attention first. So we think there's a  
21 subtle difference between the department's view of the  
22 evidence and Mr. Ray's view of the evidence. What we say  
23 is that almost without exception the workers who provided  
24 services to Phoenix and her family made decisions to close  
25 the file or not to open the file based on their view of

1 child protection concerns at that time.

2 No worker testified that they assessed there was  
3 a safety problem or an imminent risk to Phoenix and chose  
4 not to provide services because they were too busy. Every  
5 worker was satisfied there were no immediate protection  
6 concerns when they made decisions on this file.

7 What we say, as the party that's ultimately  
8 responsible for the delivery of child protection services  
9 in Winnipeg and in Manitoba, what we submit -- and I'm  
10 returning to my theme -- is that the wrong question was  
11 being asked. The question shouldn't have been whether  
12 there was an immediate protection concern, and that's a  
13 question that is no longer being asked and we should never  
14 return to that system. What we now ask is whether there is  
15 a risk of abuse or neglect, or whether there --

16 THE COMMISSIONER: Is there a risk and then what?

17 MR. MCKINNON: Whether there's a risk of abuse or  
18 neglect, and that's the probability of future harm tool.  
19 And if there is a risk, services are provided even if  
20 there's no immediate safety concern.

21 We now ask if the child is safe. That's a safety  
22 assessment. That's a different question. And if the  
23 child's not safe, then we take steps to make that child  
24 safe. And it goes without saying, Mr. Commissioner, that  
25 if you ask a different question, you may get a different

1 answer.

2           So to the extent that workers were asking the  
3 wrong question, Winnipeg CFS shares responsibility for  
4 that, but our ultimate position is that the totality of the  
5 evidence suggests that while workload was a general issue  
6 in the child welfare system in Manitoba and all other  
7 Canadian jurisdictions, it was not a specific factor in the  
8 services provided to Phoenix Sinclair and her family.

9           THE COMMISSIONER: Twice you, twice you said the  
10 proper question is, if there is a risk, and then you added  
11 something. Was it a risk ...

12           MR. MCKINNON: If there's a risk of neglect or a  
13 risk of abuse, then services need to be provided.

14           THE COMMISSIONER: Right.

15           MR. MCKINNON: If there is a safety concern, then  
16 the child needs to be made safe.

17           THE COMMISSIONER: Right.

18           MR. MCKINNON: That may include apprehension.  
19 Not necessarily, but may include. And that's the new  
20 approach. So we no longer ask the question that you saw  
21 repeatedly on this case file: Is there an immediate  
22 protection concern? That vocabulary is gone.

23           Now, it's quarter to eleven. I could take the  
24 break now or I could go for 15 minutes, whichever you would  
25 prefer.



1           THE COMMISSIONER:   No, if this is a convenient  
2 time we'll take a break for 15 minutes.

3

4                               (BRIEF RECESS)

5

6           THE COMMISSIONER:   All right, Mr. McKinnon.

7           MR. MCKINNON:   Mr. Commissioner, before I go on  
8 to my next point I just want to backtrack and bring up two  
9 points that may be helpful to you.

10                   The first is we were talking about, you know,  
11 what's going on in the other authorities with respect to  
12 structured decision making and practice model, and the  
13 obvious escaped me, which was ANCR is a Southern Authority  
14 agency.   So all the evidence you heard from ANCR would  
15 indicate that -- they're not being done in an identical  
16 way, but the kinds of practice improvements that are  
17 occurring at Winnipeg CFS are also occurring at ANCR, so  
18 you can look to the evidence of Ms. Stoker as an example of  
19 how a Southern Authority agency has improved their  
20 assessment techniques.

21                   The other point I wanted to clarify is the --  
22 and, and it's really the use of language, but differential  
23 response.   And I made the point that differential response  
24 is sometimes referred to as family enhancement, but that is  
25 a misnomer.   Differential response is a model that creates

1 two streams. One stream is the family enhancement model,  
2 sometimes referred to as prevention; that's the first  
3 stream. The second stream is the more traditional  
4 protection model, sometimes referred to as the  
5 investigation model or forensic model. So differential  
6 response is the label that describes the fact that there  
7 are now two streams.

8 Social workers make the decision as to which of  
9 those two streams are most appropriate for a particular  
10 family, and they use the structured decision making tools  
11 to assist in making that decision.

12 I now want to move to the --

13 THE COMMISSIONER: Well, just ask one question  
14 arising out of that. Once they've made a decision with  
15 respect to which of those two streams is most appropriate,  
16 I assume that if circumstances change within the family,  
17 they can move to the other stream.

18 MR. MCKINNON: And that's why when we come to the  
19 recommendations, we think that has to be done in one agency  
20 because, as Ms. Harris explained yesterday, these streams  
21 weave in and out of each other as circumstances change. So  
22 you can have a low risk family or a medium risk family that  
23 can be in a family enhancement stream, and all of a sudden  
24 a crisis erupts and then they're immediately in a different  
25 stream.

1 THE COMMISSIONER: And your recommendation is  
2 going to do what, did you say?

3 MR. MCKINNON: When we come to the  
4 recommendations, I'll be suggesting to you that it would be  
5 a mistake to create different agencies to administer these  
6 two streams.

7 THE COMMISSIONER: But should every frontline  
8 social worker be trained to move into which of the two  
9 streams a particular family assigned to them belongs? In  
10 other words --

11 MR. MCKINNON: I believe the answer to that is  
12 yes. I think you can take and enhance the skill-set for  
13 family enhancement workers to deal with servicing families,  
14 you can enhance the skill-set for protection workers to do  
15 forensic work, but the fundamental skill-set, in my  
16 submission, has to be -- they have to have the kind of  
17 training that we've described to you.

18 THE COMMISSIONER: And that would allow them to  
19 provide service under either stream.

20 MR. MCKINNON: Yes.

21 THE COMMISSIONER: And which stream it is, is  
22 dependent upon the needs of that family.

23 MR. MCKINNON: Exactly.

24 THE COMMISSIONER: Okay. I think all that'll be  
25 -- help clarify it all.

1           MR. MCKINNON: I'm moving to the issue of quality  
2 assurance, paragraph 71 in my brief.

3           THE COMMISSIONER: Yes.

4           MR. MCKINNON: During the period that Phoenix --  
5 that services were being delivered to Phoenix and her  
6 family, Winnipeg CFS primarily relied upon supervisors to  
7 ensure quality assurance, and, and supervisors remain  
8 important today. However, Winnipeg CFS did not have a  
9 formal quality assurance process in place at that time. I  
10 think the evidence was that it, it sort of got dropped in  
11 around 2002. Darlene MacDonald did testify that she and  
12 assistant program managers would randomly, randomly select  
13 files for review, and the systemic reviews following the  
14 death of Phoenix Sinclair noted that this was not  
15 sufficient.

16           We submit that today significant steps have been  
17 taken to improve and enhance quality assurance across the  
18 system, and we point to the new funding model, Mr.  
19 Commissioner, that requires all four authorities maintain a  
20 quality assurance program and provides funding for that.  
21 In addition -- I'm at paragraph 72 -- the new funding model  
22 provides for the creation of one quality assurance  
23 specialist in every agency in Manitoba, no matter how  
24 small.

25           At paragraph 73, I speak briefly about what the

1 Southern Authority is doing, and you can refer to that. My  
2 point is that quality assurance is improved across Manitoba  
3 throughout the system. Today, quality assurance at  
4 Winnipeg CFS is much more robust. As you heard, as I  
5 mentioned a minute ago, not only do we have the direct  
6 quality assurance personnel, but we have leading practice  
7 specialists who provide important quality assurance role by  
8 actively looking at files as workers are working on them.  
9 Mr. Rodgers testified that the leading practice specialists  
10 are the most effective thing that can be done to ensure  
11 quality of service. As well, we note that the GA does do  
12 formal equality assurance reviews on Winnipeg, but we  
13 submit that it's this kind of day-to-day quality assurance  
14 that's most likely to improve service throughout the  
15 system.

16 The other point we make in terms of quality  
17 assurance, Mr. Commissioner, is that these, these tools  
18 that are part of the new practice model, these SDM tools,  
19 allow supervisors a more effective way of assessing how  
20 workers are doing their work, and a framework for  
21 evaluating the clinical judgment and the decision making.

22 And, and you heard evidence about how reliant  
23 social workers -- sorry -- supervisors were on the reports  
24 from their social workers. Now there's another -- I could  
25 say more objective, that's not the right word, but it's,

1 it's a written document that the supervisor can look at and  
2 see how the work is going on that file. And these are the  
3 structured decision making tools combined with the  
4 recording package that requires not only that they fill out  
5 these tools but they give an explanation for each decision  
6 that they make, when they tick off the box, why. And it's  
7 the "why" that enables the supervisor to more fully  
8 comprehend what's happening and whether the right judgment  
9 has been made.

10 And you also heard evidence that, that one of the  
11 components of the new practice model and the use of these  
12 tools is timelines. So the computer pops up this, this  
13 assessment is -- should be done now, so the, the supervisor  
14 knows if the social worker's getting behind.

15 So there's lots of systemic changes to improve  
16 quality assurance so that social workers are not left on  
17 their own and supervisors have a way of knowing where the  
18 social, social workers are in their case.

19 Mr. Commissioner, I'll now move to the issue of  
20 standards.

21 THE COMMISSIONER: All right.

22 MR. MCKINNON: The Department acknowledges that  
23 there was confusion around standards and accepts  
24 responsibility for the confusion. As I say in paragraph 79  
25 of my brief, at the time services were delivered to Phoenix

1 and her family, Winnipeg CFS relied primarily upon  
2 supervisors to make themselves aware of standards and to  
3 ensure staff were in compliance.

4 Now, Mr. Ray, on behalf of the MGEU, took  
5 exception to this statement and interpreted it as an  
6 attempt to blame supervisors for lack of training on  
7 standards. This was not the intent of the Department. It  
8 was simply a statement of fact. More needed to be done,  
9 and it now has been done.

10 And you heard a lot of evidence about standards  
11 training now. I won't repeat it in detail.

12 But the issue of standards, in our respectful  
13 submission, is somewhat of a red herring in this Inquiry.  
14 We are not saying that it's not a good thing to train on  
15 standards. Clearly, it is. But in the context of the  
16 Phoenix Sinclair file, we are saying that standards were  
17 not a determining -- a determinative issue.

18 And what we say, essentially, is that Winnipeg  
19 CFS acknowledges that they weren't training workers and  
20 supervisors on standards. What instead they were doing is  
21 developing policies and procedures based on those  
22 standards, and it's the policies and procedures that were  
23 to govern practice.

24 And I think this point is best illustrated by  
25 reference to the 1988 standards, and I'm going to ask the

1 clerk to pull up standard 311.1. This is not in our brief,  
2 Mr. Commissioner, so it's at Commission disclosure 983,  
3 page 18767.

4 This is the standard dealing with intake. The  
5 standard is that:

6  
7 The agency has a written  
8 operational procedure which  
9 provide workers with a framework  
10 for conducting a child protection  
11 investigation (see Procedures,  
12 page 2).

13  
14 And if you look at the next page, Mr.  
15 Commissioner, under procedures 1 and 2, there are some very  
16 minimalistic standards that would apply, things like  
17 referrals should be recorded or the nature of the  
18 allegations described. They're very simplistic. Put  
19 simply, the standard was to have a procedure, and we submit  
20 that in the context of intake, this makes perfect sense  
21 because intake at different agencies can be vastly  
22 different, Mr. Commissioner.

23 You heard what intake was like at Winnipeg CFS  
24 and what it's now like at ANCR. It's a big organization  
25 and they have two tiers. Tier one is crisis response and



1 tier two is general intake. And within crisis response,  
2 they have divided that into people working phones and  
3 people working the field. It's a big operation. That is  
4 similar to what was in place at Winnipeg CFS at the time  
5 services were being delivered to Phoenix and her family.

6 We've also heard from Intertribal, Mr. Khan's  
7 client. Very small operation. Everybody does everything.  
8 The intake comes in, they record the intake, and then, then  
9 they go out and do the work.

10 So depending upon the size of the agency, the  
11 structure of the agency, the volume that it's serving,  
12 intake is vastly different from one to the other, so one  
13 standard cannot fit all agencies. So the point that we  
14 make is that when it comes to the confusion about which  
15 standard applied, it didn't have a significant impact on  
16 this case.

17 And I remind you, Mr. Commissioner, that for most  
18 of the time the services being delivered to Phoenix  
19 Sinclair and her family were at the intake level. With the  
20 exception of those few witnesses that were the family  
21 service witnesses that I just mentioned a minute ago, all  
22 the other witnesses were intake workers either at CRU or at  
23 general intake.

24 Now, during the time that, that services were  
25 being delivered to Phoenix and her family, there were two

1 policies of relevance. And I'm now at paragraph 82 of my  
2 brief. There was the intake program description -- and I  
3 cited you the CD number, Mr. Commissioner -- which was in  
4 effect in July 2001, and there was an orientation manual in  
5 May of 2004, and I cited that, and they are essentially  
6 identical with respect to the issue of intake. So the, the  
7 point I make is the standard was to have a policy, and the  
8 policy governed.

9 THE COMMISSIONER: The standard was to have a  
10 policy, and the police what?

11 MR. MCKINNON: Governed.

12 THE COMMISSIONER: (Inaudible).

13 MR. MCKINNON: If, if workers at Winnipeg CFS  
14 wanted to know or, or supervisors wanted to know what they  
15 were supposed to do, they should be looking at the intake  
16 manual.

17 And I don't think that particular issue is a  
18 failing, that, that the standard doesn't prescribe, because  
19 provincial standards were not then -- and to this day are  
20 not -- intended to, to instruct workers or supervisors on  
21 how to conduct day-to-day case management. That's not what  
22 they're about. They're to provide a framework -- what's  
23 sometimes word is -- described as a foundational standard,  
24 and then the policies describe how that work is conducted.

25 So while we accept responsibility for a lack of

1 training on standards, we make the point that at least with  
2 respect to this case, which was primarily at intake,  
3 standards or any confusion about standards wouldn't have  
4 played a role.

5 Now, since the reviews have come out, great  
6 improvements have been made to train on standards. And you  
7 have heard evidence about the GA case management standards  
8 framework manual and the flowchart. This was the colour-  
9 coded document that Mr. Rodgers showed us and the colour-  
10 coded manual. So there have been improvements made to  
11 training on standards.

12 Our simple point when it comes to standards, Mr.  
13 Commissioner, is that while there was lots of noise about  
14 standards -- and we accept there's nothing in the standards  
15 that required the child to be seen, that's not the place  
16 for, for that kind of detail; it might be in a family  
17 service unit, and it was -- but just a general how intake  
18 was to, was to operate was defined by policy and procedure.

19 I'm moving ahead, Mr. Commissioner, to  
20 information, gathering of information -- disclosure and  
21 gathering of information.

22 THE COMMISSIONER: That's page 27 of your brief.

23 MR. MCKINNON: Right. And I'm going to not go  
24 into that in great detail. I think much of it is  
25 straightforward and you can review it by reading at your

1 leisure.

2           At paragraph 95, we make the point that this  
3 Inquiry has heard evidence from some witnesses that had  
4 information that was relevant, that was important, that  
5 indicated potential signs of abuse of Phoenix Sinclair, but  
6 took no steps to report that information to CFS. That was  
7 reviewed by Mr. Gindin and we agree with his submission on  
8 those points.

9           At paragraph 99, Mr. Commissioner, we make  
10 another point about information, and that is the evidence  
11 we heard from Felix Walker. He testified that his agency  
12 does not use CFSIS on reserve, but does use it off reserve,  
13 and this point was amplified yesterday by Mr. Funke in his  
14 argument ... Sorry, I can't find a copy of it.

15           Here it is. When he took the position -- this  
16 was in his oral submissions, Mr. Commissioner.

17           He took the position that First Nations have a --  
18 I'm going to call it a proprietary interest in information  
19 on CFSIS. Sorry, I'm not finding the cite, but I'll find  
20 it for you over the break.

21           This is a troubling issue for the Department, for  
22 any child welfare agency. And you heard evidence as to the  
23 risk to children and you -- children are moving on and off  
24 reserve, they're leaving the reserve, they're coming into  
25 the city. ANCR is dealing with them, Winnipeg CFS -- they

1 may be referred to Winnipeg CFS, and we don't have the  
2 benefit of the history of that family and what was  
3 happening on reserve because -- and my submission is that  
4 the position being adopted by Mr. Walker, which has been  
5 endorsed by Mr. Funke, is essentially a political position.

