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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 Pan Am Room, Second Floor, Winnipeg Convention Centre,  
375 York Avenue, Winnipeg, Manitoba

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TUESDAY, JULY 30, 2013

## **APPEARANCES**

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**MR. N. GLOBERMAN**, Associate Commission Counsel

**MR. R. MASCARENHAS**, Associate Commission Counsel

**MR. G. MCKINNON** and **MR. S. PAUL**, 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**, 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. G. DERWIN**, 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

**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. ROLSTON**, for Witnesses, Ms. Dianna Verrier and Mr. Dan Berg

**MR. R. ZAPARNIAK**, for Ms. Roberta Dick

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1 JULY 30, 2013

2 PROCEEDINGS CONTINUED FROM JULY 29, 2013

3

4 THE COMMISSIONER: Good morning.

5 MS. WALSH: Morning.

6 MR. FUNKE: Morning, Mr. Commissioner.

7 THE COMMISSIONER: Well, Mr. Funke, you're going  
8 to lead off what promises to be our last day.

9 MR. FUNKE: I promise that I will not be nearly  
10 as long as I was yesterday, Mr. Commissioner. I appreciate  
11 the, the latitude that you've granted me to speak on behalf  
12 of my clients. I can advise that I intend to keep my  
13 comments this morning relatively brief.

14 THE COMMISSIONER: Right.

15 MR. FUNKE: I can start by indicating that so far  
16 as the submissions that have been made on behalf of the  
17 Métis, Manitoba Métis Federation and the Métis Authority  
18 are concerned, the AMC and SCO take no, no position  
19 relative to the submissions made on their behalf by Mr.  
20 Haight.

21 The next submissions that I can address are those  
22 provided on behalf of the U of M and I can advise that both  
23 the AMC and SCO take the position that they support the  
24 recommendations made on, made on behalf of the AMC of  
25 Manitoba. However, there are two recommendations that they

1 made that my clients wish to comment on.

2 The first is with respect to the recommendation  
3 made at paragraph 60(b)(i) and that can be --

4 THE COMMISSIONER: Just wait while I --

5 MR. FUNKE: -- found on page twenty --

6 THE COMMISSIONER: -- just wait while I, just  
7 wait while find that --

8 MR. FUNKE: Certainly that --

9 THE COMMISSIONER: -- that.

10 MR. FUNKE: -- can be found on page 29 of their  
11 submissions.

12 THE COMMISSIONER: Page 29?

13 MR. FUNKE: Page 29 of their written submissions,  
14 Mr. Commissioner.

15 THE COMMISSIONER: Yes.

16 MR. FUNKE: So it's the last paragraph on page  
17 29, under 60(b)(i).

18 THE COMMISSIONER: Yes.

19 MR. FUNKE: Counsel, on behalf of U of M writes:  
20

21 "... the University urges the  
22 Commissioner to include the  
23 following recommendations:

24 i. firstly, a recommendation to  
25 increase funding to programs that

1                   promote aboriginal involvement in  
2                   child and family service planning,  
3                   including funding for the Masters  
4                   of Social Work based on Indigenous  
5                   Knowledge that has been developed  
6                   by the University of Manitoba to  
7                   ensure the development of cultural  
8                   relevance and cultural knowledge  
9                   in social work practice;"

10

11                   The AMC and the SCO endorse that recommendation.  
12                   However, they also have asked me to urge you to recognize  
13                   the need for increased programming at the Bachelor level as  
14                   well, to reflect a need for First Nations colonial history  
15                   to be taught to the social workers emerging from that  
16                   program.

17                   So it's good to have it at the Masters level and  
18                   we encourage the development of the Masters program that  
19                   was described, but we think it's also important to include  
20                   specific instruction with respect to the history of First  
21                   Nations and the colonial history of Manitoba at the  
22                   Bachelor level as well, to ensure that the graduates from  
23                   that program have the benefit of that, that knowledge as  
24                   well, when they enter the workforce.

25                   The next recommendation is on page 30.    Again,

1 it's the final paragraph at the bottom of the page and it's  
2 under paragraph 60(b)(iv)(A). And that recommendation is:

3

4 "... to expand the commitment to  
5 the Differential Response [and]  
6 Family Enhancement model by:

7 A. increasing focus on the  
8 safety-oriented practice model;"

9

10 The concern that the AMC and the SCO have, with  
11 respect to that recommendation, is there wasn't a  
12 tremendous amount of evidence adduced on behalf of the  
13 witnesses who testified with respect to the U of M program,  
14 exactly what the safety-oriented practice model was. The U  
15 of M submissions cite the testimony of Dr. McKenzie in that  
16 regard and I've had an opportunity to review Dr. McKenzie's  
17 evidence on the page that they cite from the transcript.  
18 It's from May 31st, 2013, page 85, lines 7 to 13 and his  
19 evidence was this, this is Dr. Brad McKenzie:

20

21 "... the new practice model  
22 involves both training in a suite  
23 of assessment tools [but it is]  
24 but it also involves approaches to  
25 what we call safety-oriented

1 practice, which uses material  
2 around sort of looking at safety  
3 and how to map and how to engage  
4 with other service providers in,  
5 in assisting in that process,  
6 bringing those groups together to  
7 case conference and so on."

8  
9 It may very well be something that's a good idea.  
10 It may very well be something that should be considered.  
11 The difficulty for my clients is, is that there wasn't  
12 tremendous amount of evidence upon which they could review,  
13 to determine whether or not it was something that they were  
14 prepared to endorse or not.

15 The concern that my client has is that,  
16 particularly after the amendment to the Act in 2008, which  
17 promoted the safety and security of the child, above the  
18 other considerations with respect to determination of a  
19 child's best interests, it created this prevention --  
20 sorry, a protection-focused approach within the system  
21 that, my clients take the position, has resulted in the  
22 escalating numbers of children in care. That's a concern  
23 for my clients, that we think that the focus needs to be  
24 moved to prevention. And we're not suggesting, for a  
25 moment, that safety of the child isn't a significant factor



1 and that we must not, at any time, reduce our efforts to  
2 ensure safety. They're not saying that. What we're saying  
3 is that there needs to be a greater emphasis placed on  
4 prevention and not a, not this predominance of focus on  
5 safety. And there was evidence in that regard, that that  
6 type of not singular focus, but significant emphasis of  
7 focus on safety, actually results in more children being  
8 apprehended, more children being removed from the home and  
9 placed in out-of-home care and contributes to this epidemic  
10 numbers of children that are in care in Manitoba. So the  
11 AMC and the SCO say safety, practice model, safety-oriented  
12 practice model may be okay, but we have to balance that, as  
13 well, with the focus on prevention.

14 I have no further comments to make with respect  
15 to the submissions made on behalf of the University of  
16 Manitoba.

17 I turn now to the submissions that were made  
18 yesterday, by Mr. Tramley, on behalf of the Aboriginal  
19 Council of Winnipeg and their submissions can be largely  
20 summed up as a recommendation for the establishment of both  
21 an aboriginal school division and an aboriginal educational  
22 authority. And both the AMC and the SCO take the position  
23 that these are initiatives that warrant further  
24 consideration. However, we feel that they are outside the  
25 mandate of this inquiry.

1           The only evidence that was presented with respect  
2 to anything outside of early childhood education was  
3 provided by the Aboriginal Council of Winnipeg.

4           They claim to represent all aboriginal people in  
5 Winnipeg. Both the AMC and the SCO take issue with that.  
6 They say that First Nations members are represented by  
7 their First Nations leadership, no matter where they reside  
8 in the province. The ability to vote in democratic  
9 elections for leadership of the First Nations communities  
10 is eligible, or is open to any resident of a First Nation,  
11 no matter what their residency is. As a result, their  
12 leaders do have the mandate to represent them, no matter  
13 where they reside within the province. So simply because  
14 First Nations people happen to live in Winnipeg, doesn't  
15 mean that they're not still represented by their leaders,  
16 does not mean that they're not, their interests are still  
17 not represented by the AMC and the SCO.

18           THE COMMISSIONER: But aren't you, are you saying  
19 that they're not a legitimate party to make proposals and  
20 recommendations to me?

21           MR. FUNKE: No, they made an application for  
22 standing before you. It was properly heard and properly  
23 decided on, in our submissions. We're not saying that they  
24 don't have standing to make recommendations. What we're  
25 saying is that they, they claim to have a mandate to

1 represent aboriginal people in Winnipeg and we dispute  
2 that. We say that the Aboriginal Council of Winnipeg is  
3 like any non-mandated service provider, or community-based  
4 organization. They're a privately held, non-profit  
5 corporation, that their representatives are not elected by  
6 the membership of the First Nations at large. Their  
7 selections process is limited to either their stakeholders  
8 or, or enrollment list, which is not publicly accessible.  
9 We don't know who's responsible for nominating their board.  
10 There's no ability for the rank and file members of our  
11 constituent communities, the First Nation communities that  
12 live in Winnipeg, to recall the leadership of the  
13 Aboriginal Council of Winnipeg, if they advance a position  
14 that's inconsistent with our membership.

15 THE COMMISSIONER: Well, does what you're, does  
16 what you're saying diminish the attention that I should  
17 give to the proposals they put before us?

18 MR. FUNKE: It is. Our clients, the AMC and the  
19 SCO, particularly the AMC, has been involved significantly  
20 in the development of, of an educational division and an  
21 educational authority for some time. We didn't call that  
22 evidence, because that wasn't the focus of this inquiry.  
23 The only evidence you've heard is from the Aboriginal  
24 Council of Winnipeg. And my comments are not made to  
25 diminish the importance of the subject matter --

1           THE COMMISSIONER:     But you are telling me to  
2 disregard them?

3           MR. FUNKE:     I'm saying that you can't put weight  
4 on them and I'm saying it's outside the scope of the  
5 inquiry.

6           I'm not suggesting that this is, that this isn't  
7 an important issue, it is.

8           THE COMMISSIONER:     Well, wasn't their, wasn't  
9 their objective clear at the time that they made their  
10 application for standing, what their interest was?

11          MR. FUNKE:     Certainly, and we take no issue with  
12 them presenting that evidence to you, so that you have  
13 context within which to look at the broader issue of early  
14 childhood education.  And when I read their application for  
15 standing and certainly was within that context.  And lots  
16 of the evidence that they presented with was, was with  
17 respect to the summer programs that can be offered to  
18 assist children and also with respect to the ability to  
19 enhance the delivery of early childhood education  
20 programming to First Nations children in Winnipeg.  We take  
21 no issue with their submissions in that regard.

22          However, the suggestion that there ought to be an  
23 aboriginal school division, particularly pan-aboriginal  
24 school division, in our submission, tends to confuse the  
25 issue.  Aboriginal is not the same, it does not equate to

1 First Nations. Aboriginal is a, is a collective phrase  
2 that includes Métis, non-status aboriginal peoples and  
3 First Nations peoples and their interests are not the same.

4 My clients take the position that the  
5 establishment of a, of a First Nations school division may,  
6 in fact, be a good thing. But that's not something that  
7 they've addressed before you. They take the position that  
8 you ought not to make recommendations in that regard, but  
9 that is a process that continues outside the scope of this  
10 inquiry and it should be allowed to continue outside the  
11 scope of this inquiry.

12 THE COMMISSIONER: Well, you see this as some  
13 intrusion on the position of your, your, your client with  
14 respect to representation of, of First Nations people?

15 MR. FUNKE: That's correct, that's correct. My  
16 clients take the position that they have the mandate of  
17 their membership, that their membership have spoken, that  
18 my clients are acting on that direction and that that is  
19 not necessarily consistent with the representations that  
20 you've heard on behalf of the Aboriginal Council of  
21 Winnipeg, who are not the elected representatives of the  
22 First Nations community.

23 I turn now to the submission made on behalf of Ka  
24 Ni Kanichihk.

25 Ms. Dunn, on behalf of her clients, at paragraph

1 6 of her written submission, writes that:

2

3 "Ka Ni Kanichihk Inc. stresses the  
4 need for equal partnership with  
5 government funders in all  
6 decisions with respect to the  
7 delivery and funding of community  
8 based services, as well as the  
9 need for more Aboriginal workers  
10 delivering such services in  
11 mainstream organizations. Current  
12 funding models should be shifted  
13 to ensure community based funding  
14 is tied directly to Aboriginal  
15 community based organizations who  
16 will in turn control policy and  
17 programming."

18

19 THE COMMISSIONER: Now, what page are you reading  
20 from?

21 MR. FUNKE: This is paragraph 6 of her decision,  
22 her, sorry, her submissions, I apologize. That can be  
23 found on page 4 of her written submissions, under the  
24 heading: Introduction.

25 THE COMMISSIONER: Yes, and, and, and what are

1 you saying about it?

2 MR. FUNKE: So Ms. Dunn is arguing, in that  
3 paragraph, that community-based organizations, non-mandated  
4 community-based organizations, like Ka Ni Kanichihk, should  
5 have:

6  
7 "... equal partnership with  
8 government funders in all  
9 decisions with respect to the  
10 delivery and funding of community  
11 based services, as well as the  
12 need for more Aboriginal workers  
13 delivering such services in  
14 mainstream organizations."

15  
16 She goes on, in her submissions, to argue, as  
17 well, that community-based organizations like Ka Ni  
18 Kanichihk should also be equal partners in the development  
19 of policy.

20 THE COMMISSIONER: And what do you --

21 MR. FUNKE: In that --

22 THE COMMISSIONER: -- what do you say?

23 MR. FUNKE: -- we say that that's not the case.  
24 She cites the evidence of Dr. Santos and Assistant Deputy  
25 Minister --

1 THE COMMISSIONER: You say they ought not to be  
2 partners?

3 MR. FUNKE: We say that they ought not to be.

4 THE COMMISSIONER: Why?

5 MR. FUNKE: I'll get to that.

6 THE COMMISSIONER: Okay.

7 MR. FUNKE: She cites the evidence of Dr. Santos  
8 and Assistant Deputy Sanderson, in paragraph 13 of her  
9 submissions, where they testified that it's important that  
10 community-based organizations be involved, not only in  
11 program delivery, but in policy, influence and input. And  
12 we don't dispute that. We agree that there's an important  
13 role for community-based organizations to play, in  
14 providing input into those important decisions. But input  
15 does not mean the same thing as control and having -- and  
16 the importance of having input does not mean equal  
17 partnership.

18 THE COMMISSIONER: And, and control should rest  
19 where?

20 MR. FUNKE: Where it currently does, with the  
21 Province and with the First Nations leaders, for the same  
22 reasons that I've outlined with respect to my comments  
23 relative to the Aboriginal Council of Winnipeg. Ka Ni  
24 Kanichihk, again, is a non-profit organization that is not  
25 responsive to the membership of the First Nations



1 communities that they serve. Not in the same way that the  
2 leadership is. The leadership is democratically elected,  
3 that they speak on behalf of their leaders -- sorry, they  
4 speak on behalf of their constituents, that if their  
5 positions are not consistent with the position of their  
6 constituency, there is a, an ability to recall those  
7 leaders and in that way, the democratic system self-  
8 corrects.

9 Ms. Spillett, despite the fact that she is  
10 certainly well intentioned and does fantastic work on  
11 behalf of the service community that she provides services  
12 to, doesn't have that mandate. She's not answerable, nor  
13 is she accountable to the constituency --

14 THE COMMISSIONER: Well, but if she puts forward  
15 recommendations that I think are found, why shouldn't I  
16 make them?

17 MR. FUNKE: We're not suggesting that the  
18 recommendations that she makes, in terms of influencing the  
19 system, are necessarily to be disregarded. She is making a  
20 recommendation that community-based organizations should be  
21 equal partners in developing policy. And we take the  
22 position that policy should be decided by the  
23 democratically elected leadership of this province, both  
24 the province --

25 THE COMMISSIONER: What's your authority for

1 saying that?

2 MR. FUNKE: The democratic process by which  
3 leaders are elected make them responsive to the  
4 constituency if they --

5 THE COMMISSIONER: But is there something that  
6 puts your client in the position that it has the mandate to  
7 speak for all of them?

8 MR. FUNKE: Yes, because they're elected. That  
9 is their mandate. They're, they're chosen, in a democratic  
10 process, where they seek the support of the electorate.  
11 There's an election where they have the majority of the  
12 votes, that they are therefore democratically elected to  
13 speak on behalf of their constituency. The process by  
14 which Ms. Spillett was chosen to be the executive director  
15 of a non-mandated community-based organization has no  
16 correlation to that. What is her mandate, is the question  
17 that should be asking, with all due respect, Mr.  
18 Commissioner. Who selects her?

19 THE COMMISSIONER: Well, I'm here --

20 MR. FUNKE: What --

21 THE COMMISSIONER: -- I'm here to make  
22 recommendations that are better improve the lot of children  
23 in Manitoba --

24 MR. FUNKE: Absolutely.

25 THE COMMISSIONER: -- and, and if, if I get

1 recommendations, by parties that were given either  
2 standing, or intervenor status, then I'm going to act on  
3 them if I think they make sense.

4 MR. FUNKE: I think you're misunderstanding me,  
5 Mr. Commissioner. I'm not suggesting to you that you  
6 should not consider Ka Ni Kanichihk's submissions. I'm not  
7 saying that. What I'm saying is that their submission is,  
8 is that your recommendation should be that they become  
9 equal partners with the government funders, in determining  
10 policy that guides the delivery of service for child  
11 welfare and I'm saying that is, that is an over-emphasis of  
12 their role in that system. They are a service provider and  
13 they play a fundamental role in the delivery of child  
14 welfare system. They play a funumental (phonetic),  
15 fundamental and valuable role in assisting the development  
16 of policy. But it would be incorrect to put them on the  
17 equal footing with leadership, in terms of dictating  
18 policy. They have a perspective and an insight that is  
19 valuable and leadership benefits from in receiving, but at  
20 the end of the day, those policy decisions ought to be made  
21 by individuals who are accountable to the community that  
22 those policies are intended to benefit. Non-mandated  
23 community-based organizations do not enjoy that mandate.  
24 They are not accountable to the public in that way and they  
25 are not -- the, the public and the community has no way to

1 recall them if the positions that they are advancing are  
2 inconsistent with the position held by the electorate.

3           And so I'm not suggesting to you that the  
4 perspective of any of the community-based organizations  
5 that have testified before you ought not to be considered.  
6 What I'm saying is, is that their role in the system has to  
7 be carefully considered.

8           MR. FUNKE:     Their role in the child welfare  
9 system has to be carefully considered.

10           The evidence that you've heard, from the experts,  
11 such as Dr. Santos and Assistant Deputy Minister Sanderson  
12 and others, is that they need to be engaged at the  
13 community level, because community-based solutions are the  
14 ones that are the most likely to lead to positive social  
15 outcomes. They need to be involved, was the testimony that  
16 you heard. Not controlling the process, not equal partners  
17 in the development of policy, they need to be involved in  
18 the development of those programs. They need to have  
19 input. That does not mean equal partnership.

20           If we cast the net that wide, with all due  
21 respect, Mr. Commissioner, there are a multitude of non-  
22 mandated, community-based organization that provides  
23 similar services throughout Winnipeg and the Province. If  
24 the elected leadership is supposed to be equal partners  
25 with non-mandated community-based organization and the

1 development of policy, then how far does that net get cast?  
2 Who else, besides Ka Ni Kanichihk becomes a full partner?  
3 It, it, it, it's -- you start to go down a road where the  
4 resulting process becomes so unwieldy (phonetic) (sic) as  
5 to be unmanageable and more importantly, on whose behalf do  
6 those organizations speak?

7           So Ms. Spillett represents her board of  
8 directors. That's the extent of her mandate.

9           And we don't dispute their intentions, we don't  
10 dispute the good work that they do and we don't dispute the  
11 value of their insight. But that is an entirely different  
12 thing than having full partnership.

13           In her submissions, Ms. Dunn makes a number of  
14 recommendations. My comments I've already made apply to a  
15 number of the recommendations that she's made.

16           Another one I'd like to specifically address is  
17 in paragraph 41 of her submissions, page 18, of her written  
18 submissions.

19           THE COMMISSIONER: Yes, I have it.

20           MR. FUNKE: Thank you. And Ms. Dunn comments  
21 here about the ancillary benefits of a greater reliance on  
22 community-based organizations. She writes:

23

24                   "The increase in direct revenues  
25                   to Aboriginal community based

1 organizations provides communities  
2 with the economic base to become  
3 successful. The shift in funding  
4 from mainstream organizations to  
5 Aboriginal community based  
6 organizations will not increase  
7 cost but will encourage economic  
8 independence for the community as  
9 a whole."

10

11 There are two problems, in the view of the AMC  
12 and SCO, with respect to that recommendation. First of  
13 all, it anticipates that no new additional funding gets  
14 spent on prevention. It is based on reallocation of  
15 existing spending, so that it is revenue neutral. I think  
16 I've been quite clear in my submissions throughout that the  
17 AMC and the SCO take the position that there needs to be  
18 significant additional new dollars spent on prevention and  
19 that those new dollars should be split both between  
20 mandated CFS agencies and non-mandated community-based  
21 organizations. The AMC and the SCO want to be clear, their  
22 position is not that non-mandated community-based  
23 organizations should not be, should not receive additional  
24 funding. Quite the contrary, the AMC and the SCO take the  
25 position that the involvement of non-mandated community-

1 based organization is fundamental to the success of the  
2 system, particularly with respect to providing prevention  
3 services, that there needs to be significant additional  
4 funding spent, not only in the traditional mandated CFS  
5 agencies, but also in non-mandated community-based  
6 organizations.

7           The concern we have with respect to paragraph  
8 number 41 is that it talks about that being an engine for  
9 economic development within the community. The concern is,  
10 is that, as my clients have expressed throughout and I've  
11 attempted to, to say on their behalf, is that again, this  
12 comes back to this idea that this industry that has  
13 developed around the system, that is dependent upon First  
14 Nations children that are substantially overrepresented  
15 among the children in care in this community, that this  
16 notion of this industry that has developed has become this  
17 economic force. It need not be encouraged further. The  
18 idea that the CFS system and children in care and provision  
19 of services, should become some form of economic  
20 development is very concerning. The only focus should be  
21 on the, on the provision of services, not the economic  
22 benefits of the provision of services. And I, and I don't  
23 make those comments to single out Ka Ni Kanichihk for  
24 criticism. That is a perspective that is wild, widely held  
25 within the system that needs to be addressed in our

1 submission.

2 I note as well, in the submissions on behalf of  
3 Ka Ni Kanichihk, it indicates that the, that, that the  
4 organization and Ms. Spillett endorse the recommendation  
5 for a separate aboriginal educational system and again, I  
6 just repeat the comments that I made with respect to the  
7 submissions of the Aboriginal Council of Winnipeg in that  
8 regard.

9 And finally, Ms. Dunn, in her oral submissions,  
10 talked about the importance of a aboriginal women's  
11 advocate and the creation of that office. And in listening  
12 to her submissions, it was not clear to me precisely what  
13 the role of that advocate's office would be. It's  
14 difficult for the AMC or the SCO to take a position where  
15 the role of that advocate is, is not clear, in our view.

16 In one respect, Ms. Dunn seemed to suggest that  
17 the advocate would take on the position of advocating  
18 individually for mothers involved in the system. And  
19 traditionally, that's a role played by counsel, when  
20 they're involved in the legal system. And if I'm accurate  
21 in understanding the gist of her submissions, she's  
22 speaking, as well, about the opportunity to have an  
23 advocate involved in matters where there's not a formal  
24 court proceeding. Generally speaking, that's on the  
25 prevention level, or where there is a protection file



1 that's been opened, but a child has not been apprehended  
2 and the family's involvement in the system, at that point,  
3 is voluntary, though it's not always appreciated that way,  
4 by the mother, who may be involved. That may bear further  
5 consideration, in that there may be value in that  
6 submission.

