

IN THE MATTER OF:

Commission of Inquiry into the Circumstances  
Surrounding the Death of Phoenix Sinclair

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CROSS-EXAMINATION OF: JANET HELEN KEHLER

CROSS-EXAMINATION BY: MR. J. KROFT and  
MR. J. GINDIN

CROSS-EXAMINATION DATE: TUESDAY, MAY 22, 2012

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ORIGINAL

The Cross-examination on Affidavit of **JANET HELEN KEHLER**, viva voce, on oath, had and taken by Jill Proctor, an Official Examiner in this Honourable Court, at the offices of Myers Weinberg LLP, in the City of Winnipeg, Province of Manitoba, on Tuesday the 22nd day of May 2012 at 11:01 a.m.

**APPEARANCES:**

On behalf of the Witness:	Mr. G. Smorang
On behalf of the Media Group:	Mr. J. Kroft, Ms. B. Chisick
On behalf of Kim Edwards And Steve Sinclair:	Mr. J. Gindin, Mr. D. Ireland
On behalf of the Department Of Family Services and Consumer Affairs:	Mr. S. Paul
On behalf of CFS General, North, South, ANCR:	Mr. L. Bernas
On behalf of Intertribal Child and Family Services:	Mr. H. Kahn

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**TUESDAY, MAY 22, 2012 11:01 A.M.**

**JANET HELEN KEHLER, BEING FIRST DULY  
AFFIRMED, TESTIFIED AS FOLLOWS:**

**CROSS-EXAMINATION**

**BY MR. KROFT:**

Q Ms Kehler, you have sworn two affidavits in this matter at least insofar as they relate to the publication issues we are talking about today, correct?

A Correct.

Q One was sworn June 27th of 2011?

A Correct.

MR. KROFT: And with your counsel's permission, I will mark that as Exhibit 1 to this examination.

**EXHIBIT # 1 - AFFIDAVIT  
JUNE 27, 2011.**

**BY MR. KROFT:**

Q You swore a supplementary affidavit, which you affirmed on April 4, 2012?

A Correct.

Q I believe you have a clean copy of that in front of you as well.

A I do.

MR. KROFT: I am going to ask that be marked as Exhibit 2.

**EXHIBIT # 2 - AFFIDAVIT  
APRIL 4, 2012**

**BY MR. KROFT:**

Q Mr. Smorang, are you seeking to qualify Ms Kehler as an expert of any sort?

MR. SMORANG: No.

**BY MR. KROFT:**

Q Ms Kehler, you are not a social worker at the time, correct?

A I am a social worker by discipline, but I am not a child protection worker anymore.

Q And you haven't been in that field for about ten years, correct?

A For about six years.

Q Six years. And you are not a registered social worker at the time, are you?

A I am not.

Q You are an employee of the Manitoba Government Employees Union?

A Correct.

Q And that is what you have been doing for the past six years?

A Correct.

Q And as I understand it, some Manitoba social workers belong to the MGEU; is that right?

A Correct.

Q And MGEU has retained counsel to represent certain of those members who may be called to give evidence at the Phoenix Sinclair Inquiry, correct?

A That's correct.

Q And you have made it clear that in your view, I guess, in the view of MGEU, the Government didn't have a legal basis to conduct the inquiry in the nature that it is conducting it; isn't that right?

A That's correct.

Q And your view, which you have expressed publicly, is that going public is not the solution, as you put it in your open letter, right?

A I would qualify that response a little bit.

Q Well, sure, and in fairness, you may want to look at your open letter which you have attached as part of an article in Exhibit "C" to your supplementary affidavit.

MR. SMORANG: Whereabouts?

MR. KROFT: On the second page, the third paragraph.

THE WITNESS: Starting with Those of you?

MR. KROFT: No, it starts Our lawyers?

THE WITNESS: Okay.

MR. KROFT: I am referring to the last sentence in that paragraph.

MR. SMORANG: Third paragraph. Our lawyers, okay.

THE WITNESS: You are correct, that is the letter that we put out.

**BY MR. KROFT:**

Q Yes.