6 THE COMMISSIONER: That it's their decision?

7 MR. MCKINNON: Their -- it's their information,  
8 they control it, and they decide whether or not to share  
9 it. And that puts children at risk. You heard evidence of  
10 that. Now what --

11 THE COMMISSIONER: You're, you're saying they  
12 should be linked to the whole -- to the system.

13 MR. MCKINNON: They should be linked. They don't  
14 want to be linked because they, they are an autonomous  
15 nation. They want -- it's their information, they want to  
16 own it and control it. The reality is it puts children at  
17 risk.

18 And there's been a suggestion that we should  
19 withhold funding under the funding model if agencies don't  
20 put information on CFSIS. I think that's -- heard that  
21 yesterday. But how can that -- how can the, how can the  
22 Department do that? We can't, we can't stop funding child  
23 and family services because there's a political dispute  
24 over control of information.

25 We're not asking you to make many

1 recommendations, Mr. Commissioner, but we are asking you to  
2 make a recommendation here, to use your high office and the  
3 esteem with which you are held by the government and by the  
4 aboriginal people who are putting our confidence in you in  
5 this Inquiry to come up with a recommendation that's very  
6 clear, that all agencies should be posting information on  
7 the -- whatever information system, whether it's CFSIS or a  
8 replacement, that the agencies in Manitoba should all have  
9 access to each other's information within the restrictions  
10 that are already established. One agency can't just go  
11 snooping on another agency's data system, but they  
12 shouldn't have to beg for it, either, and they shouldn't be  
13 denied it.

14 THE COMMISSIONER: What did you say about  
15 snooping?

16 MR. MCKINNON: One agency can't look at another  
17 agency's files. The Department can, but Agency One can't  
18 look at Agency Two's files unless permission is granted.  
19 But if it's not on the system --

20 THE COMMISSIONER: But you're saying if, if I  
21 made the recommendation you want, it would be possible,  
22 agency to agency, without departmental approval.

23 MR. MCKINNON: I think that what I'm saying is  
24 that if aboriginal agencies put their information on  
25 CFSIS --

1 THE COMMISSIONER: Are made to put it on.

2 MR. MCKINNON: Made to put it on. It wouldn't be  
3 unlimited access. It would be the same as Intertribal.  
4 Intertribal puts their information on, Winnipeg CFS can't  
5 get it, but Winnipeg CFS, once they receive approval, can  
6 access it. There's also the intake module --

7 THE COMMISSIONER: And where, where do they go  
8 for that approval?

9 MR. MCKINNON: I'm just clarifying. There's  
10 different levels of permission. The first thing you need  
11 to know is that there's a file. If it's not on CFSIS, you  
12 don't even know there's a file. Once you know there's a  
13 file, then there's levels of access, and I don't know that  
14 the evidence goes much beyond that and I don't know that my  
15 understanding goes much beyond that, Mr. Commissioner. But  
16 what I do know is that if it's not on CFSIS, ANCR doesn't  
17 even know there's a file, Winnipeg CFS doesn't know there's  
18 a file. They don't even know to ask. It has to go up on  
19 CFSIS.

20 THE COMMISSIONER: And is there evidence as to  
21 whether what's taking place in, in the Norway House  
22 situation is applicable across the Northern Authority?

23 MR. MCKINNON: I think the evidence is that there  
24 are different agencies taking different approaches in the  
25 north. That would be my sense of the evidence.

1 THE COMMISSIONER: And do you --

2 MR. MCKINNON: But --

3 THE COMMISSIONER: -- know who that evidence came  
4 from?

5 MR. MCKINNON: I, I would be guessing.

6 THE COMMISSIONER: All right, we'll look for it.

7 MR. MCKINNON: Okay. I will maybe over the break  
8 try to see if I can refresh my memory on that. But  
9 certainly, we had unequivocal evidence from Mr. Walker that  
10 they take the position that off, off reserve they post, on  
11 reserve they don't, and that's being defended by Mr. Funke  
12 as an ownership of information issue.

13 I'm going to move to another topic, Mr.  
14 Commissioner, and I'm at paragraph 100 of my brief.

15 THE COMMISSIONER: And that request that you made  
16 of me, for that recommendation, comes from the Department  
17 and Winnipeg Child and Family Services?

18 MR. MCKINNON: I think it comes as well from  
19 ANCR. I think that was one of the recommendations which  
20 Mr. Cochrane had in his list, is that everyone use CFSIS.  
21 I recall someone suggesting that it should be tied to  
22 funding. The problem with tying it to funding is we can't  
23 de-fund an agency if --

24 THE COMMISSIONER: No.

25 MR. MCKINNON: -- they have a different political



1 view as to who owns information.

2 THE COMMISSIONER: All right. I'll, I'll look at  
3 that.

4 MR. MCKINNON: Thank you.

5 THE COMMISSIONER: All right. Now where are we  
6 going?

7 MR. MCKINNON: We're at paragraph 100 of my  
8 brief.

9 THE COMMISSIONER: All right.

10 MR. MCKINNON: And this is what we've entitled  
11 alleged calls to CFS. It's -- there's ten paragraphs  
12 there, Mr. Commissioner.

13 What this relates to is six individuals who claim  
14 they made reports to CFS, of which CFS has no record. Some  
15 of these individuals claim they called a specific agency;  
16 some can't tell us who they contacted. Some can't recall  
17 what they said. There are some very vague suggestions  
18 about these alleged calls to Winnipeg CFS -- or, sorry, not  
19 to Winnipeg, to a CFS agency.

20 The position we adopted at the Inquiry, Mr.  
21 Commissioner, is when someone didn't know who they called,  
22 but they call -- they say they called CFS, we, as, as the  
23 default lawyer, as the lawyers for the entire system for  
24 that -- to that extent, cross-examined them because we felt  
25 that the evidence had to be challenged to test it for

1 reliability, and that's the same position we've taken with  
2 respect to our brief, is we put in a summary of what we  
3 think their evidence was and why we think that you should  
4 be skeptical in concluding that these calls actually took  
5 place.

6 THE COMMISSIONER: But, but there was an agency  
7 who had witnesses come forward or we have evidence about  
8 searches being made for the Phoenix Sinclair file all on a  
9 certain day or within a very confined time frame.

10 MR. MCKINNON: Right, and we, we called that  
11 evidence. We accept that searches were made for Phoenix  
12 Sinclair in August of 2005, which would have been after she  
13 was dead, and that could relate to the fact that someone --  
14 well, obviously someone was calling, inquiring about  
15 Phoenix Sinclair, but what we submit is that no child  
16 protection concerns were identified.

17 So someone could have called. Someone could have  
18 said, you know, I'm wondering what happened to, to Phoenix  
19 Sinclair. Last I heard, she was in care. Do you have a  
20 file open for Phoenix Sinclair? They would receive an  
21 answer to that if they were related. Or at least somebody  
22 would have gone on the system to see if there was an open  
23 file for Phoenix Sinclair. But in the absence -- and, and  
24 those witnesses did not say they raised a child protection  
25 concern.

1           So we think it makes sense that someone went on  
2 the system looking for Phoenix Sinclair --

3           THE COMMISSIONER: As a result of phone calls.

4           MR. MCKINNON: As a result of a phone call in  
5 August, but these other witnesses who say they made calls  
6 aren't able to put a time. In some cases, Mr.  
7 Commissioner, your own investigator was unable to find --  
8 you know, found they had a phone that didn't allow, for  
9 example, long distance calls, or a cell phone that showed  
10 no record of a call having been made, so we've summarized  
11 that evidence for you.

12           THE COMMISSIONER: How many -- was there more  
13 than one who said they made the call?

14           MR. MCKINNON: They're outlined in the -- there  
15 are six in total. I mean, some -- we've, we've dealt with  
16 the issue of Della Fines, for example.

17           THE COMMISSIONER: Yes.

18           MR. MCKINNON: We dealt with the SOR who reported  
19 to her former foster mother but also says she called CFS.  
20 We've dealt with that one. We dealt with them all.  
21 They're all concisely summarized --

22           THE COMMISSIONER: Okay.

23           MR. MCKINNON: -- they're all footnoted for you.  
24 What we say is this: If those calls were made and no  
25 record was kept by any agency in Manitoba, that would be of

1 grave concern to the Department and of grave concern to any  
2 administrator of any child welfare agency in Manitoba.  
3 That should not happen. If a call comes in reporting a  
4 child protection concern, whether it's anonymous or by a  
5 minor or however that call comes in, it should be followed  
6 up and it should be recorded. And so we would be gravely  
7 concerned if those calls came and no one recorded them and  
8 no one did anything. That would be a terrible lapse.

9           If you feel that's something you have to make a  
10 finding on, Mr. Commissioner, in your report, all we're  
11 saying is there is some reason to question the reliability  
12 of some of those calls or, where the call was admitted,  
13 whether they disclosed what would amount to a child  
14 protection concern.

15           THE COMMISSIONER: I follow.

16           MR. MCKINNON: And while I'm on this point, Mr.  
17 Commissioner, at paragraph 105 of my brief, this is where  
18 I'm talking about whether DOE #3 reported a child  
19 protection concern about Phoenix, at page ...

20           THE COMMISSIONER: Thirty-one.

21           MR. MCKINNON: Second page, page 32. The very  
22 last two lines of that, I've got a typographical error.

23           THE COMMISSIONER: Right.

24           MR. MCKINNON: It should be 2005, both times.

25           THE COMMISSIONER: October or November 2005.

1           MR. MCKINNON:    Right.    And what we are saying  
2 there, Mr. Commissioner --

3           THE COMMISSIONER:   And, and is, is July 2005 in  
4 the last sentence?

5           MR. MCKINNON:    Right.

6           THE COMMISSIONER:   Yes, okay.

7           MR. MCKINNON:    And that's where we're making the  
8 point that the evidence of the boys contradicts the  
9 evidence of the mother on this, on this issue.

10           I'm moving to the topic of prevention, page -- or  
11 paragraph 110.

12           And I note, Mr. Commissioner, that one of the  
13 major initiatives arising out of the systemic reviews  
14 following the death of Phoenix Sinclair was the emphasis on  
15 early intervention and prevention services for family and I  
16 -- families, and I think you're equally concerned about  
17 that, Mr. Commissioner. This, as I said a moment ago, is  
18 sometimes referred to as differential response and the, the  
19 two streams of service delivery. And at paragraph 110,  
20 I've already covered that in my earlier comments.

21           THE COMMISSIONER:   Yes.

22           MR. MCKINNON:    And as you know, the, the ultimate  
23 goal of differential response and family service -- family  
24 enhancement -- and frankly, it's also the goal of the  
25 traditional protection service -- is to keep children safe

1 at home. So at paragraph 111 I make the comment, the  
2 family enhancement stream assesses the family's strengths  
3 and needs and provides family with -- families with  
4 services to help prevent children coming into care or  
5 coming into contact with the protection stream by improving  
6 parenting and ensuring protection through a less intrusive  
7 and more engagement focused method of providing services.

8 So that's where I spoke a minute ago that, you  
9 know, sometimes workers that are in the true family  
10 enhancement stream will be more focused on engagement with  
11 families, but both social workers need basic training on  
12 all of these techniques.

13 And I make the point that even families with  
14 higher risk factors can be served by these programs so long  
15 as the professional staff are able to satisfy themselves  
16 that the child is safe.

17 At paragraph 112, I reference the evidence of  
18 Carolyn Loeppky, who noted that this introduction of this  
19 differential response model was one of the largest  
20 investments made by the Department towards increased  
21 staffing.

22 At paragraph 113, I deal with what has become an  
23 issue in, in a number of the recommendations, and that's  
24 the suggestion that it would somehow be better if  
25 prevention services were provided by a non-mandated agency

1 -- that is, an agency that doesn't have a mandate to  
2 apprehend children -- or a different agency.

3           At 114, we talk about what non-mandated agencies  
4 can do, and the Department accepts that, that non-mandated  
5 agencies provide a valuable service to the community, they  
6 play an important role in supporting families who are  
7 struggling. You heard evidence, Mr. Commissioner, that  
8 much of the funding for community-based agencies comes from  
9 the Department. However, we urge real caution in accepting  
10 that community-based agencies are a viable alternative to  
11 the family enhancement services now being provided by  
12 mandated agencies.

13           And at paragraph 114, we adopt the evidence of  
14 Dr. McKenzie, and he said to do that would be a serious  
15 mistake. And he says that, you know:

16

17                     "... since 2006" --

18

19 He uses the possessive "we."

20

21                     "... we've been concentrating in  
22 this [problem] on building  
23 capacity within the Child and  
24 Family Service system to provide  
25 an alternate approach ..."

1

2

3

4

So he's talking about this whole initiative, this whole family enhancement initiative. He says that would be lost if this transfer were to occur.

5

He says:

6

7

8

9

"... we do not have a well-developed child welfare NGO sector in this province ..."

10

11

12

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16

That doesn't mean they're not doing good work, doesn't mean they're not doing valuable work, but they're not developed. Dr. Trocmé talked about a manualized program, that is, trained, with, with, with programs and formal mandates and manuals to carry out specific services. That's not what -- that doesn't exist in Manitoba.

17

18

19

20

21

22

Thirdly, he makes the point that those kinds of services largely don't exist outside of Winnipeg, so aboriginal communities and smaller remote communities don't have all of those kinds of programs and services. We submit that, that these prevention programs have to be part of an integrated family service system.

23

24

25

And at paragraph 115, Mr. Commissioner, I quote the evidence of Ms. Knol, who was with Andrews Street Family Centre, and I think others have commented on her



1 evidence as well. The gist of her evidence was if, if what  
2 was required for her to get funding is that she had to keep  
3 files and report to CFS, that she would prefer not to be  
4 funded, and I understand what she's saying.

5           They see themselves as an advocacy group.  
6 They're there to support families. They don't want to  
7 support CFS. They -- and, and that's a useful role. You  
8 heard evidence right at the beginning of, of the Phoenix  
9 Sinclair phase one, how the Boys and Girls Club had a woman  
10 -- I think her name was Taylor, Nikki Taylor, going back,  
11 sorry. But she was at the Boys and Girls Club. It was a  
12 non-mandated agency, it was a community-based service  
13 organization like this, funded by or received some part of  
14 their funding from the Department. They assumed the role  
15 of the advocate for Steve Sinclair. That's an important  
16 role, but they can't then be an adjunct to Child and Family  
17 Services.

18           And the point is these agencies do not want to  
19 disclose information to Child and Family Services because  
20 they believe that would destroy what I'm going to call, in  
21 loose terms, therapeutic -- their therapeutic relationship,  
22 their supporting relationship, their advocacy relationship.

23           Now, obviously, if there is information that a  
24 child is in need of protection, they have a statutory duty  
25 to report that, but other kinds of information about

1 struggles in the family that CFS would be interested in  
2 knowing about, these agencies don't want to be seen as an  
3 adjunct service to CFS.

4 Now, I want to be careful not to overstate that  
5 position, Mr. Commissioner, because you did hear evidence  
6 in terms of phase one that CFS referred both Samantha and  
7 Steve to Ma Mawi agency. That's a community-based agency  
8 and you heard from the executive director of Ma Mawi, who I  
9 submit was a most impressive and competent witness.

10 They do provide services to Winnipeg CFS, we do  
11 -- and, and other agencies, all the other agencies in  
12 Winnipeg. They do refer cases to Ma Mawi to provide  
13 community-based services. That should continue. It will  
14 continue, but it's under the -- typically, where there's an  
15 open CFS file and it's under the direction and control of a  
16 social worker at CFS, so that if a problem arises, CFS can  
17 respond to protect the child.

18 Now, the best encapsulation of this issue, I  
19 would submit, is the little chart that was prepared by Dr.  
20 Trocmé. It's at paragraph 117.

21 THE COMMISSIONER: That's the circle.

22 MR. MCKINNON: No, it's not a circle. This is --  
23 if you look at my brief at paragraph 117 --

24 And, Madam Clerk, if you could pull up --

25 THE COMMISSIONER: Oh, yes.

1 MR. MCKINNON: -- that little chart?

2 THE COMMISSIONER: I, I see it, yes.

3 MR. MCKINNON: This chart helped me, Mr.  
4 Commissioner, and I hope it will assist you in  
5 understanding where the Department sees -- what the  
6 Department sees as the role of community-based agencies.  
7 So if you see this, this -- there's a continuum from left  
8 to right, and on the left is prevention before an  
9 occurrence.