7           On the other hand, it sounded like she was  
8 suggesting that the women's advocate should share some of  
9 the powers that are presently vested in the Children's  
10 Advocate and I'm not sure exactly how that would work out.  
11 It wasn't clear to me, or my clients, listening to Ms.  
12 Dunn's submissions, exactly what she was proposing, in  
13 terms of the powers and duties that, that aboriginal  
14 women's advocate would have. But certainly, if she was  
15 talking about the formalization of that role, akin to the  
16 Children's Advocate, that would again, one assume, one  
17 assumes, involve some form of legislative change. And  
18 again, with respect to any changes to legislation, my  
19 client's take the position that that should only be done in  
20 consultation and in partnership with them, as part of the  
21 ongoing AJI-CWI process.

22           THE COMMISSIONER: Now, that's something you  
23 raised a number of times yesterday.

24           MR. FUNKE: Yes.

25           THE COMMISSIONER: And what you're, what I think

1 you're saying to me is, if I make recommendations for  
2 changes in legislation, I must somehow involve the Province  
3 in a consultation with your client?

4 MR. FUNKE: I'm not saying that you need to do  
5 that. What I'm saying -- and I, I provide that, so that  
6 you understand the context within which any recommendations  
7 that you make ought to be considered. So what my clients  
8 are asking is a -- is for a recommendation from you that  
9 any legislative change only be considered in partnership  
10 with First Nations leadership. So you don't need to  
11 address it in each specific recommendation that you make,  
12 that may have an impact on legislation. We're looking for  
13 one overarching recommendation that says to the Province,  
14 to the extent that you want to consider legislative change,  
15 reflecting both your obligation to -- your duty to consult  
16 and the recognition that's developed in discussions between  
17 the, the Province and the First Nations leadership, that  
18 there will be a legislative review, as part of the AJI-CWI  
19 process. We're asking for a recommendation that says any  
20 legislative amendments that are contemplated that would  
21 impact on the delivery of services to First Nations people  
22 needs to be done in partnership with First Nations leaders.

23 THE COMMISSIONER: And where, in the evidence, do  
24 you point for the, for the basis on which I would make that  
25 recommendation?

1           MR. FUNKE: Well, that's a bit of a problem, Mr.  
2 Commissioner. We're a, we're in a conundrum, because we  
3 were told that this inquiry was not going to be a systemic  
4 review of the system and we were specifically told that we  
5 were not going to be allowed to call evidence with respect  
6 to that. So we did not. But there's no question that  
7 that's the context within which this --

8           THE COMMISSIONER: But, but you're asking me to  
9 make the recommendation.

10          MR. FUNKE: Well, I -- because that reflects the  
11 reality of the context within which your recommendations  
12 are going to be considered.

13          If you're not prepared to make that  
14 recommendation, at the minimum, you need to understand that  
15 that's the context within which your recommendations are  
16 going to be considered.

17          THE COMMISSIONER: At, at -- what is the minimum  
18 did you say?

19          MR. FUNKE: At a minimum, we're hoping that you  
20 appreciate that that is the context within which any  
21 recommendations that you do make are going to have to be  
22 considered and implemented.

23          THE COMMISSIONER: But isn't that up to the  
24 Province, who is the legislative authority, to decide if  
25 they're going to hold those consultations before they act?

1           MR. FUNKE: Yes. The difficulty, of course, is  
2 that there, there is some evidence before you, particularly  
3 with respect to the MOU that we referred to yesterday and  
4 at Exhibit 10, which is the overview of the AJI-CWI process  
5 that was prepared and filed before you, that does talk  
6 about the right of First Nations to have control over the  
7 development and delivery of services. That becomes  
8 meaningless if the Province passes legislative change that  
9 impacts upon the system, that controls the development and  
10 delivery of services to First Nations people, if they don't  
11 do it in a way that affords the First Nations to have that  
12 control. We say that implicit in that is a duty to  
13 consult, in terms of legislative change.

14           THE COMMISSIONER: A duty to consult?

15           MR. FUNKE: Absolutely.

16           THE COMMISSIONER: A, a, a mandated duty to  
17 consult?

18           MR. FUNKE: It's there by agreement. The  
19 Province recognized --

20           THE COMMISSIONER: But, but you concede that, for  
21 whatever reason, the, the, the basis of the agreement, or  
22 the evidence of the agreement is not before me?

23           MR. FUNKE: The specific agreement may not be,  
24 but there is evidence before you with respect to the role  
25 of First Nations relative to the delivery of services to

1 First Nations communities and there's no dispute about  
2 that. That was referred to by a number of witnesses in the  
3 evidence. It's before you in Exhibit number 10. It was  
4 referred to yesterday in the memorandum of understanding,  
5 which acknowledges the right, not the opportunity, not the  
6 desirability, not the involvement, the right of First  
7 Nations to control the development and delivery of  
8 services. To the extent that legislative change impacts on  
9 their, their ability to do so, it's implicit that there be  
10 a duty to consult.

11 THE COMMISSIONER: I follow.

12 MR. FUNKE: Thank you. Unless you have any other  
13 questions, Mr. Commissioner, those are my submissions on  
14 behalf of the AMC and the SCO.

15 Once again, I thank you for the opportunity to  
16 take more time than was allotted to us. I -- you've  
17 certainly been very generous in that regard and I thank you  
18 for that.

19 THE COMMISSIONER: Thank you, Mr. Funke.

20 MR. FUNKE: Thank you.

21 THE COMMISSIONER: Mr. Cochrane, I guess you're  
22 next, are you?

23 MR. COCHRANE: Yes.

24 THE COMMISSIONER: Now, just let me get your  
25 brief out here. Yes, I have it.

1           MR. COCHRANE: I'm just going to grab mine, Mr.  
2 Commissioner. I realize I left it at the table.

3           Good morning, Mr. Commissioner. For the record,  
4 it's Harold Cochrane, appearing for Northern Authority,  
5 Southern Authority and ANCR. I have a reply, Mr.  
6 Commissioner, to the submissions of Mr. Gindin, Mr. Funke  
7 and Mr. McKinnon.

8           And I'll start first with Mr. McKinnon. When Mr.  
9 McKinnon turned his commentary to the authorities, two  
10 authorities and to ANCR, he said that 44 of our  
11 recommendations caught him by surprise. He suggested that  
12 the Commission should ignore most of the recommendations.  
13 Frankly, Mr. Commissioner, that statement caught me by  
14 surprise.

15           The authors of the 44 recommendations are Elsie  
16 Flette, the CEO of the Southern Authority, Ron Monias, CEO  
17 of the Northern Authority, Sandie Stoker, ED of ANCR, Peter  
18 Dublienski also contributed significantly to these  
19 recommendations. Mr. Dublienski, Mr. Commissioner, until  
20 recently, was an ADM at the Department and he's now an  
21 administrator at the Authority, appointed by the Province.  
22 He had input into these recommendations.

23           The authorities, Mr. Commissioner, have been  
24 created by Manitoba to run child welfare in the province.  
25 They were created by the Authorities Act and put in place

1 to run the system. And you've already heard about the  
2 extensive powers that have been delegated to the  
3 authorities. These people, these entities, Mr.  
4 Commissioner, are the experts. The individuals I  
5 mentioned, they know child welfare better than anyone and  
6 that's not an overstatement. They are at the top of the  
7 child welfare system in Manitoba.

8 The Department and the authorities work together  
9 and I would say almost on a daily basis, reviewing the  
10 delivery of child welfare service and working on ways to  
11 make the system better. And frankly, Mr. Commissioner, the  
12 advice of these individuals carry weight and they should  
13 carry weight. And outside this Commission, I doubt that  
14 the Department would ever suggest to anyone that the advice  
15 of the authorities on child welfare matters be ignored.

16 The recommendations may have caught Mr. McKinnon  
17 off surprise, by surprise, but I would submit that they  
18 certainly should not have caught the Department, the  
19 director, the ADM and the minister by surprise, because Mr.  
20 Commissioner, the, the 44 recommendations we've made are in  
21 response to issues that are notorious in child welfare and  
22 these are issues that were certainly raised in this  
23 inquiry.

24 Mr. McKinnon, as far as I can tell, gave two  
25 reasons as to why you should ignore the recommendations of

1 the authority and of ANCR. His first reason said, Mr.  
2 Commissioner, you have to be aware of the costs of  
3 implementing those recommendations. And then he said his  
4 second reason was those recommendations, well, they're not  
5 grounded in evidence, Mr. Commissioner. Those were the two  
6 broad reasons that he provided to you. And intend to deal  
7 with each of those in, in turn.

8 First, on the issue of costs, Mr. McKinnon says  
9 that, by his analysis, 26 to 28 of the recommendations may  
10 result in a need for additional resources. To that I say,  
11 okay.

12 THE COMMISSIONER: Many recommendations I've  
13 heard involve additional resources.

14 MR. COCHRANE: Yes. And I'd like to respond to  
15 his assertion in the form of a question. And that is, is  
16 the Department suggesting to you, Mr. Commissioner, that  
17 you ignore or you discount any recommendation that better  
18 protects children in Manitoba on the basis that the  
19 recommendations may require the expenditure of additional  
20 resources? I would hope not.

21 Mr. Commissioner, and are you looking at  
22 recommendations that do not require additional resources?  
23 That's the related question I would have and again, I  
24 would, I would hope not.

25 The order in council, Mr. Commissioner, which



1 establishes this commission indicates, at paragraph 2 that:

2

3 "The commissioner must report his  
4 findings ..."

5

6 And here's the words I want to highlight:

7

8 "... and make such recommendations  
9 as he considers appropriate  
10 to better protect Manitoba  
11 children ..."

12

13 It goes on to say you have consider the, the  
14 reports that have already happened and their  
15 recommendations and how they've been implemented.

16 Mr. Commissioner, in my view, that is an open-  
17 ended invitation to you. There's no restriction in the  
18 order in council relating to the cost of the  
19 recommendations. There's nothing in that order in council  
20 saying that the recommendations you are to make are to be  
21 fettered by cost implications. That's not there.

22 THE COMMISSIONER: I, I, I agree with you  
23 entirely, subject to this, that I have to be mindful the  
24 Government of Manitoba has many other initiatives that  
25 it -- where its money's required to go and I have to be

1 reasonable as I look at it. But I, I see nothing there  
2 that prevents me from endorsing a recommendation that's  
3 going to cost additional money, if I think it's sound and  
4 should be implemented.

5 MR. COCHRANE: I'm, I'm glad you've clarified  
6 that. I do have additional comment on that point as well.

7 I mean, certainly, it doesn't say that you have  
8 to make recommendations to better protect Manitoba  
9 children, provided that those recommendations do not cost  
10 too much money to the Province. That's certainly not what  
11 it says and I, I, I would hope that's not what Mr. McKinnon  
12 is suggesting as well.

13 I'll also point out, Mr. Commissioner, that the  
14 Department provided absolutely no evidence on what the  
15 Government can or cannot afford. That was not presented to  
16 you.

17 When it comes to financial priorities, Mr.  
18 Commissioner, with all due respect, this Commission cannot  
19 speculation about what the Government can afford today, or  
20 can afford tomorrow. If it is the position of the  
21 Department that is not, that it is not prepared to spend  
22 additional money, and I would say substantial additional  
23 money, to make fundamental change to the child welfare  
24 system, then quite frankly, Mr. Commissioner, we have to  
25 question the effectiveness and the success of this

1 commission. This commission is unprecedented in Manitoba's  
2 history. You've heard from a hundred and twenty-six  
3 witnesses. You've had 85 days of testimony and we've been  
4 at this for almost two years and it's cost millions of  
5 dollars to conduct this inquiry. And it would be a huge  
6 disappointment that, if after all this, there isn't a  
7 commitment, fiscal commitment, by the Government, to make  
8 the necessary fundamental change and improvements to child  
9 welfare system.

10 I also point out that any recommendations that  
11 this commission makes are advisory (phonetic) (sic) in  
12 nature and it is for the Government, Mr. Commissioner, to  
13 prioritize (phonetic) (sic) the recommendations and to decide  
14 what can or cannot be afforded.

15 When Mr. McKinnon suggests that you have to  
16 consider the cost of the recommendations, I don't think  
17 that's an overstatement. What he's really talking about, I  
18 believe, is implementation of the recommendations. That's  
19 what he's, I think, getting at. Cost is tied to  
20 implementation.

21 Mr. Commissioner, in the textbook, this has been  
22 referred, I know, The Law of Public Inquiries in Canada,  
23 author is Simon Ruel. He was, of course, he's familiar to  
24 this commission. He was retained by Commission counsel at  
25 the Court of Appeal. He talks about this. And I'll

1 just -- at page 162 of his text, which is chapter 9, he  
2 talks about recommendations and he makes the point, and I  
3 want to highlight this, because I think it's important, he  
4 says:

5

6 Commissions of inquiry are  
7 advisory and consistent with  
8 that role, commissioners should  
9 leave the implementation of their  
10 recommendations to other competent  
11 authorities.

12

13 And then he references an article by Frank  
14 Iacobucci. That, that article is called, or titled,  
15 Commissions of Inquiry and Public Policy, where Iacobucci  
16 states the following:

17

18 There is, there inevitably will be  
19 a tendency to conclude that the  
20 final measure of the effectiveness  
21 of a commission is the degree to  
22 which its activities and  
23 recommendations are accepted by  
24 other institutions of society and  
25 by the public. One must be

1 cautious in employing such a  
2 measure. In particular, one must  
3 avoid evaluating inquiries by  
4 their success in achieving the  
5 execution of policy. Other  
6 institutions of government are  
7 designed to implement policy. If  
8 inquiries were so designed, they  
9 would lose most of their unique  
10 advantages, such as their detached  
11 independence from the political  
12 arena and bureaucratic policy,  
13 politics, their flexibility and  
14 their ability to be self-  
15 determining, within the terms of  
16 their mandate. Inquiries often  
17 should leave implementation to  
18 other institutions.

19  
20 So I, I, I, I suggest, Mr. Commissioner, that  
21 you, you, you proceed cautiously when an issue of costs is  
22 thrown at you, you be cautious with that, because, with  
23 respect, the, the primary function is to make  
24 recommendations to better protect Manitoba children.

25 Our 44 recommendations we've, we've made, we

1 believe are, are intended to do just that and they're made  
2 to offer you assistance. And we believe that if they're  
3 fully implemented, our recommendations would better  
4 protection children in Manitoba.

5 Moving on to his second point, Mr. Gindin -- Mr.  
6 McKinnon's second point and that is our recommendations are  
7 not supported by the evidence.

8 Now, he, he says that 24 of our 44  
9 recommendations are not supported by evidence. I've gone  
10 through those recommendations again, over the weekend, and  
11 quite frankly, I don't know on what basis he makes that  
12 statement. It is difficult to respond to Mr. McKinnon,  
13 since he did not particulilize (phonetic) (sic) which  
14 recommendation he's contesting. And I want to be clear, my  
15 clients are not asking you to make factual findings that  
16 are not grounded in the evidence. We strongly disagree  
17 that the recommendations are not related to the evidence  
18 that you've heard.

19 The purpose of our recommendations is to remedy  
20 problems or issues which have been identified by the  
21 evidence adduced at this inquiry. Again, there's been  
22 hundred and twenty-six witnesses, 85 days of testimony.  
23 The evidence adduced, Mr. Commissioner, was extensive. It  
24 raised a myred (phonetic) (sic) of child welfare issues.

25 Mr. McKinnon also said that the inquiry was

1 primarily an investigative inquiry. That's not correct.  
2 Phase 1 was an, was investigative in nature, but the  
3 inquiry became a policy inquiry in phase 2 and 3.

4 The evidence adduced in phase 2 and 3 related to  
5 systemic issues. You heard a lot of evidence about  
6 housing, poverty, addictions, all of those issues. They  
7 may not have been related to case-specific Phoenix  
8 Sinclair issues, but that's evidence you heard, Mr.  
9 Commissioner. And my view is that in order to adopt a  
10 recommendation, it is not a necessary prerequisite that a  
11 witness set out the recommendation in testimony and  
12 justified under oath. That's too high a threshold. And if  
13 you were to do that, if that's the test you were to apply,  
14 then frankly, the, all of the recommendations put forward,  
15 or a substantial number of the recommendations put forward  
16 to you by other parties as well, would be offside that  
17 principle. But I don't think that's the test.

18 THE COMMISSIONER: No, I agree with you. If, if,  
19 if you overall evidence is there to support the  
20 recommendation, it, it, it has, it wouldn't be necessary  
21 for the, for a witness to pinpoint the wording of the  
22 recommendation.

23 MR. COCHRANE: Yes.

24 THE COMMISSIONER: You don't know what the  
25 recommendation's going to be until all the evidence is in.

1           MR. COCHRANE: That's right. Thank you. In my  
2 view, the evidence that is necessary is evidence that  
3 there's a problem or a deficiency about the system and  
4 that's what we've done, Mr. Commissioner. I spent a lot of  
5 time, during my closing, talking about the 11 themes that  
6 our recommendations are broken into. You only need to look  
7 at those themes and see how they relate to the issues that  
8 are raised before this commission.

9           Again, regrettably, I, I, I don't have -- Mr.  
10 McKinnon didn't particularize which recommendations he's  
11 contesting, although he did mention five of them,  
12 recommendation 5, 7, 15, 32 and 43. And those I want to  
13 respond to directly this morning.

14           THE COMMISSIONER: But do they relate to your,  
15 your discussion about whether there was support for them in  
16 the --

17           MR. COCHRANE: Yes.

18           THE COMMISSIONER: -- evidence, or are you going  
19 to look at them as individual recommendations?

20           MR. COCHRANE: Individual recommendations.

21           THE COMMISSIONER: So you're through with your  
22 second point of --

23           MR. COCHRANE: I'm through with the second point,  
24 but now I'm --

25           THE COMMISSIONER: Okay.



1           MR. COCHRANE: -- I'm digging deeper into the,  
2 the five recommendations that he said weren't supported by  
3 the evidence.

4           THE COMMISSIONER: All right. Now, and, and  
5 you're going first to which recommendation?

6           MR. COCHRANE: Recommendation number 5.

7           THE COMMISSIONER: Yes, I have it.

8           MR. COCHRANE: Okay. So just, again, just so  
9 we're on the same page, our recommendation was that:

10

11                   "The Province ..."

12

13                   Here's key words:

14

15                   "... consistently fund agencies  
16 and the Authorities for the  
17 specific development and provision  
18 of culturally competent services  
19 to children and families involved  
20 [in] the child welfare system."

21

22           Mr. Commissioner, there was, there was a lot of  
23 evidence adduced at this inquiry relating to the importance  
24 of culturally appropriate services and in particular, how  
25 the provision of cultural services is related to good, to

1 good outcomes for children. Cindy, Cindy Blackstock, AMC's  
2 witness, for example, talk about that.

3 And Mr. McKinnon's critique of our client's -- of  
4 this recommendation was that there was -- and his words  
5 were:

6  
7 There was no evidence presented at  
8 the inquiry that it is more  
9 expensive to provide culturally  
10 appropriate services.

11  
12 And I double checked the audio recording, to make  
13 sure I had that right.

14  
15 ... no evidence presented at the  
16 inquiry that it is more expensive  
17 to provide culturally competent  
18 services.

19  
20 I want to turn, Mr. Commissioner, to the  
21 transcript of April 20th (sic) of the proceedings and at  
22 page 44 to 51, Mr. McKinnon adduces precisely the evidence  
23 he now --

24 THE COMMISSIONER: Page what?

25 MR. COCHRANE: -- says does not exist. That's

1 page forty, 49 to 51.

2 THE COMMISSIONER: Yes.

3 MR. COCHRANE: There's evidence there that he  
4 adduced. And that is a --

5 THE COMMISSIONER: Who, who's the witness?

6 MR. COCHRANE: -- that is a cross-examine (sic)  
7 of Billie Schibler, April 29th, 2013, page 51, line 3. And  
8 Mr. McKinnon asks her:

9

10 " Q Is it your evidence that  
11 it's more expensive or requires  
12 more social workers to do  
13 culturally appropriate practices  
14 and procedures?"

15

16 That's the question. Answer, Ms. Schibler:

17

18 "I would suggest that yes, it is,  
19 but it's not just for ...  
20 culturally appropriate. I think  
21 if we talked about best practice  
22 services it doesn't matter which  
23 culture you're from, [you're]  
24 still best practice and, yes, it  
25 is more expensive ... yes, it is

1                   not necessarily reflected in the  
2                   current funding model so ... would  
3                   have to be adjustments to that."

4

5                   And she repeats that theme earlier on, page 50 of  
6 her transcript.     She makes the point that it's not  
7 reflected in the funding agreement.

8                   So to suggest, with respect to number 5, Mr.  
9 Commissioner, that there's no evidence, that's simply not  
10 correct.

11                   He next commented on recommendation number 7 and  
12 I'll turn to that now, Mr. Commissioner. Recommendation --  
13 in recommendation 7, and I talked about this during my  
14 closing, but we're asking for:

15

16                   "Funding allocations for agencies  
17                   and Authorities with respect to  
18                   quality assurance functions should  
19                   be structured ..."

20

21                   That allocation:

22

23                   "... should be structured to take  
24                   into account agency size, quality  
25                   assurance       needs,       [methology

1                   (sic)],       [geographic]       area,  
2                   caseload       and       the       scheduled  
3                   approach       undertaken       by       each  
4                   [agency]."

5

6                   Now, Mr. Commissioner, you heard, again, a lot of  
7       evidence about quality assurance.       You heard about why  
8       quality insurance (sic) is important to the system and why  
9       it's critical to the child welfare system.       And Ms. Flette  
10      talked about that in her evidence.

11                  Now, Mr. McKinnon, to be fair to him, said, it's  
12      too early to tell if this recommendation is warranted and I  
13      think he said that because the quality assurance funding at  
14      the agencies just rolled out within the last year.       So, so  
15      I, I get that.

16                  But the reality is, Mr. Commissioner, is that  
17      each agency right now receives funding for one quality  
18      assurance person, that's each agency.       And there's no  
19      consideration to an agency's size, the number of cases they  
20      have, the number of employees they have, the complexity of  
21      the cases they carry.       And the point of this  
22      recommendation, frankly, is, is that, that there should be  
23      an account of that.       Because you, you, you going to have  
24      situations, I'm sure, where you're going to have smaller  
25      agencies, such as Intertribal CFS, small agency, small

1 number of cases. It's one QA person. Compare that to an  
2 agency like Southeast Child and Family Services or to West  
3 Region Child and Family Services, those are bigger  
4 agencies, Mr. Commissioner, in this province where the  
5 number of cases, the number of staff, the number of  
6 children in care, the number of foster homes, all of those  
7 important factors are higher, they're more complex in those  
8 bigger agencies. But yet, it's not accounted for. And our  
9 recommendation is simply that those factors should be  
10 looked at.

11 THE COMMISSIONER: And --

12 MR. COCHRANE: Argue this is a responsible  
13 recommendation and one that's only going to improve quality  
14 assurance which we believe very strongly will improve the  
15 child welfare system in Manitoba.

16 THE COMMISSIONER: -- and you -- the last word  
17 should be each agency, rather than each authority, I  
18 gather? In, in the recommendation?