A And that is the quotation that we put in there. I guess I would say it depends how you define "going public".

Q Those are your words?

A Those are our words, correct.

<p style="text-align: right;">5</p> <p>1 18 Q You say "our", you signed the letter?</p> <p>2 A Correct.</p> <p>3 19 Q So I take it that you are taking personal</p> <p>4 responsibility for the letter regardless of</p> <p>5 what corporate responsibility is --</p> <p>6 <b>MR. SMORANG:</b> In fairness, three people</p> <p>7 signed the letter.</p> <p>8 <b>MR. KROFT:</b> And you are one of them?</p> <p>9 <b>THE WITNESS:</b> I am, correct. That is why</p> <p>10 I used the word "our", because there was three of us.</p> <p>11 <b>BY MR. KROFT:</b></p> <p>12 20 Q But you agree with this entire letter?</p> <p>13 A I do.</p> <p>14 21 Q And the position that going public isn't</p> <p>15 the answer, that is something that you have</p> <p>16 advocated on behalf of the union in the letter?</p> <p>17 A Yes. That's correct.</p> <p>18 22 Q And you have argued that simply increasing</p> <p>19 accountability measures is going to do little</p> <p>20 help, and might even make things worse,</p> <p>21 correct?</p> <p>22 A I would agree that those are the some of</p> <p>23 the words we have used.</p> <p>24 23 Q And you have used yourself?</p> <p>25 A Yes.</p>	<p style="text-align: right;">7</p> <p>1 again.</p> <p>2 29 Q Check again, take your time.</p> <p>3 A She is the only authority that we quote.</p> <p>4 30 Q And you, meaning you personally, and the</p> <p>5 co-writers of the letter, have argued publicly</p> <p>6 that looking into the facts of what occurred in</p> <p>7 the Phoenix Sinclair case at this inquiry is</p> <p>8 going to be a duplication of what was already</p> <p>9 said in private reports? You have made that</p> <p>10 argument?</p> <p>11 A I think I need to qualify my response</p> <p>12 there.</p> <p>13 31 Q All right.</p> <p>14 A We have said that there is a duplication</p> <p>15 to parts of the inquiry. That there are</p> <p>16 certain components of the inquiry where work</p> <p>17 has not yet been done.</p> <p>18 32 Q But the part of the inquiry, where they</p> <p>19 are looking into the circumstances of the death</p> <p>20 of Phoenix Sinclair, you have taken the</p> <p>21 position that that is a duplication?</p> <p>22 A Correct.</p> <p>23 33 Q And it shouldn't be done?</p> <p>24 A That's correct.</p> <p>25 34 Q And in fact, you personally committed the</p>
<p style="text-align: right;">6</p> <p>1 24 Q I don't mean to be nitpicky, but you are</p> <p>2 here as the witness, and you are testifying,</p> <p>3 you understand, personally, correct?</p> <p>4 A Correct.</p> <p>5 25 Q So the only person, who I can ask</p> <p>6 questions of here is you?</p> <p>7 A Correct.</p> <p>8 <b>MR. SMORANG:</b> She also, though, represents</p> <p>9 the MGEU. When you are using the pronoun "you", if</p> <p>10 it makes a difference, please tell her whether it is</p> <p>11 you Janet, or you MGEU. Because she will speak for</p> <p>12 both.</p> <p>13 <b>BY MR. KROFT:</b></p> <p>14 26 Q And in your letter that was published in</p> <p>15 the newspaper, and that is Exhibit "C", in</p> <p>16 making your argument, you relied on Ms</p> <p>17 Wotherspoon's arguments that are repeated in</p> <p>18 the affidavit that you just listened to a</p> <p>19 discussion of?</p> <p>20 A In part. Yes.</p> <p>21 27 Q In fact, you quote Ms Wotherspoon?</p> <p>22 A We do.</p> <p>23 28 Q She is the only authority that you quote</p> <p>24 in that letter?</p> <p>25 A I believe so. I would have to check</p>	<p style="text-align: right;">8</p> <p>1 Union, you and the other two letter writers, to</p> <p>2 oppose a public review of the facts of the</p> <p>3 Phoenix Sinclair case, haven't you?</p> <p>4 A Ask me one more time.</p> <p>5 35 Q Okay. You have committed to the members</p> <p>6 of the MGEU, and the public, because it was a</p> <p>7 public letter, you have committed to oppose the</p> <p>8 public review of the facts of the Phoenix</p> <p>9 Sinclair case.</p> <p>10 A That's correct.</p> <p>11 36 Q Now, I take it you are aware that in the</p> <p>12 course of preparing for --</p> <p>13 A Sorry --</p> <p>14 37 Q Sorry to?</p> <p>15 A Sorry to interrupt. When you say we have</p> <p>16 committed to not having a public review, and</p> <p>17 even before, when I said you have to define</p> <p>18 what going public is, I guess the reason I want</p> <p>19 to qualify that response is we did suggest that</p> <p>20 an inquest, which is also a review, would be an</p> <p>21 appropriate way, but that the format in which</p> <p>22 Phase I was being handled, we didn't think was</p> <p>23 appropriate.</p> <p>24 38 Q Okay. But an inquest in the normal</p> <p>25 course is a public proceeding. Right? You</p>