10 So that would be -- and there's two kinds of  
11 programs there: universal programs -- that's things like  
12 early childhood education, and Healthy Baby, and all kinds  
13 of programs like that. They're universally provided;  
14 they're before an occurrence; their intention is to reduce  
15 the probability or the possibility of maltreatment.  
16 There's also targeted programs noted there. Targeted  
17 programs would, would be things like teen mother programs,  
18 youth justice program. So people that might be in conflict  
19 with the law, people that might have housing problems,  
20 people that might have addiction problems. There can be  
21 targeted programs.

22 That's primary prevention. There's a very  
23 important role for community-based agencies to provide  
24 services there. That's where it's -- that's where the  
25 emphasis for community-based agencies should be, in

1 prevention before occurrence.

2           Then we have maltreatment, and you'll see what  
3 Dr. Trocmé classifies as maltreatment in that box, which is  
4 physical abuse, sexual abuse, emotional abuse, neglect, and  
5 exposure to intimate partner violence. Now CFS is involved  
6 or should be involved. That's the kind of thing that gives  
7 rise to a call to CFS, that CFS can and should open a file  
8 to protect children. And that doesn't mean, Mr.  
9 Commissioner, that you apprehend. That's just service.

10           And what, what happens at that point is CFS does  
11 their assessments. They do a safety assessment. Is the  
12 child safe? If not, they have to make that child safe,  
13 including apprehension, if necessary. They should do a  
14 risk assessment, the probability of future harm. That  
15 should happen because there's been an incident of  
16 maltreatment.

17           And when they do that assessment of the  
18 probability of future harm, they should be making decisions  
19 now: Is this a case that should go to the family  
20 enhancement stream or is this a case that should go to the  
21 child protection stream? That's where that decision is  
22 being made. If they determine that the child is safe and  
23 it's an appropriate case for family enhancement, then they  
24 provide prevention services, and you see there's two kinds  
25 of prevention and, in fact, if they decide that it should

1 go to the protection stream they're still going to provide  
2 two kinds of services, two kinds of prevention. They want  
3 to prevent the re-occurrence. So if there's been physical  
4 abuse, how are you going to prevent that from happening  
5 again? That's the, that's the job of CFS.

6           The second job of CFS is how to prevent  
7 impairment. Dr. Trocmé talked about what impairment is,  
8 but in a, in a nutshell, impairment is the adverse  
9 consequences that flow from neglect. So if there has been  
10 sexual abuse, you need therapy so that you're going to  
11 minimize the risk of long-term damage. So that's where  
12 he's got the note, long-term outcomes. The goal is to  
13 prevent a recurrence of maltreatment and to treat for the  
14 sequelae of that maltreatment. So that's, that's where we  
15 submit Child and Family Services should be involved.  
16 There's been maltreatment; the goal should be to prevent  
17 recurrence and to prevent impairment, whichever stream  
18 they're in.

19           Can community-based, non-mandated agencies help  
20 with that? Absolutely. Ma Mawi is a prime example. They  
21 can be part of the prevention of impairment. They can  
22 provide counselling, they can provide group support, they  
23 can provide parenting classes and parenting training.  
24 There is, there is a role.

25           But what we submit is critical is that Child and

1 Family Services be involved. I used the analogy of the  
2 quarterback when I was cross-examining Dr. McKenzie.  
3 Somebody has to be calling the plays and ensuring that the  
4 child is safe and that the services are producing. And  
5 whether these services are provided by an external agency  
6 or by a CFS agency, what they're looking for is  
7 demonstrated acts of protection over time. No longer is it  
8 acceptable -- and, and Ms. Harris spoke about this -- you  
9 know, go take a parenting program and then you'll get your  
10 kids back. And they go take a parenting program and they  
11 don't get their kids back. Why? Because their risk  
12 factors haven't been dealt with.

13 So this is -- we think this chart helps to  
14 illustrate both upstream and downstream service delivery.  
15 We think that once there's been an incident of  
16 maltreatment, there's a role for CFS and we think it should  
17 be provided by one agency. They can refer out to other  
18 agencies but someone has to take ownership, and we think  
19 that's the CFS agency.

20 One other point which I make in paragraph 119 of  
21 my brief is this concept: The one thing that the mandated  
22 agency can do is it can require that the services be, be  
23 undertaken, that they be received. If we are looking at  
24 non-mandated agencies, as Dr. Trocmé noted, the families  
25 that we're most concerned about are the families that are

1 least likely to voluntarily accept those services. That's  
2 a critical component as well.

3 So that while their, their community-based  
4 agencies can deliver services, they're under a mandate, the  
5 family must take those services, the, the agency must be  
6 satisfied that the family has reduced risk. If we just  
7 leave it up to the family to go and take those services,  
8 the very people that we want to take the services the most,  
9 are the least likely to take them.

10 Mr. Commissioner, I'm moving to the issue of  
11 aboriginal children in care.

12 As I note at paragraph 121 of my brief, this is  
13 one of the underlying themes of the Inquiry. Why are there  
14 so, so many aboriginal children in care in Manitoba and,  
15 frankly, across Canada? You identified this issue earlier,  
16 Mr. Commissioner, and I can't imagine anyone sitting in  
17 your chair wouldn't ask that question.

18 At page 122, I quote the evidence of Dr. Trocmé  
19 -- or sorry, at paragraph 122, I cite the evidence of Dr.  
20 Trocmé. Mr. Funke spoke about these statistics as well.  
21 These are national statistics. I'm sure they're equally  
22 applicable to Manitoba, but it's a national problem. And  
23 I'm certain, Mr. Commissioner, that your findings and  
24 recommendations with respect to this particular issue will  
25 be of great interest to all jurisdictions in Canada.

1           I would submit that Dr. Trocmé is really the  
2 foremost expert in Canada on this issue, and I would urge  
3 you to examine his evidence carefully and his various  
4 studies which he's filed.

5           THE COMMISSIONER: I can assure you I'll be doing  
6 that.

7           MR. MCKINNON: I just want to make a couple of  
8 points.

9           At paragraph 123, Dr. Trocmé makes the point that  
10 there is no difference -- this is critical -- there is no  
11 difference in the rate of placement for First Nations and  
12 non-aboriginal children if we take into consideration the  
13 risk factors such as neglect, substance abuse, lack of  
14 support, and housing problems. I cite his evidence there;  
15 I won't read it.

16           We submit this is key to your addressing this  
17 problem, this serious problem. We suggest that what this  
18 tells us is that the problem is not racial bias. The  
19 problem is that aboriginal people are disproportionately  
20 living in conditions that give rise to economic -- to  
21 poverty, to substance abuse, to housing problems, to lack  
22 of supports.

23           At paragraph 25 (sic), I make this point:  
24 Poverty rates are higher, housing problems are more  
25 serious, higher rates of violence, alcohol and substance



1 abuse, parents themselves having a history of having been  
2 removed from their families, and the sad legacy of  
3 residential schools. So the solution to the problem, Mr.  
4 Commissioner, will not be simple, but it has to address  
5 those underlying issues. We mention --

6 THE COMMISSIONER: And can, can Manitoba do that  
7 on its own?

8 MR. MCKINNON: Probably not. Probably not.  
9 Certainly, on reserve it can't. What Manitoba -- at least  
10 from the point of the view of the Department, what the  
11 Department can do is its best to enhance and encourage  
12 aboriginal control of child and family services. And we  
13 make the point at paragraphs one-ten -- 25, 126 of our  
14 brief that that was the motivation behind AJICWI. And the  
15 department remains committed to AJ, AJICWI.

16 Now, Mr. Funke makes the point that AJICWI is  
17 only an interim measure, an interim step, that the goal is  
18 for aboriginal autonomy. I think there's some difficulty  
19 here, Mr. Commissioner, because it's very difficult to  
20 define what full aboriginal autonomy is, but the Department  
21 has no dispute with the long-term goal of aboriginal  
22 people, but what we submit is that today we have a place, a  
23 system, where aboriginal people living off reserve can  
24 choose to receive services from a culturally relevant  
25 authority. That's unique. That's a major step in the

1 right direction. If aboriginal people living off reserve  
2 do not identify with their traditional culture, they can  
3 elect to receive services from the General Authority. We  
4 are not prescribing. We're enabling.

5           Mr. Commissioner, I believe from your comments  
6 you understand that Manitoba has taken a significant step  
7 towards full aboriginal control of child welfare, and as  
8 you know, the boards of the authorities are appointed by  
9 the aboriginal leadership as set out in the act. So  
10 aboriginal leadership controls the authorities through  
11 their boards, not directly -- which would be inappropriate;  
12 politicians should not be involved in child welfare -- but  
13 it is appropriate that they control the boards. And the  
14 boards hire CEOs, and the authorities mandate agencies, and  
15 the agencies hire CEOs, and they're all able to provide, at  
16 their discretion, culturally relevant services. This is a  
17 huge step.

18           It may not be full control as defined by Mr.  
19 Funke, but I submit it's as far as Manitoba can go under  
20 the present constitution, legally. And we're not proposing  
21 to step back from that. We're proposing to continue that.  
22 And if the goal at some future date -- if the goal is  
23 aboriginal law and full autonomy, however that's defined,  
24 this interim step will have been a valuable step because  
25 you will have aboriginal agencies with capacity to deliver

1 services, with leadership that is trained, with aboriginal  
2 workers that know what to do.

3 So it is a very, very important interim step, and  
4 I think I can safely say -- because I've had this  
5 conversation with Mr. Funke -- that what we agree upon is  
6 that, as an interim step, the Department and the aboriginal  
7 leadership want to make this work. We, we are committed to  
8 the same goals, which is the best results possible for  
9 aboriginal children who need services.

10 Mr. Commissioner, I was about to go on and  
11 respond to some of the other submissions. I'm happy to go  
12 for another 15 minutes and then take our lunch break, or  
13 take a break now, come back earlier. I, I leave it to you.

14 THE COMMISSIONER: If you're, if you're going  
15 into that area, maybe we should adjourn now and come back  
16 at 1:45.

17 MR. MCKINNON: That would be fine with me.

18 THE COMMISSIONER: All right. We'll, we'll do  
19 that. We'll adjourn until 1:45. Thank you.

20

21 (LUNCHEON RECESS)

22

23 THE COMMISSIONER: All right, Mr. McKinnon.

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

25 Before the break I was trying to find a reference

1 in Mr. Funke's oral submission, and I don't know if you  
2 have yet received a copy, but --

3 THE COMMISSIONER: Yes, I have, but it's in my  
4 office. I don't have it with me.

5 MR. MCKINNON: You might want to make a note of  
6 it because I was promising you I'd find the cite, and it's  
7 the last bullet on page 34 where Mr. Funke puts forward the  
8 argument that First Nations have a property interest -- my  
9 words -- in information they enter onto their computer  
10 system. That's the cornerstone of the issue that I have  
11 invited you to comment on.

12 Now moving on to the response to the other  
13 submissions, and let me -- and I'll essentially go through  
14 them in the order in which they presented to you, Mr.  
15 Commissioner --

16 THE COMMISSIONER: All right.

17 MR. MCKINNON: -- starting with Mr. Gindin on  
18 behalf of Kim Edwards and Steve Sinclair.

19 Mr. Gindin made an issue with respect to notes  
20 and criticized workers individually, supervisors in  
21 particular, individual supervisors who were unable to  
22 produce their notes. And you heard evidence from Ms.  
23 Brownlee that Winnipeg CFS looked for those supervisors'  
24 notes and was unable to locate the notes. Also, the  
25 support notes -- support worker notes for Ms. Pickering

1 were unable to be located. The absence of those notes on  
2 the file are the fault of Winnipeg CFS, not the individual  
3 supervisors or the family support worker. We have the  
4 obligation to retain those notes and we didn't do it  
5 appropriately.

6 Mr. Gindin makes the comment that it's surprising  
7 that there were some notes in particular of Mr. Orobko who  
8 was a supervisor going back to 1999, but they couldn't find  
9 his more recent notes. And we don't have an explanation  
10 for that, Mr. Commissioner, but we have a theory to propose  
11 and the theory is this: that when file transfers took  
12 place in May of 2005, notes that were still in the Jarvis  
13 office seem to have disappeared, and that's the only  
14 explanation we have. So that notes from files that were  
15 closed long ago seem to be in existence, but on May of '05  
16 when the Jarvis office no longer became an office of  
17 Winnipeg CFS, notes were not appropriately labelled so they  
18 could be retrieved. That's the only explanation we have.  
19 But we should not blame individual supervisors for their  
20 lack of notes. Now, the exception to that, again, is Mr.  
21 Orobko, who gave evidence that he destroyed his notes.  
22 That is a different situation.

23 And as you know, Mr. Commissioner, I do not  
24 represent Mr. Orobko, who was a supervisor; he chose to be  
25 unrepresented. And in fact, you may recall I cross-

1 examined him quite vigorously on several issues so I'm not  
2 here advocating as his counsel. But as an officer of the  
3 court, there is one issue I would like to bring to your  
4 attention, and that is the submission made by Mr. Gindin  
5 that Mr. Orobko destroyed his notes in 2010 knowing full  
6 well that the Inquiry had been called. And the point that  
7 I wish to make, so that Mr. Orobko, who is unrepresented,  
8 doesn't get -- the importance of that issue is not  
9 overstated -- is that it was his evidence that he destroyed  
10 his notes in 2010, he knew the Inquiry had been called, but  
11 he did not know that he had been involved in the service  
12 delivery to Phoenix Sinclair, and he didn't know that until  
13 my office contacted him advising him that he was a  
14 potential witness. So what he did was wrong in the sense  
15 that the policy was not to destroy notes, but he did not do  
16 that knowing that he had an involvement in the Phoenix  
17 Sinclair file. And the reference I have for you is  
18 November 14, 2012, pages 65 and 66. So I think that's an  
19 important detail that I draw to your attention.

20 I'm now going to address the five recommendations  
21 that you've asked all counsel to address, arising out of  
22 Mr. Gindin's submissions.

23 The first one is the separate agency for  
24 prevention, and I've addressed that in my earlier remarks.  
25 As you know, the Department and Winnipeg CFS are opposed to

1 this recommendation and I gave you some reasons in my  
2 earlier remarks --

3 THE COMMISSIONER: Yes.

4 MR. MCKINNON: -- and I'll reference them.  
5 They're paragraphs 100 to 120 of our written brief.

6 And my suggestion to you, Mr. Commissioner, is  
7 that fundamentally we think that a separate agency for  
8 prevention would be a step backwards. The majority of  
9 child welfare families do not present with immediate safety  
10 concerns. You heard Dr. Trocmé's evidence on this; I think  
11 his statistic was about 85 percent don't present with  
12 immediate protection concerns. And you heard many social  
13 workers describe the Phoenix Sinclair case as a typical  
14 case, and I think what they meant by that is this is a  
15 typical case that you see in that 85 percent group where  
16 there are risk factors such as parenting capacity concerns  
17 and neglect and substance abuse and, to some extent, family  
18 violence. What we submit, Mr. Commissioner, is that the  
19 new family enhancement program would have been an excellent  
20 service for this family.

21 We understand the concern that you articulated  
22 and Mr. Gindin has articulated, that families are reluctant  
23 to engage with CFS due to negative perceptions, but we  
24 adopt the position that was, I think, eloquently put by Mr.  
25 Khan, who explained how agencies are now beginning to

1 engage with families.

2 We also endorse the submissions of Ms. Harris,  
3 who spoke about how the protection stream integrates with  
4 the investigation stream. And you heard evidence -- and I  
5 mentioned this before -- about how CFS workers are now  
6 being taught to engage with families with much better  
7 results.

8 And we think that we could get into a -- we could  
9 actually make things worse if there were two streams, with  
10 separate administrations. Then they'd have to figure out  
11 protocols to relate to each other, they could have  
12 different ways of assessing risk, how would the file be  
13 transferred from one agency to another. We think it would  
14 introduce another layer of complication into what is  
15 already a complex model.

16 We submit that the benefits of the new service  
17 model are only now beginning to emerge and we are seeing  
18 more children being kept safe at home, and certainly Mr.  
19 Rodgers and Ms. Loepky gave evidence and, and there's no  
20 disputing that children in care are up, but so are the  
21 children being served and being kept safe at home, and the  
22 greater increase is in children being kept safe at home.