19 MR. COCHRANE: Yes, one -- what I'm referring to  
20 there, Mr. Commissioner, is you, you've heard evidence from  
21 Elsie Flette. You didn't hear evidence from the Northern  
22 Authority because they weren't called. But what, what I'm  
23 getting at there is that at the Southern Authority, you'll  
24 recall, they have a, a plan to conduct QA reviews of each  
25 agency on a four year cycle. So I'm just -- I'm saying

1 there that the scheduled approach to QAs should be  
2 considered a factor in the funding.

3 THE COMMISSIONER: That's a scheduled approach  
4 undertaken by each authority?

5 MR. COCHRANE: Yes.

6 THE COMMISSIONER: All right. Not agency?

7 MR. COCHRANE: No, not agency.

8 THE COMMISSIONER: Oh, okay.

9 MR. COCHRANE: I'll move on, Mr. Commissioner, to  
10 recommendation number 15, which is another recommendation  
11 Mr. McKinnon talked about.

12 THE COMMISSIONER: Sixteen?

13 MR. COCHRANE: Fifteen.

14 THE COMMISSIONER: Fifteen.

15 MR. COCHRANE: Fifteen. This one has also been  
16 subject of some comment by other parties, but the  
17 recommendation, just so we're clear again, is that:

18

19 "The CFS Act should be amended to  
20 provide a clear delineation  
21 between 'prevention' and  
22 'protection' services, providing  
23 clear direction as to when  
24 agencies can stream families into  
25 prevention services. The

1 threshold for child protection  
2 referrals should be when children  
3 are reasonably suspected to be at  
4 'risk of serious harm'. All other  
5 matters should be referred to the  
6 appropriate prevention [stream]."  
7

8 As I mentioned in my closing, Mr. Commissioner,  
9 this is somewhat of a, what I would call a technical  
10 recommendation, in the sense that -- well, I'll -- let me  
11 back up a bit.

12 When Mr. McKinnon talked about this  
13 recommendation, you asked him if the new service model,  
14 that is differential response, is compatible with the CFS  
15 Act. That, Mr. Commissioner, is the goal of this  
16 recommendation, to make it consistent, to make the  
17 legislation more compatible with having that clear  
18 delineation. This recommendation assists in that regard.

19 When you asked, Mr. Commissioner, Mr. McKinnon if  
20 the CFS Act needs to be amended to be compatible with the  
21 new service model, Mr. McKinnon responded: I don't think  
22 so.

23 And his, his criticism of this recommendation  
24 wasn't that it wasn't a good recommendation. In fact, he  
25 said it might be a great recommendation. He said it might



1 be a great recommendation for a year, a couple years, or 10  
2 years, depending on how long this service model's  
3 considered to reflect best practice. And it's his view  
4 that it would be a mistake to legislate a distinction  
5 between prevention and protection services.

6 We disagree. The Act already provides a  
7 distinction between protection and voluntary services.  
8 However, it is completely silent with respect to prevention  
9 services, despite the new model that's in place.

10 The new, the new model, of course, as you've  
11 heard, is designed to focus on prevention services, because  
12 it's those -- the evidence shows that it's prevention  
13 services that results -- it results in better outcomes.

14 The goal, therefore, of this recommendation, of  
15 course, is to expand the provision of prevention services.

16 And this was talked about, Mr., Mr. Commissioner,  
17 by Dr. Brad McKenzie and he talked about this on May 30th,  
18 2013, at page 22 and again at page 98 and 99. I won't read  
19 his quotes, although I have them here if you wish for me to  
20 go into it. But the gist of what he's saying is that the,  
21 there's a need to expand prevention services. And he was,  
22 he was being questioned then by Mr. Olson.

23 And let's not forget, Mr. Commissioner, that the  
24 evidence you've heard is all that all agencies, child  
25 welfare agencies in Manitoba, are required to follow the

1 differential response model in order to receive funding  
2 from the Province. How can the Province require the  
3 service model on the one hand, but then ignore, ignore it  
4 when it comes to the overriding legislation on the other  
5 hand? Legislation, in our view, should respect, reflect,  
6 respect and reflect the practice of child welfare in  
7 Manitoba, not ignore it. If the practice of child welfare  
8 changes in the future, the legislation should be amended  
9 again at that time. It's that, it's that simple.

10 His next -- Mr. McKinnon then commented on  
11 recommendation 32. Mr. Commissioner, that's a  
12 recommendation that we've put forward that there should be  
13 FASD specialists at every agency. We say the Province  
14 should provide funding for FSD, F, FASD specialists at each  
15 child welfare agency.

16 Mr. McKinnon, McKinnon's criticism was that  
17 there's no evidence to assess or support the need for this  
18 recommendation. And that's not true, Mr. Commissioner.

19 When, when Ms. Flette testified before the  
20 inquiry, that's April 30th, 2013, page 116.

21 THE COMMISSIONER: What date?

22 MR. COCHRANE: One sixteen.

23 THE COMMISSIONER: Do you know the date?

24 MR. COCHRANE: April 30th, 2013.

25 THE COMMISSIONER: Right.

1           MR. COCHRANE: As well, on page 117, she talked  
2 about the main reasons, the top reasons why children come  
3 into care. I don't know if you recall that discussion.  
4 But within those reasons, she talked about addictions,  
5 addictions to alcohol and to drugs. So that issue was  
6 definitely talked -- touched on in the evidence.

7           But even besides that, Mr. Commissioner, I want  
8 to remind you that Section 3 of the order in council  
9 requires you to consider the findings made in the reports  
10 that were completed after the death of Phoenix Sinclair and  
11 you're to consider the manner in which the recommendations  
12 from these reports were implemented. And that's key  
13 because one of those reports, which is referenced in  
14 Section 3(d), is Honouring Their Spirit, A Child Death  
15 Review, and that's the report by Billie Schibler.

16           In that, in that report there was a  
17 recommendation that FASD specialists be placed at each CFS  
18 agency. That's the recommendation made in that report and  
19 this cannot be ignored, as suggested by Mr. McKinnon,  
20 because of that section.

21           And Ms., Ms. Loepky, of course, talked about  
22 this during her testimony and that's on May 9th, 2013, page  
23 197. And in essence, what she's talking about there, Mr.  
24 Commissioner, is the Government's response to that  
25 recommendation. And what she said, in a nutshell, is this:

1 That the Province made a decision that instead of being  
2 putting FSD, FASD specialists at each agency, there, by my  
3 count, there's about 19 or 20 agencies, they decided  
4 instead to put those specialists at the authority level,  
5 four positions, instead of the 20. Or five positions, is  
6 what she said in her evidence. They haven't fully  
7 implemented that recommendation and it's our review that  
8 the response to that recommendation, Mr. Commissioner,  
9 should be reviewed by you, particularly when you hear from  
10 Ms. Flette that one of the main reasons for children coming  
11 in apprehension today is because of addictions. It is the  
12 agencies, Mr. Commissioner, the front line workers, the  
13 agencies, that require that resource. So our  
14 recommendation is that in addition to keeping the, those  
15 positions at the authority level, that you, that they ought  
16 to be added, as well, to the agency level. That's the gist  
17 of our recommendation.

18 Finally, Mr. Commissioner, Mr. McKinnon  
19 referenced forty, 43 and 44 of our recommendations. These  
20 are ones that relate to poverty and housing. And he said,  
21 authorities and agencies, they want to get into the  
22 business of housing and food, I think, were his words. And  
23 he said there's no evidence before you, Mr. Commissioner,  
24 to support these recommendations.

25 Now, my view, Mr. Commissioner, is you heard a

1 lot of evidence about inadequate housing, about poverty and  
2 the linkage of these problems to the child welfare system.  
3 Again, the evidence of Elsie Flette, when she testified  
4 before the Commission on April 30th, 2013, page 116, 117  
5 and 118 and 119, Mr. Commissioner. She again talked about,  
6 at the top, reasons for children coming into care. And one  
7 of the reasons she mentioned was housing.

8           And on page 117, she was asked:

9

10                   "I'm interested in that ... in the  
11                   housing reason. ... can you  
12                   explain that a bit more?"

13

14           And on page 117, line 19, she went on to explain  
15 that. I won't go through the entire explanation. It's  
16 there and I'd suggest that you take a look back at that if  
17 there's any question. But she said:

18

19                   "... we remove kids sometimes  
20                   because of housing, because a  
21                   family has no place to live ..."

22

23           She says:

24

25                   "... no one likes to do that and

1           you try to work with the family to  
2           see what they can find for a house  
3           or a home to live in ..."

4

5           She says:

6

7           "If you're a family who wants to  
8           take in relatives that might have  
9           to be removed from their mom and  
10          dad [and] you're willing to care  
11          for them but you have no space in  
12          your house ... those kids [often -  
13          - those, those kids] end up coming  
14          into [the] care and/or being  
15          placed with perhaps strangers or  
16          perhaps outside ... the  
17          community."

18

19           And then she talked about, at the bottom of page  
20 118, she goes:

21

22           "... you know, the different a  
23           good environment makes to you and  
24           to your mental health and your  
25           wellbeing [the wellbeing of] ...

1 kids being able to study and do  
2 homework ... you know, it's hard  
3 to come home from school when  
4 there's 12 kids in the house and  
5 there's no space and trying to sit  
6 down and find a quiet place to do  
7 [your] homework. And those types  
8 of issues that are -- really  
9 [these type of issues really]  
10 impact ... families, ... we don't  
11 have good ... solutions right now  
12 in child welfare about what to do  
13 with that."

14

15 And then she talks:

16

17 "... once we remove ... children  
18 ... we don't call it housing when  
19 we pay foster parents ...  
20 [maintenance fees] ... special  
21 rates and that, but ... we  
22 certainly do support them if they  
23 [need] to get an additional  
24 bedroom [and] get more space, so  
25 there is a housing cost ... we

1                   pay."

2

3                   "It would [be, in my] in my  
4                   opinion [it would] in the long run  
5                   be much more [cost-effective] for  
6                   those families, where we can do  
7                   it, to support them and get them  
8                   good housing and [keep] help them  
9                   maintain their family and their  
10                  kids [rather] than putting those  
11                  kids [into] care ... sometimes for  
12                  a very long time."

13

14                  So that evidence is before you, Mr. Commissioner  
15                  and she made very clearly (sic) the linkage between housing  
16                  and children in care.

17                  And if you look at our, our wording 43 in our  
18                  recommendation, what we're suggesting, what we're  
19                  recommending is that the authorities and agencies have the  
20                  ability to assist with housing. We're not suggesting, as  
21                  Mr. McKinnon said, getting into the housing business, but  
22                  the reality is we have to do with housing and we do, on  
23                  many reserves in Manitoba.

24                  On the issue of food, again, just close that  
25                  loop. It's tied into the issue of poverty. Agencies do



1 provide breakfast programs, lunch programs and those type  
2 of programs on the reserve. So it is definitely tied to  
3 the work that the agencies do.

4 THE COMMISSIONER: Well, bearing in mind the  
5 limitations on me, with respect to making comments, with  
6 respect to reserves --

7 MR. COCHRANE: Yes, I understand that. The --  
8 what we're talking about though is the, the -- an  
9 allocation of funding from the Province to, to enable these  
10 agencies to provide, to better provide those services they  
11 [sic] already providing. It's not a -- that, itself, is  
12 not a jurisdiction issue. We already do it.

13 THE COMMISSIONER: Yes.

14 MR. COCHRANE: Let us do a better job, is what  
15 we're saying. That's the purpose of those recommendations.

16 So in closing then, with respect to Mr. McKinnon,  
17 I would challenge the Department and Mr. McKinnon, to tell  
18 you, instead of summarily dismissing our recommendations,  
19 because of they say costs or no evidence, to tell you how  
20 and why our recommendations will not make the system better  
21 and more responsive and how and why our recommendations, if  
22 implemented, do not better protect children, because that's  
23 what, that's what we're here for, Mr. Commissioner. That's  
24 the purpose of this inquiry. And we believe that if those  
25 implementations -- recommendations are implemented,

1 children will be better protected.

2 I'd like to move now to Mr. Gindin. Just very  
3 quickly, with respect to his first recommendation, number  
4 1, that is separating protection and prevention, just to  
5 make the point, Mr. Commissioner, that you've heard from  
6 the Southern Authority -- just to make a quick point with  
7 respect to that recommendation, you've heard from the  
8 Southern Authority, Northern Authority, ANCR, General  
9 Authority, ICFS, Intertribal CFS and the Department and  
10 each of those parties -- and I may have missed others --  
11 they all oppose that recommendation. And the same goes for  
12 his recommendation number 3.

13 I'd like to make some short additional comments  
14 to some of Mr. Gindin's other recommendations if I can. I  
15 won't be long.

16 Recommendation number 4 and 5 that he makes.  
17 Number 4 is:

18

19 "That a file cannot be closed by a  
20 supervisor when unresolved issues  
21 still remain;"

22

23 And the fifth recommendation is:

24

25 "... all files should remain open

1                   to service for at least 3 months  
2                   after a child is deemed to be safe  
3                   and either left with or returned  
4                   to the family;"

5  
6                   ANCR, Southern Authority and the Northern  
7 Authority would oppose these two recommendations, Mr.  
8 Commissioner. And I'll point out that a file is closed at  
9 ANCR today only when a child is determined to be safe and  
10 the risk levels are low. And in those circumstances,  
11 there's no need for a file to remain, remain open for at  
12 least three months, as suggested. Doing so would increase  
13 social work load on non-essential matters and would divert  
14 attention away from families where children are in need of  
15 protection, or where there are serious risks to children.  
16 So, for those reasons, we would oppose those two  
17 recommendations.

18                   With respect to his recommendation number 6 and  
19 that is --

20                   THE COMMISSIONER: Now, you, you said those two  
21 recommendations. Number 4 and?

22                   MR. COCHRANE: Four and 5.

23                   THE COMMISSIONER: And five?

24                   MR. COCHRANE: Yes.

25                   THE COMMISSIONER: All right.

1           MR. COCHRANE: I'm moving now, Mr. Commissioner,  
2 to Mr. Gindin's recommendation number 6.

3           THE COMMISSIONER: Yes?

4           MR. COCHRANE: And that is that:

5

6                     "All children with an open file  
7                     ... undergo a medical check-up  
8                     within one month ..."

9

10           And my clients oppose that recommendation.

11           It is current practice, Mr. Commissioner, that  
12 all children in care receive an immediate medical  
13 assessment. That's the current practice, standard  
14 practice. If a child is not in care, the decision with  
15 respect to medical check up rests with the parents, unless  
16 there's abuse, an abuse investigation, in which case the  
17 child abuse regulation requires a medical examination. If  
18 a child is not in care, there's not a legal means for child  
19 welfare agencies to require parents to take their children  
20 for medical checkup. I think one of the parties -- I don't  
21 remember who, one of the parties made a similar statement.

22           If services are being provided on a voluntary  
23 basis, or under the prevention stream, health care  
24 practitioners are not obligated to share medical  
25 information with child welfare agencies without the consent

1 of the parents.

2 So it's not as if our clients are opposing  
3 medical checkups, we're saying it's there, it's standard  
4 practice. We're opposed to making all open files --  
5 that's, that's too broad a characterization.

6 Moving on, Mr. Commissioner, this is my last  
7 comment respecting Mr. Gindin, recommendation number 21 and  
8 the recommendation is:

9

10 "That every call that comes to  
11 ANCR and ... [any] other mandated  
12 agencies be recorded in a log and  
13 those records kept in accordance  
14 with file adequate file retention  
15 policies;"

16

17 Mr. Commissioner, ANCR already records every call  
18 that comes in regarding a safety issue or a child  
19 protection concern. Those all already recorded and those  
20 calls are documented on the intake module. And this  
21 requirement, Mr. Commissioner, is already a provincial  
22 foundation standard. So that happens.

23

24 In addition to that, ANCR also logs, in the  
25 intake module, all calls that it receives regarding  
existing open child welfare files. Those are also

1 documented.

2 THE COMMISSIONER: So you're saying what's called  
3 for in recommendation 21 is already happening?

4 MR. COCHRANE: It's already happened except he  
5 wants every call recorded. And I'm saying, I'm saying that  
6 that is too broad.

7 We already record all calls regarding safety, all  
8 calls regarding child protection concerns and all calls  
9 regarding existing open child welfare files. Those are  
10 already recorded.

11 At ANCR, we receive approximately 96,000 calls  
12 per year through our switchboard.

13 THE COMMISSIONER: But that requires the  
14 assessment by the person receiving the call that it fits  
15 into one of those categories you enumerate?

16 MR. COCHRANE: Yes.

17 THE COMMISSIONER: And if they made a  
18 miscalculation in, in exercising their judgment, there  
19 might well not be a, a record of a call that should have  
20 been recorded?

21 MR. COCHRANE: Well, if it's, if it's a open  
22 protection file, easy to determine. We do a search, see if  
23 there's an open protection file, that's recorded. If it is  
24 a call regarding safety or protection concern, those are  
25 pretty -- they may or may not have an open file already.

1 But you're right, there is a, there is an assessment need.  
2 But Mr. Commissioner, half of the calls we get at ANCR, or  
3 that ANCR gets, are not related at all to child protection.  
4 We could get -- or, or related to open child welfare files.  
5 We may get a call from a young lady asking about birth  
6 control or we may get a call about an individual wanting to  
7 know about food banks. We get non-related CFS files --  
8 sorry, calls and the recommendation here requires, or would  
9 suggest that we record all of those calls, regardless of  
10 their nature. And we're saying that that is too extensive.  
11 It goes too far. We certainly are not opposed to recording  
12 calls regarding safety, child protection concerns or open  
13 protection files.

14           And with respect to -- if I can move on now, with  
15 respect to Mr. Gindin's recommendations 34 to 38, I can  
16 just simply indicate that these recommendations are already  
17 incorporated in ANCR's service model, ANCR's contact  
18 policy, their existing policies with respect to safety and  
19 risk assessments and prior contact checks. And I can also  
20 note that the SDM tool precludes using one a child as a  
21 proxy for the wellbeing of another, which is what those  
22 recommendations -- one of them, deals with. And the tools  
23 also do not use cleanliness (phonetic) (sic) of a home as  
24 an indicator that a child in a home is safe. Those were  
25 the point of those recommendations.

1 Mr. Commissioner, moving on to Mr. Funke --

2 THE COMMISSIONER: Well, now, looking at the  
3 clock, how long are you going to be on Mr. Funke?

4 MR. COCHRANE: I should be 10 minutes.

5 THE COMMISSIONER: Well, we'll, we'll hear you  
6 and then we'll take our mid-morning break then.

7 MR. COCHRANE: Thank you.

8 THE COMMISSIONER: And then does that complete  
9 your submission?

10 MR. COCHRANE: That'll complete my submission.

11 THE COMMISSIONER: Thank you.

12 MR. COCHRANE: So to begin, I want to thank Mr.  
13 Funke, he, he agreed to go ahead of me yesterday. I wanted  
14 that acknowledged, so I appreciate that gesture by him.

15 In his closing, not yesterday, but in his  
16 closing, he, Mr. Funke made some broad statements about  
17 ANCR that I wanted to address.

18 He stated: Families are not receiving culturally  
19 appropriate services at ANCR. That was during this  
20 closing. And Mr. Commissioner, that statement is simply  
21 wrong and it's contrary to the evidence you've heard and  
22 there's no other way for me to put that. And I asked if  
23 you'd just simply review the evidence of Ms. Stoker, on May  
24 6th, 2008, particularly -- sorry, 2013. Particularly when  
25 she talked about the Snowbird Lodge and the cultural



1 services being provided there by aboriginal staff.

2 UNIDENTIFIED PERSON: (Inaudible).

3 MR. COCHRANE: Do you wish for me to continue,  
4 Mr. Commissioner?

5 UNIDENTIFIED PERSON: (Inaudible).

6 THE COMMISSIONER: Yes, I don't know what the  
7 problem is.

8 UNIDENTIFIED PERSON: (Inaudible) --

9 THE COMMISSIONER: Well, maybe we'll take our  
10 break and --

11 UNIDENTIFIED PERSON: -- (inaudible) because  
12 these people --

13 MR. COCHRANE: Thank you.

14 UNIDENTIFIED PERSON: -- are lying.

15 THE COMMISSIONER: -- but, but, but, but Ms.  
16 Walsh, we had the rest of the week set aside and then there  
17 was some indication --

18 UNIDENTIFIED PERSON: (Inaudible) --

19 THE COMMISSIONER: -- last week we weren't going  
20 to need it and today would, would --

21 UNIDENTIFIED PERSON: -- (inaudible) --

22 THE COMMISSIONER: -- would be the last day.

23 MS. WALSH: That's correct.

24 THE COMMISSIONER: Now, I'm prepared to limit the  
25 noon hour to one hour. Check with your colleagues if

1 they're -- are we going to finish by going late this  
2 afternoon? Or do we need an evening sitting? But we're  
3 going to get through today by giving everybody the  
4 opportunity somehow and I'm prepared to sit as long as  
5 necessary.

6 MS. WALSH: Thank you.

7 THE COMMISSIONER: But, but I think there  
8 probably needs to be a little organization. So --

9 MS. WALSH: I'll talk to my colleagues.

10 THE COMMISSIONER: -- we'll take a 15 minute  
11 break now.

12 MR. COCHRANE: Thank you.

13

14 (BRIEF RECESS)

15

16 THE COMMISSIONER: Okay. Mr. Cochrane?

17 MR. COCHRANE: Thank you. Mr. Funke, when he did  
18 his closing, talked about lack of experienced workers at  
19 ANCR. And I'll, I'll just add, Mr. -- in response -- note,  
20 Mr. Commissioner, that there's absolutely no evidence on  
21 the current experience level of ANCR staff before you.

22 Mr. Funke then said that some of the services  
23 being done by ANCR should be transferred to a First Nation  
24 agency. It's unclear to me, Mr. Commissioner, what, what  
25 he's talking about. ANCR is an intake agency. As such,

1 ANCR transfers its protection files almost immediately to  
2 agencies, including First Nation agencies. So he can't be  
3 talking about protection files, because they're already  
4 transferred out.

5           If he's talking about prevention files, those are  
6 the files, Mr. Commissioner, that ANCR keeps for up to 90  
7 days. That's the family enhancement files.

8           Mr. Commissioner, you, you have evidence before  
9 you from Ms. Stoker, that about 80 percent of the staff  
10 providing prevention services at ANCR are aboriginal staff.  
11 And this is consistent with, or sometimes even higher staff  
12 ratios than at other First Nation agencies. This is not in  
13 evidence, but I'd, I'd like -- if I can get your indulgence  
14 just to add this, Sandy Bay CFS, which is one of our bigger  
15 agencies here in Manitoba, has 71 percent aboriginal staff.  
16 ANCR's family enhancement program has more than that.  
17 Sagkeeng Child and Family Services, 81 percent aboriginal  
18 staff, Southeast Child and Family Services, which is one of  
19 the bigger agencies, First Nation agencies, has 70 percent  
20 aboriginal staff. So ANCR staff, in the family enhancement  
21 stream, which are the files we keep for 90 days, which I  
22 think is what Mr. Funke's referring to, we're already  
23 consistent or above those staff ratios.

24           And finally I just -- ANCR is controlled by a  
25 board of directors, 75 percent of that board are people of

1 aboriginal descent. And of course, you've already heard  
2 that ANCR is mandated by the Southern First Nation  
3 Authority and that board, as you've heard, under the  
4 legislation, is appointed by the Assembly of Manitoba  
5 Chiefs.

6 Yesterday, Mr. Funke commented on our  
7 recommendations and I want to thank him, because he, he  
8 also went yesterday evening, provided me his written  
9 comments. I thought that was very gracious and I thank him  
10 for that, because what it's done for me this morning, Mr.  
11 Commissioner, is it's shortened my presentation by a lot.  
12 So I want to acknowledge that Mr. Funke did that.