9

1 are aware of that?  
 2 A Yes, I am.  
 3 39 Q And you are fine with that?  
 4 A Yes.  
 5 40 Q So when you say you are going to argue  
 6 vehemently, that a public duplication is  
 7 counterproductive for all involved. That is  
 8 only if it is done in the context of an  
 9 inquiry?  
 10 A Sorry. Ask me again.  
 11 41 Q Well, you have said in your letter that  
 12 you are going to vehemently argue, that a  
 13 public duplication is counterproductive?  
 14 A Correct.  
 15 42 Q Yes. And by that you mean going over the  
 16 Phoenix Sinclair case itself?  
 17 A Yes.  
 18 43 Q In the public forum?  
 19 A That's correct.  
 20 44 Q Yes. But, I think what you have  
 21 qualified is that if that public inquiry  
 22 occurred in the context of an inquest you would  
 23 be fine with that?  
 24 A That is the position we took.  
 25 45 Q Yes. Your counsel and I have had some

10

1 written discussions with respect to my  
 2 obtaining some information, are you familiar  
 3 with that?  
 4 **MR. SMORANG:** I am not even sure what you  
 5 are talking about.  
 6 **MR. KROFT:** On April 16 I requested some  
 7 information from Mr. Smorang, and I can show --  
 8 sorry, April 12. I am showing you that letter. It  
 9 was an e-mail.  
 10 **MR. SMORANG:** I can tell you I vaguely  
 11 recall getting this. That is about all I can tell  
 12 you.  
 13 **MR. KROFT:** Presumably you asked your  
 14 client, Mr. Smorang, if they had that information.  
 15 **MR. SMORANG:** I can't even tell you that.  
 16 **MR. KROFT:** You wrote me back, and told me  
 17 your client didn't have that information, so I am  
 18 assuming that would be a fair assumption, I think.  
 19 **MR. SMORANG:** I think that would be a fair  
 20 assumption.  
 21 **MR. KROFT:** So, can you confirm for me,  
 22 first of all, that your lawyer received my letter in  
 23 e-mail form dated April 12.  
 24 **THE WITNESS:** I see the e-mail before me.  
 25 **MR. KROFT:** We are not disputing that that

11

1 was received by your counsel, on your behalf?  
 2 **MR. SMORANG:** That is not disputed.  
 3 **THE WITNESS:** I would have no way to  
 4 dispute that.  
 5 **MR. KROFT:** Let's mark that as the next  
 6 exhibit.  
 7  
 8 **EXHIBIT # 3 - E-MAIL APRIL 12, 2012.**  
 9  
 10 **BY MR. KROFT:**  
 11 46 Q And, you have before you, as well, your  
 12 lawyer's response to my request.  
 13 A Mh-hmm.  
 14 47 Q And, would you confirm that that response  
 15 was an accurate response?  
 16 A Yes.  
 17 **MR. KROFT:** Let's mark that as the next  
 18 exhibit.  
 19  
 20 **EXHIBIT # 4 - RESPONSE TO**  
 21 **APRIL 12 E-MAIL.**  
 22  
 23 **BY MR. KROFT:**  
 24 48 Q Now, you can see, that your counsel did  
 25 suggest that I try to get information from the