23 And if the issue is, is public attitude -- and I  
24 think it is -- we submit that the only way to change public  
25 attitude towards CFS is to demonstrate that we can engage



1 with families and can work collaboratively, and we think  
2 that would be the way to change public attitude, through  
3 good work, through these new models of family engagement  
4 and family enhancement, so they see CFS as more than just  
5 the agency that apprehends children. They see CFS as the  
6 agency that tries to help families improve. That's our  
7 submission on that point.

8           The next one is number three, which was files  
9 being opened in the name of the child. The Department and  
10 Winnipeg CFS oppose this recommendation. As you know, Mr.  
11 Commissioner, under the current system files are opened in  
12 the name of the primary caregiver, who is almost always the  
13 mother.

14           Phoenix's case was exceptional and we heard, I  
15 think, evidence from Heather Edinborough on this. And what  
16 was exceptional about it is we had a father who was  
17 prepared to parent his children. So that's why we -- you  
18 know, we have this unusual situation. For most of the  
19 time, there was one child and there were -- and the child  
20 was alternatively being cared for by either the mother or  
21 the father. So in this unique situation it probably would  
22 have been more convenient to have only one file in the name  
23 of the child, but in the vast majority of cases there's  
24 only one caregiver, and it's the mother, and there's more  
25 than one child.

1           And if there are multiple -- three or four --  
2 children in the family, which would, I think -- I submit is  
3 more the norm, the risks that are presented to those  
4 children are primarily the risks associated with the adults  
5 that are living in the household. That could be the mother  
6 or the father or the stepmother or the stepfather. It  
7 could be a boyfriend or an uncle or a cousin, but it's  
8 someone living in the household. So the risks to all four  
9 children are the same.

10           And what you heard in the evidence is that under  
11 our new approach towards risk assessment and safety  
12 assessment, everyone in the household has to be assessed.  
13 And so if there were four children in the, in, in, in the,  
14 in the family, it would just add a layer of complication to  
15 do that assessment four times. It's all the same  
16 individuals, the same caregiver, it's the same household,  
17 and we submit it's best done on one file so that everyone  
18 in the household can be seen as a unit.

19           The next issue raised was the registration of  
20 social workers. The Department and Winnipeg CFS are in  
21 favour of this in principle. However, it should be done in  
22 a way that respects the concerns of aboriginal agencies and  
23 aboriginal social workers.

24           You will recall, Mr. Commissioner, that I  
25 examined Miriam Browne, who was the registrar or the -- the

1 registrar of the existing association, about this issue  
2 back on December 19th, 2012, and that examination can be  
3 found at pages 30 to 45 of the transcript of that date.  
4 And what she said -- and it was a bit awkward for her  
5 because I was asking her to put forward the objections of  
6 the aboriginal social workers, which weren't her own  
7 objections, but she did, I think, fairly describe what  
8 those concerns were.

9 My understanding is that progress has been made  
10 on that front since the date of her evidence, but I'm not  
11 in a position to comment further. So we're in favour in  
12 principle. We accept that there are concerns of aboriginal  
13 workers and aboriginal agencies that have to be  
14 accommodated.

15 The next one was the Office of the Children's  
16 Advocate. That's Mr. Gindin's recommendation number 32.  
17 The Department takes no position on that.

18 The fifth one is recommendation number 47, an  
19 acknowledgement that -- by Manitoba that overrepresentation  
20 of aboriginal people relates to poverty, poor housing,  
21 substance abuse, et cetera. We submit that the evidence we  
22 have heard at this Inquiry establishes clearly that such is  
23 the case. We submit that your report will be important in  
24 assisting the government and all Manitobans in  
25 understanding the relationship between children coming into

1 care and these systemic factors, poverty, and, and poor  
2 housing. I'm reluctant to say more than that because, as  
3 counsel for the Department, I don't want to be seen as  
4 making any kind of commitment on behalf of the government.

5 I'm now moving on to the MGEU's brief, and the  
6 MGEU's brief is 235 pages long and the word "caseload" or  
7 "workload" appears 373 times. We've dealt with the issue  
8 of workload previously, Mr. Commissioner, and I don't -- I  
9 think I would just be repeating myself, so I won't.

10 I just want to add one further comment on this  
11 issue, and that is the issue at, at paragraph 54 of their  
12 brief. MGEU states that:

13

14 "Reorganizations cause confusion,  
15 stress and tend to reduce a social  
16 worker's commitment to the  
17 organization."

18

19 That may be so.

20 THE COMMISSIONER: You, you just quoted which  
21 paragraph?

22 MR. MCKINNON: Paragraph 54, MGEU's brief.

23 THE COMMISSIONER: Yes, I have it.

24 MR. MCKINNON: And they're talking about  
25 reorganizations there. And my point is that social workers

1 are professionals, and sometimes reorganizations are  
2 necessary and in the public interest. And in this case in  
3 particular, the Aboriginal Justice Inquiry identified that  
4 aboriginal control of child welfare was an issue that was  
5 important and in the public interest, and the changes that  
6 were made were necessary.

7 We submit the evidence of Jay Rodgers  
8 demonstrates that the degree of change was unprecedented.  
9 It involved two years of planning. It involved extensive  
10 consultation, and in spite of the criticisms that have been  
11 levelled by the MGEU, we submit it was carried off without  
12 significant disruption to services.

13 You'll recall, Mr. Commissioner, that the actual  
14 transfer of files occurred in May of 2005. That was two  
15 months after the case was closed at Winnipeg CFS for the  
16 final time. So the actual file transfer process was after  
17 Phoenix Sinclair's file had been closed for the final time.  
18 There is no suggestion that the decision to close the file  
19 in March of 2005 was related to devolution. It's my hope  
20 that the findings from this Inquiry will lay to rest any  
21 suggestion that the devolution process contributed to the  
22 tragedy of Phoenix Sinclair's death.

23 And there's also -- while we're talking about  
24 this topic of devolution, the point is made that this did  
25 create additional work in terms of creating transfer

1 summaries in the family service unit, and there is no  
2 dispute on that. Mr. Rodgers and others spoke at length  
3 about the supports that were brought in to accommodate that  
4 extraordinary workload. That would have been occurring  
5 between the period of January and May of 2005, so in the  
6 critical period. What I want to remind you, Mr.  
7 Commissioner, is that extra work was at the family service  
8 units. The Phoenix Sinclair, through that period of time,  
9 was at the intake.

10 I want to comment very briefly on the submissions  
11 made on behalf of Diana Verrier. Ms. Verrier was a  
12 supervisor who played a very small role of the delivery of  
13 services to Phoenix and her family. She also played, I  
14 submit, a very small role at this Inquiry. She has her own  
15 lawyer because of the conflict of interest issue that was  
16 identified during the course of these proceedings. She's  
17 filed submissions dealing with a very narrow issue relating  
18 to whether she, as a supervisor, changed a document  
19 prepared by a CRU worker.

20 The Department and Winnipeg CFS take no position  
21 on whether she did or didn't. What we can say, however, is  
22 that supervisors are expected to review files.

23 THE COMMISSIONER: Expected to what?

24 MR. MCKINNON: Review files, and change them if  
25 they think they're wrong. So when it comes to that 24, 48

1 hour change that was initialled by the supervisor, that  
2 would not be inappropriate. With respect to the other  
3 issue, as to whether or not parts of a report were deleted,  
4 again, we can't take -- we make no comment as to whether it  
5 did or didn't occur. But if it did occur, it should have  
6 been initialled and acknowledged.

7           Mr. Rolston, on behalf of Diana Verrier, suggests  
8 that because his client was overworked and may have been  
9 working, working in the evenings, this somehow was a factor  
10 that you should consider in determining whether or not  
11 she's to blame. My submission to, to that or my response  
12 to that, with, with the greatest of respect, is that if Ms.  
13 Verrier was too busy, the default position would be to do  
14 nothing. I don't understand his point that she was so busy  
15 that she had to -- somehow that explains why she made  
16 changes.

17           So we don't want to be misunderstood on this, Mr.  
18 Commissioner, we have no way of knowing whether Ms. Verrier  
19 altered a report. All we can say is, is if she did, it had  
20 nothing to do with training or any of the other systemic  
21 issues you've been hearing about.

22           I'm now addressing ANCR, the Northern Authority,  
23 and the Southern Authority. And I can say, Mr.  
24 Commissioner, that, as you know, ANCR and these two  
25 authorities have made 44 recommendations and some of them

1 caught me by surprise. And we're certainly not in a  
2 position to comment on all 44 recommendations, both because  
3 of time constraints and because of lack of information.

4 I can tell you that based on my analysis of these  
5 recommendations, at least 26 and perhaps as many as 38 of  
6 these recommendations are requests for additional  
7 resources. It's hard to know exactly how many of them are  
8 because, some of them, you can't tell whether funding would  
9 be required to implement them. But in our view, probably  
10 38 of the 44 recommendations have resource implications.

11 A major concern from the Department's perspective  
12 is that many of the recommendations -- and by my count, 24  
13 of the 44 -- are not supported by evidence that was called  
14 at the Inquiry. A further eight of the 44 there was very  
15 scant evidence at the Inquiry. So in total, 32 of 44  
16 recommendations have little or no evidence to support them.

17 The difficulty we have, Mr. Commissioner, as a  
18 Department, and the difficulty that I think you will have  
19 as Commissioner, is how do you respond to recommendations  
20 where there's no evidentiary base? If there are 30 to 40  
21 recommendations all with funding implications, how do you  
22 decide which ones are priorities? I don't, frankly, know  
23 how you're going to sort that out. They may all be good  
24 recommendations, Mr. Commissioner, but I don't think it's  
25 fair to you to ask you to determine whether they're good



1 recommendations based upon -- in the absence of any  
2 evidence.

3 THE COMMISSIONER: And I have to write a report  
4 based on the evidence I heard.

5 MR. MCKINNON: Thank you. I'm going to just  
6 comment, then, briefly on a couple of the recommendations.

7 Recommendation five is funding for culturally  
8 competent services. I don't recall any evidence that it is  
9 more expensive to provide culturally appropriate services.  
10 The evidence which the authorities cite in their brief as a  
11 footnote in support of this recommendation, I submit, don't  
12 support the recommendation in any way. They don't relate  
13 to that issue.

14 It's the Department's submission that the current  
15 legislation and the current funding model allows agencies  
16 and authorities to develop service delivery models that are  
17 specific to their client population and training programs  
18 for their staff to train to that service delivery model.  
19 And we heard evidence of how some authorities have done  
20 that, using, for example, quality assurance specialists to  
21 train, using the trainers to train. So if, for example, I  
22 think one of the items cited is using elders as cultural  
23 workers, we think there are ways that can be done within  
24 the current funding model.

25 Recommendation number seven is funding for

1 agencies with respect to quality assurance. Again, I don't  
2 recall any evidence that the current funding for quality  
3 assurance contained in the funding model is inadequate.  
4 Indeed, the evidence suggests that there was substantial  
5 improvement over the past. Elsie Flette testified that  
6 they have only been operational for a year or two and it's  
7 too early to evaluate. The citations in support of this  
8 request for additional resources do not support the  
9 request.

10 Recommendation 15, amending the legislation to  
11 distinguish between prevention and protection. In the  
12 Department's view, it would be a mistake to legislate the  
13 difference between child protection streams. Currently,  
14 these decisions are based on assessments by social workers  
15 as to which is the best stream and which, which, which  
16 stream best suits the needs of a particular family's based  
17 on risk factors. As you heard, a prevention case can  
18 become a protection case, and vice versa.

19 When we look at the hierarchy of legislation in  
20 the family services world, in the system, legislation is  
21 the highest -- and this is trite law, I think, but I, I, I  
22 just sort of refresh your memory as to what we're dealing  
23 with here. There's legislation, and then there's  
24 regulation, and then there's provincial standards below  
25 that, and below that there's authority standards, then

1 there's agency policy, and then there's agency practice.

2 Right now, things like these streams, they're  
3 agency practice. They may in some cases be agency policy.  
4 And if authorities think they want to elevate the formality  
5 associated with that, they could make authority-specific  
6 policies -- or authority-specific standards, pardon me.  
7 authority specific standards. They could do that without  
8 any assistance from you or the legislature.

9 But there's an overriding philosophy that I'm  
10 submitting to you on behalf of the Department, and that is:  
11 Legislation should enable, it shouldn't restrict, it  
12 shouldn't prescribe, because what we heard at this Inquiry  
13 is that these structured decision making, family  
14 enhancement, are best practice. Best practice will change.  
15 It's continuously improving. As the research comes in, as  
16 the literature comes in, best practice improves. And so  
17 legislation should be enabling authorities and agencies to  
18 follow best practice, but to use the legislature to dictate  
19 best practice, in my view, would be a mistake.

20 THE COMMISSIONER: While you're on that, just  
21 believe it, Mr. McKinnon, I had written out a couple of  
22 questions on legislation and this is probably the time to  
23 put them, although you may have just answered them. The  
24 first one, is there anything about the new model of service  
25 delivery -- that is, differential response -- and the new

1 approach to risk assessment that you have described, that  
2 would require a change to the legislation, that is, to the  
3 Child and Family Services Act?

4 MR. MCKINNON: I don't think so. I mean, you  
5 could -- as the authorities are urging you, you could  
6 enshrine it in legislation and it might be great for a week  
7 or two or a month or a year, or two years, but as you know,  
8 legislation is hard to change and I would not want to  
9 enshrine a practice model in legislation.

10 THE COMMISSIONER: My second question, apropos to  
11 that, is, is the differential response model something that  
12 the Department is requiring to be followed across the  
13 province?

14 MR. MCKINNON: It is funded across the province,  
15 and my understanding is it has been accepted across the  
16 province and is in place at every agency in the province,  
17 but it's, it's not necessary to prescribe it in the sense  
18 that with the resources there, agencies are happy to do  
19 this work.

20 THE COMMISSIONER: But you're not, you're not  
21 mandating in, in the sense that it must be done.

22 MR. MCKINNON: We're not -- let me just ...

23 With respect to -- essentially, in the funding  
24 model, and in the agreements and the business plans that  
25 are being entered into, that is -- it's expected that

1 there'll be two streams of service delivery, the protection  
2 and the family enhancement. How it's delivered is up to  
3 the authorities and their agencies, but it, it is expected  
4 that every agency in Manitoba offer both streams and it's  
5 enshrined in the funding model and the requirement to  
6 submit business plans.

7 THE COMMISSIONER: Is that an expectation that,  
8 that will be enforced?

9 MR. MCKINNON: Absolutely. Yes.

10 THE COMMISSIONER: Thank you. Those, those are  
11 the two questions that seemed appropriate to ask once you  
12 just dealt with the subjects you have.

13 MR. MCKINNON: And, and I, and I think it, it  
14 does all fit together because it's part of our view that,  
15 that, that kind of thing is best dealt with outside of  
16 legislation because we don't want our hands tied in the  
17 future.

18 Recommendation number 32 of the -- of ANCR and  
19 the authorities is that the province should provide funding  
20 for a fetal alcohol -- FASD specialist at each agency. And  
21 this is another request for resources. This is another  
22 situation where you have no evidence on which to assess the  
23 need for and the desirability of this recommendation.

24 I do want to point out to you, Mr. Commissioner,  
25 that there was some evidence from Ms. Loepky that there

1 has been a fetal alcohol syndrome initiative by the  
2 province, and that was in her evidence when she talked  
3 about the five positions being attached to the authorities  
4 for the FASD strategy of the province. That's the only  
5 evidence you have. It was in the context of the funding.

6 What I also want to tell you is that this  
7 recommendation was in some of the systemic reviews that are  
8 mentioned in the order-in-council. That was the response  
9 of the government to those systemic reviews. There were --

10 THE COMMISSIONER: What was the response?

11 MR. MCKINNON: The creation of the five  
12 specialists at the four authorities.

13 THE COMMISSIONER: Oh, yeah, um-hum.

14 MR. MCKINNON: We did disclose additional  
15 documents to Commission counsel about the province's FASD  
16 initiative. Commission counsel -- and, and I'm not talking  
17 about Ms. Walsh, I'm talking about her staff -- conferred  
18 with us and told us they considered that was not relevant  
19 to Phoenix Sinclair because there was nothing in the  
20 Phoenix Sinclair case that touched on FASD. We agreed with  
21 that. Those documents were not produced at this Inquiry,  
22 they were not circulated to other counsel, so this is just  
23 an example of not only was there no evidence, but the  
24 evidence that was available, there was a deliberate  
25 decision made -- with which we agreed -- that we shouldn't

1 go there because it wasn't relevant to the Inquiry.