13 I think the gist of what he said yesterday was  
14 that his clients, AMC and SCO, they want to be involved.  
15 They want to be at the table, when it comes time for --  
16 when we're talking legislative change to the system. And  
17 my clients, ANCR and Northern Authority, Southern  
18 Authority, we don't disagree with that. We don't disagree  
19 with the objective of engaging First Nation and -- First  
20 Nations and their leadership in legislative changes. I  
21 think that was his main theme yesterday.

22 He did raise recommendation 36. I'll just take  
23 a, a moment, Mr. Commissioner, to respond to that.  
24 Recommendation 36 is on page 47 of my package and that is  
25 the recommendation, Mr. Commissioner, you'll recall,

1 where --

2 THE COMMISSIONER: Recommendation number what?

3 MR. COCHRANE: Thirty-six.

4 THE COMMISSIONER: Thirty-six.

5 MR. COCHRANE: Page 47.

6 THE COMMISSIONER: Yes, I have it.

7 MR. COCHRANE: And this, in summary, this is the  
8 recommendation where we recommend more funding be provided  
9 for the creation of a specialized domestic family violence  
10 position in CFS agencies. And Mr. Funke said there's no  
11 evidence at this inquiry of family violence.

12 And I want to just turn your attention, Mr.  
13 Commissioner, to the transcript, April 30th, 2013, page  
14 122. This is the evidence of Ms. Flette, from the Southern  
15 Authority. Earlier, you would recall, Mr. Commissioner, I  
16 talked about the, the four big reasons, if I could use that  
17 term, for children coming into care. Ms. Flette talked  
18 about that earlier, when I was referencing Mr. McKinnon.  
19 This is a continuation of her evidence and on, on page 122,  
20 line 5, I ask her:

21

22 "In terms of domestic  
23 violence ..."

24

1                                   Because, remember, she said that's one  
2 of the main reasons.

3

4                                   "... which is ... one of the big  
5 reasons [for] children [coming]  
6 into care, can you tell the  
7 Commissioner ... what you're  
8 seeing with respect to domestic  
9 violence?"

10

11                                   And then she gives the answer, she  
12 says:

13

14                                   "... we're certainly more aware  
15 and there's ... research [being]  
16 done ... about the effects of  
17 domestic violence on children. I  
18 think for many years and maybe to  
19 some extent we still do, ... tend  
20 to think ... [that] they're not  
21 beating up on the [children]. It  
22 sometimes will ... get to [the]  
23 point where ..."

24

25                                   And then she says:

26

27                                   "... but [there's an] impact of

1                   them [the children], of [the]  
2                   children seeing that kind of  
3                   violence between their parents  
4                   [it's] very detrimental to [to the  
5                   child and] the risk that it puts  
6                   the child in as well ... what we  
7                   see in child welfare is domestic  
8                   violence is very often tied ...  
9                   with [that of] addictions and  
10                  alcohol and drug use."

11

12                  And that is -- so she's talking about domestic  
13                  violence being one of the reasons. That's the, the, the  
14                  evidence before you, Mr. Commissioner, with respect to  
15                  domestic violence.

16                  Mr. Funke also made some statements yesterday  
17                  that leadership, and he's talking First Nation leadership,  
18                  should be involved in policy and legislative type  
19                  initiatives with input from the authorities. And that the  
20                  authorities and the agencies should deal with service  
21                  delivery.

22                  I think, think that was one of the messages he --  
23                  or comments he made yesterday. I think what he was saying  
24                  was, was really saying is that service delivery, the day-  
25                  to-day functions of child welfare, should be that of the

1 agencies and the authorities and that chiefs should not  
2 become involved in service delivery. He's also saying, I  
3 think, that the authorities and the agencies and First  
4 Nation leaders should work together to better protect  
5 children. And if that was his message, Mr. Commissioner,  
6 then my clients, the Northern Authority, the Southern  
7 Authority and ANCR, we endorse that fully.

8           Mr. McKinnon stated that: I hope the work of  
9 this commission will lay to rest, forever, the idea that  
10 devolution contributed or caused the death of Phoenix  
11 Sinclair.

12           My clients endorse this statement fully, Mr.  
13 Commissioner.

14           And in closing, when we started our closing  
15 submissions and again this morning, you made some very  
16 important statements. On the first day of our closing  
17 arguments, you stated, Mr. Commissioner: The prime and  
18 driving force is to make recommendations, to make  
19 fundamental changes to the child welfare system.

20           And then this morning, you stated, Mr.  
21 Commissioner, I'm here to make recommendations to improve  
22 the lives and to better protect the lives of children in  
23 Manitoba.

24           Mr. Commissioner, we're confident that our  
25 recommendations, if implemented, will assist you in



1 achieving these goals and we offer them for assistance and  
2 we hope you find them useful and beneficial as you  
3 undertake your work. And I thank you for listening to me  
4 this morning and we look forward to your report.

5 THE COMMISSIONER: Thank you, Mr. Cochrane, for  
6 your contribution.

7 MR. COCHRANE: Thank you.

8 THE COMMISSIONER: Who's coming next? Mr., Mr.  
9 Kahn, or Ms. Harris? Mr. Khan.

10 MR. KHAN: Good morning, Mr. Commissioner. I  
11 promise I won't be very long. I should be all of about 10  
12 minutes, five, possibly.

13 Just a couple comments, first, with respect to  
14 the submissions of Ms. Dunn and on the women's advocate.

15 THE COMMISSIONER: Who's -- oh, Ms., Ms. Dunn,  
16 yes.

17 MR. KHAN: Yes.

18 THE COMMISSIONER: Yes, okay. Let me just find  
19 that. I have it.

20 MR. KHAN: And, and my comments are only with  
21 respect to her submissions on the, on the women's advocate.

22 I just want to start by saying that, as a front  
23 line agency, Intertribal is fully in support of, of any  
24 resources that are available to parents that might assist  
25 in the process. In our experience, the process is

1 certainly complicated to families. It's a very emotional  
2 time and so any support that they can, they can have access  
3 to is of assistance, especially having someone to explain  
4 the process to them. That's always been very helpful.

5 Our concern, or our question that we just raised  
6 is, given that there's already some complexity to the  
7 system and the parents are, typically are unfamiliar with  
8 it, adding another person in the mix may not be, may not,  
9 in the end, be of assistance, especially if, if this  
10 person's somewhat forced upon the parent, the parent may,  
11 in any event, see this as a, simply someone else from the  
12 government being involved.

13 Now, the -- in Winnipeg and, and in, and in  
14 Manitoba, there's a relatively small bar of, of lawyers who  
15 practice CFS work. Ms. Dunn is one of them. Some of the  
16 lawyers here also practice. And in my experience, the  
17 counsel who do CFS work on behalf of parents do a very good  
18 job of, of advocating on behalf of those parents, of  
19 bringing their, their interests and their positions  
20 forward. And, and like I had mentioned, believe I  
21 mentioned this in July, the vast majority of, of child  
22 protection matters end up on consent. I mean, where the  
23 agency's, identifies a child protection concern and an  
24 apprehension has occurred, the agency is, is limited, in,  
25 in terms of what it can do. If, if an order is required,

1 we proceed with the order.

2 In terms of the process, once that's determined  
3 and there's no possibility of returning the child until  
4 certain things are done, it really become an issue of, of,  
5 of building a relationship with the parents. It's a forced  
6 relationship and, and counsel, in my experience, counsel  
7 for the parents are an integral part to that and I don't  
8 see, I haven't seen an issue. In, in other words, in, in  
9 many cases, parents don't fully understand what the issues  
10 are, it's usually their counsel that help them, help them  
11 guide through the process and help them --

12 THE COMMISSIONER: So, so you're --

13 MR. KHAN: -- understand what's going on.

14 THE COMMISSIONER: -- speaking against the  
15 appointment of a special advocate; is, is that what you're  
16 getting at?

17 MR. KHAN: Well, I, I'm just concerned that this  
18 might create, in some respects, some -- an extra level of  
19 complexity, when it comes to parents.

20 THE COMMISSIONER: When it comes to what?

21 MR. KHAN: To the parents' perspective. They  
22 already have counsel, they're, they, they'll have their,  
23 their worker appointed to them --

24 THE COMMISSIONER: Well, what, what do you, what  
25 part, what apart (sic) of Ms. Dunn's submission are you

1 speaking to?

2 MR. KHAN: Just her oral, oral submissions, when  
3 she's referring to having, I believe she said, having a, a  
4 separate person from the women's advocate appointed to each  
5 parent --

6 THE COMMISSIONER: Yes.

7 MR. KHAN: -- which would come about as --

8 THE COMMISSIONER: That was one of the --

9 MR. KHAN: -- part of the process.

10 THE COMMISSIONER: -- recommendations, yes. And,  
11 and you're opposed to that?

12 MR. KHAN: I'm just raising some, some questions  
13 on, on the issue --

14 THE COMMISSIONER: I see.

15 MR. KHAN: -- that's all.

16 THE COMMISSIONER: Okay.

17 MR. KHAN: I also wanted just to clarify our  
18 position with respect to Mr. Gindin's recommendation number  
19 3, and that's opening a, a file in the name of the child,  
20 as opposed to the parents.

21 Now, we had indicated that we're, we're opposed  
22 to that recommendation. And I just wanted to clarify that  
23 we're not opposed on the, on the simple basis that it might  
24 be an administrative issue, or there's a cost issue  
25 involved. It's that from our, from our perspective,

1 there's, there's no need for it. Accessing information on  
2 CFSIS, in terms of how the file is opened, is not an issue  
3 for the Tribal -- in, in getting into information.

4 Now, outside of the city, we've, we've identified  
5 that we have some connectivity issues. And so we would  
6 submit that if, if -- the recommendations should -- there  
7 should be a purpose to the recommendations and from our  
8 perspective, there's no particular -- it's not addressing  
9 any shortcoming that, that we have identified.

10 Now, I'm speaking only from one agency, but from  
11 hearing the, the submissions of all the authorities, it  
12 appears to me that that's, that, that, that's not an, an  
13 issue that they've identified in all the other agencies  
14 that are operating under the, under the authorities. But I  
15 just wanted to make it clear, we're not opposed simply  
16 because it's an administrative issue, it's that we don't --  
17 we haven't identified a concern that would be solved by  
18 opening a file under the name of the child. So I just  
19 wanted to clarify that.

20 Mr. Funke and Mr. Cochrane has, have spoken  
21 directly about a few of Mr. Gindin's recommendations.

22 THE COMMISSIONER: Which one?

23 MR. KHAN: Mr. -- both Mr. Cochrane and Mr. Funke  
24 have spoken, have spoken about various recommendations  
25 brought forward by Mr. Gindin.

1 THE COMMISSIONER: Yes.

2 MR. KHAN: I just wanted to add to what Mr. Funke  
3 said, with respect to recommendation number 12. And, and I  
4 think it just identifies -- it just goes back to what I  
5 raised when I, when I appeared last week, being that we  
6 would just ask that you, when you're drafting your  
7 recommendations, take into consideration how it may affect  
8 other agencies that (inaudible) that were not part of this  
9 file, the Phoenix Sinclair file.

10 So recommendation number 12 is that a court  
11 appointer (sic) be instructed -- sorry, be appointed to  
12 appear on behalf of workers at court. Mr. Funke explained  
13 the need of the worker being (inaudible) to provide  
14 evidence. What you, what you have and I, I don't mean to  
15 bring evidence at this, this time, (inaudible) what we  
16 haven't looked at is how docket court also works outside of  
17 the city. And in, in, in, in, in many locations, docket  
18 court is just once a month, in a rural, in rural  
19 communities. And whereas in the city, when we're before  
20 the master and it's on a daily basis, we're looking at  
21 three main issues and one is whether the services have been  
22 dealt with, procedural steps have been dealt with, what the  
23 positions of the parents are, at which point, if they're  
24 agreeing, we proceed with an order, if not, we move to pre-  
25 trial. It's, it's -- and there's so many more matters on

1 the docket, they're done pretty quickly.

2 In, in, in, in some, in some rural dockets, since  
3 they're only, since we're only appearing once a month, a  
4 lot more gets done. They almost serve as a mini pre-trial,  
5 depending on the judge and, and, and, and the size of the  
6 docket and, and which parties attend court. And so having  
7 the actual worker on file is, is required, because when  
8 we're dealing with access issues, planning and so on, a lot  
9 of discuss occurs actually in the courtroom and also  
10 outside of the courtroom.

11 I recall Mr. Orobko bringing that up and I  
12 thought that would be great, particularly in the city,  
13 assuming the masters don't have an issue with that, because  
14 of course, court time does eat up a tremendous amount of,  
15 of, of time that the workers spend on a file.

16 THE COMMISSIONER: So are you speaking in support  
17 of the recommendation?

18 MR. KHAN: No, this leads to just a, again, our,  
19 our, our, our basic submission that the -- we have to  
20 consider the impact on the entire system in, and in, and  
21 across the province. So whereas this may have been helpful  
22 in the city, it, it certainly wouldn't be helpful outside  
23 of the city. And again, we don't have evidence to discuss  
24 that, you know, to, to, to really, to deal with that  
25 further. And of course, there would have been no reason to

1 this, the fact finding phase here. We really dealt with  
2 just one particular file, with one agency, in an urban  
3 setting. And so I just would like the Commission to keep  
4 that in mind, and then, and then that's all.

5           Lastly, of course, I would just like to thank the  
6 Department for also clarifying an issue that was, has  
7 always been a concern for Intertribal and that, and that is  
8 that an aboriginal agency hasn't been, was not involved in  
9 the Phoenix Sinclair file. So I just wanted to thank Mr.,  
10 Mr. McKinnon for that.

11           Thank you, Mr. Commissioner.

12           THE COMMISSIONER: Thank you, Mr. Khan.

13           Ms. Harris?

14           MS. HARRIS: Good morning, Mr. Commissioner.

15           THE COMMISSIONER: Morning.

16           MS. HARRIS: I will keep my comments brief as  
17 well, this morning. If I can have just one moment, I left  
18 part of my submission on my table.

19           With respect to the submissions of the  
20 Department, by way of reply, I'd first like to commend the  
21 Department as the body responsible for operations at  
22 Winnipeg Child and Family Services, for accepting  
23 responsibility for the manner in which services were  
24 delivered to the Phoenix Sinclair family constellation and  
25 we are really very pleased and we thank the Department of



1 it support of the fundamental changes that were implemented  
2 by the General Authority in the aftermath of that tragedy  
3 at all of its mandated agencies, including Winnipeg Child  
4 and Family Services, in the General Authority's practice  
5 model and our standards training and the development of our  
6 leading practice specialists' training initiatives.

7           The General Authority does disagree with the  
8 submission of the Department, that the only reason for  
9 failure in the, to the family of Phoenix, Phoenix Sinclair  
10 and to Phoenix herself, was that of improper assessment.  
11 We continue to be of the view that workload was a factor  
12 and that view was expressed in the external reviews, the  
13 recommendations of which were accepted in their entirety by  
14 the Province.

15           We also support the assertion of the Department  
16 that -- and, and I want to be clear, while it's not your  
17 job, Mr. Commissioner, to determine how we can afford the  
18 recommendations, the Province can afford the  
19 recommendations that you are going to make, that it isn't  
20 helpful to simply throw more money into the system, without  
21 doing so in a targeted manner that will improve services.

22           It's our submission that workload reduction  
23 remains the single most important factor, in terms of  
24 ensuring proper service delivery and we agree with the  
25 MGEU's submission and reply in that regard.

1           By way of brief clarification, Mr. McKinnon, on  
2 behalf of the Department, drew a distinction between the  
3 skill sets for, which are necessary for protection work and  
4 for prevention work. And when I say prevention work, I  
5 mean the prevention work which is conducted by child  
6 welfare agencies, which is secondary prevention work, not  
7 the primary prevention work that is conducted by community  
8 agencies. And although we don't think that the description  
9 was entirely inaccurate, we feel like the distinctions  
10 between the type of social work practiced has been somewhat  
11 over emphasized. Either stream of work, whether one is  
12 providing the service to a, to a family under the auspices  
13 of the "prevention stream", or under the protection stream,  
14 require very similar skill sets. There may be other skill  
15 sets required when you're doing protection work, from the  
16 investigation standpoint, but I would remind you, Mr.  
17 Commissioner, that when there's an intake, that's also  
18 investigative in nature. So investigation and working with  
19 the family to remediate whatever is happening in the family  
20 that is rendering their children unsafe, or potentially  
21 unsafe, are intertwined. And that's why the General  
22 Authority practice model emphasizes the integration of  
23 those skill sets so that every social worker knows how to  
24 do the work and do it in a manner which engages families  
25 and ultimately reduces the number of children which will

1 come into care and keep children safe at home.

2 In reply, generally, to a number of comments that  
3 were made and responses to recommendations with respect to  
4 funding, we would just like to reiterate that the main  
5 distinction between the prevention stream and the  
6 protection stream, under differential response, is a, is,  
7 in our view, an issue of funding only. It's not our view  
8 that the nature of the social work is so fundamentally  
9 different that the caseloads ought to be funded  
10 differently. Our submission remains that we should be  
11 funding -- that, that cases should be funded, on a case  
12 sensitive basis, at one to 20. That was Dr. McKenzie's  
13 recommendation in his report and that's where the evidence  
14 for that one to 20 number comes from.

15 When I say case sensitive, and it wasn't as clear  
16 in my written submissions at it, as it ought to have been,  
17 what that means is that monies which are necessary for  
18 other services were provided, other than strictly the  
19 social work and the workload of cases that he or she has,  
20 such as monies for foster care ought to be broken out of  
21 that and, and listed as separate line items. When we say  
22 one to 20, we mean true one to 20 cases. That doesn't  
23 include having to pay for other aspects of the work that is  
24 done out of that budget, which is currently the case.

25 In addition, in some of the submissions, one of

1 the things that has been raised is the, the, the mention of  
2 how, with our new graduates, they work at a caseload of one  
3 to 20 and how that's really not that different from what  
4 we're proposing. In fact, there's two distinctions that  
5 I'd like to make really clear. The first is that new  
6 workers don't start out with a caseload of, of, at one to  
7 20, at that ratio, they start out with zero cases and their  
8 cases are gradually increased. The goal is to have them  
9 reach a one to 20 ratio at, by the end of their first year.  
10 Sometimes that accelerated because we do still have  
11 workload pressures and we have to accelerate them getting  
12 to that one to 20 sooner.

13 THE COMMISSIONER: Is that what's happening now?

14 MS. HARRIS: Yes, that is what's happening now.  
15 If we were to be funded at one to 20, within the General  
16 Authority, we would certainly -- the, one of the things we  
17 would be doing is dialing back the amount of workload that  
18 we imposed on our new graduates and that, that initial  
19 ratio would be even lower still.

20 THE COMMISSIONER: That is, if it went from one  
21 to 25 to one to 20, that's what would, would happen?

22 MS. HARRIS: Yes, if that were to happen, then  
23 our, our initial, our new hires would not be having their  
24 workload cap out at one to 20 by the end of their first  
25 year or sooner. We would be reducing that number, the

1 number of cases they had, to provide more time for training  
2 and to, and to get their feet wet and to learn the skills  
3 that they need.

4           With respect to the issue of compliance with the  
5 use of CFSIS, what my submission was, was that the use of  
6 CFSIS by all agencies should be a condition of their  
7 mandate. And I used the word "sanctions". That was taken,  
8 by Mr. McKinnon to mean that I, that the General Authority  
9 was supporting financial sanctions, in the form of  
10 withdrawing funding from agencies who refused to use CFSIS.  
11 And that is not our submission. That would clearly  
12 endanger the wellbeing of children. All we're saying is  
13 that the use of CFSIS, right now, should be imposed upon  
14 all agencies by way of a condition of their mandate. That  
15 simply supports remedies which are already present in the  
16 Child and Family Services Act to ensure that agencies are  
17 following the directives that they're given by their  
18 authorities.

19           We do support a new information system being put  
20 into place, but that will take months and I would probably  
21 suggest it probably would take years for that to happen,  
22 for the research and --

23           THE COMMISSIONER: For -- just a minute, for what  
24 happen?

25           MS. HARRIS: For a new information system to --

1 THE COMMISSIONER: Or for a new? Okay.

2 MS. HARRIS: -- replace CFSIS, to take --

3 THE COMMISSIONER: Yes, yeah, yeah.

4 MS. HARRIS: -- place.

5 THE COMMISSIONER: Yeah.

6 MS. HARRIS: That's a very long process, Mr.  
7 Commissioner --

8 THE COMMISSIONER: Yes --

9 MS. HARRIS: -- as I --

10 THE COMMISSIONER: -- I understand that.

11 MS. HARRIS: -- as I understand and so the  
12 concern that we do have and I, and I'm dealing with this  
13 topically, as opposed to by each counsel, but the concern  
14 we do have with the submission of Mr. Funke is that it may  
15 be that there will be a new information system put into  
16 place in Manitoba at some point, which will address the  
17 data issues that Mr. Funke referred to yesterday, in terms  
18 of who owns the data and the First Nations concern that is  
19 expressed by at least AMC, his client, and SCO, that they  
20 don't own that data, what our submission is, is until there  
21 is a system that will accommodate and deal with that, CFSIS  
22 needs to be used. That is what will help ensure the safety  
23 and wellbeing of children in the province of Manitoba.

24 With respect to Mr. McKinnon's submission  
25 opposing the General Authority coming into its full

1 mandate, as was recommended in the Strengthening the  
2 Commitment report, we have the following comments.  
3 Firstly, Mr. McKinnon's argument, as I understood it to be,  
4 was that in order for the General Authority to receive its  
5 full mandate, Winnipeg Child and Family Services would  
6 again have to become privatized.

7 THE COMMISSIONER: Would have to what?

8 MS. HARRIS: Would have to again become  
9 privatized. We would not be able to be a branch of  
10 government. Respectfully, we disagree with that, with that  
11 perspective.

12 It was -- when you look at the date that the  
13 Authorities Act was assented to, the Child and Family  
14 Services Authorities Act, more properly referred to, it was  
15 assented to on August 9th, 2002 and it came into force in  
16 November of 2003. The decision to bring Winnipeg Child and  
17 Family Services into government was made in 2001 and by  
18 April 2003, Mr. Rodgers himself was already on the  
19 transition to help that happen. So it's our submission  
20 that in drafting the legislation, as it was drafted, where  
21 there was no distinction made between the mandates of the  
22 other three authorities and that of the General Authority,  
23 the fact that Winnipeg Child and Family Service, Services,  
24 and rural and northern were coming back into government,  
25 or, or Winnipeg was coming into government was already

1 known to the Province. There was no distinction put into  
2 the legislation. It was clearly not the intent to hold  
3 back the General Authority from exercising its full mandate  
4 under the legislation or, or frankly, a distinction would  
5 have been put into the legislation, because that fact was  
6 known to the government at the time.

7 As I said, we disagree with the, the, the  
8 position of the Department that was taken by Mr. McKinnon,  
9 that Winnipeg Child and Family Services needs to be  
10 privatized, in order to bring the General Authority to its  
11 full mandate. First of all, we don't agree that it should  
12 be privatized. That's not something that the General  
13 Authority's seeking. We don't think that it's in the best  
14 interests of children and families to privatize Winnipeg  
15 Child and Family Services at this time.