12

1 department.  
 2 A Yes.  
 3 49 Q Through their counsel Gord McKinnon.  
 4 A Yes.  
 5 50 Q I received a letter back from Mr.  
 6 McKinnon, which your counsel got a copy of  
 7 dated May 14. I don't know, if he shared that  
 8 with you, or not?  
 9 **MR. SMORANG:** I did share with her the  
 10 letter of May 18, actually, enclosing all of the  
 11 documents, from Mr. McKinnon to you. But I don't  
 12 know that I shared this one.  
 13 **MR. KROFT:** All right. Would you take a  
 14 moment to review that letter that --  
 15 **MR. SMORANG:** I am going to get my stuff,  
 16 if we can go off the record while she reviews it.  
 17 **MR. KROFT:** No problem.  
 18 **(DISCUSSIONS HELD OFF THE RECORD)**  
 19 **BY MR. KROFT:**  
 20 51 Q Mr. Smorang, then, you did receive a copy  
 21 of this letter?  
 22 **MR. SMORANG:** Of the May 14 letter to  
 23 Aikins?  
 24 **MR. KROFT:** Yes.  
 25 **MR. SMORANG:** From TDS, yes, I have a copy

13

1 of that letter.

2 **MR. KROFT:** And I gather you got that in

3 the context of a covering letter dated May 14, to

4 you?

5 **MR. SMORANG:** To me. From Mr. McKinnon,

6 copied, carbon copied to you and Ms Walsh, same date

7 May 14.

8 **MR. KROFT:** Let's mark that as the next

9 exhibit, because, I understand that is probably how

10 you got the letters.

11 **MR. SMORANG:** It is, but, I can't say that

12 I showed them to my client. I can tell you I showed

13 my client Mr. McKinnon's letter of May 18 to you,

14 enclosing documents.

15 **MR. KROFT:** I am going to come to that.

16 **MR. SMORANG:** Well, if you are content

17 marking it as an exhibit, the May 14 letter,

18 recognizing that she --

19 **MR. KROFT:** What I am going to ask her is

20 whether she takes issue with Mr. McKinnon's

21 description of the policies and procedures manual in

22 the fourth paragraph of the letter to me dated May

23 14.

24 **MR. SMORANG:** For context, I guess we can

25 mark that, but I want the record to show that I don't

14

1 believe she has seen this.

2 **MR. KROFT:** Okay. We will mark this as

3 Exhibit "A" for identification.

4 **MR. SMORANG:** That is your letter to me of

5 May 14, enclosing -- sorry, McKinnon's letter to me

6 of May 14, enclosing McKinnon's letter to you of May

7 14.

8 **MR. KROFT:** Yes.

9

10 **EXHIBIT "A" FOR IDENTIFICATION -**

11 **MAY 14 LETTER MCKINNON TO SMORANG**

12 **ENCLOSING MAY 14 LETTER MCKINNON**

13 **TO KROFT.**

14

15 **MR. KROFT:** While we are talking, Mr.

16 Smorang, did you, or anybody on behalf of MGEU

17 respond to Mr. McKinnon's letter of May 14 that was

18 addressed to you?

19 **MR. SMORANG:** No.

20 **MR. KROFT:** So Ms Kehler, Mr. McKinnon, in

21 the fourth paragraph of his letter addressed to me

22 dated May 14, Exhibit "A" for identification, part of

23 Exhibit "A" for identification --

24 **MR. SMORANG:** Just give her a moment to

25 read paragraph four.

15

1 **THE WITNESS:** Okay.

2 **BY MR. KROFT:**

3 52 **Q** Do you take issue with Mr. McKinnon's

4 information that to the best of his knowledge

5 there are no documents in the policies and

6 procedure manual that touch upon the issues of

7 privacy, safety, or anonymity?

8 **A** Do I take, do I disagree with him?