2 THE COMMISSIONER: Well, I think --

3 MR. MCKINNON: So --

4 THE COMMISSIONER: I think you can leave it on  
5 the basis that I'll be writing my report on the basis of  
6 the evidence that I heard.

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

8 Finally, I move to recommendations 43 and 44 of  
9 the authorities which deals with, as I read it, authorities  
10 and agencies getting into the housing business and  
11 provision of food.

12 Now, we have heard evidence at this Inquiry about  
13 the issues of housing and we have heard evidence about  
14 poverty, and there's no dispute food security is  
15 fundamental human right, but the Department is of the view  
16 that this is not the role of child welfare authorities or  
17 their agencies, is to be in the housing business or in the  
18 food distribution business. The caveat on that is we know  
19 agencies often provide food. If they go into a home and  
20 there's no food, they use their incidental expenditures to  
21 provide food for that house.

22 THE COMMISSIONER: Well, it's part of the  
23 service.

24 MR. MCKINNON: Part of the service, but it  
25 shouldn't be institutionalized. We should not confuse the

1 mandate of child welfare and move into -- move child  
2 welfare into the housing business or into the food security  
3 business.

4 So those are my comments on the ANCR and the  
5 authorities.

6 Now moving to the AMC-SCO brief.

7 THE COMMISSIONER: This is whose brief?

8 MR. MCKINNON: This is Mr. Funke's brief.

9 THE COMMISSIONER: Oh, yes, okay.

10 MR. MCKINNON: At page -- and, and I'm referring  
11 to his earlier version, his first version, not his oral  
12 submission.

13 THE COMMISSIONER: Yes, I have that with me.

14 No, I guess, I guess maybe I have both. Go  
15 ahead, anyway.

16 MR. MCKINNON: At page 34 of his earlier brief,  
17 clause two, Mr. Funke talks about the Winnipeg CFS  
18 deficits. Essentially, his point is that Winnipeg CFS has  
19 an advantage over other agencies because their deficits  
20 were written off.

21 Have you found it, Mr. Commissioner?

22 THE COMMISSIONER: Yes, I have.

23 MR. MCKINNON: It's the, the centre paragraph.

24 THE COMMISSIONER: Just -- I'll just go through  
25 right through it.



1           Yes.

2           MR. MCKINNON:   The last half of that paragraph  
3 where there's a list of deficits in the millions of dollars  
4 that were allegedly written off, Mr. Funke was relying on  
5 information contained in the annual reports of the  
6 Department in connection with -- when he produced this  
7 information. And the point I want to make, Mr. Funke and I  
8 have had some discussions about this, and in the spirit of  
9 cooperation I disclosed to him that there were some very  
10 complicated accounting reasons why those are shown as  
11 deficits and I produced information to him, and as a result  
12 of the information I produced to him, he is no longer  
13 arguing that those deficits were related to the operations  
14 of Winnipeg CFS, and you will see in his oral submission  
15 he's no longer advancing that point.

16           And these deficits are complicated, Mr.  
17 Commissioner. They relate primarily to issues that I have  
18 trouble comprehending, relating to seconded employees from  
19 Winnipeg that were working at other agencies, so it's a  
20 complicated calculation. Mr. Funke's not advancing it  
21 anymore. I just don't want you to write your report with  
22 the belief that Winnipeg CFS is receiving 1.5 to 2 million  
23 dollars in debt relief year after year. And so I'm  
24 submitting that's not an issue for your consideration.

25           Winnipeg CFS now --

1 THE COMMISSIONER: And it was, it was gone from  
2 his statement yesterday.

3 MR. MCKINNON: It was gone from his statement  
4 yesterday and Mr. Funke has been most cooperative with me  
5 on that point. I just wanted to make sure it didn't find  
6 its way into your report.

7 THE COMMISSIONER: Understood.

8 MR. MCKINNON: When it comes to the  
9 recommendations of Mr. Funke, I'm going to be selective  
10 which ones I comment on. I think the most important one  
11 that I comment on is recommendation number nine.

12 THE COMMISSIONER: Now, are you using yesterday's  
13 brief or the written brief?

14 MR. MCKINNON: I, I'm using his, his original  
15 brief.

16 THE COMMISSIONER: That's fine.

17 MR. MCKINNON: And I think all of them are the  
18 same in both, but he, he changed the order a little bit.

19 THE COMMISSIONER: Right.

20 MR. MCKINNON: But number nine was the one where  
21 he -- it's Roman numeral ix, it's at the bottom --

22 THE COMMISSIONER: Yes.

23 MR. MCKINNON: -- of page --

24 THE COMMISSIONER: Yes.

25 MR. MCKINNON: -- 37, and that's where he's

1 talking about a greater discretion to override the SDM  
2 tools. And Ms. Harris dealt with this at some length  
3 yesterday, and I endorse her submissions.

4 And what I want to emphasize about this is I  
5 think there is a misconception on the part of Mr. Funke or  
6 his client about the SDM tools, and let me try to  
7 illustrate the point. And Mr. Funke was talking about  
8 using the old tools, whatever they were, and run a parallel  
9 system so that we could see whether there was -- and, and,  
10 and social workers having discretion as to which tools to  
11 accept, which assessments to accept. But the important  
12 thing that, that you have to understand is that the, the  
13 key tool, the actuarial tool is a probability of future  
14 harm tool, and that looks at issues of neglect and abuse.

15 And if you want to see the tool, Mr.  
16 Commissioner, it's at Commission disclosure 1077, page  
17 22322.

18 I don't know if you want to see it now or not,  
19 but the point I make is that that tool is used to come up  
20 with the risk that a child will be neglected or abused in  
21 the next 18 months. If the risk is moderate or high, that  
22 family will receive services. That's all that happens.  
23 That becomes a family eligible for services. So I ask you  
24 to consider what would happen if we use the old tools and  
25 it didn't assess that family would be at risk? All that

1 could potentially happen is that a family that would  
2 otherwise be eligible for services didn't receive those  
3 services. I think that would be scandalous.

4 And I'm repeating myself, but this probability of  
5 future harm tool defines when families need and require  
6 service. That's all it does. It does not lead to  
7 apprehension.

8 THE COMMISSIONER: And no need for an override,  
9 then.

10 MR. MCKINNON: No need for an override. There's  
11 still discretion that's built into the tool, but it won't  
12 result in additional aboriginal children coming into care.  
13 That's a different issue. That's safety.

14 So I, I'm just trying to imagine the scandal if  
15 the risk showed on the probability of future harm tool and  
16 no services were provided and something terrible happened  
17 to that child. How would any agency be able to explain  
18 their behaviour?

19 Recommendation number 12 is the Eagle Urban  
20 Transition Centre. And you'll recall, Mr. Commissioner,  
21 Mr. Funke called a very impressive witness who spoke about  
22 the work being done by this organization. I have no bone  
23 to pick with this centre, I think they're doing great work,  
24 but I'm going to urge you to be cautious that just because  
25 this witness was a great witness, this program sounds like

1 a great program, that it does not leapfrog over other  
2 deserving organizations that are in need of and requesting  
3 funding.

4 We heard, for example, that the Aboriginal Centre  
5 in Winnipeg -- I think it was Wayne Helgason was their  
6 witness -- provides very similar services. So when it  
7 comes to the recommendations that you make on things like  
8 the services being provided by the Eagle Urban Transition  
9 Centre, we're urging you to make those recommendations, if  
10 you choose to do so, more broadly in terms of defining the  
11 service that you think is important, and let the funder  
12 decide who's best able to provide those services.

13 I'm now moving on to the General Authority. I  
14 adopt almost everything the General Authority said in their  
15 submissions, Mr. Commissioner, except their  
16 recommendations.

17 THE COMMISSIONER: Except what?

18 MR. MCKINNON: Their recommendations.

19 THE COMMISSIONER: Oh, okay, oh, yes, okay.

20 MR. MCKINNON: And I'll just add a couple of  
21 comments with respect to a couple of their specific  
22 recommendations. I think they start at -- at least, I'm  
23 going to start commenting on the recommendation at  
24 paragraph 102.

25 THE COMMISSIONER: Yes, I have it.

1           MR. MCKINNON:     Mr. Rodgers or the General  
2 Authority has made a recommendation there with respect to  
3 the adoption issue. Again, that's an issue on which we  
4 heard very little evidence. The point I want to make to  
5 you, Mr. Commissioner, is that we have to be very sensitive  
6 when it comes to adoption issues as it might impact  
7 aboriginal communities. We don't want a repeat of the  
8 sixties scoop or any of the other things that we've been  
9 criticized for in the past. And when I say "we," it's  
10 child welfare across Canada.

11           THE COMMISSIONER: Who, who, who might have given  
12 evidence that would support that recommendation?

13           MR. MCKINNON:     If there was any evidence, it  
14 would have come from Mr. Rodgers. I can't recall it.

15           Finally, paragraph 115, which is the General  
16 Authority full legislative mandate. Now, that sounds  
17 innocuous enough, Mr. Commissioner, but the difficulty that  
18 this recommendation presents is that Winnipeg CFS is an  
19 entity under the Department of Family Services and Labour.  
20 And as a branch of the government, they are not allowed to  
21 have an independent bank account, they're not allowed to  
22 receive revenue or issue cheques directly. Their employees  
23 are civil servants; they're governed by the Department's  
24 human resource policies and pension plan.

25           What I want to make sure you understand, Mr.

1 Commissioner, is that in order to change that, in order to  
2 give the General Authority a full legislative mandate,  
3 which would mean in order to implement this, Winnipeg CFS  
4 would have to become an independent agency. And we heard a  
5 lot of evidence, the disruption that was caused when  
6 Winnipeg CFS was made a part of the Department in 2003.  
7 It's my submission that there would be significant cost and  
8 disruption to making it an independent agency, and  
9 therefore the Department is opposed to this recommendation.

10 Those are my submissions on the other parties'  
11 recommendations, Mr. Commissioner. I haven't obviously  
12 covered them all, but the ones where I thought I could  
13 perhaps be of some assistance.

14 Unless there are any other questions ...

15 THE COMMISSIONER: I have a couple of questions,  
16 but I, I think that's fine for you to reply today. It'll  
17 just shorten up the reply time for next week.

18 MR. MCKINNON: Well, and having the benefit of  
19 going last, unless something comes up, I won't have to  
20 reply.

21 THE COMMISSIONER: Yes, yeah. Well, now I do  
22 have a couple of questions. Let me just find my -- the  
23 acts here.

24 It, it -- what I, what I want to know, really,  
25 is, in light of Section 18 of the Authorities Act, what

1 powers and duties that are listed in the Child and Family  
2 Services Act pertaining to the director --

3 MR. MCKINNON: Yes.

4 THE COMMISSIONER: -- are still left with the  
5 director? And, and as you, as you likely know, the -- as  
6 that Section 18 in the Authorities Act specifically says,  
7 after setting out the authority, that the authority shall  
8 have -- the powers and duties of the director cease with  
9 respect to those agencies. That's, that's Section 18.

10 MR. MCKINNON: Yes, yes.

11 THE COMMISSIONER: What, what is left with the  
12 director?

13 MR. MCKINNON: Very good question. I'm going to  
14 answer it two ways. First I'm going to answer at a very  
15 high level, which is all I'm capable of, and then I'm going  
16 to give you a very specific answer which is in document,  
17 documentary form.

18 THE COMMISSIONER: Which is what?

19 MR. MCKINNON: In documentary form.

20 THE COMMISSIONER: Okay, yeah.

21 MR. MCKINNON: So at a very high level, the  
22 director has responsibility for what I'm going to call  
23 province-wide services: licensing, criminal record checks,  
24 investigations of, of agencies where there's allegations  
25 against persons working in agencies, registries --



1 UNIDENTIFIED PERSON: (Inaudible).

2 MR. MCKINNON: -- adoption registry --

3 UNIDENTIFIED PERSON: (Inaudible).

4 MR. MCKINNON: -- and standards. And standards,  
5 as you know, the ultimate authority is with the director of  
6 child protection, but by convention there is a standards  
7 development protocol where a consultation process involving  
8 the authorities is, is engaged. And the standards  
9 development protocol, we gave you the Commission disclosure  
10 number through Mr. Cochrane a couple of days ago. I could  
11 look it up again. So at a, at a very, very high level,  
12 that's what the director of child protection does today.

13 THE COMMISSIONER: Quite removed from day-to-day  
14 child welfare issues.

15 MR. MCKINNON: Quite removed.

16 Then they still do have this fundamental  
17 override. There's -- I don't know that it's been used but  
18 -- there is still statutory authority, but it's rarely used  
19 to actually apprehend a child. I'm looking at my client.  
20 Technically, the director of child protection could  
21 apprehend any child in the province, so there is this  
22 ultimate safeguard. But what I then want to take you to in  
23 terms of the detail, if, if --

24 Madam Clerk, if you could assist, it's Commission  
25 disclosure 1103, which is the funding model, and it's page

1 23539.

2           And Mr. Commissioner, this is about a four-,  
3 five-page document that was prepared by Manitoba Civil  
4 Legal Services. It's been attached as Appendix 1 to the  
5 funding model and it is a detailed chart showing --

6           THE COMMISSIONER: That is the funding model  
7 between who?

8           MR. MCKINNON: Canada and Manitoba.

9           THE COMMISSIONER: Okay, yeah.

10          MR. MCKINNON: But this is an appendix. It's not  
11 part of the funding model.

12          THE COMMISSIONER: To the new funding model.

13          MR. MCKINNON: Right. And I think what -- I'm  
14 guessing here, Mr. Commissioner, but I think Canada was  
15 asking the same question, because Canada is saying, Okay,  
16 we're entering into an, an arrangement with Manitoba, and  
17 you've got the director of child protection and you've got  
18 the authorities, who does what? So that was attached as an  
19 exhibit -- or as an appendix to the funding model, and it's  
20 three or four pages long.

21          Madam Clerk, if you could just sort of scroll  
22 through it.

23          So it's very specific as to what the act says,  
24 what the authorities regulation says, and who the  
25 responsible party is. So in some cases it's the director,

1 in some cases it's the authorities, and in some cases it's  
2 a shared responsibility.

3 So I, I commend that to you, Mr. Commissioner.  
4 If you're looking for any level of detail beyond the very  
5 high level that just described to you, it can be found  
6 there.

7 THE COMMISSIONER: Thank you. I think that  
8 answers my question.

9 Then my final question is, is this, that I would  
10 like to know a little more about the structure of the, of  
11 the standing committee. Does it have a staff? How many  
12 positions are there? What's the nature and essence of the  
13 work they do?

14 MR. MCKINNON: Standing committee is statutory.  
15 I'll be one moment and I'll find the ...

16 It's in the Authorities Act.

17 THE COMMISSIONER: Yes.

18 MS. WALSH: Section 30.

19 THE COMMISSIONER: Yes, it's --

20 MR. MCKINNON: Section --

21 THE COMMISSIONER: -- Section, Section 30.

22 MR. MCKINNON: Section 30, thank you. I'm going  
23 to tell you what I can tell you, given my current  
24 knowledge. You'll see it's the, the, the four authorities.  
25 It's the ...

1 THE COMMISSIONER: Yes.

2 MR. MCKINNON: There's an additional member  
3 appointed by the Métis Authority. The director's a member.  
4 So that's standing committee. It has an office called the  
5 standing committee office, which was funded since 2006.

6 THE COMMISSIONER: Now, you might want to reply  
7 to this next week because I have a follow-up question with  
8 it.

9 MR. MCKINNON: Okay. And that would be helpful  
10 to, to do that and perhaps give me the follow-up, too.

11 THE COMMISSIONER: Yeah, as I want to know more  
12 about it, it -- the structure and functioning with -- you  
13 say it has a staff and so on. What kind of positions are  
14 fulfilled there, what do they do, and, and what, what's the  
15 object of, of the work they're doing? And along with that  
16 my other question is what accountability, if any, attaches  
17 to the committee and its work by way of reporting out to  
18 the authorities, the government, and the general public of  
19 Manitoba?

20 MR. MCKINNON: That would probably be best if I  
21 have the weekend to look at that.

22 THE COMMISSIONER: You certainly have.

23 MR. MCKINNON: That would be helpful. Some of it  
24 may be in evidence. If it's not in evidence, I'll, I'll,  
25 I'll make submissions on it.