16 More importantly, there are already ongoing  
17 discussions with government about bringing the General  
18 Authority into its full mandate and those discussions have  
19 taken place with senior officials. We are hopeful that it  
20 will happen. How we deal with the issues of the pension  
21 plan, that Mr. McKinnon referred to, and other employee-  
22 based issues will be dealt with by some other form of  
23 status that's given to the agency, without privatizing it.

24 We also note that there are other bodies which  
25 are not formally government employees, whose employees are



1 members of the Civil Service Superannuation Plan, so again,  
2 all of those issues are things that can be worked out and I  
3 don't want to over, over simplify but where there's a will,  
4 there's a way and at the end of the day, the province did  
5 accept all of the recommendations, which were made in the  
6 external reviews and this was one of them. And there is a  
7 way to do it. It does not involve having to sacrifice the  
8 wellbeing of children and families to be done and in fact,  
9 will enhance --

10 THE COMMISSIONER: And which recommendation --

11 MS. HARRIS: -- the wellbeing of children and  
12 families.

13 THE COMMISSIONER: -- are you referring to,  
14 specifically?

15 MS. HARRIS: Bringing, bringing the General  
16 Authority into its full legislative mandate.

17 THE COMMISSIONER: Yeah, and, and was -- are you  
18 saying that that was recommended in one of the six reports?

19 MS. HARRIS: In the Strengthen the Commitment  
20 report.

21 THE COMMISSIONER: In the Strengthening  
22 Commitment (sic)?

23 MS. HARRIS: Yes. With respect to the issue of  
24 what evidence is before you, Mr. Commissioner, on this  
25 point, Mr. McKinnon is correct that there is not a tonne of

1 evidence before you. However, in Mr. Rodgers' transcript  
2 from May 14th, page 183, lines 2 through 8, there is a very  
3 brief --

4 THE COMMISSIONER: Now, just a minute, whose  
5 evidence are you going to now?

6 MS. HARRIS: Mr. Rodgers'.

7 THE COMMISSIONER: Yes?

8 MS. HARRIS: May 14th, page 183 --

9 THE COMMISSIONER: Yeah.

10 MS. HARRIS: -- lines 2 through 8.

11 THE COMMISSIONER: Page 183 --

12 MS. HARRIS: Yes, lines 2 through 8. There is a  
13 very brief reference --

14 THE COMMISSIONER: -- what did you say after 183?

15 MS. HARRIS: Lines 2 through 8.

16 THE COMMISSIONER: Oh, lines 2 to 8?

17 MS. HARRIS: Yes, sir.

18 THE COMMISSIONER: Okay.

19 MS. HARRIS: There is a very brief reference  
20 there to -- it isn't referred to as mandate, so I don't  
21 want to mislead you, Mr. Commissioner, it doesn't  
22 specifically use the language of mandate. It does talk  
23 about the General Authority receiving its funding, the full  
24 funding that it would normally receive for its agency, so  
25 it can, to the, so that the authority can better plan

1 without changing the status of Winnipeg Child and Family  
2 Services. And that was what Mr. Rodgers was referring to.  
3 What I think is, is important, however, is that that  
4 evidence was unchallenged by the Department and there was  
5 no cross-examination of Mr. Rodgers on that point by the  
6 Department.

7           The reason we're making this recommendation is  
8 because the funding which is available should flow to the  
9 General Authority so that the General Authority can make  
10 their determinations about how it wishes to allocate  
11 resources and engage in planning with all of its agencies.  
12 That's good for children in the province of Manitoba and  
13 can help ensure their safety.

14           And lastly, on this point, before I move on, in  
15 terms of evidence, while there may be not an enormous  
16 amount of evidence to support bringing the agency into its  
17 full mandate, the, the authority into its full mandate,  
18 although there were other mentions made by Mr. Funke and  
19 others about the difficulties and, and some inequities that  
20 were perceived, on the part of the General Authority for  
21 being caught within government during the inquiry, there  
22 also is no evidence put before the inquiry to support the  
23 assertion that the action of bringing the General Authority  
24 into its full mandate is impossible. There is no evidence  
25 to suggest that.

1           With respect to the General Authority's  
2 submission and recommendation at paragraphs 102 and 103 of  
3 our written submission, around the easing the way through  
4 legislative change for the adoption of, of -- for adoption  
5 subsidies rather, to assist in, in the permanency planning  
6 for children and the adoption of permanent ward by social  
7 workers, by making it financially easier to do that --

8           THE COMMISSIONER: Just a minute, what, what page  
9 are you on?

10           MS. HARRIS: It's my written submission and it's  
11 -- or the General Authority's rather, and I believe it's  
12 paragraph 102.

13           THE COMMISSIONER: One-o-two?

14           MS. HARRIS: And Mr. Commissioner, you'll find  
15 that on page 35.

16           THE COMMISSIONER: Yes, I have it.

17           MS. HARRIS: The concern, which was raised by the  
18 Department, was that we need to be careful with respect to  
19 how that might interfere with aboriginal adoption and, and  
20 aboriginal rights, in terms of adoption. We don't want a  
21 repeat of the Sixties Scoop in -- and I'm paraphrasing,  
22 because Mr. McKinnon didn't use those words precisely, but  
23 that's what I understood him to mean. And I have a couple  
24 of points to make in that regard.

25           First, in Mr. Rodgers' transcript, when he was

1 discussing this recommendation with you, Mr. Commissioner,  
2 one of the things that he also expressed and we did, it  
3 didn't make its way into the written (phonetic) (sic)  
4 recommendations, was that there be a clarification and, and  
5 in the legislation, around the issue of custom adoptions  
6 for aboriginal peoples. That's located in the transcript  
7 from May 14th, at page 177, lines 9 through 14. And again  
8 on page 177, from line 21 through to page 178, at line 9.  
9 And again, there was no cross-examination on either the  
10 issue of custom adoption, or the issue of providing  
11 financial incentives to assist in the adoption of -- foster  
12 families to assist in the adoption of permanent wards so  
13 that children would have a permanent home, which is the  
14 primary goal. There's also a cost savings component,  
15 because then we're not -- we don't have as many children in  
16 the system that require the child, the, the same level of  
17 child maintenance, but the primary focus, obviously, is to  
18 provide permanency for children who would otherwise be, be  
19 adopted, but for the expense to the foster parents, that  
20 they simply can't manage.

21           It's our submission that irrespective of the type  
22 of adoption, so to speak, whether it's the adoption that  
23 you would see traditionally in, in western culture, under  
24 the Adoption Act, or whether it's a custed (phonetic)  
25 adoption on the part of First Nations and aboriginal

1 peoples, the point is that no person who's applying for  
2 adoption, irrespective of the method, is unable to do so  
3 for financial reasons. It's not intended to weight the  
4 adoption of children in one way or another, it's simply to  
5 remove barriers to adoption, by way of additional financial  
6 resources than the, greater than that which is already  
7 available.

8           Nothing in this recommendation supersedes an  
9 agency's right to plan for permanency for children, in  
10 whatever way they see fit and that includes cultural  
11 considerations and the placement with extended family, or  
12 whatever, whatever the permanency plan is.

13           In speaking with the other three authorities, I  
14 note that neither the Northern Authority, or the Southern  
15 Authority disagree with that recommendation. In fact, they  
16 endorsed our recommendations. I did confirm that with Mr.  
17 Cochrane earlier and I also did take the time to ask  
18 counsel for the Métis Authority and the Manitoba Métis  
19 Federation, what their position was on this issue as well.  
20 And although they -- I wouldn't want to speak for them,  
21 because there, there was some concern around process, so I  
22 wouldn't say that the Métis Authority's gone so far as to  
23 endorse the recommendation, they certainly, in principle,  
24 thought that financial assistance, with safeguards, to  
25 ensure that it wasn't misapplied, would be of benefit to

1 children, in terms of planning for permanency.

2           With respect to this matter, I can also confirm  
3 that my client has advised there's already been a series of  
4 discussions again with the Department. The Department has  
5 the literature and the evidence. Mr. Rodgers referred to  
6 how successful it is in his oral evidence before you, Mr.  
7 Commissioner, but the Department already has the literature  
8 and the studies that demonstrate that this is a positive  
9 step for children. We didn't introduce it into evidence at  
10 the inquiry, but the Department is aware of it.

11           Turning now to the comments of Ms. Dunn and  
12 secondarily Mr. Gindin, like to speak about the issue of  
13 trust again a bit.

14           The description, by Ms. Dunn, of the power to  
15 apprehend is accurate in the sense that, yes, agencies have  
16 the power to enter into a person's home without a warrant  
17 and apprehend a child if need be and the child is in need  
18 of protection. The dramatic description of that draconian  
19 remedy being, being used calls up very disturbing images.  
20 The image that Ms. Dunn used was someone just walking into  
21 your kitchen and simply taking your children and walking  
22 back out the door. I'd like to emphasize, for the  
23 Commission, that that is simply not, absent every -- and,  
24 and there will be occasions where apprehensions do happen  
25 that way, because sometimes there really is the need to

1 apprehend in that draconian, that seemingly draconian way,  
2 to protect children. But that's not the way we practice  
3 social work. That's not the way the General Authority  
4 approaches dealing with families. I won't reiterate my  
5 entire submission about the General Authority's practice  
6 model, but whenever humanly possible, and in the vast  
7 majority of the cases, the abuse of power by, by agencies  
8 simply doesn't occur, because that's not what is in the  
9 best interests of children and in the, in the interest of  
10 reuniting families.

11           There's no question that trust is a major issue.  
12 That was the crux of my submission to you, Mr.  
13 Commissioner, last week, is that we need to build trust and  
14 how we do that. In -- as a general reply to both Ms.  
15 Dunn's submission and Mr. Gindin's submission, is that what  
16 seems to be happening when there's this argument that the  
17 secondary prevention work, which is the work that agencies  
18 do, in terms of prevention, not what community agencies do,  
19 and protection work, where these ought to be split into two  
20 separate agencies under, under the legislation, and, and,  
21 and it -- and you split, is that there appears to have been  
22 a conclusion drawn as to the causation. And it's a  
23 causation issue. It -- there's no evidence before you that  
24 the reason why people don't trust agencies is because  
25 simply that there's this investigative work happening.



1 That's a conclusion which has been drawn. And without  
2 going into my submission again, we've demonstrated, through  
3 our pilot project and through the development of the  
4 General Authority practice model and Dr. McKenzie's  
5 studied, that by using the techniques that the General  
6 Authority now uses, we are building trust with families.  
7 They are responding differently. There is more  
8 collaboration between agencies and families. And that's  
9 evidenced by the fact that children, aged zero to 17, new  
10 cases of children aged zero to 17 and we make, need to make  
11 that clear, are not coming into the system in the same  
12 numbers that they were once were. What we are doing is  
13 working, in an empirically measurable way.

14 Mr. Gindin quoted Mr. Rodgers' transcript about  
15 how difficult the dual mandate can be, the investigation  
16 and working with families and how difficult that can be. I  
17 reviewed those sections of the transcripts. There's  
18 nothing in those sections which contradicts our submission,  
19 which is that yes, the work is very difficult. That  
20 doesn't mean that the functions should be split. And all  
21 of the reasons why the functions ought not to have been  
22 split and you'll note that the AMC, all of the authorities  
23 have all -- and the agencies, have all said to you, Mr.  
24 Commissioner, don't split these. That's not because we  
25 have a vested interest in maintaining things the way they

1 are, or that it's too difficult to change it, it's that we  
2 are the experts in deliverate (phonetic) (sic) of child  
3 welfare system in the Province. The authorities know how  
4 to do this work and how to do it in a way that keeps kids  
5 the safest and is the most -- is the least likely to create  
6 difficulties and gaps in communication and, and, and  
7 whatnot, which would result from splitting those functions  
8 and, and creating two separate agencies to do it.

9           And again, every child who comes into contact  
10 with our system is either in need of protection, or is  
11 likely to be in need of protection, every child. If the --  
12 whatever is happening in the home is insufficient to draw  
13 the attention of child welfare agencies, then the child is  
14 not likely to be in need of protection, under the  
15 definition, under the statute. We're -- whether we're  
16 providing prevention services, which again, is to prevent  
17 greater intervention down the road by the child welfare  
18 system, in the form of apprehensions and the like, or  
19 whether it's investigation/protection, all of it's child  
20 protection, Mr. Commissioner, all of it. All of it is, is  
21 -- it's -- the question is, do you do that work with  
22 children in the home, because they can -- they're safe in  
23 their home and we can do the work with them in place? Or  
24 do we need to apprehend the children, in order to do that  
25 work, and hopefully reunite the family? But it's all child

1 protection work.

2 It's important to note here that there will  
3 always be some parents and Mr. Funke touched on this --

4 THE COMMISSIONER: There'll always be what?

5 MS. HARRIS: There will always be some parents  
6 who refuse to engage with the child welfare system.

7 THE COMMISSIONER: Oh, yeah.

8 MS. HARRIS: They will refuse voluntary, will  
9 refuse voluntary services, they will refuse to go into the  
10 prevention stream and receive those services while their  
11 children are safe at home. It's a small number of people  
12 that refuse to engage, but there are people who will refuse  
13 to engage with the child welfare system for one reason or  
14 another. And unfortunately, it, you know, what we know,  
15 from the probability of future harm tool, which is analysis  
16 of actuarial data on the likelihood that that family is  
17 going, that that child will be in need of protection in the  
18 immediate future, within 18 months, is that if the family  
19 refuses services, it very well may be that the  
20 circumstances will change and the child, or children in  
21 that home will no longer be safe and will require  
22 apprehension. And that's a shame, but we can't make every  
23 person who is offered services to take those, take those  
24 services. And so sometimes apprehensions will remain  
25 necessary, just simply because of a refusal on the part of

1 parents to engage and there's nothing we can do about that,  
2 except again, build trust over time, through the various  
3 methods I discussed last week, both in improving our public  
4 perception and in terms of creating a new reputation, in  
5 terms of how workers work with families over time, so that  
6 it is possible to start that engagement. But we'll never  
7 have a perfect system.

8           The reality is that when we use the General  
9 Authority's practice model, we know that the number of  
10 families who refuse to engage with the agency is fewer than  
11 prior to our use of the practice model, because the  
12 techniques we're using work.

13           I'm reluctant to talk about the SDM tools again,  
14 Mr. Commissioner, because I feel that when we emphasize the  
15 discussions of the tools, to the exclusion of other aspects  
16 of the practice model, which all work together to improve  
17 the way that services are delivered to families, and we,  
18 and we pull the SDM tools out, we are over emphasizing  
19 their use. But unfortunately, because of some of the  
20 submissions which have again been made, we have not choice  
21 but to talk about the tools a little bit more.

22           And I'd again like to reiterate that there was --  
23 Mr. Funke yesterday, and I'm paraphrasing, so Mr. Funke  
24 will, will correct me if I express this incorrectly, but  
25 Mr. Funke expressed yesterday that the, the CRC warns

1 against taking a tool from another jurisdiction and putting  
2 it into place in a different jurisdiction, prior to its  
3 being validated.

4           That's just not how the tools are implemented.  
5 What happens is that the tool is specifically developed for  
6 use in any given jurisdiction. That's what happened in our  
7 jurisdiction. Then there's training on that tool. Then  
8 the tool is implemented. And then once we have enough  
9 cases, because the tool has been in use long enough, we're  
10 able to conduct a validation study, so that any anomalies  
11 in the tool, in terms of cultural bias, can be eliminated,  
12 if that, in fact, is there, if, in fact, those anomalies  
13 are there. And it's important to note that because it's an  
14 actuarial tool, and Mr. Rodgers, in his evidence, back in  
15 May, talked about the difference between actuarial tools  
16 and other tools, if there's an anomaly, it's basically,  
17 it'll be clear. There'll be mathematical data that  
18 suggests an anomaly.

19           So, to be clear, you -- no one takes a tool from  
20 another jurisdiction and simply implements it without  
21 validation. That's not the process. Secondly, we're ready  
22 to validate. I think I've made that, that, that submission  
23 before. And the General Authority agrees, the purpose of a  
24 validation study is to ensure that there is no cultural  
25 bias.

1           When Mr. Rogers gave evidence back in May that he  
2 wasn't particularly concerned about cultural bias, it's  
3 because he has also read all of the studies and the  
4 literature with respect to the use of CRC's SDM tools and  
5 that is not a particular concern to him, because of the  
6 manner in which those anomalies, on the rare occasions,  
7 have occurred and how they've been corrected. It's not  
8 because he's being glib and he just doesn't think it, it,  
9 it's a valid concern. It is a valid concern, but he  
10 believes, from his review of the research, that it's not a  
11 concern to be given an enormous amount of weight, because  
12 the, the validation study will deal with it and it'll be  
13 corrected if, in fact, there is any form of bias in this,  
14 in, in -- any kind of anomaly, it'll be corrected.

15           In the meantime, children are still safer by way  
16 of the use of a tool which gather objective, consistent  
17 data from worker to worker about whether a child is safe,  
18 or in the case of a risk assessment, the level of risk a  
19 child is living with, than to use methods which are less  
20 objective and do not collect objective data. Children are  
21 still safer right now.

22           Leaving the topic of the SDM tools, I do want to  
23 use the tools as a, as an opportunity to address the  
24 concern that Mr. Gindin raised, which I thought I had  
25 addressed, but it was in his reply argument, so I'm going

1 to perhaps address it a different way, is the concern that  
2 information between the four authorities is not being  
3 shared, in terms of what we're doing, what a different  
4 authority is doing, what programs are being applied, how  
5 they're being worked with. That communication is already  
6 happening at standing committee. There is no hoarding of  
7 information.

8           And the SDM tools are a perfect example of that.  
9 The General Authority did do the initial research and  
10 brought the SDM tools to the attention of the other  
11 authorities at standing committee. And the other  
12 authorities, in a joint effort with the General Authority,  
13 brought into place the probability of future harm tool and  
14 the safety assessment tool (inaudible) following. And it's  
15 a perfect example of how the standing committee is supposed  
16 to work. The General Authority said, look at this, this is  
17 great, we -- this is why we think it's great. Other people  
18 said yes, we agree with this piece or that piece and  
19 certain aspects have been implemented province-wide, as a  
20 joint effort.

21           Other aspects have been continued on the part of  
22 the General Authority on its own and the other authorities  
23 have, I think, and I, and I don't want to misspeak, but  
24 have also engaged with the Children's Research Centre on  
25 their own, in other ways. So that there is some joint

1 effort, but the application, the how is being tailored  
2 between the authorities and the way which is most  
3 appropriate for that authority. It's not for the General  
4 Authority to impose on anyone else how they ought to  
5 conduct the business of the administration of child welfare  
6 service delivery in their authority. It's our job to share  
7 information, as they do with us.

8 Just one moment please. And I have just a few  
9 more comments. They'll be very brief, Mr. Commissioner.

10 With respect to the issue of cultural  
11 appropriateness, in terms of the service delivery for child  
12 welfare services, we would just like to remind you, Mr.  
13 Commissioner, that because of the vast overrepresentation  
14 of aboriginal peoples and children in the child welfare  
15 system, we talk about that cultural appropriateness,  
16 rightly so, with an emphasis on cultural appropriateness  
17 for aboriginal peoples, in terms of the child welfare  
18 system, but I'd like to remind you, Mr. Commissioner, that  
19 the General Authority has other challenges and we have  
20 challenges of diversity, which were also talked about by  
21 Dr. Wright as being major challenges, in terms of dealing  
22 with cultural diversity and providing culturally  
23 appropriate services to other cultures, which are in the  
24 minority in the child welfare system. And both Dr. Wright  
25 and Mr. Rodgers talked extensively, in their oral evidence,



1 about the challenges of dealing with newcomer populations  
2 and other, other diversity issues, in terms of the delivery  
3 of child welfare services.

4 As a separate statement, the General Authority  
5 does wish put on the record that it does support the full  
6 restoration of, of the provision of child welfare services  
7 to aboriginal peoples.

8 THE COMMISSIONER: You -- give me that again?

9 MS. HARRIS: We do support the restoration of the  
10 provision of child welfare services to aboriginal people,  
11 to their own people. Not saying that very eloquently, but  
12 that's, I think, the, the gist of it.

13 And lastly, a very brief comment with respect to  
14 the issue of privatization of child welfare services. We  
15 do have some community involvement. The, the -- in --  
16 within the General Authority, the, the example which was  
17 used was the Royal Bank of Canada is, in part, sponsoring  
18 our Age of Minority Initiatives, in terms of the aftercare  
19 program that you heard evidence about, where there's a  
20 central phone line that youth who have transitioned out of  
21 care can call for job search assistance, or counseling, or  
22 housing assistance and that sort of thing. We agree that  
23 that's something to watch for, but at the same time, we  
24 just want to make it very clear that no private money is  
25 going to fund mandated work on the, in the child welfare

1 system, within the General Authority. Mandated services  
2 are funded publicly, full stop. The services that the  
3 General Authority, the, the, this initiative that we've  
4 designed, that we hope will apply for children province-  
5 wide, not just kids who are within the GA, is a non-  
6 mandated services. It's our initiative and we had to fund  
7 that out of our own budget and we did receive some private  
8 funding to do that and again, better to be able to provide  
9 that service on a pilot basis, using some private funds,  
10 than to not be able to provide that service to children.  
11 But again, want to make very clear, no mandated services  
12 are being provided with the use of private monies, none.

13           And lastly, I wish to correct myself. I  
14 apparently misunderstood Mr. Funke during his first  
15 submission and he corrected me and he was right to do so.  
16 But we agree with the notion that there should be new  
17 funding for primary prevention services, the kinds of  
18 prevention services that are conducted by community  
19 agencies and that that funding should happen without  
20 diversion from the funding which goes to the child welfare  
21 system, including the provision of secondary prevention  
22 services. And we agree with Mr. Funke's submission that  
23 over time it would be everyone's hope and wish that the  
24 need for child welfare services would decrease as primary  
25 prevention services take hold and take effect and, and

1 reduce the impact and the need for the intervention of the  
2 child welfare system. But until then, obviously, we still  
3 continue to require our funding and require the increases  
4 in funding that have been put forward to you, Mr.  
5 Commissioner, by way of a number of recommendations from  
6 various parties.

7 And with that, those conclude my submissions in  
8 reply.

9 THE COMMISSIONER: Thank you, Ms. Harris,  
10 appreciate your contribution.

11 MS. HARRIS: Thank you.

12 THE COMMISSIONER: All right. What time shall we  
13 adjourn to, Ms. Walsh, to, in order to complete today?

14 MS. WALSH: Counsel that I spoke with were fine  
15 with taking just an hour for lunch.

16 THE COMMISSIONER: All right. Let's, let's  
17 adjourn until 1:30 then.

18 MS. WALSH: Thank you.

19

20 (LUNCHEON RECESS)

21

22 THE COMMISSIONER: All right. Mr. McKinnon  
23 please.

24 MS. WALSH: Just before --

25 THE COMMISSIONER: Oh --

1 MS. WALSH: -- Mr. McKinnon begins, Mr.  
2 Commissioner, just a housekeeping issue. You will recall  
3 that Mr. Haight, during his submission, mentioned that he  
4 was going to be filing what he called Exhibit 136A, which  
5 was a corrected version of the exhibit that had been filed  
6 as 136 --

7 THE COMMISSIONER: Yes.

8 MS. WALSH: -- so that has now been provided and  
9 circulated to counsel and I just wanted to confirm that  
10 that has formally been done.