9 53 **Q** Are you taking issue with it? Are you in

10 a position to say he is wrong?

11 **MR. SMORANG:** You may not be in a position

12 to say he is right or wrong, but he is asking do you

13 take the position he is wrong?

14 **THE WITNESS:** I will have to read it again.

15 I would say based on an e-mail that was forwarded to

16 me yesterday by counsel, the one that Mr. Smorang

17 referenced, there seems to be some information on the

18 issue of safety.

19 **BY MR. KROFT:**

20 54 **Q** Let's just be clear about what we are

21 talking about.

22 **A** Okay. But I have no knowledge of --

23 that is the extent of my knowledge on that

24 issue.

25 55 **Q** Okay. Mr. McKinnon advises us, me and

16

1 your counsel, that there is a large policy and

2 procedure manual that the Winnipeg Child and

3 Family Services has.

4 **A** Okay.

5 56 **Q** That he describes as large, in any event.

6 **A** In the neighborhood of 2000 pages he says.

7 57 **Q** Yes, you found it. Did you review that

8 before you swore your affidavit?

9 **A** I did not.

10 58 **Q** No. So you have no information to add to

11 Mr. McKinnon's comment that in those two

12 thousand page manuals, there is nothing that

13 touches upon privacy, safety, and anonymity

14 except as described in this letter, correct?

15 You accept that?

16 **A** Correct. I do.

17 59 **Q** Mr. McKinnon in his letter suggested that

18 in addition to the policy and procedure manual,

19 there are some documents that were in the

20 possession of Winnipeg Child and Family

21 Services that may be relevant to the motion.

22 And then he lists them in his letter of May 14

23 to me, right?

24 **A** Correct.

25 60 **Q** And you are now referring to an e-mail

17

1 that was forwarded to you under cover of a  
2 letter from Mr. McKinnon dated May 18 in which  
3 he encloses those additional documents?  
4 A Correct.  
5 61 Q And before you received those documents,  
6 from Mr. McKinnon by e-mail, had you seen them?  
7 A I had, I may have seen one, a number of  
8 years ago, and that is it.  
9 62 Q Okay. You did, though, review the  
10 material that Mr. McKinnon sent to us on May  
11 18? Since you got it over the weekend, right,  
12 I think you said that?  
13 A I took a very brief look at those  
14 documents.  
15 63 Q Okay. I am suggesting to you that there  
16 is nothing in any of those documents that says  
17 social workers are not supposed to disclose  
18 their names, or occupations?  
19 A I didn't see anything like that in my  
20 review.  
21 64 Q Which agencies, which child welfare  
22 agencies does MGEU have members in?  
23 A All Nations Child and Family Services, All  
24 Nations Coordinated Response Network, typically  
25 understood to be ANCR.

18

1 65 Q That is one agency?  
2 A That is one agency. You wanted me to  
3 list them, right?  
4 66 Q Yes.  
5 A The civil service is where quite a number  
6 of child welfare workers --  
7 67 Q When you say the civil service, in terms  
8 of agencies, you are talking about Child and  
9 Family Services of Winnipeg?  
10 A I believe they are called Winnipeg Child  
11 and Family Services Branch is their official  
12 title now.  
13 68 Q All right.  
14 A We also have members in, the supervisors  
15 in Child and Family Services of Central  
16 Manitoba, which is Portage la Prairie's office.  
17 We also have recently organized Métis Child and  
18 Family Services. Which is, as well as Michif  
19 Child and Family Services, which is Métis broke  
20 off into two agencies.  
21 69 Q So, there is two Métis agencies, you  
22 represent the social workers in both of them?  
23 A We represent all of the staff in both of  
24 them. And then ANCR, that is it.  
25 70 Q Just so I have it straight. ANCR,