1 THE COMMISSIONER: Well, after all I've said, if  
2 there's not evidence I can't -- I guess I can't do much  
3 about it, but I'm interested to hear what you have to say.

4 MR. MCKINNON: I hear you, Mr. Commissioner.  
5 We'll see what we can come up with.

6 THE COMMISSIONER: All right. Well, then that  
7 completes your submission?

8 MR. MCKINNON: It does, Mr. Commissioner. I just  
9 want to thank you for your patience. I want to thank all  
10 other counsel in the room who, in my view, have shown a  
11 very high degree of professionalism and cooperation, one  
12 with the other. I'm satisfied that all counsel in this  
13 room are seeking the same objective, which is the  
14 improvement of the lives of children in Manitoba. It's  
15 been a pleasure to work with all of these people.

16 I want to pay particular thanks to Commission  
17 staff, and make special mention to Ms. Ewatski, who I know  
18 has worked very late at night because I've been dealing  
19 with her very late at night, and she has made us all look  
20 better by her dedication and hard work and I appreciate  
21 that very much.

22 THE COMMISSIONER: Stand up.

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

24 THE COMMISSIONER: Thanks, Mr. McKinnon.

25 Now, Ms. Walsh, I suggest we, we adjourn for 15

1 minutes and then take the University of Manitoba this  
2 afternoon?

3 MS. WALSH: Yes, I think they're, they're well-  
4 prepared.

5 THE COMMISSIONER: All right.

6 MS. WALSH: Thank you.

7 THE COMMISSIONER: Well, I'm going to adjourn for  
8 15 minutes now. I'm not going to leave my desk immediately  
9 because I've got so much paper here I'm going to organize  
10 it, but we stand adjourned for 15 minutes.

11

12 (BRIEF RECESS)

13

14 THE COMMISSIONER: Okay, we'll take our time.

15 UNIDENTIFIED PERSON: Oh, right, we're back on  
16 the record.

17 MS. VERSACE: Thank you. Maria Versace on behalf  
18 of the University of Manitoba.

19 As you know, the University of Manitoba, on  
20 behalf of the Faculty of Social Work, was granted  
21 intervener status in this Inquiry in recognition of the  
22 fact that we offer the only accredited social work program  
23 in Manitoba and that most social workers with university  
24 degrees in the province have received a portion of their  
25 education at our institution. While the university was not

1 directly involved in the system that provided services to  
2 Phoenix Sinclair, we feel a societal responsibility to  
3 assist in building a strong child protection system in the  
4 province and in finding solutions to prevent future  
5 tragedies.

6           The university has submitted a written brief that  
7 highlights a number of factors that should be considered  
8 when reviewing the child welfare system and that we urge  
9 you to consider -- that you consider these factors in  
10 preparing a report.

11           In this submission I propose to highlight certain  
12 content of that written submission, and then address the  
13 particular recommendations made by Mr. Gindin that you  
14 indicated you wished to hear about, as well as other  
15 recommendations made by the other parties regarding  
16 training, particularly by the U of M and education offered  
17 by the U of M.

18           I will not be referring to specific portions of  
19 the evidence, although that evidence has been referenced in  
20 our written materials and much of it has been highlighted  
21 by other counsel. Instead, I will simply touch on the  
22 broader themes presented in our submission that should be  
23 considered when recommending changes to the child welfare  
24 system. We urge you to keep these themes in mind when  
25 reviewing the specific recommendations submitted by the

1 various parties in this Inquiry.

2           This Inquiry was held in three phases. In phase  
3 one the Commission heard evidence on the facts surrounding  
4 the contact Phoenix Sinclair and her family had with the  
5 child welfare system; phase two focused on the child  
6 welfare system itself, starting with a discussion about  
7 best practices and the delivery of child welfare services;  
8 and phase three focused on how improvements to child and  
9 family service system can be enhanced to better protect  
10 children.

11           The University of Manitoba participated in phases  
12 two and three of this Inquiry.

13           In phase two the Commission heard from two  
14 University of Manitoba witnesses, Dr. Alexandra Wright, who  
15 spoke about best practices in social work and about an  
16 ecological approach to child welfare; and Dr. Harvy  
17 Frankel, who is seated to my left, who spoke to the  
18 curriculum used within the faculty, the accreditation  
19 standards that influence that curriculum, the efforts made  
20 to establish a college of, of social workers, and the level  
21 of specialization that exists with respect to child welfare  
22 issues.

23           In phase three, the Commission heard from two  
24 additional University of Manitoba witnesses, Dr. Brad  
25 McKenzie, who spoke to the overrepresentation of aboriginal



1 children within the current child welfare system, and about  
2 a community caring approach to child welfare and how that  
3 approach might be funded; as well as Dr. Marni Brownell,  
4 who spoke to the most common risk factors for children  
5 going into care and the need for an upstream approach to  
6 child welfare which would focus on preventative measures as  
7 opposed to a downstream approach that is reactionary in  
8 nature.

9           These witnesses, along with a number of others  
10 that presented evidence in the three phases of the Inquiry,  
11 raised a number of factors that should be considered in  
12 creating any comprehensive strategy to improve child and  
13 family services in Manitoba.

14           These factors demonstrate five overlapping themes  
15 for consideration, which are outlined in our brief and  
16 which I will briefly summarize this afternoon.

17           THE COMMISSIONER: When you refer to your brief,  
18 can you tell me sort of what page you're going to or what  
19 paragraph number?

20           MS. VERSACE: I, I certainly can.

21           THE COMMISSIONER: That'll just, that'll just  
22 help me for following.

23           MS. VERSACE: Certainly, I can do that.

24           THE COMMISSIONER: Because I've read it all, but  
25 that was ten days ago, kind of thing.

1 MS. VERSACE: I can certainly do that for you,  
2 Mr. Commissioner.

3 So the university submits that any comprehensive  
4 strategy to improve the, the system must address five  
5 overlapping themes, which I'll, I'll address and point you  
6 to the specific paragraphs in turn.

7 THE COMMISSIONER: Right.

8 MS. VERSACE: First, there's a need for  
9 involvement of aboriginal communities in planning,  
10 managing, and delivering services; second, a commitment to  
11 evidence-based or evidence-informed practice as a basis for  
12 reforms; third, a commitment to develop knowledge skills  
13 among -- and skills among social workers and child welfare  
14 service staff; fourth, a need for expanded focus and  
15 commitment to the differential response and family  
16 enhancement model; and fifth, a need for closer  
17 collaboration between child and family services and  
18 community-based services, and we would submit that that  
19 would include the University of Manitoba.

20 So beginning with the need to involve aboriginal  
21 communities in planning, managing, and delivering services,  
22 Dr. Trocmé, Dr. McKenzie, Dr. Wright, and Dr. Frankel all  
23 spoke to the importance of building capacity in aboriginal  
24 communities by working collaboratively with those  
25 communities with respect to the education and development

1 of young people, and also with respect to the economic  
2 development of the community and the community's engagement  
3 in supporting families. And we have summarized and, and  
4 referenced their evidence in paragraphs 9 to 16 of our  
5 brief.

6 THE COMMISSIONER: Thank you. Oh, yes, I see  
7 where you are.

8 MS. VERSACE: We submit that any reform to the  
9 child and family service system must include a continuing  
10 financial commitment to the involvement of aboriginal  
11 people and communities in planning, managing, and  
12 delivering aboriginal-specific child and family services to  
13 aboriginal people and must further include increased  
14 efforts to ensure collaboration.

15 The university therefore urges you, Mr.  
16 Commissioner, to consider including recommendations in your  
17 report that support aboriginal involvement in social work  
18 and child and family service planning, such as new  
19 government funding to support a Master of Social Work based  
20 on indigenous knowledge, to develop leaders who can  
21 approach social work and child welfare from a different  
22 perspective, and to ensure the development of cultural  
23 relevance and integration of cultural knowledge and  
24 practice in social work practice beyond the Bachelor of  
25 Social Work degree. That recommendation is at paragraph

1 55(a) of our brief.

2 We also urge you to consider recommendations that  
3 incorporate systematic evaluation of practice tools and  
4 service models to ensure cultural relevance and respectful  
5 service provision, which is especially important in  
6 aboriginal communities and newcomer communities. And that  
7 recommendation is further elaborated again in paragraph 55  
8 of our brief.

9 Moving to the second theme or consideration,  
10 there must be a commitment to evidence-based or evidence-  
11 informed practice as a basis for service reforms.  
12 Evidence-informed or evidence-based practice is the concept  
13 that decision making or planned intervention should be  
14 based on research and clinical evidence, including  
15 frontline experience and the family's perspective, and that  
16 there should be a planned process to decision making.

17 The benefits of that system were discussed during  
18 the evidence of Dr. Wright, Dr. Nico Trocmé, and Elsie  
19 Flette, and we provided the references to their evidence at  
20 paragraph 17 to 20 of our brief.

21 The university recommends that this increased  
22 commitment to evidence-informed or evidence-based practice  
23 be achieved through investment in evaluation and review of  
24 programs that work from other jurisdictions to help develop  
25 best practices, through ongoing evaluation and attention to

1 methods of ensuring the efficient and effective use of  
2 frontline staff time, including the creation of datasets  
3 that can be then analyzed by the province through  
4 organizations such as the Manitoba Centre for Health Policy  
5 in order to inform policy and to assess the strengths and  
6 weaknesses of the system and the services provided. Those  
7 recommendations, again, are in paragraph 55(b) of our  
8 brief.

9 THE COMMISSIONER: 55(c), yes.

10 MS. VERSACE: Thank you.

11 Thirdly, any recommended reforms must also  
12 support a commitment to develop knowledge and skills among  
13 social workers and, and child welfare staff. The evidence  
14 of Dr. McKenzie, Dr. Frankel, and Dr. Wright suggests that  
15 staff in the child welfare system must be educated and  
16 trained in the use of structured decision making tools that  
17 include safety assessment, risk assessment, and the  
18 strengths and needs assessment leading to case plans; that  
19 they must be educated and trained to have the skills of  
20 good, sound, clinical judgment, and an ability to do an  
21 assessment of families; and they must be educated and  
22 trained to facilitate engagement with families to build  
23 trust and cooperation, increasing their ability to provide  
24 service. These witnesses also spoke to the importance of  
25 ensuring that workload pressures are eased so that workers

1 can attend ongoing training and truly benefit from that  
2 training.

3           Mr. Commissioner, the university urges you to  
4 consider including recommendations in your report that will  
5 ensure efforts are made to build staff in supervisory  
6 capacity, and those recommendations should include an  
7 emphasis on training and a more family oriented service  
8 model in child welfare, which has been shown to increase  
9 staff satisfaction. We submit this should include efforts  
10 to increase staff retention by addressing the issues of  
11 caseload size, staff turnover and vacancies, the lack of  
12 support from -- a lack of support from management to  
13 address those issues, professional development, and  
14 supervisory expertise and availability, as these have been  
15 found to be problematic to staff retention and best  
16 practices in social work.

17           And we also ask that you consider recommendations  
18 that include a commitment to reducing the administrative  
19 burden for staff which, when combined with reasonable  
20 workloads and ongoing training and experience in child  
21 welfare, facilitates a shift in service from an over-  
22 emphasis on case management to more casework with families  
23 and children and increases staff capacity. And again,  
24 those are further elaborated in paragraph (c) of our, of  
25 our submission.

1           The university further recommends that funding be  
2 allocated to increase the supply and availability of a  
3 highly trained workforce through efforts to encourage child  
4 welfare workers to obtain a formal social work degree, as  
5 research has suggested that a minimum requirement of a  
6 Bachelor of Social Work degree provides basic knowledge and  
7 skills necessary to be able to perform child welfare work.

8           The University of Manitoba has taken certain  
9 measures to make the Bachelor of Social Work degree more  
10 accessible to child welfare workers and to include more  
11 child welfare specific courses in its undergraduate  
12 curriculum, including instituting a large distance  
13 education program delivered both online and in rural and  
14 northern Manitoba. The university has also developed  
15 continuing education programs in aboriginal child welfare  
16 and child and family services in -- and in community  
17 wellness, which credits can be used towards a Bachelor of  
18 Social Work if the student completes the entire diploma and  
19 is admitted into the faculty.

20           And that was evident in Dr. Frankel's evidence,  
21 which we refer to in paragraph 26.

22           THE COMMISSIONER: Yes.

23           MS. VERSACE: The university submits that these  
24 efforts could be supplemented by the development of a  
25 comprehensive labour force strategy for child and family

1 services in Manitoba similar to the nursing initiative that  
2 has taken place in this province in recent years, which  
3 strategy should be developed in collaboration with the  
4 province, the child welfare authorities, and the University  
5 of Manitoba Faculty of Social Work.

6 It is important to note that it is not the  
7 university's job to create practice-ready child welfare  
8 social workers. However, the university, through the  
9 Faculty of Social Work, must partner with the authorities  
10 and agencies to train staff, and the university submits  
11 that the training that was described by Ms. Harris on  
12 behalf of the General Authority, that the training that the  
13 General Authority has started to implement on the job is  
14 exactly how the system of training as between the  
15 authorities and the university should work.

16 THE COMMISSIONER: There's a relationship that's  
17 proving to be satisfactory.

18 MS. VERSACE: Yes, and we welcome further  
19 collaboration in terms of the types of training and  
20 programming.

21 THE COMMISSIONER: And at this point it's as  
22 between the university and, and the General Authority only?

23 MS. VERSACE: My understanding is its less  
24 frequently taking place at the other authorities, although  
25 there is collaboration there as well.



1 THE COMMISSIONER: Well, that's good. That's  
2 good to hear.

3 MS. VERSACE: Moving to the fourth theme or  
4 consideration, the university urges you to consider  
5 recommendations that expand focus on a differential  
6 response and family enhancement model.

7 In his evidence, Dr. McKenzie spoke to the  
8 benefits of that model in terms of improved child safety  
9 and family functioning, greater parental satisfaction, and  
10 greater staff satisfaction. And you can refer -- we have  
11 referenced that evidence at paragraphs 30 to 38 of our  
12 brief.

13 THE COMMISSIONER: Yes.

14 MS. VERSACE: There was some debate about where  
15 to locate these programs and how to deliver them, whether  
16 outside of the child welfare system, which has the  
17 potential benefit of building additional community  
18 capacity, or inside the child welfare system, which does  
19 have the potential for greater coordination between  
20 protection and prevention services. Regardless of where  
21 these services are developed and offered, new resources  
22 must be allocated for family enhancement services so that  
23 funding does not end up being divided between protection  
24 and prevention, which would result in a constrained system.

25 The university submits that expanded commitment

1 to differential response and family enhancement practice  
2 models may be achieved in four ways, although there may be  
3 more. I will focus on four, however.

4 Firstly, through increased focus on safety  
5 oriented practice that combines knowledge about safety and  
6 risk assessment with skills and knowledge in work with  
7 families and that brings groups together to case conference  
8 and map out how to engage with other service providers in  
9 assisting that process.

10 Secondly, through block or flexible funding to  
11 expand early intervention services and build community  
12 capacity, particularly in aboriginal communities, with  
13 ongoing annual funding increases in order to sustain new  
14 initiatives over the long term, particularly in relation to  
15 staffing costs.

16 Third, through new investment targeted at  
17 strengthening the roles of the community service system  
18 that works most closely with families referred or likely to  
19 be referred to child welfare system.

20 And fourth, through new funding to assist  
21 coordination of services between child welfare system and  
22 the community service system, such as providing funding to  
23 a lead agency to help coordinate the services offered by  
24 the community-based organizations in a community caring  
25 model.

1           The final theme brought forward in the evidence  
2 is the need for closer collaboration between child and  
3 family services and other community-based services, and the  
4 University of Manitoba would hope to be part of the  
5 collaboration. Dr. McKenzie spoke of other jurisdictions  
6 in the world that have successfully set up mechanisms for  
7 coordination of referrals and service provision. He spoke  
8 about the Child Wellbeing Centres in New South Wales,  
9 Australia, that have implemented a reporting system, set up  
10 in the schools, that allow them to pre-screen families that  
11 need particular services and refer those families to  
12 services that are needed in the circumstances. We refer to  
13 that evidence at paragraph 40 of our brief.

14           However, while the devolution of some of these  
15 services to external community-based organizations is  
16 important in building community capacity and has met with  
17 success in other jurisdictions, the success of this  
18 approach depends on three factors: a well developed,  
19 highly professionalized service organization with  
20 experience in delivering child and family service programs;  
21 well-developed mechanisms for coordination of referrals and  
22 service provision; and continued involvement of child  
23 protection agencies and government in ensuring adequate  
24 accountability, service outcomes, and value for money.