11 THE COMMISSIONER: Right. Thank you.

12 MR. MCKINNON: Thank you, Mr. Commissioner,  
13 Gordon McKinnon, counsel for the Department and Winnipeg  
14 CFS.

15 Mr. Commissioner, I'm going to start by  
16 commenting on an issue that you asked me to look at last  
17 week, which was the structure of standing committee and you  
18 specifically requested some submissions on staffing,  
19 funding and accountability. So I propose to do that first  
20 and in order to assist you, Mr. Commissioner, there are  
21 four documents in the Commission disclosure that I'll be  
22 referring to. I have made copies for you, just so that you  
23 can look at the paper and the clerk, I may be asking to  
24 bring them up on the screen.

25 THE COMMISSIONER: Thank you.

1           MR. MCKINNON: Mr. Commissioner, I can indicate  
2 that we've -- Ms. Ewatski has e-mailed all counsel, there's  
3 no objection to these documents becoming part of the  
4 evidence. And I think these documents will help me explain  
5 standing committee to you and help you understand.

6           The first document that I'm going to refer you to  
7 is Commission disclosure 1052, at page 21768. And you'll  
8 see, Mr. Commissioner, this is described as a joint  
9 resolution of the members of standing committee and it's  
10 dated January 22nd, 2008. And this is a resolution that is  
11 establishing the Office of the Standing Committee. So  
12 you'll recall, the standing committee is created by  
13 statute, amongst the four authorities and the statutory  
14 director. Here they are, by resolution, creating the  
15 Office of the Standing Committee. And you will see that  
16 there was a consensus amongst the authorities, the Child  
17 Protection Branch and the leadership council. That's right  
18 in the second line of that document and I'll just do a, a  
19 segue and remind you who the leadership council is.

20           THE COMMISSIONER: It's also statutory.

21           MR. MCKINNON: It's also statutory and that is  
22 under the Authorities Act and it's Section 29 of that Act  
23 and it, it creates the leadership council. In order to  
24 determine who's on that leadership council, you have to  
25 look at the regulations and I don't know if I have the

1 regulation in front of me, but in a nutshell, it's the --  
2 I, I don't want to get this wrong, Mr. Commissioner, so let  
3 me see if I can find it. Yes, it's at Section 58 of the  
4 Regulation 183/2003. And the leadership council is the  
5 minister of Family Services, the minister of Aboriginal and  
6 Northern Affairs. So there's two ministers. The grand  
7 chief of SCO, the grand chief of MKO, the president of the  
8 Manitoba Métis Federation and a Métis woman, designated by  
9 the Métis Federation. And so you see, I'm tying into this  
10 on this segue, Mr. Commissioner, this was seen as an  
11 important development in child welfare in Manitoba. So  
12 that that was an occasion where the leadership council was  
13 consulted and was part of the consensus that was reached,  
14 resulting in the creation of this office.

15           And if you look at the details of that  
16 resolution, it allocates new funding from the Province, it  
17 describes a core staffing complement, including things like  
18 a coordinator, a financial analyst. There's administrative  
19 assistants and policy analysts. And at point number 5, you  
20 will note that the office reports to the standing  
21 committee. So with this resolution, we see the political  
22 leadership and the leadership of the Child and Family  
23 Services, through their authorities, reaching a consensus  
24 on the creation of this new office.

25           The next document I'm going to refer you to is

1 the second in that bundle. It's Commission disclosure 1223  
2 and it's page 25822.

3 And Mr. Commissioner, this is described as an  
4 analytical document, which was prepared by and presented to  
5 Treasury Board. You will see, in this document, that the  
6 Department is requesting 1.5 million dollars to support  
7 this office, Office of the Standing Committee. And as  
8 well, on page 1 of that document, you will see, Mr.  
9 Commissioner, a description of the 15 staff to be hired to  
10 support the work of the office. I won't go through it, but  
11 that will -- in, in table form, you'll see it there.

12 I'll note, as well, Mr. Commissioner, at the  
13 bottom of the page, under key issues, there is reference to  
14 the fact that this request for the creation of standing  
15 committee office arises out of the ombudsman's report,  
16 which is one of the six reports referenced in the order in  
17 council.

18 And if I can take you to the next page, the very  
19 top of that page, there is a very brief description where  
20 Treasury Board is advised that, on the basis of existing  
21 resource levels, the authorities do not have the capacity  
22 to attend to their responsibilities and it notes those  
23 responsibilities include developing minimum standards and  
24 joint protocols, investigative and analytical work to  
25 ensure the application of best practices, research planning

1 and the development for the implementation of AJI-CWI.  
2 It's at the top of page 2 and it's in that first paragraph  
3 before the bullet. Excuse me.

4 So my submission, Mr. Commissioner, is that  
5 little paragraph is helpful, in that it concisely describes  
6 the role of standing committee office and the work being  
7 done by standing committee.

8 The next document that I'd like to refer you to  
9 is Commission disclosure 1102, page 23464. And this is a  
10 progress report on the Changes for Children initiative.  
11 You've heard much about that in the course of the inquiry,  
12 Mr. Commissioner. It's, it's issued in autumn of 2010. I  
13 chose this document because I thought it was helpful in  
14 giving you a bit of the history of the Office of the  
15 Standing Committee. It talks about, in the introduction,  
16 it actually references this the Phoenix Sinclair tragedy.  
17 It talks about the fundamental structure of the  
18 organization. It mentions the external reviews. It  
19 describes the Changes for Children initiative. That's at  
20 page 23469.

21 THE COMMISSIONER: Yes.

22 MR. MCKINNON: At, for example, at page 23470,  
23 you will see reference to primary prevention initiatives  
24 that are being planned and implemented by standing  
25 committee. So a lot of this, Mr. Commissioner, is with a



1 view to ensuring that you have a, a picture that standing  
2 committee -- and, and, and a lot of the evidence you heard  
3 from the General Authority and from the Southern Authority  
4 and from ANCR, was also being implemented systemically  
5 through standing committee. So that's the intent of, of  
6 drawing this to your attention.

7 THE COMMISSIONER: Right.

8 MR. MCKINNON: And in the pages that follow, you  
9 will see all kinds of other system-wide initiatives that  
10 are being referenced. There's intersectoral (phonetic)  
11 (sic) collaboration, there is, at page 23472, there's a  
12 reference to the fetal alcohol spectrum disorder  
13 initiatives. There is reference to things like an  
14 aboriginal elders' gathering. So these are the kind of  
15 initiatives that are being planned and developed at  
16 standing committee.

17 If you refer to page 23478 and the pages that  
18 follow that, Mr. Commissioner, you'll see standing  
19 committee's involvement in creating the new differential  
20 response model. On the next page, you'll see reference to  
21 the implementation plan and you'll see reference, for  
22 example, to the, to the 54.5 staff positions created by the  
23 funding. So a lot of this is evidence that you've heard,  
24 Mr. Commissioner, it's sort of concisely summarized here.  
25 But the important point that I'm trying to illustrate is

1 this is being coordinated by standing committee.

2 The next document I would like to draw your  
3 attention to, Commissioner, is the fourth one I, I just  
4 handed you. It's Commission disclosure 1972, page 40938.

5 Now, this is slightly different from the other  
6 reports, because it is a report to standing committee, not  
7 a report from standing committee. And what this document  
8 demonstrates in some detail, more than you need to look at,  
9 is the specialized training that's taking place throughout  
10 the system. And if you look at 40941, Mr. Commissioner,  
11 you'll see a chart listing all kinds of training  
12 initiatives that are taking place in the province.

13 The next page, you'll see what's happening with  
14 the competency based training, with various training  
15 modules that are being offered. And the point of providing  
16 you with this document, again, is to show that in thing --  
17 with respect to things like training, which is a province-  
18 wide initiative, standing committee was providing direction  
19 and oversight to (inaudible).

20 So that is sort of a, a, a series of documents  
21 that I hope will provide you with some comfort, Mr.  
22 Commissioner, that standard committee is providing some  
23 central coordination of the delivery of services.

24 THE COMMISSIONER: Yeah, I, I'm pleased to have  
25 that, just to give me that background and understanding.

1           MR. MCKINNON:     Now, you've also asked me to  
2 comment on the accountability of standing committee and the  
3 way I would describe standing committee is as a  
4 partnership. It's a partnership of the four authorities  
5 and the statutory director. Each of the five partners is  
6 responsible to their board, or in the case of the statutory  
7 director, she's responsible to the deputy minister.  
8 Collectively, they're responsible for identifying those  
9 areas that need central planning and coordination and once  
10 identified, to ensure that the coordination and  
11 implementation necessary to run the child welfare system is  
12 in place.

13           THE COMMISSIONER:   Just review again collectively  
14 who they're responsible to?

15           MR. MCKINNON:     Each of the four authorities, the  
16 CEOs, is responsible to their board.

17           THE COMMISSIONER:   Yes.

18           MR. MCKINNON:     The director, the statutory  
19 director, is responsible to the deputy minister.

20           THE COMMISSIONER:   Yes.

21           MR. MCKINNON:     And collectively, and the analogy  
22 I'm using is a partnership, as a partnership, they're  
23 responsible for identifying areas that need central  
24 planning --

25           THE COMMISSIONER:   And identify --

1           MR. MCKINNON:  -- or need central -- areas that  
2 need central planning --

3           THE COMMISSIONER:  Yes?

4           MR. MCKINNON:  -- or coordination, such as we've  
5 been talking about, training, differential response  
6 strategy, those kinds of things.  So they identify those  
7 areas and then they ensure the coordination of the  
8 implementation.

9           THE COMMISSIONER:  And, where, where are, where  
10 is that?  What are you reading from when you give me that  
11 collection?

12          MR. MCKINNON:  That's from, that's just -- it's  
13 not written anywhere, Mr. Commissioner.

14          THE COMMISSIONER:  Okay.

15          MR. MCKINNON:  That is by way of an analogy, I  
16 think a partnership analogy is the best I can come up with.

17                 And you'll recall that the goal of all of this is  
18 to try to ensure there is central coordination --

19          THE COMMISSIONER:  Yes, that's --

20          MR. MCKINNON:  -- but not entrench upon the goals  
21 and intent of AJI-CWI, which is to allow aboriginal  
22 authorities a high degree of autonomy over child welfare  
23 with respect to their people.

24                 And so what I'm describing to you, Mr.  
25 Commissioner, is really the balance that has been struck in

1 Manitoba.

2 I'm now moving on to other issues and I'm going  
3 to reply to some of my colleagues. I'm going to start by  
4 replying to Ms. Dunn's submission. And you'll recall, Mr.  
5 Commissioner, in my previous oral submission, I gave a  
6 detailed description of what the Department sees as the  
7 proper role for community-based agencies. We think that  
8 they have a role to play prior to any issues of  
9 maltreatment arising and we also think they have a role to  
10 play in the reduction of recurrence of maltreatment, or  
11 impairment that may otherwise result from maltreatment, if  
12 no services are provided. So that's a very high level  
13 where we see the roles of community-based agencies.

14 When Ms. Dunn made her submissions on Monday, she  
15 suggested that the evidence of Dr. McKenzie was to the  
16 effect that we have invested so much money in family  
17 enhancement that we can't change because of the amount of  
18 money that's been invested. And in, in, in our submission,  
19 Ms. Dunn has not correctly described Dr. McKenzie's  
20 evidence on that point and I would like to just refer you  
21 to that, because we consider it fundamentally important.

22 And if you look at page -- or sorry, paragraph  
23 114 of our written brief --

24 THE COMMISSIONER: Yes, I have it right here.

25 MR. MCKINNON: -- what we submit Dr. McKenzie is

1 saying there and we've repeated his evidence verbatim, what  
2 we say the correct interpretation of his evidence is, is  
3 four things. Number 1, it's not -- the first point is  
4 perhaps the one that Ms. Dunn interpreted, interpreted as  
5 being related to money. But what he says is we've been  
6 building capacity, within the CFS system, to provide  
7 prevention services. He says those initiatives would be  
8 lost if there was a transfer of, of prevention services to  
9 community-based agencies.

10 So it's my submission that it's not the money  
11 he's referring to, rather, it's the resource and the  
12 capacity that's been developed over the last six years.

13 The second point, and he actually starts out, the  
14 paragraph starts out with the word secondly, Dr. McKenzie  
15 says we do not have a well-developed NGO sector in this  
16 province, as do other jurisdictions and I think that's,  
17 again, a point with which the Department would agree.

18 THE COMMISSIONER: Just a minute, where does it  
19 say secondly?

20 MR. MCKINNON: Paragraph 114, there's a quote --

21 THE COMMISSIONER: Yeah.

22 MR. MCKINNON: -- the third paragraph down  
23 starts with the word --

24 THE COMMISSIONER: Oh, oh --

25 MR. MCKINNON: -- secondly.

1 THE COMMISSIONER: -- oh, right in the quote.  
2 Oh, I'm sorry.

3 MR. MCKINNON: Right in the quote.

4 THE COMMISSIONER: Okay.

5 MR. MCKINNON: Yeah.

6 THE COMMISSIONER: It's in the quote, okay.

7 MR. MCKINNON: And in that, the second point he  
8 makes is that there's a lack of capacity in the community-  
9 based agencies to do this kind of prevention work.

10 And we submit that's consistence, consistent with  
11 the evidence you heard from community-based agencies, that  
12 they are having difficulties retaining staff and that many  
13 of their best workers end up working for the child welfare  
14 agencies. So there is a problem with capacity in the non-  
15 government sector.

16 The third point he makes is that these services  
17 are not generally available outside of Winnipeg and in  
18 particular, in aboriginal communities.

19 And the fourth point he makes is the difficulties  
20 this would create in the coordination of services. And I  
21 think a lot of the argument you've heard from the various  
22 authorities and agencies, in the last several days, has  
23 been that issue of coordination of services.

24 So we say the reason, cited by Dr. McKenzie, with  
25 which we concur, it's nothing to do with money, it has to

1 do with capacity.

2 Mr. Commissioner, I'm going to move on to AMC/SCO  
3 and reply to some of the arguments of Mr. Funke.

4 In his oral reply, which you heard recently, Mr.  
5 Funke, on numerous occasions, made reference to what he  
6 described as the requirement of the province to consult  
7 with his client on legislative changes.

8 THE COMMISSIONER: Yes.

9 MR. MCKINNON: You're well familiar with that  
10 point.

11 THE COMMISSIONER: I am.

12 MR. MCKINNON: I think it's important that the  
13 Department comment on this issue. To the extent that Mr.  
14 Funke has made the argument that no legislative amendments  
15 should be made without consultation with his client, to the  
16 extent that he's made that argument, my submission to you,  
17 Mr. Commissioner, is this is entirely a process issue. The  
18 process being by what process should Manitoba consider  
19 legislative amendments? And we submit that's a  
20 consultation process and we also would suggest that it  
21 should not be your obligation, at this inquiry, to  
22 determine what an appropriate consultation process would  
23 look like.

24 Now, I don't want my comments to be  
25 misinterpreted as suggesting that the Department is not



1 prepared to consult. I would submit that you heard  
2 evidence from Ms. Loepky, and others, that the Department  
3 has, to date, acted in good faith with, with its aboriginal  
4 partners and with aboriginal leadership. And I take you  
5 back, for example, to the first piece of paper we looked at  
6 a moment ago, where the leadership council was involved and  
7 consulted on the creation of the standing committee office.

8 We have every reason to expect that kind of  
9 cooperation to continue with any further, any future  
10 consultations that may be required at a, as a result of the  
11 recommendations you may make. I think it would be fair for  
12 you, Mr. Commissioner, to assume that the Department will  
13 conduct itself in such a way that any recommendation you  
14 make for legislative change, will be treated seriously by  
15 the Department and the Department will consult with its  
16 partners and stakeholders during the legislative process.

17 THE COMMISSIONER: I understand you.

18 MR. MCKINNON: Okay. The however, and there's  
19 always a however, the however is that the Department's  
20 hands should not be tied and recommendations should not  
21 restrict the Department's ability to provide central  
22 governance where that is essential.

23 THE COMMISSIONER: To provide central government?

24 MR. MCKINNON: Where that is essential.

25 Finally, Mr. Commissioner, we remind you that

1 there are other stakeholders that need to be consulted,  
2 such as the authorities and in some cases, collateral  
3 agencies.

4 I want to make some comments now about -- I'm  
5 responding to Mr. Funke's submission, who was, in turn,  
6 referring to ANCR's recommendation number 34 and that was  
7 the recommendation dealing with First Nations' jurisdiction  
8 and First Nations law.

9 THE COMMISSIONER: Just let me find that now.  
10 Yes, I have it.

11 MR. MCKINNON: And you'll recall, Mr. Funke noted  
12 that his client fully endorsed that recommendation and he  
13 also advised you that, in discussions with me, it was his  
14 conclusion that the Province also endorsed the restoration  
15 of First Nations' jurisdiction. And I think it's important  
16 that I clarify and that you hear from me on this point.

17 THE COMMISSIONER: Yes. You're going to tell me  
18 the Province's position?

19 MR. MCKINNON: Well, I'm going to tell you, first  
20 of all, that my client's the Department, not the Province,  
21 so I can't speak for the Province. So to that extent, Mr.  
22 Funke used the word Province, I would have preferred he use  
23 the word Department.

24 THE COMMISSIONER: You're -- but let's look at  
25 that. You're, you're representing the department of

1 government that has responsibility in this area.

2 MR. MCKINNON: Yes.

3 THE COMMISSIONER: So aren't you, by extension,  
4 representing the Government?

5 MR. MCKINNON: I don't want to go that far  
6 because it, it does involve First Nations law and I'm, I'm  
7 going to come to that, why I'm a little bit uncomfortable  
8 that I can speak on First Nations law.

9 When it comes to the position of the province, I  
10 can say, as was pointed out by the witness, Norman Bone, in  
11 his evidence, that the Authorities Act expressly states  
12 that that legislation must not be interpret, interpreted as  
13 abrogating or derogating from the pursuit of self-  
14 governance by aboriginal peoples in Manitoba. So that's --

15 THE COMMISSIONER: That's --

16 MR. MCKINNON: -- in --

17 THE COMMISSIONER: -- that's a section of the  
18 Authorities Act.

19 MR. MCKINNON: -- Section 3 of the Act. So to  
20 that extent, I'm comfortable saying that Manitoba has  
21 recognized the current situation is not an end game, but a  
22 step in the process.

23 THE COMMISSIONER: Did you say not an end game?

24 MR. MCKINNON: The current situation is not the  
25 end game. We don't take the position that with the

1 creation of the Authorities Act, we have fully satisfied  
2 the ambitions of aboriginal people for self-governance.

3 THE COMMISSIONER: In this area?

4 MR. MCKINNON: In this area. And the question we  
5 submit, from the Department's perspective, is what that  
6 means at the present time. And the point I made, in my  
7 submissions, can't remember when it was, last week, was  
8 that with the creation of the Authorities Act, there's a  
9 very high degree of aboriginal control in Manitoba that, in  
10 my submission, is unprecedented in Canada. So we've gone a  
11 long way, but the Department is not telling aboriginal  
12 people that no further developments can take place along  
13 the road to self-governance. But it's important that it be  
14 recognized how far we've gone.

15 And the other point I made last week, Mr.  
16 Commissioner, is that what's necessary now, at this interim  
17 stage, along the path to aboriginal self-governance, what  
18 is important now is to make the current system work and I  
19 don't think there's any disagreement from Mr. Funke, or any  
20 of his client, that the goal, at the, at the current, at  
21 the present time, is to make the current system work as  
22 effectively as possible and to build, within the aboriginal  
23 community, the capacity for whatever the future may hold,  
24 in terms of aboriginal self-governance.

25 THE COMMISSIONER: To build in the aboriginal

1 community, did you say the ability or the --

2 MR. MCKINNON: The capacity.

3 THE COMMISSIONER: -- the capacity?

4 MR. MCKINNON: Capacity is the key word,  
5 because --

6 THE COMMISSIONER: To --

7 MR. MCKINNON: -- you can't have --

8 THE COMMISSIONER: -- the capacity to, to assume,  
9 or accept?

10 MR. MCKINNON: Yes, to, to provide services in  
11 whatever form any future aboriginal self-governance may  
12 take form. So that's the -- the, the points are, we're not  
13 saying it's the end of the, of the street, and it's not the  
14 end of the road, but let's make the current system work.  
15 Let's not defer making the current system work, on the  
16 basis of something that may come many years down the  
17 future.

18 The third point is in terms of where are we  
19 today? The third point is what Mr. Norman Bone said, is  
20 that First Nations people have to sit on their side of the  
21 house, those were his words, and have these discussions.  
22 And you will recall, that was in response to a, a very able  
23 cross-examination by Mr. Cochrane, where he was asking Mr.  
24 Bone to explain what aboriginal self-governance looked like  
25 and, and Mr. Bone was explaining, it's not going to be

1 easy. There's issue as to whether it's going to be by  
2 treaty, or whether it's going to be by band, or whether  
3 it's going to be by nations. Lots to work out.

4 THE COMMISSIONER: Now, in the last minute,  
5 you've used both aboriginal and First Nations.

6 MR. MCKINNON: Right. I should be using the word  
7 First Nations.

8 THE COMMISSIONER: And why do you say that?

9 MR. MCKINNON: There's no issue in the minds of  
10 the Department whether Métis people have this degree of  
11 control, but it's First Nations people that take the  
12 position, as I understand it, that they have a right to  
13 self-governance.

14 THE COMMISSIONER: I, I follow you.

15 MR. MCKINNON: And I remind you again of Mr.  
16 Bone's evidence, where he said, we, as First Nations  
17 people, have to sit and design this child welfare law. So  
18 there's no plan in place, Mr. Commissioner. There's no  
19 defined First Nations law that's sitting on a shelf  
20 somewhere. And from the Department's position, what we're  
21 saying in, in the third point on this whole issue, the  
22 third point, in terms of the status, where we are today, is  
23 that the next step should come from the aboriginal people.  
24 It should not be up to the Department to anticipate what  
25 First Nations people want, in the form of self-governance.

1 It should be for them to present. And that's when we move  
2 forward, not before.

3 So what I say, Mr. Commissioner, is, in the  
4 absence of a specific proposal, it's difficult for the  
5 Department to comment further, other than we're not closed  
6 to the idea.

7 One final point on this, Mr. Commissioner. It's  
8 the Department's understanding that the kind of full  
9 restoration of aboriginal control over child welfare that  
10 would meet the aspirations of First Nations leadership may  
11 be outside of the constitutional authority of Manitoba.  
12 And I say may be, because it would depend what the proposal  
13 is. It would certainly require some involvement of Canada  
14 and it may require an amendment to the constitution. And  
15 that's where I'm saying I can't speak for Manitoba. Mr.  
16 Commissioner, I'm not a constitutional lawyer and we don't  
17 pretend to be giving you advice on constitutional law,  
18 other than we understand there may be some limitations on  
19 what Manitoba can do alone.

20 I'm going to move now, Mr. Commissioner. In  
21 terms of opening files in the name of the child, that was  
22 one of Mr. Gindin's recommendations. I believe it was his  
23 recommendations number 3.

24 THE COMMISSIONER: Yes.

25 MR. MCKINNON: And I'm not responding to Mr.

1 Gindin's submissions, I did that earlier, but I do want to  
2 respond to Mr. Funke's argument on this point. And I  
3 listened carefully to his comments and as I interpreted his  
4 remarks, he characterized this issue, about which, whether  
5 the file should be in the name of the child, or in the name  
6 of the caregiver as a CFSIS issue and it was his submission  
7 to you that this was primarily limited by technology. I  
8 can advise you that the Department disagrees that this is a  
9 CFSIS issue.