19

1 Winnipeg Child and Family Services?  
2 A Correct.  
3 71 Q Supervisors in Central?  
4 A Correct.  
5 72 Q And all staff in the two Métis Child and  
6 Family Service branches?  
7 A Right. I said all staff at Métis, and  
8 Michif. We have all staff at ANCR as well.  
9 73 Q And ANCR is in Winnipeg?  
10 A Yes.  
11 74 Q And Winnipeg Child and Family Services  
12 operates in Winnipeg?  
13 A Correct. That is where that extends  
14 beyond, because the civil service child welfare  
15 agencies are across Manitoba. So, there is --  
16 75 Q You better explain that to me.  
17 A The civil service has staff across  
18 Manitoba that provide child welfare agencies,  
19 child welfare services.  
20 76 Q How many would that be?  
21 **MR. SMORANG:** How many staff, or --  
22 **MR. KROFT:** Yes, how many staff?  
23 **THE WITNESS:** How many staff? I would  
24 approximate there would be 250 child protection  
25 workers in the civil service.

20

1 **BY MR. KROFT:**  
2 77 Q And how many of them work outside of  
3 Winnipeg, and Brandon?  
4 A I am guessing 75 maybe.  
5 78 Q And they are employees of the government?  
6 A That's correct.  
7 79 Q That is in addition to Winnipeg Child and  
8 Family Services?  
9 A That's correct.  
10 80 Q I understand.  
11 A So they would be covered under Rural and  
12 Northern Services Branch, I believe is their  
13 title.  
14 81 Q So, there is Winnipeg Child and Family  
15 Services?  
16 A Correct.  
17 82 Q There are those social workers that you  
18 just described, who work for the government?  
19 A Right.  
20 83 Q ANCR, which is the Winnipeg intake agency?  
21 A Correct.  
22 84 Q Winnipeg Child and Family Services?  
23 A Yes.  
24 85 Q Which is separate from the, what you just  
25 described to to me, the 250?



21

1 A Can we start at the top one more time? Is  
2 that all right?

3 86 Q Yes.

4 A So, we represent the civil service, of  
5 which a part of that is Winnipeg Child and  
6 Family Services.

7 87 Q Okay. When you said there is about 250  
8 members you represent, did, was that the entire  
9 civil service?

10 A No. Do you want to know child protection  
11 workers?

12 88 Q Yes.

13 A Or staff within child welfare?

14 89 Q I want to know child protection workers?

15 A That is what you want to know?

16 90 Q Yes. Okay, let's start with this, how  
17 many child protection workers?

18 A I have never broken it down this way.

19 91 Q How many child protection workers does  
20 MGEU represent?

21 A At the time of our affidavit we indicated  
22 it was approximately four hundred, subsequent  
23 to my affidavit, we have begun to represent  
24 Métis, and Michif, so that number has  
25 increased.

22

1 92 Q And how many of those operate outside of  
2 Brandon, and Winnipeg?

3 A Outside of Brandon, and Winnipeg. May I  
4 have a piece of paper? I would have said  
5 there was approximately four hundred before,  
6 and I would estimate that Métis and Michif is  
7 approximately another --

8 MR. KROFT: We can go off the record. Go  
9 off the record.

10

11 (DISCUSSIONS HELD OFF THE RECORD)

12

13 BY MR. KROFT:

14 93 Q Okay. Maybe you should tell me what you  
15 calculated, because, I think I am going to ask  
16 the wrong question and throw you off?

17 A I recall the question being approximately  
18 how many child welfare social workers we  
19 represent.

20 94 Q Yes.

21 A Currently. And my estimation of that is  
22 approximately 550. And I recall your second  
23 question being how many of those child welfare  
24 social workers are outside of Winnipeg? Is  
25 that correct?

23

1 95 Q Yes.

2 MR. SMORANG: And Brandon perhaps.

3 MR. KROFT: Outside of Winnipeg and  
4 Brandon.

5 THE WITNESS: Can we pretend Brandon is  
6 outside of Winnipeg.

7 BY MR. KROFT:

8 96 Q Tell me how many are outside of Winnipeg?

9 A I believe approximately 200, maybe 225 is  
10 my estimation of those numbers.

11 97 Q Those 200 to 225 that are outside of  
12 Winnipeg, they include the two Métis agencies  
13 that just joined up, correct?

14 A Correct.

15 98 Q They are not party this this inquiry, are  
16 they?