25           The university therefore urges you to consider

1 including recommendations in your report that the  
2 government designate new funding to strengthen community  
3 services and assist in the coordination of those community  
4 services with child and family services.

5 The recommendations I have mentioned are further  
6 elaborated upon, as I have mentioned, in the university's  
7 brief as quality of service improvements, and that's at  
8 paragraph 55. The university also made recommendations  
9 regarding system improvements that we urge you to consider.

10 The welfare of children will be improved by  
11 increasing and targeting efforts and funding at the first  
12 two levels of the system, being universal access to certain  
13 services and targeting programs for at-risk children and  
14 families. These two levels were under the heading of  
15 prevention before occurrence in Dr. Trocmé's chart that Mr.  
16 McKinnon referred to at paragraph 117 of his brief and  
17 reviewed this morning. These should eventually lead to a  
18 reduced need for funding at the third level, being child  
19 protection services.

20 With respect to level one, universal access to  
21 services, the university urges you to consider  
22 recommendations that will promote more universally provided  
23 services for children and families, including efforts to  
24 promote neighbourhood and social cohesion, as well as  
25 housing condition, adequate income support to families

1 through programs such as guaranteed annual income, early  
2 screening and services offered for children who are or may  
3 become at risk, support services to enhance child  
4 development -- for example, specialized services including  
5 daycare and pre-school such as the Perry preschool program  
6 -- and support services to enhance parenting such as home  
7 visitors, parent education -- and parent education such as  
8 the Positive Parenting Program.

9           Although a range of these services do exist in  
10 Manitoba, these are not accessible to all, nor are they  
11 always well-coordinated. Small, rural communities and  
12 those living on reserves are often poorly served by these  
13 programs and there is no well-coordinated response between  
14 provincial and federal governments on reserve. We submit  
15 that targeted funding and intersectoral coordination are  
16 essential to address the factors that tend to place  
17 children at risk.

18           With respect to level two, targeted programs for  
19 at risk children and families, the university urges you to  
20 consider recommendations that will support targeted  
21 programs regarding substance abuse problems potentially  
22 within the education system, targeted home visits, and  
23 interventions where a failure to engage may trigger  
24 investigation of child maltreatment and related actions to  
25 ensure the safety of children at risk and make sure

1 families are not falling through the cracks.

2           Again, despite the presence of some of these  
3 programs aimed at early intervention which include a number  
4 of non-government services focusing more specifically on  
5 aboriginal children and families, these programs are  
6 underdeveloped in Manitoba compared to many other  
7 jurisdictions, and intersectoral coordination is essential  
8 to a successful child welfare system, particularly at the  
9 community level, and service providers of these more  
10 targeted programs should include other government  
11 departments, the non-government sector, and the child  
12 welfare system through programs in the model of  
13 differential response and family enhancement.

14           We submit that new investment in levels one and  
15 two services must be accomplished in ways that both protect  
16 child safety in the immediate future and build family and  
17 community supports over the longer term.

18           I'll move now to the five recommendations arising  
19 out of Mr. Gindin's submission.

20           The first was that the Child and Family Services  
21 Act be changed to reflect child protection as the only  
22 purpose of the mandated child protection agencies' division  
23 between child protection and child wellbeing.

24           The university takes no formal position on this  
25 matter, but we'll simply comment that both of these models

1 have been used in the past, so it's not the model that is  
2 the problem but in how you implement the model in terms of  
3 communication of information and funding. We will also  
4 comment that the danger in having a separate agency is that  
5 the enforcement agency will not work -- will not  
6 necessarily work in a coordinated way with the support  
7 agency, and that potentially leads to a fragmented service  
8 and separation of children from their families in situation  
9 where it could be potentially reasonably avoided.

10 With respect to the next recommendation, number  
11 three, that files be opened in the name of the child, the  
12 university takes no position on that.

13 THE COMMISSIONER: I can, I can understand that,  
14 when you're not involved in the day-to-day workings of the  
15 Department --

16 MS. VERSACE: Yes.

17 THE COMMISSIONER: -- and, and the agencies,  
18 yeah.

19 MS. VERSACE: Moving to number 17, that the new  
20 registration process be implemented as soon as it is  
21 proclaimed, requiring all social workers to be registered,  
22 the university takes no formal position on this but we do  
23 wish to make a couple of comments.

24 THE COMMISSIONER: I'd be interested to hear  
25 them.

1           MS. VERSACE:     Certainly.     This recommendation  
2 focuses on the legislation that simply protects the title  
3 of social worker, without addressing the educational  
4 standards of workers who are actually practising in the  
5 child welfare system. This recommendation will only have  
6 an effect on the way the agencies provide services if it is  
7 coupled with the recommendation that only social workers  
8 may hold certain key roles within the authorities. This  
9 recommendation alone would not have any effect, as agencies  
10 could still employ workers in frontline positions that are  
11 not social workers and, in fact, that is a common practice  
12 in today's system.

13           If there is a correlating recommendation that  
14 child welfare workers must be registered social workers,  
15 then it also raises the question of the professional self-  
16 regulatory body's absorption capacity in the short term.  
17 And by way of example, all child welfare workers in  
18 Saskatchewan will soon have to register with the  
19 Saskatchewan Association of Social Workers, but this is  
20 being done in stages to deal with that absorption capacity  
21 issue.

22           I'll move on to number 32 --

23           THE COMMISSIONER:   Just before --

24           MS. VERSACE:     -- regarding --

25           THE COMMISSIONER:   Just before you, just before



1 you go on with that --

2 MS. VERSACE: Certainly.

3 THE COMMISSIONER: -- Dean Frankel, was it you or  
4 was it Dr. McKenzie that was on that transition team?

5 MR. FRANKEL: It was me.

6 THE COMMISSIONER: It was you.

7 MR. FRANKEL: Yes.

8 THE COMMISSIONER: And you were to report by June  
9 the 30th. At least, that's what I remember.

10 MR. FRANKEL: And we, in fact -- that's been  
11 delayed --

12 THE COMMISSIONER: I'm not asking you to talk out  
13 of school, but if you can talk in school and there's  
14 anything you can tell me, I'd like to hear --

15 MR. FRANKEL: (Inaudible).

16 THE COMMISSIONER: I'll hear you at the  
17 microphone. But on the other hand, if, if it's  
18 confidential material, I accept that.

19 MR. FRANKEL: Oh, no, certainly I'm happy to  
20 comment on it. We have been delayed. We had a recent  
21 meeting with the Minister and agreed to report by the end  
22 of this year, by December.

23 THE COMMISSIONER: I see. So there'll be no  
24 proclamation in the interim. That's -- I would think  
25 that's --

1 MR. FRANKEL: That's --

2 THE COMMISSIONER: -- a certainty.

3 MR. FRANKEL: That's correct.

4 THE COMMISSIONER: Yes. Well, that's an update,  
5 yes.

6 Thank (inaudible) and when you gave evidence you  
7 spoke to, to the college, I know.

8 MR. FRANKEL: Yes.

9 THE COMMISSIONER: And then that's a matter of  
10 record that I'll be reviewing. Thanks, Dean.

11 MS. VERSACE: And so I'll move to number 32 of  
12 Mr. Gindin's recommendations, that the Office of the  
13 Children's Advocate be an independent voice, and to remove  
14 any appearance of bias, that the children's advocate should  
15 not be a formal child welfare social worker.

16 The university would be opposed to this type of a  
17 recommendation as we believe that personal suitability and  
18 orientation should count more than one's previous job  
19 history, and certainly the staff of the children's advocate  
20 office should include persons with child welfare experience  
21 and expertise.

22 THE COMMISSIONER: Thank you.

23 MS. VERSACE: Finally, with respect to the fifth  
24 recommendation regarding the acknowledgement by the  
25 Manitoba government regarding -- the acknowledgement by the

1 Manitoba government that the overrepresentation of  
2 aboriginal people in the child welfare system requires a  
3 concerted effort to increase funding and develop programs,  
4 the university supports this recommendation and has  
5 elaborated on the importance of this point in, in  
6 paragraphs 9 to 16 and paragraph 47 of our written  
7 submission.

8 THE COMMISSIONER: In, in paragraphs what?

9 MS. VERSACE: Nine to 16.

10 THE COMMISSIONER: Nine to 16.

11 MS. VERSACE: And paragraph 47. And we have  
12 nothing further to add to that.

13 THE COMMISSIONER: Thank you.

14 MS. VERSACE: I'd like to move now to  
15 recommendations made related specifically to the University  
16 of Manitoba.

17 Mr. Gindin made a further recommendation at  
18 number 15 of his brief that increased funding be allocated  
19 to the University of Manitoba to run more clinical courses  
20 in child welfare with emphasis on frontline social work.

21 THE COMMISSIONER: Yes.

22 MS. VERSACE: Again, I reiterate that it is not  
23 the university's responsibility to create practice-ready  
24 social workers, but certainly we want to partner with the  
25 authorities and agencies to educate and train staff, and we

1 would support recommendations that the government might  
2 provide funding to the Faculty of Social Work to offer  
3 regular cohorts of the child and family services  
4 concentration for existing child welfare staff who don't  
5 have degrees, as well as for potential new staff.

6 THE COMMISSIONER: But in, in the curriculum  
7 there are courses that are centred particularly on, on  
8 child welfare issues.

9 MS. VERSACE: Yes, there are, and Dr. Frankel  
10 spoke to those courses in his evidence.

11 THE COMMISSIONER: Yes, he did.

12 MS. VERSACE: And perhaps at this point I, I will  
13 note that the University of Manitoba Bachelor of Social  
14 Work currently does have, as well, more aboriginal and  
15 First Nation content than most social work, social work  
16 programs across the country, although we do acknowledge  
17 that there may be additional work to be done and we are  
18 committed to continually reviewing those course offerings  
19 within the framework of the accreditation guidelines.

20 And I believe that addresses also the  
21 recommendation number 29 of ANCR and the Northern and  
22 Southern Authorities' joint submission.

23 THE COMMISSIONER: Right.

24 MS. VERSACE: Finally, with respect to all of the  
25 recommendations made by the various parties, we simply ask

1 that you review and assess those recommendations in light  
2 of the five themes presented in our submission and -- as  
3 that relates to the evidence presented that has been  
4 referenced in, in those submissions.

5           The University of Manitoba has an interest in  
6 assisting improvements to the child welfare system as it  
7 offers the only accredited social work program in Manitoba  
8 and it is a major educator of social workers and child  
9 protection workers in Manitoba. We are committed to  
10 assisting and implementing whatever recommendations are  
11 made, as we do feel a societal responsibility to assist in  
12 building a strong protection system in the province and in  
13 finding solutions to prevent future tragedies.

14           Such assistance can take and has taken the form  
15 of collecting and analyzing data through the Manitoba  
16 Centre for Health Policy, through modifying the social work  
17 generalist undergraduate degree within the framework of the  
18 accreditation standards to provide a concentration in child  
19 and family services and indigenous perspectives, by  
20 providing certificate programs to child welfare workers  
21 through distance education and in various regions of the  
22 province, as well as by supporting our faculty members who  
23 are engaged as experts and consultants within the child  
24 welfare system.

25           We urge you to consider recommendations that will

1 allow the university to continue to act in this capacity  
2 and assist in making the child welfare system one in which  
3 children and family can get the supports they need.

4           Subject to any questions, we would like to take  
5 this opportunity to thank you for allowing the University  
6 of Manitoba to be involved as an intervener in this  
7 Inquiry, and for your careful and thorough consideration of  
8 all of the evidence and the submissions. And we would also  
9 like to thank Commission counsel and staff for their  
10 efforts throughout this process.

11           THE COMMISSIONER: Well, thank you very much, Ms.  
12 Versace, and, and through you to the university my  
13 appreciation for the contribution they've made. The, the  
14 faculty members that you made reference of, the dean, and  
15 Dr. Wright, and, and Dr. McKenzie and, and Professor  
16 Brownell, I guess, along with Dr. Trocmé who came from  
17 outside, we're -- are going to be well-referenced in my  
18 report, I assure you, because from those academic people  
19 came a lot of background information about how the system  
20 should work, and, and I think -- as I think what I, I said  
21 when the dean was on the stand, it's part of what I like to  
22 see university doing, is getting out in the community and  
23 being of assistance, and the University of Manitoba has  
24 stepped up to the plate here and, and I express my  
25 appreciation for that.

1 MS. VERSACE: Thank you.

2 THE COMMISSIONER: Thank you.

3 All right. We're having one more submission this  
4 afternoon, are we?

5 MS. WALSH: Yes. You're, you're ready? Good.  
6 The MMF, then.

7 THE COMMISSIONER: Mr. Haight.

8 MR. HAIGHT: Thank you, Mr. Commissioner.

9 THE COMMISSIONER: Now, just before you start,  
10 Ms. Walsh, Ms. Ewatski told me that there was another  
11 document arrived in the office today. Did you file  
12 something today?

13 MR. HAIGHT: No, not today. I spoke with Ms.  
14 Ewatski and with Ms. Walsh, and that was where I'm going to  
15 begin, actually --

16 THE COMMISSIONER: Oh.

17 MR. HAIGHT: -- my submission today, sir, is to  
18 advise of the need to make some corrections to Exhibit 136,  
19 which is the --

20 THE COMMISSIONER: Yes.

21 MR. HAIGHT: -- paper filed by the MMF and the  
22 Métis Child and Family Services Authority, entitled Métis  
23 Children and Families in the Child Welfare System.

24 THE COMMISSIONER: I have 136 here.

25 MR. HAIGHT: You do, and --

1 THE COMMISSIONER: Yes.

2 MR. HAIGHT: And what I'm going to do -- I'll  
3 just explain to you the corrections that need to be made  
4 and the process which I have suggested to Ms. Walsh as to  
5 how we might do that.

6 THE COMMISSIONER: Mr. Haight --

7 MR. HAIGHT: And --

8 THE COMMISSIONER: -- did I give you a chance of  
9 introducing yourself and your client?

10 MR. HAIGHT: You mentioned, you mentioned my name  
11 but, but I should, for the record, indicate it's Bill  
12 Haight -- thank you, sir -- on behalf of Manitoba Métis  
13 Federation and Métis Child and Family Services Authority.

14 So Exhibit 136, you recall, has at the end of it  
15 a Appendix A, which deals with Selected Indicators of Métis  
16 Socio-Economic Gaps.

17 THE COMMISSIONER: Yes.

18 MR. HAIGHT: And you may recall, sir, during the  
19 course of the evidence of Ms. Schibler and Ms. Mayer, that  
20 there was questions asked both in direct and in cross-  
21 examination regarding the reference to all other residents  
22 for Winnipeg and all other residents for Manitoba, and the  
23 comparison between the Métis population and all other  
24 residents. And the question was asked whether all other  
25 residents include First Nations people, and the answer to



1 that question was yes. That answer was correct and  
2 Schedule A is correct.

3 The difficulty is, is that in the body of the  
4 paper, pages 18 to 28, when Schedule A is discussed and  
5 referred to, the term -- the Métis population is compared  
6 to non-aboriginal population when it should say "all other  
7 residents," and that happens on a number of occasions  
8 between pages 18 and 28.

9 And so what I intend to do, sir, is, is provide  
10 to Commission counsel an amended version of 136 which will  
11 have interlineations and underlining so that the changes  
12 can be readily seen, and then my suggestion is that once  
13 Commission counsel circulates that, if there's no objection  
14 -- and I would be surprised if there were -- but if there  
15 is no objection, then that document would be marked then as  
16 Exhibit 136A.

17 And my, my client's initial request was to have  
18 136 removed. Spoken to Ms. Walsh about that and, and for  
19 -- under good reason, she suggested that that's not the way  
20 to proceed, and so the compromise, I think, would be that  
21 on the website Exhibit 136 would have an asterisk  
22 indicating that that document is amended, please reference  
23 document 136A.

24 And so I expect to get that document, now that  
25 we're not sitting tomorrow, around to Ms. Walsh tomorrow.

1           THE COMMISSIONER: I'd heard there was something  
2 and I thought it arrived, but I understand you and I, I  
3 can't see there'd be any objection to that.