10           The Department opposes this recommendation for  
11 the reasons I articulated earlier and fundamentally, that  
12 is, if there's more than one child living in the same  
13 household, there's -- the risk to those children are  
14 generally the adults in the household. And the tools we  
15 now use require that everyone in the household be assessed  
16 and our whole structure of service delivery is based on the  
17 household. We fear that to open files in the name of the  
18 child, where there's more than one child in the family,  
19 would create a disjointed view of the family. We would be  
20 concerned about the risk of information being on one file  
21 and not being transferred to another file. It is not just  
22 an administrative burden, it's a risk that information will  
23 not be easily located when looking at risk. So the  
24 position of the Department, Mr. Commissioner, is that this  
25 has nothing to do with information technology. Regardless



1 of the information system that may be in place, the  
2 Department would oppose this recommendation.

3           One final point, because I don't know if this is  
4 made, been made clear to you, but it's, just wanted to  
5 remind you of this point, Mr. Commissioner, when a child is  
6 in care, under the current system, when a child is in care,  
7 they do get their own file. The file is opened up in the  
8 name of the child when they are in care. And the reason  
9 for that is that while children -- there's always an  
10 attempt to keep siblings together. That can't always be  
11 achieved. So when the child goes into care, the file is in  
12 the child's name. So that already exists.

13           Finally, Mr. Commissioner, I just want to briefly  
14 respond to Mr. Cochrane's submissions to you earlier this  
15 morning. And I urge you to review my comments that I made  
16 last week and not the characterization of those comments  
17 that Mr. Cochrane gave you this morning.

18           Mr. Commissioner, Mr. Cochrane made the point  
19 that his clients are experts. We take no issue with that.  
20 We have excellent leadership in the, in the Authorities.  
21 You heard from Ms. Flette, you heard from -- although not,  
22 not Mr. Cochrane's client, you heard from Mr. Rodgers,  
23 clearly experts. You heard from Sandie Stoker, also  
24 expert. So suggestion that they lack expertise.

25           Secondly, I did not suggest that their

1 recommendations be ignored. And there was some suggestion  
2 that there was a sweeping generalization by me, on behalf  
3 of the Department, that their, that their recommendations  
4 be ignored. What I suggested -- and, and, and frankly,  
5 there was no suggestion by me that you should be restricted  
6 by cost. There was no suggestion of that kind by me. What  
7 I suggested is that you may find it difficult, it may  
8 present you with a challenge, for you to prioritize  
9 (phonetic) (sic), literally dozens of recommendations, in  
10 the absence of an evidentiary foundation and some notion of  
11 what those recommendations may cost, so that you can assess  
12 whether they're reasonable.

13           And by way of illustration, in my submissions  
14 last week, I drew your attention to the fetal alcohol  
15 syndrome issue and how there had been a decision made not  
16 to call evidence on that point and then a recommendation  
17 came forward from the authorities. Now, I never said there  
18 was no evidence on fetal alcohol syndrome, but I said we  
19 hasn't heard -- there was scant evidence, I think was my  
20 phrase. So just because the words "fetal alcohol syndrome"  
21 may have been mentioned at the inquiry, or just because  
22 somebody may have mentioned the word "addictions" at the  
23 inquiry, I submit, doesn't give you an evidentiary base to  
24 determine whether there should be a fetal alcohol syndrome  
25 specialist in every agency.

1           My final comments, Mr. Commissioner, when it  
2 comes to any recommendation that you may be considering  
3 that involves a reorganization of the way in which services  
4 are delivered, the Department would recommend caution. And  
5 I don't think there are many that I would describe as a  
6 fundamental reorganization. The one that comes to my mind  
7 most clearly is the recommendation of us separating  
8 prevention into, into a separate agency. That would  
9 certainly be a fundamental reorganization. And we  
10 recommend extreme caution.

11           In phase 1 and phase 2 of the inquiry, Mr.  
12 Commissioner, you heard a great deal of evidence from  
13 social workers and their managers, and my, and my  
14 witnesses, about the difficulty created by the  
15 reorganizations that occurred between 2000 and 2005. So  
16 reorganization has a cost and we submit that what's -- and,  
17 and, and I'm not going to repeat all my arguments about the  
18 changes that we have implemented since 2006, with the  
19 receipt of these reports. You have that, Mr. Commissioner.  
20 But it's our submission that we've now got the program  
21 changes, the funding, the training and the practice model  
22 and we're starting to see better results. And what we  
23 think is that a period of stability is required, in terms  
24 of structure or organization. And most of these program  
25 changes, structured decision making and the practice model,

1 and the training and all these things you've heard so much  
2 about in phase 2, are relatively new, three, three to five  
3 years old. So we think we need some time to embed those  
4 practices throughout the system and that should be  
5 something that should bear, in your mind, when considering  
6 recommendations that may fundamentally restructure the way  
7 services are being delivered.

8           What we are hoping, Mr. Commissioner, is that  
9 amongst your recommendations, you will see fit, based on  
10 the evidence you've heard at this inquiry, you will see fit  
11 to say that child and family services in Manitoba are on  
12 the right track. And what we are hoping is that your  
13 recommendations will add to the developments that have  
14 taken place since 2006, so that we can continue to make  
15 progress.

16           Now, unless you have any questions, Mr.  
17 Commissioner, those are my submissions.

18           THE COMMISSIONER: No, thank you, Mr. McKinnon,  
19 that, I think, completes everything I require.

20           MR. MCKINNON: Thank you very much, Mr.  
21 Commissioner, it's been a pleasure.

22           THE COMMISSIONER: Thank you. All right. I  
23 guess we're going to hear again from the University in  
24 reply. Ms., Ms. Versace?

25           MS. VERSACE: Good afternoon, Mr. Commissioner,

1 I'm Maria Versace, appearing for the University of Manitoba  
2 and I'll just take a couple of minutes to address the two  
3 recommendations that were addressed by Mr. Funke, on behalf  
4 of the AMC/SCO and I will be referring to our brief, if you  
5 could have that in front of you.

6 Mr. Funke addressed two of our recommendations,  
7 the first being at page 29, and that was paragraph  
8 60(b)(i), with respect to the programming offered by the  
9 University or proposed to be offered by the University of  
10 Manitoba. Mr. Funke advised that his client was endorsing  
11 the proposal within our brief, but further urged you to  
12 recognize the need for programming, particularly specific  
13 programming regarding indigenous knowledge at the Bachelor  
14 of Social Work level as well.

15 And in reply there, I just, three points that I  
16 would like to make with respect to that.

17 THE COMMISSIONER: All right.

18 MS. VERSACE: First, I would direct you to Dr.  
19 Frankel's evidence on April 24th, on page 163, where he  
20 describes the fact that the social work, Bachelor of Social  
21 Work is a generalist degree, according to accreditation  
22 standards and that specialization tends to occur at a  
23 Masters level.

24 Secondly, Dr. Frankel further described, at page  
25 223 of his, of the transcript, that there are limitations

1 to redesigning the Bachelor of Social Work's degree, due to  
2 those accreditation standards.

3 And third, at page 144 of his evidence, he  
4 describes the efforts that have been made to bring specific  
5 programming regarding indigenous knowledge to the  
6 undergraduate level with respect to a mandatory six credit  
7 hour course that is required for all students within the  
8 Bachelor of Social Work degree.

9 Moving to the next recommendation that Mr. Funke  
10 addressed, which was at page 30 of our brief, this  
11 recommendation was regarding an, an increased focus on  
12 safety-oriented, on the safety-oriented practice model.

13 THE COMMISSIONER: Which number is that?

14 MS. VERSACE: That would be paragraph  
15 60(b)(iv)(A).

16 THE COMMISSIONER: Oh, okay, yeah.

17 MS. VERSACE: Mr. Funke raised the point that  
18 there wasn't a lot of evidence for his client to review and  
19 to determine whether or not they would endorse this type of  
20 a recommendation and he referred to the evidence of Dr.  
21 McKenzie, which was cited within our brief, at page 26 and  
22 that's at paragraph 55(d)(i). Mr. Funke quoted the, the  
23 testimony that is cited within that paragraph.

24 THE COMMISSIONER: Yes.

25 MS. VERSACE: In fact, there is additional

1 evidence that perhaps should have been also reference in  
2 our brief at that point and I can provide those reference  
3 to you now.

4 THE COMMISSIONER: All right.

5 MS. VERSACE: First of all, in the cross-  
6 examination of Dr. McKenzie by Mr. McKinnon, on May 31st,  
7 at page 102, pages 102 and 103 --

8 THE COMMISSIONER: What day?

9 MS. VERSACE: -- that was May 31st, pages 102 and  
10 103.

11 THE COMMISSIONER: Yes?

12 MS. VERSACE: Dr. McKenzie did refer to the signs  
13 of safety practice technique that was in response to a  
14 question whether or not he was aware of, of that signs of  
15 safety practice technique that was being implemented by  
16 Winnipeg CFS. Dr. McKenzie advised that he was and that  
17 that program is what he would consider to be safety-  
18 oriented, a safety oriented practice model. So I would  
19 refer you to not only that section of Dr. McKenzie's  
20 evidence, but also the evidence of Alana Brownlee and I'm  
21 sorry, I don't have the date of her evidence, but I do have  
22 the page numbers. It's pages 161 to 165. And I would ask  
23 that you review that testimony when reviewing this  
24 particular recommendation, submitted by the University of  
25 Manitoba.

1           Those were the only two issues I wished to  
2 respond to, subject to any further questions.

3           THE COMMISSIONER: Thank you very much.

4           MS. VERSACE: Thank you.

5           THE COMMISSIONER: So, Ms. Dunn, are you -- is  
6 she next? She not here? Mr. ...

7           MS. WALSH: It appears she just stepped out for a  
8 minute.

9           THE COMMISSIONER: Oh, all right, we'll just --  
10 unless, Mr. Rolston, do you want to go next? Or --

11          MS. WALSH: I don't think so. I don't think he  
12 has --

13          THE COMMISSIONER: Has a reply?

14          MS. WALSH: Perhaps Mr. Tramley?

15          THE COMMISSIONER: Yeah, I'm sorry, yes. Mr.  
16 Tamley (phonetic) (sic), do you, do you -- do you want to  
17 go next?

18          MR. TRAMLEY: Certainly, thank you. I was at the  
19 back of the room, testing the theory on whether or not you  
20 actually get called on if you sit at the back of the room.  
21 Looks like --

22          THE COMMISSIONER: Well, you're --

23          MR. TRAMLEY: -- obviously --

24          THE COMMISSIONER: -- on the program.

25          MR. TRAMLEY: -- I'm on the program, so it



1 actually worked, thank you.

2           There are -- I just wanted to check, before I  
3 dealt with my reply, there was some information that you  
4 had asked about, a couple of questions you had asked me  
5 about during my submission yesterday.

6           THE COMMISSIONER: Yes.

7           MR. TRAMLEY: And you had asked me to provide --  
8 or you had inquired about some further information. I'm  
9 wondering whether or not that information has now been  
10 provided to you. There is some excerpts as it relates to  
11 Statistics Canada information, related to population  
12 numbers, as well as a couple of excerpts from the Public  
13 Schools Act and Regulation. That would have been provided  
14 to you very late --

15           THE COMMISSIONER: Yes.

16           MR. TRAMLEY: -- if you have it.

17           THE COMMISSIONER: It seems to me that did come  
18 in. Yes, I have it --

19           MR. TRAMLEY: Would have been come in very  
20 late --

21           THE COMMISSIONER: -- here, yes --

22           MR. TRAMLEY: -- maybe this morning --

23           THE COMMISSIONER: -- no, I --

24           MR. TRAMLEY: -- or late yesterday afternoon.

25           THE COMMISSIONER: -- I have it here.

1           MR. TRAMLEY: I will be briefly reviewing, or  
2 referring to that, so if you have that before you, as well  
3 as our final submission as well.

4           THE COMMISSIONER: Yes, I have both.

5           MR. TRAMLEY: Thank you. There are three areas  
6 that we wanted to cover in our reply. The first one  
7 relates to the comments on the recommendations that were  
8 made by the Aboriginal Council, were made by counsel this  
9 morning for the AMC and the SCO on those recommendations  
10 and then to touch on the other two areas. One was on the  
11 urban population statistics that you asked about yesterday.

12           THE COMMISSIONER: Yes.

13           MR. TRAMLEY: And the third point being, relating  
14 to the makeup or structure of the Franco-Manitoban School  
15 Division.

16           THE COMMISSIONER: Yes.

17           MR. TRAMLEY: Dealing with them in that order  
18 then, yesterday, when Mr. Funke had originally mentioned  
19 that he was going to be making comments about the  
20 recommendations that were made by the Aboriginal Council, I  
21 felt quite flattered, in fact, that somebody had been  
22 listening to what we were commenting about, had read our  
23 material and was actually going to be making some  
24 recommendations or suggestions on those points. That warm  
25 fuzzy feeling evaporated a bit this morning when there was

1 a bit of a chill in the air as it related to the nature of  
2 those comments, as it related to the recommendations. And  
3 I think, to put it bluntly, or diplomatically as possible,  
4 the position being taken by the AMC and the SCO, as it  
5 relates to the Aboriginal Council's involvement in this  
6 inquiry, the evidence that it called, as well as the  
7 recommendations that it's making is really suffering from a  
8 fundamental misunderstanding of what we were saying and  
9 what our purpose for was to be here.

10 From the material that we provided, starting with  
11 the application for intervenor status that, that was  
12 approved by the Commission, the summary of evidence that we  
13 provided, the evidence, through Mr. Helgason, that was  
14 provided to this commission, as well as our written  
15 submission, it was clear what we were talking about, in  
16 terms of what, what we were interested in, as it related to  
17 a particular focus and the needs and desires of the  
18 aboriginal community, particularly in Winnipeg, as it  
19 related to trying to address one of those significant  
20 vulnerabilities and risk factors, being education, a lack  
21 of education. And we tried to fit in with the other  
22 experts that you had, Dr. Santos, Ms. McCuaig, in the  
23 reports that were put before you, both through, through  
24 them as well as others as well. And I've only mentioned  
25 just a couple of them, because those are the two that, that

1 popped to my head, but there was other comments that were  
2 made, both by people from organizations or otherwise, that  
3 related to the importance of trying to address the  
4 underlying risk features, one of them being education. And  
5 that was a particular focus that the Aboriginal Council  
6 had.

7           What its focus wasn't related to some sort of  
8 argument, or dispute, or otherwise, as it related to  
9 representation or role of certain organizations or not  
10 organizations, in particular issues.

11           The Aboriginal Council was fairly strong in the  
12 position that it took as it related to, when dealing with  
13 these issues, when this commission's going to be dealing  
14 with those recommendations, to look at that coin, as I  
15 talked about yesterday, as it related to aboriginal control  
16 and local community control. And that was the context upon  
17 which those comments were made. And if you look at our  
18 recommendations that were made, we're not suggesting that  
19 any particular organization, group or otherwise be  
20 particularly included or not included. The only suggestion  
21 that we've made is it's fundamental that there has to be  
22 consultation with the aboriginal community and that  
23 consultation also has to be done on a local basis.

24           The relative representative nature of any of the  
25 organizations that are out there, or that are participating

1 in this particular inquiry is irrelevant. It's an  
2 interesting question and a really interesting discussion to  
3 have sometime, as it relates to the relative representation  
4 nature of who represents who, who has a role to play,  
5 whether those roles are better played by political  
6 organizations, whether they're played by organizations  
7 service, that are actually servicing in the community, the  
8 mandates like Ms., Ms. Dunn's client, and Ma Mawi, that  
9 you've heard about. But that interesting question and that  
10 debate can be left for another day.

11 The recommendations that we've asked and the  
12 mandate that you have makes the issue or dispute, or lack  
13 of a better phrase, however you want to -- we can agree to  
14 disagree, as it relates to those points. That's not  
15 important and that's not relevant to the particular mandate  
16 that this commission has. The recommendations that we've  
17 asked you to take a look at, you don't have to answer that  
18 question. You don't have to crack that nut to try to  
19 identify who the Province should be dealing with, what  
20 group, organization, or otherwise. That hasn't been part  
21 of the questions that have been put before you, up until  
22 now, and we suggest that it has -- it, it's no part of it,  
23 going forward, in terms of the recommendations you have.  
24 So it's not a matter that you have to struggle with that  
25 issue and come up with some sort of conclusion and say,

1 well, you know, what, I'm not sure that I can necessarily  
2 make that recommendation. That's our concern, is that  
3 there will be a concern, in terms of making a  
4 recommendation and saying, well, now am I saying that that  
5 particular organization may be involved or not involved?  
6 Or do I have to make that kind of determination? We're  
7 saying you don't have to make that kind of determination.  
8 That's not really the point of this commission. The point  
9 is, is dealing with answering the questions, as it relates  
10 to those underlying features and trying to deal with those,  
11 those factors.

12           The issue -- there was one argument that was made  
13 as it related to whether or not education had been brought  
14 up. That was sort of -- it made a reference to whether or  
15 not that counsel had been only interested in early  
16 education, or was it something broader? This was sort of a  
17 new thing, as it related to school board and education  
18 authority.

19           Back at the lunch hour, I went back to the  
20 transcript, just to confirm, because it hadn't been a  
21 secret, Aboriginal Council wasn't making any secret about  
22 its position or advocating on behalf of the communities.  
23 It related to having more than just simply a school,  
24 talking about an education authority, talking about  
25 potentially the school division as well. That evidence was

1 led on May 29th, through Mr. Helgason. That was evidence  
2 that's provided to this commission, that I know that you  
3 will be going through to be able to deal with that.

4 Council for the AMC had an opportunity, if there  
5 was any concern in that kind of evidence being put forward,  
6 that either it was irrelevant or to question Mr. Helgason  
7 about that particular point, or otherwise. Two people  
8 asked questions of Mr. Helgason in cross-examination, Mr.  
9 Gindin, Mr. McKinnon. And they asked some questions as it  
10 related to clarification of certain issues. There was no  
11 cross-examination of Mr. Helgason. So it's not a matter  
12 where this is something that's sort of we've been  
13 successful in pulling rabbit out of a hat or otherwise.  
14 We've been pretty open about what we're advocating for in  
15 these particular circumstances.

16 And finally on a, I guess a final note, if I can  
17 make it, is that I think the question that's being asked by  
18 the AMC, as it relates certainly to our recommendations,  
19 they're asking the wrong question. The question that was  
20 put forward to you this morning was related to who's making  
21 the recommendation? Instead of what is the recommendation?  
22 That's the real question. What's the problem, what's the  
23 recommendation? Not who's making the recommendation?

24 If any of the other organization or groups that  
25 are here before you today had stood up and said, we think

1 that a aboriginal controlled school board in Winnipeg is  
2 the way to go, we think that advocating for a task force to  
3 look into an aboriginal education authority is the way to  
4 go, we would have been absolutely supportive of that. It  
5 doesn't make any difference who's making it. The question  
6 that has to be looked at are answering those questions that  
7 you looked at and you raised during the submissions that  
8 counsel were making. How will it help? Is it sound? Is  
9 it the right step to take? Is it a good use of public  
10 money? Those are the issues, as it relates to a  
11 recommendation, not who's making it. We're fortunate  
12 enough we put it forward, fantastic, but if somebody else  
13 supports it, puts it forward, that's great. The AMC or any  
14 other organization wants to be involved in it moving  
15 forward, fantastic, as well. The more the merrier, as long  
16 as it's moving in a productive way and going somewhere that  
17 it's going to be helping the community ultimately in  
18 dealing with the risk factors, that's really the key  
19 feature.

20 Because the question have been put to you that as  
21 part of your mandate, you can't look at this issue. You  
22 can't be making recommendations, or considering our  
23 recommendations. And the only thing I can do is go back to  
24 the comments that I quoted from you on April the 15th.  
25 That was from the transcript from the -- when you were



1 describing what was going to be looked at in phase 3.  
2 Those last two questions: What are the reasons for those  
3 disproportionate numbers? And the second question: What  
4 are the solutions to significantly reduce the number of  
5 children in care, both aboriginal and non-aboriginal.  
6 Those are the questions that you posed as part of phase 3.  
7 That's clearly within the mandate, when you look at the  
8 risk factors that have been identified for children going  
9 into care, or risk for going into care, education was one  
10 of those key features. You've heard a lot of evidence as  
11 it relates to that. That's the question that we're trying  
12 to answer. So I don't think there's any issue whatsoever  
13 of, of a matter of mandate, jurisdiction, to be able to  
14 comment on that, one way or the other.

15           Moving on now to the questions that you had  
16 asked. There was some information provided, through Mr.  
17 Helgason, of the most recent population statistics numbers  
18 that had come out of the last census and unfortunately,  
19 that information, I haven't been able to get in a form,  
20 whether from Statistics Canada website, or otherwise, to be  
21 able to present to you like the information that I provided  
22 to you here. The best information that we have, as it  
23 relates to sort of that general kind of information is what  
24 we have from the 2006 census, as I understand it. And when  
25 you look at the document before you, all it -- the only

1 real difference is the difference in terms of relative  
2 numbers. As we understood aboriginal identity, for  
3 example, was, I think, approximately 72,000 people, I  
4 think, was the evidence in, from Winnipeg. When you look  
5 at the numbers on the, on the, the handout, it's  
6 approximately 68,000 when this 2006 census was done.

7 THE COMMISSIONER: And you're talking about 2006  
8 versus 2011?

9 MR. TRAMLEY: That's correct, yes.

10 THE COMMISSIONER: Yeah.

11 MR. TRAMLEY: Yeah. And the different growth  
12 that's there. And even if we took the relative numbers  
13 that are here, we do know that the fastest growing group of  
14 our society is the aboriginal community, young aboriginal  
15 community, and when you look at the numbers in the, in the  
16 Statistics Canada information, it spoke about, at that  
17 time, one of the questions you'd asked me had been what was  
18 the largest community, in terms of numbers and it does  
19 remain to be Winnipeg. But you'll see that there are some  
20 other significant urban centres as well. Edmonton,  
21 Toronto, Vancouver, Saskatoon, Calgary. And you'd also --  
22 the second point you'd asked about on the population had  
23 been sort of the relative number as, as, as the, as you  
24 compare it to the population as a whole.

25 THE COMMISSIONER: Yes.

1           MR. TRAMLEY:   And I, my poor math, I tried to  
2 figure out a number of approximately 10 percent.   That's  
3 the number that was identified in 2006.   I think that  
4 number is actually higher now, if you looked at 72,000  
5 versus what the population is in Winnipeg today.   I think  
6 that number would probably be more closer to maybe 12  
7 percent or so, but it certainly is increasing and every  
8 indication that it's going to continue to do so.

9           You'd asked about other centres as well.   The  
10 numbers, of course, are skewed for larger centres like  
11 Toronto and Vancouver, though, even though they have a  
12 quite sizable aboriginal population, because those cities  
13 are so large, you can see how the numbers are quite low.  
14 When you look at Vancouver, it's approximately two percent.  
15 Toronto, it's .5 percent.

16           Two cities that were very close to Winnipeg  
17 though, Regina and Saskatoon.   In 2006, you can see the  
18 numbers were approximately, taking it around nine percent  
19 of those centres.   And so, relatively speaking, we'd be  
20 comparative cities, as I would suggest, when you're looking  
21 at those kinds of numbers.   Those and -- seem to be the  
22 only two that were really quite high.

23           If I can move on to the second question that you  
24 asked, and that related to the structure and makeup of the  
25 Franco-Manitoban School Division.   We had put forward the

1 proposition that there's already a model that's in place in  
2 Manitoba dealing with the French community, French  
3 language, French culture and that they have a separate  
4 school division that's been provided for already. And so  
5 we had looked at that and suggested that what we were  
6 suggesting, when we're talking about an aboriginal school  
7 division inside the city of Winnipeg, that there was  
8 something to compare it to, something to look at, something  
9 to see, that there was actually some meat on those bones,  
10 in terms of that suggestion.

11           The Franco-Manitoba -- and so what I've done is  
12 I've taken an excerpt out of the Public Schools Act,  
13 because that's where their, that's where their authority  
14 comes from. It's actually all in one section, Section 21,  
15 but of course, 21 has 43 subsections. But it's, reads like  
16 a mini Code. When you get an opportunity, I know you  
17 haven't, not have had an opportunity yet, because you just  
18 received it, but it's actually a fairly quick read and it's  
19 an interesting read, because it really reads like a little  
20 mini Code. It identifies the school board. It identifies  
21 the programming that's going to be put in place, in terms  
22 of the way that it's going to be structured. It talks  
23 about who's eligible to be able to receive the French  
24 language programming and the schooling. Talks, as it  
25 relates to advisory groups, school committees. Talks about

1 even the interrelationship between the French school  
2 division and the non-French school division, in terms of  
3 sharing of schools, transferring of schools and assets and  
4 resources. So it even took into account how that was going  
5 to be resolved, in terms of those kinds of issues.

6 And you had asked about particular question had  
7 been that related to the, the trustees and the board. And  
8 if I can turn you to starting at 21(35), that's toward the  
9 back, about the last three or four pages back.

10 THE COMMISSIONER: Yes, I have it.

11 MR. TRAMLEY: And basically, the way that their  
12 system works, they're being a bit unique because the school  
13 division covers a number of schools in Manitoba. A lot of  
14 French community, or towns outside of, of Winnipeg and then  
15 eight schools inside of Winnipeg, and basically, what  
16 they've provided for, initially the Government had set up  
17 what they describe as a electoral divisions. And so they  
18 identify these divisions, which ultimately then the school  
19 division themselves could change their board by way of a  
20 by-law and identify sort of a geographic area and then  
21 works much the same as it relates to the people who are  
22 going to be able to vote are people who have children that  
23 are within the school, are going to be starting in the  
24 school in the fall and then those electoral divisions, they  
25 have certain number of trustees. I think it was four in

1 Winnipeg, that started, then two, I think, in the other two  
2 regions. That may have changed now, in terms of what  
3 they've put in place, but then those people put forward  
4 their names and then they're to be elected by those  
5 individuals. And so that's really, in effect, the way the  
6 system works.

7           So they've taken really a very similar system  
8 that they have here, almost anywhere, whether it's in  
9 Winnipeg or otherwise, in school divisions, and just simply  
10 sort of superimposed it and changed it up a little bit.

11           THE COMMISSIONER: And I'll, I'll certainly read  
12 that.

13           MR. TRAMLEY: All right. And the final comment I  
14 wanted to make in my -- is I had taken a lot longer  
15 yesterday than I would have liked and in my haste to leave,  
16 I didn't have an opportunity to thank the Commission, on  
17 behalf of the Aboriginal Council, for the opportunity for  
18 the Council to participate as an intervenor in these  
19 proceedings. It was an important step for the Aboriginal  
20 Council to be able to participate and they, and they  
21 appreciate that very much. I didn't get a chance, as well,  
22 to thanks some of the individuals that were involved,  
23 Commission counsel, Ms. Walsh, Ms. Ewatski as well, in  
24 terms of their assistance and as well as Ms. Dyck, one of  
25 the research analysts, was a tremendous help to us, in

1 terms of getting us up to speed regarding the background  
2 information and otherwise. So I'm not even sure I've ever  
3 met her before, but I've spoken to her on the phone many  
4 times, and by e-mail. She was a terrific help. So thank  
5 you very much.

6 THE COMMISSIONER: Thank you for your kind words.

7 MR. TRAMLEY: Thank you.

8 THE COMMISSIONER: All right. Now, that, that  
9 then just leaves Ms. Dunn, as I understand it. I -- about  
10 how long do you expect to be, Ms. Dunn?

11 MS. DUNN: Say 10 to 15 minutes, Mr.  
12 Commissioner.

13 THE COMMISSIONER: Do you want to continue? Or  
14 take a break?

15 MS. DUNN: I'm, I'm at your disposal.

16 THE COMMISSIONER: Commission counsel indicates a  
17 break might be in order.

18 MS. WALSH: Please.

19 THE COMMISSIONER: All right. We'll take a 15  
20 minute break.

21 MS. WALSH: Thank you.

22

23 (BRIEF RECESS)

24

25 THE COMMISSIONER: All right, Mr. Dunn.

1           MS. DUNN: Thank you, Mr. Commissioner. For the  
2 record, it is Catherine Dunn. We providing a reply  
3 submission, this afternoon, on behalf of Ka Ni Kanichihk  
4 and I would like to address some of the issues raised by  
5 other counsel, with respect to the role of community-based  
6 organizations and hopefully in the order in which those  
7 remarks were made.

8           First of all, with respect to Mr. Ray, who  
9 represents the MGEU, he -- and I'm sure any -- he, as well  
10 as any counsel, will correct my quotes of their positions.  
11 But in any event, my understanding of his submission was  
12 that he felt that there might be, in terms of the use of a  
13 mother's advocate, an internal conflict on the issue of  
14 child abuse reporting, which -- and therefore that would  
15 not work. I disagree with that proposal, if that is what  
16 Mr. Ray meant, Mr. Commissioner. There is a statutory  
17 (phonetic) (sic) obligations on all Manitobans to report  
18 child abuse and that abligation (phonetic) (sic) is on  
19 every community-based organization now and will continue to  
20 be. And I think the remarks of Ms. Knol, as, as noted by  
21 Mr. Funke, have been blown out of proportion, in terms of  
22 her testimony. I do not think, in her saying that she  
23 wanted to keep a distance between her organization and  
24 Child and Family Services was in any way saying that she  
25 would not protect children who had contact with her



1 organization, who come to her by way of a community-based  
2 referral.

3 So the mother's advocate is not, in any way, a  
4 means by which children would be the subject of a non-  
5 reporting issue. That is a function that is in force now  
6 and would remain in force, obviously, forever, because it's  
7 a very good reason for, for it to be a law in Manitoba.

8 With respect to Mr. Funke's submission on behalf  
9 of his clients, he was, on behalf of this clients,  
10 concerned about Ka Ni Kanichihk's recommendation for a  
11 shift in funding, as opposed to an increase in funding.  
12 And let me be the first to, to say, Mr. Commissioner, that  
13 we are not an organization who are experts in funding by  
14 any stretch of the imagination. We are not currently at  
15 that funding table and that was part of our original  
16 submission. Let there be no mistake and Mr. Commissioner,  
17 we will, indeed, take the money. We are simply saying, at  
18 this point, that the money that is currently being directed  
19 to non-aboriginal mainstream organizations should be  
20 flowing to aboriginal community-based organizations.

21 THE COMMISSIONER: I never got the impression  
22 that you wouldn't accept the money.

23 MS. DUNN: Oh good, good. My work here is done  
24 then, Mr. Commissioner.

25 With respect to Mr. Funke's concerns about a flow

1 of revenue to community-based organizations and Ka Ni  
2 Kanichihk's argument that that would increase the economic  
3 base, and therefore bring a holistic wellness to community-  
4 based organizations. He referred to that theory as a  
5 concern for his clients, because it would create an  
6 industry. And I certainly know what Mr. Funke means, in  
7 terms of child welfare and the industry comment that he  
8 made, but in reply to that, Ka Ni Kanichihk strongly  
9 objects to the suggestion by his organization, or any  
10 other, that community and the building of community is  
11 somehow an industry. Ka Ni Kanichihk, like many community-  
12 based organizations, represent their own people in their  
13 own community and in their own way. That is not an  
14 industry, that is a blueprint for an advancement of  
15 aboriginal people within their own community place.

16 Mr. Funke says, on behalf of this clients, that  
17 community-based organizations have a role in policy, and an  
18 important one, by way of perspective, but not by way of  
19 equality. Mr. Funke's position is that his clients, by way  
20 of being political bodies, somehow own the perspective of  
21 aboriginal communities and Ka Ni Kanichihk and other  
22 community-based organizations are not mandated to speak on  
23 behalf to their people. In response to that remark, Mr.  
24 Commissioner, let me simply say that political bodies are  
25 appointed on the will of the people and not the other way

1 around. It is the people who elect those who will  
2 represent them. And community-based organizations are able  
3 to say what is important and dynamic within their own  
4 communities.

5 With respect to Mr. Funke's submission that the  
6 idea of an aboriginal women's advocate, that the role of,  
7 of same is not clear, I, I have to agree. Because what  
8 we're presenting to this commission is a principle. It is  
9 not a blueprint, but it is a principle that is advanced on  
10 behalf of community-based organizations that we say will  
11 work, that is part of many of the experts' evidence, in  
12 terms of the importance of community. The mother's  
13 advocate need not be connected to the Office of the  
14 Children's Advocate, or it may be. It is difficult, at  
15 this stage of the principle, to say what it would look  
16 like. We simply know that the role is to allow families,  
17 going through the child welfare system to have an advocate,  
18 for whatever reason that they require one. And I know that  
19 there has been some suggestions say, made that that role  
20 is, is now taken over by child protection lawyers on behalf  
21 of their clients. And while that is true in the courtroom  
22 setting, or perhaps in relation to the courtroom setting,  
23 lawyers are not there on the occasions on which their  
24 clients attend at child welfare agencies. Nor is it their  
25 role to advocate for the dignity on behalf of their

1 clients. They are there to, to support the dignity of  
2 their clients, but they are not available 100 percent of  
3 the time to ensure that. Their role is primarily related  
4 to the courtroom and to protecting judicial rights on  
5 behalf of parents. Their role is not to ensure, such as a  
6 mother's advocate, to ensure that that dignity persists  
7 throughout the entire process, not only the judicial  
8 process.

9 THE COMMISSIONER: Can you see the existing child  
10 advocate's powers and duties and responsibility being  
11 widened, such as to include what you're proposing for  
12 mothers?

13 MS. DUNN: I, I wouldn't out rule it. I, I, you  
14 know, this is a principle that has many different ways in  
15 which it can be expounded or expanded. The Office of the  
16 Children's Advocate is not here represented by counsel, so  
17 I wouldn't want to speak on their behalf. But I can say  
18 that --

19 THE COMMISSIONER: They, they were invited.

20 MS. DUNN: They were invited, they did provide  
21 witness evidence for the Commission to consider. Their  
22 role is not antithetical to that of a mother's advocate.  
23 Children are not creatures in and of themselves, they come  
24 from family. And if you choose to work with a family, as a  
25 mother's advocate would, it does not, in any sense, disable

1 the rights of the child, who is vulnerable throughout the  
2 entire process of the system.

3 Mr. Kahn suggested that the concept of a, a  
4 women's advocate might complicate an already complicated  
5 system by forcing a mother's advocacy role on a parent who  
6 does not want it. That is not the role that a mother's  
7 advocate would have. It is not a role that is imposed by  
8 any sense of the imagination. This is an opportunity for a  
9 parent to choose or not to choose help through this  
10 process. They may be sufficiently educated within the  
11 child welfare system and sufficiently strong, in terms of  
12 education and in attitude not to require a mother's  
13 advocate, and that is fine, because aboriginal people are  
14 resilient and very strong and they may not need that extra  
15 help, but some may need that help and that help should be,  
16 as a right, available to them.

17 THE COMMISSIONER: And when you speak of a  
18 mother's advocate, bearing in mind that there are many one  
19 parent families, headed by the father, would, would a,  
20 would the father have the same kind of access to this  
21 person --

22 MS. DUNN: Yes, the --

23 THE COMMISSIONER: -- that you're --

24 MS. DUNN: -- reason I'm using the word mother's  
25 advocate, is because, on a practical basis, it would appear

1 that on more often than not, it is, the single parent is a  
2 female.

3 THE COMMISSIONER: Yes.

4 MS. DUNN: But obviously, the same concerns that  
5 a mother has, in terms of dealing with the system, would be  
6 the same that a father has. And so the word "mother" and  
7 "father" is used interchangeably, in terms of our  
8 submission, Mr. Commissioner.

9 THE COMMISSIONER: Yeah, well, we know, in this  
10 case, that Steve Sinclair was often playing the parent,  
11 sole parent role with respect --

12 MS. DUNN: Exactly.

13 THE COMMISSIONER: -- to Phoenix.

14 MS. DUNN: Exactly and there are many people like  
15 Mr. Sinclair, who, who, as fathers, are there to represent  
16 the rights of their children with the, with the system.  
17 And I don't mean to disrespect Mr. Sinclair in, in --

18 THE COMMISSIONER: No, no.

19 MS. DUNN: -- just referring to mother's  
20 advocate.

21 THE COMMISSIONER: I don't suggest that.

22 MS. DUNN: No. Ms. Harris suggested, rather  
23 strongly, that there is no abuse of power in the evidence  
24 before you, with respect to child welfare and the system of  
25 child welfare in general. With all due respect to Ms.

1 Harris, we are dealing with a situation which is tragic and  
2 unfortunate in and of itself. Whether you want to call  
3 that abuse, whether you want to call that an accident,  
4 whether you want to call that a tragedy, that is all true,  
5 but when you are dealing with a bureaucracy, whether it's  
6 child welfare, whether it's the police system, whether it's  
7 the medical system, all bureaucracies are capable of being  
8 abusive, because they are large government entities which  
9 deal with vast populations and as a result, there are  
10 people who fall through those systemic cracks.

11 Mr. McKinnon, in his submission, talked, as  
12 directed by Mr. Commissioner, about the role of the  
13 standing of the Office of the Standing Committee, and I  
14 would suggest, suggest, on listening to Mr. McKinnon, that  
15 that is a very good place for the mother's advocate role to  
16 start. There is, within the disclosure evidence, listed by  
17 Mr. McKinnon, room for certainly community-based  
18 organizations and room for a mother's advocate. This  
19 standing committee, Office of the Standing Committee, the  
20 purpose of it is for the authorities and for the director  
21 to have oversight on policy and protocol and certainly,  
22 policy and protocol is something that the women's advocate  
23 could be directed by the authorities and by the government,  
24 if they were encouraged to do so.

25 THE COMMISSIONER: What, what, what -- I'm just

1 not sure I understand the role of the standing committee.  
2 Are you saying that they, that they would be a good one to  
3 sanction the idea and put it in --

4 MS. DUNN: Yes --

5 THE COMMISSIONER: -- place?

6 MS. DUNN: -- I -- because they are at a very  
7 high level, as I understand the role, and I'm not saying  
8 that I understand it completely --

9 THE COMMISSIONER: But it wouldn't operate out of  
10 the standing committee office, or --

11 MS. DUNN: Right.

12 THE COMMISSIONER: -- are you -- you're not  
13 suggesting that?

14 MS. DUNN: No, but I'm saying that that committee  
15 -- well, I'm -- perhaps they would have a role there. I'm  
16 not a hundred percent sure of the legality, because it's a  
17 statutory committee and it would probably involve, at the  
18 very least, revising some of the regulations, if not the  
19 actual legislation. But certainly that committee, which  
20 has that kind of power, is the, is the sort of body which  
21 should be able to, to look at this concept with, with real  
22 teeth.

23 Mr. McKinnon says that the role of community-  
24 based organizations is best left before maltreatment, those  
25 type of files, or files dealing with the reduction or



1 impairment of maltreatment and I cannot disagree that that  
2 is a very strong place for community-based organizations.  
3 However, I don't see the rationale, frankly, for removing  
4 community-based organizations who deal with children who  
5 become permanent wards, because that is an area where huge  
6 amounts of money are directed, the maintenance of children  
7 in care and going back to Ms. Spillett and Ka Ni  
8 Kanichihk's position, why is so much revenue directed to  
9 non-aboriginal organizations? And you only have to look at  
10 some of the statistics, in terms of agencies that get  
11 money, agencies that are non -- and I'm not going to bring  
12 out anyone in particular, but there's, there's evidence  
13 before you about what kind of money flows to places who  
14 provide residential care of children in care on a permanent  
15 basis and it's millions and millions of dollars. And why  
16 should aboriginal organizations be cut out of maintaining  
17 children permanently in care? That is where they should  
18 be, as opposed to where they should not be, is providing  
19 that culturally appropriate family that these children  
20 missed in the first place.

21 In terms of Dr. McKenzie's specific quote, which  
22 Mr. McKinnon included at paragraph 114 of the Department  
23 brief, I agree completely when he says that Dr. McKenzie,  
24 and he quoted his, him specifically, used the words  
25 "building capacity" and not the words money. In my

1 submission, Mr. Commissioner, that is a difference without  
2 distinction. Building capacity involves money and there is  
3 no real difference between the two, because they are  
4 interconnected.

5 Dr. McKenzie also expressed a concern that they,  
6 there is not a well-developed NGO system in Manitoba, as  
7 there is in other jurisdictions. That may or may not be  
8 true. I am suggesting that, based on Dr. McKenzie's  
9 evidence, I am not sure how much of an expert he is on the  
10 situation of community-based organizations from the inside.  
11 I know he is an expert about policy, in terms of child  
12 welfare, but does he know about the real life of community  
13 and community building capacity in Winnipeg at the present  
14 time? I don't, didn't get that sense. Obviously that's  
15 something that Mr. Commissioner will perhaps review, in,  
16 in, in, in terms of that specific piece of evidence.

17 But you heard from the community organizations at  
18 this inquiry and they told you that they know what their  
19 community needs and they know how to lead their communities  
20 towards that goal.

21 Dr. McKenzie also suggested that community-based  
22 services are best left in the Winnipeg vein and are not  
23 available in First Nations and certainly Ka Ni Kanichihk  
24 doesn't disagree with that. We may not be experts in that  
25 area, so what I say is really obiter, as opposed to

1 anything else, but I can only direct the Commission to the  
2 evidence, I believe, it was, of Ms. Flette, who talked  
3 about what a powerful job West Region Child and Family  
4 Services did as being the really only connected community  
5 resource in that community to, to help families in the  
6 child welfare scheme. So there may be -- and I'll just  
7 leave it at that because I'm, you know, that's not my area.

8 THE COMMISSIONER: I have your point.

9 MS. DUNN: Yes. Subject to any questions Mr.  
10 Commissioner has, that would be my reply submission and  
11 once again, I thank you for your very careful listening  
12 skills throughout this entire process.

13 THE COMMISSIONER: Thank you, Ms. Dunn, for your  
14 presentation and the involvement of your client in these  
15 proceedings, it's been appreciated.

16 MS. DUNN: Thank you very much, Mr. Commissioner.

17 THE COMMISSIONER: All right. Commission  
18 counsel, I think it's to you lies the final word.

19 MS. WALSH: Thank you, Mr. Commissioner.

20 Yes, one of the privileges of being Commission  
21 counsel is the right to have the last word. And the words  
22 I want to say are words of thanks.

23 First, to the witnesses who all participated so  
24 willingly and carefully, together, they told the story that  
25 you and the public needed to hear. For many, the stories

1 were difficult to tell, but witnesses set aside their fears  
2 in order to honour the memory of Phoenix Sinclair and to  
3 fulfill their public duty. So to all the witnesses, thank  
4 you.

5           Next, my thanks to the counsel who represented  
6 parties, intervenors and individuals. The public's  
7 perception of lawyers often is, I think, that we are an  
8 adversarial bunch, but an inquiry such as this could not  
9 have achieved what I believe has been a thorough and  
10 comprehensive review of the necessary facts and issues  
11 without the cooperation and indeed, collaboration of all  
12 counsel. On behalf of the Commission's legal team, I thank  
13 counsel for their continued efforts to satisfy our endless  
14 requests for information and assistance. Counsel, you are  
15 a credit to your clients and your profession and it has  
16 been a pleasure to work with you.

17           Now, for a public inquiry to be truly effective,  
18 the role played by the media is essential. In this  
19 particular case, the members of the media have performed  
20 their work with diligence, while being sensitive to the  
21 Commission's requirements for confidentiality, for which I  
22 thank them.

23           And with the media, comes recognition of the  
24 public itself. I'm grateful to members of the public for  
25 demonstrating a continuing interest and desire to be

1 informed about the issues this commission has addressed.

2 And thank you to the clerks and the sheriffs who  
3 have served us all so well and to the pool of independent  
4 contractors who have prepared the transcripts of the  
5 evidence of the Commission. And of course, to the  
6 administrative staff of the Commission, Marcie Ewatski and  
7 Cindy Pearson and support staff. Meeting the needs of this  
8 Commission has involved an extraordinary undertaking and we  
9 could not have succeeded without you.

10 Many thanks, as well, to the two investigators,  
11 Sam Anderson and Bruce Foster, who were retained by the  
12 Commission, originally to assist in locating witnesses, but  
13 who provided so much support to the witnesses themselves  
14 whenever necessary.

15 Which brings me to my own legal team, the  
16 extraordinary colleagues with whom I have had the privilege  
17 to work, over the last two years, Derek Olson, Kathleen  
18 McCandless, Karen Dyck, Noah Globerman, Elizabeth  
19 McCandless and Rohith Mascarenhas. Your dedication,  
20 intelligence and unfailing good humour have sustained me  
21 and the work of this entire Commission. I thank you for  
22 your professionalism and your friendship.

23 Finally, Mr. Commissioner, I know I speak for  
24 everyone when I say thank you to you, for your patience,  
25 wisdom and guidance. These proceedings began with the

1 standing hearings on June 28th, 2011. Since that time, you  
2 have held 91 days of hearings, been asked to consider the  
3 thousands of pages of Commission disclosure documents and  
4 the additional hundred and sixty-one exhibits which were  
5 all entered into evidence. You have heard from 126  
6 witnesses and numerous counsel. Throughout, you have  
7 ensured that witnesses and counsel were heard in the  
8 fullest sense. Now, it is in your hands to deliver a  
9 report which will influence the necessary public support  
10 and political will, to better protect Manitoba children.  
11 Thank you.

12 THE COMMISSIONER: Well, thank you, Ms. Walsh,  
13 and you have expressed appreciation and thanks to all other  
14 participants, as I've endeavoured to do to counsel as they  
15 appeared each time at the podium.

16 I want to thank you as Commission counsel and the  
17 members of your staff that you have outlined here, all of  
18 whom have participated in this hearing, for the work you've  
19 done.

20 It'll come as no surprise, of course, to the rest  
21 of you that the work of Commission counsel is not over. In  
22 no sense could I handle all this volume of paper and the  
23 extensive, the extensiveness of all of the evidence without  
24 some assistance in getting this report drafted and  
25 prepared. The assignments are, are out now and we're

1 beginning our work, all of which will be under my guidance,  
2 of course. I'm fortunate in securing the services of an  
3 editor, who I've worked with over the years, who will  
4 receive draft chapters as and when we have them produced in  
5 the office and I have every expectation that we will meet  
6 the deadline of the Government, which is to have the report  
7 in its hands by the 15th of December.

8 It has been both a pleasure and an interesting  
9 experience to work with all of you.

10 I think, as we close, we remember the, the tragic  
11 circumstances that brought us together of the life of a  
12 little girl whose presence on this earth ended far too  
13 soon, out of which, this inquiry came, with a view to  
14 making the improvements that Commission counsel has just  
15 referred to and hopefully, that will be the ultimate  
16 result, for the betterment of all the children of the  
17 province.

18 So with that and my sincere thanks and appreciate  
19 for the cooperation of everybody, we now stand permanently  
20 adjourned.

21 MS. WALSH: Thank you.

22

23

(INQUIRY PUBLIC HEARING CONCLUDED)