4           MR. HAIGHT: Okay. Thank you sir.

5           So then moving to the submission, submission in  
6 substance, as you will recall, Mr. Commissioner, you heard  
7 from the representatives of the Manitoba Métis Federation  
8 and the Métis Child and Family Services Authority, or what  
9 I'll, for purposes of brevity, refer to as the authority,  
10 in phase three of this Inquiry. And the Métis Authority or  
11 its agencies did not provide services to Phoenix Sinclair,  
12 her family, or her foster parents, and therefore had no  
13 involvement until it was announced that phase three was  
14 going to be part of this Commission of Inquiry, and the --  
15 both the MMF and the authority sought and received  
16 intervener status so that they could provide to you their  
17 perspective on why it is that Métis families  
18 disproportionately come into contact with the child welfare  
19 system when compared with non-aboriginal populations.

20           So you will also recall that in addition to  
21 hearing the MMF perspective on that socio-economic issue,  
22 you also heard from the authority regarding the programs  
23 that they -- that it had implemented as a result of the  
24 recommendations that came out of the external review, and  
25 that arguably is a phase two type issue but with the

1 consent of Commission counsel we dealt with it all at once  
2 in the course of phase three.

3           And what you heard was that the authority,  
4 through its two agencies, has placed a great deal of  
5 emphasis on proactive or preventative services that are  
6 culturally specific to the Métis, and while the agencies  
7 under the authority have 1,060 children in care, the  
8 authority has strived to offer, through its two agencies,  
9 services which are proactive, which attempt to avoid the  
10 often counterproductive stamp of taking children into care,  
11 and the Commission heard that those programs are resulting  
12 in positive outcomes.

13           The Commission also heard from a number of  
14 experts regarding the importance of preventative services.  
15 You heard from Dr. Trocmé -- and, and Mr. McKinnon refer to  
16 it again today -- that the targeted preventative services  
17 and their importance, and those were the sort of services  
18 that -- and are the sort of services that the authority  
19 through its agencies provide.

20           You also heard from Kerry McCuaig, Dr. McKenzie,  
21 Dr. Brownell, and Dr. Santos, who all passed on to you the  
22 importance of preventative services. And you also heard  
23 from a number of witnesses the importance of attempting to  
24 encourage a preventative centred funding model, which is,  
25 of course, something that we don't have today and, of

1 course, the authority echoes that message, sir, and ...

2           But on the other side of the coin, you heard from  
3 the authority that a number of its culturally distinct  
4 preventative programs are in jeopardy because of the  
5 current funding model's emphasis on number of children in  
6 care and funding based upon that. The authority presented  
7 to you in its evidence, through its paper, and in its  
8 brief, its perspective that the funding model rewards the  
9 reactive step of taking children into care. While -- and  
10 while there must be funding for this, it should not be  
11 unduly emphasized and it should not be at the expense of  
12 preventative services which you have heard are so  
13 important.

14           And while it is true, as Mr. McKinnon says, that  
15 the funding that is available today is far greater, that  
16 the province has stepped up to the plate, along with the  
17 federal government, and provided a great deal more funding,  
18 that is true. The concern is with the emphasis as to how  
19 that funding is shelled out, sir. And the emphasis appears  
20 to be -- based upon what this Inquiry has heard, to be  
21 somewhat misdirected and, and missing the message that has  
22 been provided to you by these academics, these -- and, and  
23 people on the ground, that it is, it is jeopardizing, at  
24 least in the case of the authority and its agencies, these  
25 preventative and proactive steps.

1           And it's the position of the authority that an  
2 explicit change in emphasis is required in order to reduce  
3 the number of children in care and reduce the  
4 disproportionate exposure of Métis families to the child  
5 welfare system, a change in emphasis that explicitly makes  
6 more funding available for preventative programs.

7           And so I'm not standing here, as some have and  
8 said, We need more money. We just need to look at how  
9 we're using the money and take a look at what money is  
10 going to the reactive step of taking children into care and  
11 what money might be utilized to prevent that so that you  
12 don't need to use those dollars.

13           The authority, sir, made four recommendations in  
14 the paper. Those were repeated in the brief and I won't go  
15 into them because I've effectively summarized most of them  
16 in the submission that I just made to you. The only other  
17 recommendation that I've not touched upon, that was made by  
18 the authority, is that full devolution must occur.

19           It was the intention that it occur, and it has  
20 not been fully implemented, and it is the perspective of  
21 the authority that, that a timeframe be set, a reasonable  
22 timeframe -- you saw in the paper that it was three years  
23 -- a reasonable timeframe be set and then all parties then  
24 work towards full devolution.

25           The -- before turning to the socioeconomic

1 issues, Mr. Commissioner, and the, the MMF's perspective on  
2 those, there are a number of recommendations that have been  
3 made, particularly those made by Mr. Gindin on behalf of  
4 Ms. Edwards and Mr. Sinclair, and those recommendations  
5 have been provided to the authority and I'll make comment  
6 them. I, I don't intend to go through them in a great deal  
7 of detail.

8 I can advise you that there are a number of  
9 recommendations made by Mr. Gindin with which the authority  
10 agrees, and there are a number of recommendations which are  
11 already reflected in current practice and so I won't go  
12 into those. I will reserve -- or, excuse me, I will leave  
13 my comments to deal only with the issues where, where there  
14 is a disagreement, and you will hear that my position or  
15 that the position of the authority is very similar to that  
16 given by the General Authority, very similar to that given  
17 by the Department, and now by the university.

18 Specifically dealing with recommendation number  
19 one under the heading of New Philosophy, that family  
20 services should be delivered by a separate government  
21 agency or non-governmental organization, the authority  
22 joins with the General Authority, with the Department, and  
23 with the university to say that that -- it would not be a  
24 step forward. In fact, the Métis Authority would view that  
25 as a step backwards to the old days of the Children's Aid

1 Society. And I won't -- I, I can tell you that the reasons  
2 for them, them suggesting that that would not be a step  
3 forward are those reasons already provided by Ms. Harris,  
4 Mr. McKinnon, so I won't repeat them, but, clearly, there  
5 is a need for collaboration between the two streams and it  
6 is the view of the authority that such a step would  
7 restrict that collaboration.

8 Recommendation number three, that files be  
9 opened in the name of the child as opposed to the parent or  
10 caregiver. Like the General Authority and the, and the  
11 Department, the Métis Authority disagrees and cannot accept  
12 that recommendation. And by opening a file only in the  
13 name of the child and not the parent, the system may be  
14 prevented from knowing if a protection file exists on an  
15 adult. This practice basically protects the adult from  
16 other systems who may be conducting prior contact checks to  
17 determine suitable employment with vulnerable populations,  
18 and this could be a dangerous practice, is the view of the  
19 authority, Your Honour -- or, excuse me, sir, Mr.  
20 Commissioner.

21 Recommendation number 11, hiring of social  
22 workers should be screened to make sure that they have time  
23 to fulfil their job commitments without significant  
24 distractions like long commutes or attending university  
25 classes in other fields. While this recommendation is

1 ideal, it is almost impossible, in the authority's view, to  
2 carry out and, in fact, current practice has shown that  
3 many staff are currently in university and working full-  
4 time and are able to manage both without either suffering.  
5 That's the authority's experience.

6           The recommendation that a unit employ a court  
7 worker who can take instructions and appear on behalf of  
8 the social workers' routine matters before the court,  
9 again, the authority feels that that would be ideal and  
10 agrees with it but the current funding model does not  
11 support those type of resources.

12           Recommendation 27 seeks special training to be  
13 implemented by the authorities in identifying issues that  
14 should be implemented by the authorities. And the  
15 authority agrees with that but not the authorities solely,  
16 that that is something that needs to be carried out by the  
17 authorities as well as the Department. And in fact, that's  
18 in essence what is happening today. The province oversees  
19 core training as well as the four authorities, and the  
20 child protection branch sits on a joint training team to  
21 determine system training. So, so it's not just the  
22 responsibility of the authorities, but the responsibility  
23 of the system as a whole, sir.

24           Recommendation 32 about -- that recommends that  
25 child's advocate -- children's -- Office of the Children's



1 Advocate be truly independent voice for the children and  
2 youth of Manitoba and former child welfare social workers  
3 should not be eligible to fill that position, the authority  
4 disagrees with that. It would be unduly restrictive and  
5 you would be overlooking, as was suggested by others, very  
6 suitable and excellent candidates. Ms. Harris made the  
7 suggestion of perhaps lawyers and, again, that would --  
8 lawyers with experience in this area might be appropriate  
9 as well, but not to the exclusion of other acceptable and  
10 qualified candidates. So I think that would be unduly  
11 restrictive and could effectively result in that office  
12 being ineffectual, as opposed to more effective, as, as is  
13 desirable.

14 Finally, sir, recommendation 45, that it be  
15 expressly provided by legislative provision that the  
16 confidentiality provisions apply to the families and not to  
17 the names of the social workers unless it would clearly  
18 lead to the identification of a particular family. There  
19 is a safety concern that the authority has regarding that  
20 issue. Anonymity is important for frontline workers who  
21 are involved in child protection and that, in the  
22 authority's position, should be maintained.

23 And so that's the authority's position on, on the  
24 position as put forward -- the recommendations put forward  
25 by Mr. Gindin. And by emphasizing only the areas in which

1 we disagree which, as you can hear, Mr. Commissioner, are  
2 not -- there is not significant number. I don't want to  
3 detract from the efforts made to put those recommendations,  
4 and which I said before, a great deal of which the  
5 authority agrees with or takes no position on, and a great  
6 deal of which are also currently implemented so, so --

7 THE COMMISSIONER: And that, that refers to all  
8 those that you have not made specific reference to.

9 MR. HAIGHT: Those to which I have not made  
10 specific reference to, sir, the authority either agrees  
11 with, takes no position with, or are currently implemented  
12 in practice, correct.

13 So that leads me, then, sir, to the MMF's  
14 position on the socio-economic issue raised in phase three.  
15 The court -- the Commission, excuse me, heard from the MMF  
16 not only through the paper that was submitted, Exhibit 136,  
17 but through the evidence of Ms. Schibler and Ms. Mayer.  
18 The Inquiry heard about the social conditions impacting  
19 Métis children and families. Specific statistics were  
20 provided to you, sir, through that Appendix A to Exhibit  
21 136, on health and education, and compared the Métis  
22 experience to all other residents, and that information was  
23 specifically drawn from what is known at the MMF as the  
24 Métis Atlas. Statistics were also provided to you  
25 regarding housing and employment and compared the Métis

1 experience to all other residents.

2           And what is clear from the information provided  
3 to you by the Métis, what is clear from the information  
4 provided throughout phase three -- and I heard Mr. McKinnon  
5 say it today, and it seems as though it's unanimously  
6 accepted -- that, that the socio-economic plight of  
7 aboriginal people -- in, in this case, the Métis people --  
8 the, the problems with housing, the problems with, with  
9 employment, health, they are all indications -- socio-  
10 economic indicators of poverty and they are all the cause  
11 of a disproportionality that we have seen with aboriginal  
12 people, the Métis and First Nations, and their involvement  
13 in the child welfare system. The -- that fact, I think, is  
14 universally accepted, sir.

15           The, the more difficult question -- and I think  
16 it's probably well beyond the scope of this Commission of  
17 Inquiry -- is, how do you fix that? And, and that is, is a  
18 multi-faceted and multi-dimensional issue that we have  
19 probably, despite the depth of the evidence heard here,  
20 only, you know, touched the tip of the iceberg.

21           But from the Métis perspective, there is one  
22 solution, sir. There is one way that can pave a positive  
23 way forward, and that is the full implementation of the  
24 Manitoba Métis policy. And you heard about the policy. It  
25 was, in fact, tendered as Exhibit 137. The policy is a

1 policy of the Province of Manitoba, enacted as such and  
2 created in partnership with the Manitoba Métis Federation.  
3 It recognizes the cultural distinctiveness of the Métis  
4 people. It also acknowledges -- the Province of Manitoba  
5 has said right in its own policy -- the enduring gap in the  
6 quality of life between the Métis and the non-aboriginal  
7 people of Manitoba, as well as the requirement to close  
8 that gap.

9           So that which you are looking at in this Inquiry  
10 has actually been stated for all to see, by the Province of  
11 Manitoba in the Manitoba Métis policy.

12           THE COMMISSIONER: And, and what does it say  
13 about how that should be done?

14           MR. HAIGHT: It doesn't. It doesn't, but what we  
15 did hear, sir, is that that policy has not been fully  
16 implemented. It has set goals and it has set a way of  
17 trying to achieve that goal -- those goals through  
18 consultation with the MMF, through implementation of Métis-  
19 specific, culturally-specific programs, and yet we heard  
20 that that policy has not been fully implemented.

21           And while this Commission of Inquiry cannot say  
22 thou shalt implement, or I recommend that you implement it  
23 in this fashion, it can recommend -- and I'm asking that  
24 the Commission do so recommend -- that the Manitoba  
25 government sit down with the MMF and work towards full

1 implementation of that policy because --

2 THE COMMISSIONER: Well, are you suggesting that  
3 the Manitoba government alone can address the socio-  
4 economic problems that you speak of, the poverty, the  
5 housing, the, the substance abuse, and all that goes with  
6 it?

7 MR. HAIGHT: No, that is not the suggestion. It  
8 is -- what I said, sir, is it is one of the ways forward.  
9 It is a way forward that will assist. But the question  
10 that you ask raises another very sensitive issue with the  
11 MMF and that is the fact that the funding that it receives  
12 is predominantly and largely provincial. The MMF looks on,  
13 I can tell you, with great envy at the programs that are  
14 available to First Nations as a result of federal funding,  
15 which it receives very little of.

16 You heard, I believe, Mr. Helgason speak of an  
17 employment -- a tripartite employment agreement that was  
18 put in place between the MMF, the provincial government,  
19 and the federal government. That is a rarity, sir. That  
20 very rarely happens.

21 And, and so, so, clearly, the federal government  
22 needs to stand up to the plate but they're not a party to  
23 this proceeding and so, so it's difficult for me to stand  
24 here and, and, and for the Commission of Inquiry to make  
25 recommendations in that respect when, when the federal

1 government is, is not a party to this proceeding.

2           But I can tell you that it is a very live issue.  
3 It is one that the Métis are very hopeful may be rectified  
4 by the recent decision from the Supreme Court of Canada as  
5 it relates to land, at least. But it is -- has been a  
6 thorn in the side of the Métis people for years, and  
7 hundreds of years, sir. So, so -- but I'm just trying to  
8 address what the parties to this proceeding might be able  
9 to do.

10           The MMF believes -- what's ironic about, about  
11 the Métis policy is, is the statement made and the  
12 inconsistency that we see today through the emphasis of the  
13 current funding model and the impact that it's having on  
14 culturally specific preventative programs initiated by the  
15 authority and its agencies. Those programs are in jeopardy  
16 because of the emphasis of a funding model, yet the Métis  
17 policy says, you know, this is our goal, to develop these  
18 sort of programs to assist the Métis people. And so there  
19 is an inconsistency and an irony there that I think needs  
20 to be stated, needs to be stated clearly, and, and the  
21 province I think needs to be told that, that that  
22 inconsistency needs to be rectified.

23           And it's the view, sir, that if the province were  
24 to sit down and work towards full implementation of the  
25 Métis policy, that will assist the socio-economic condition

1 of the Métis and that will bridge the gap somewhat.

2 Subject any questions that you have, sir, that's  
3 my submission on behalf of my two clients.

4 THE COMMISSIONER: No, Mr. Haight, I think that's  
5 -- everything I had on my mind, I've spoken to.

6 MR. HAIGHT: Thank you, sir, for your, your great  
7 attention at all times during this, this Inquiry. Thank  
8 you.

9 THE COMMISSIONER: Thank you for your  
10 participation.

11 MR. HAIGHT: Thank you.

12 THE COMMISSIONER: So Ms. Walsh, I think the  
13 arrangement is now we adjourn till Monday morning; is that  
14 it?

15 MS. WALSH: Yes, Mr. Commissioner. We have  
16 Monday and Tuesday set aside in any event, so we'll hear  
17 the remaining two submissions on Monday morning and then  
18 proceed with replies.

19 THE COMMISSIONER: Yes. And, and it's  
20 anticipated that that can be done within the two days.

21 MS. WALSH: Yes.

22 THE COMMISSIONER: All right.

23 MS. WALSH: Thank you.

24 THE COMMISSIONER: With that arrangement having  
25 been agreed to by everybody, we'll stand adjourned now till

1 9:30 on Monday morning.

2

3 (PROCEEDINGS ADJOURNED TO JULY 29, 2013)