17 A They are not.

18 99 Q And of the 200 to 225 outside of Winnipeg  
19 social workers represented by your union, out  
20 of that number how many are the new Métis  
21 folks?

22 A So, of those outside of Winnipeg the 200  
23 to 225, how many of those would be the Michif  
24 Métis folks? I would suggest to you 50 ish.

25 100 Q Okay. So, prior to that there would have

24

1 been 150 to 200 people outside of Winnipeg?

2 A Yes. I believe that number.

3 101 Q Ish?

4 A Thank you.

5 MR. SMORANG: 150 to 175. If you take 50  
6 off those two numbers, 200 to 225.

7 BY MR. KROFT:

8 102 Q How many of those are in Brandon?

9 A My estimate on that number is less  
10 reliable than my previous estimates. But, I  
11 would suggest to you, it is not more than ten,  
12 approximately, because Brandon has its own  
13 agency, which is not part of the MGEU. So, it  
14 could be even less than that. They have an  
15 independent agency.

16 MR. KROFT: Let's go off the record for a  
17 minute.

18 (DISCUSSIONS HELD OFF THE RECORD)

19 BY MR. KROFT:

20 103 Q I have shown, I am showing to you some  
21 pages that are marked as Exhibit "A" to the  
22 affidavit of Allison Lamontagne, which was  
23 sworn May 22, and which come from the Annual  
24 Report of Manitoba Family Services and  
25 Community Affairs. Are you familiar with that

25

27

1 report?  
 2 A No. I am not.  
 3 104 Q You have not read that report?  
 4 A I have not.  
 5 105 Q Are you familiar with these statistics  
 6 about number of children in care?  
 7 A I have not seen this document before.  
 8 106 Q But do you have a similar document, are  
 9 you familiar with the statistics in Manitoba as  
 10 to how many children are in care, and who has  
 11 them in care, who is responsible for them?  
 12 A I have heard general knowledge previous  
 13 about which authorities, but I do not have  
 14 specific knowledge about which authorities have  
 15 how many children in care.  
 16 107 Q Is it fair to say that a large majority of  
 17 the children that are in care in Manitoba are  
 18 aboriginal?  
 19 A Yes.  
 20 108 Q And is it fair to say that a large  
 21 majority of the children in care in this  
 22 province are looked after by First Nation  
 23 agencies?  
 24 A Are you asking me a question based on the  
 25 information that is in this document, or based

1 114 Q Okay.  
 2 A So I know that number.  
 3 115 Q When you say based, you mean that is their  
 4 main office in Winnipeg?  
 5 A No, I can't tell you that their is main  
 6 office. I know they have office in Winnipeg  
 7 because they provide service to clients in  
 8 Winnipeg.  
 9 116 Q They would be clients primarily associated  
 10 with the various remote communities that they  
 11 are affiliated with, right?  
 12 A Yes.  
 13 117 Q Okay. So, you would agree with me that  
 14 many of the children in care in Manitoba have  
 15 roots and family in communities outside of  
 16 Winnipeg? You would agree with that?  
 17 A Yes.  
 18 118 Q And in some cases, some very remote  
 19 communities?  
 20 A In some cases, yes.  
 21 119 Q Would you agree with me that most of the  
 22 children in care in the province are under the  
 23 supervision of groups of social workers who are  
 24 not represented by MGEU?  
 25 A Would I agree that there are social

26

28

1 on what my opinion or my --  
 2 109 Q No, I am asking what you know. If the  
 3 answer is you have no idea, you need to tell me  
 4 that. But you have told me you are not  
 5 familiar with the statistics, I am not asking  
 6 you about that. I am asking you about whether  
 7 to your knowledge, the majority of children in  
 8 care in this province are in care of First  
 9 Nation agencies?  
 10 A I believe that to be correct.  
 11 110 Q It is quite a large number, is my  
 12 understanding?  
 13 A Yes.  
 14 111 Q And you would agree with me that many of  
 15 these agencies are based outside of the city of  
 16 Winnipeg?  
 17 A Yes.  
 18 112 Q And, fair number of them, a large number  
 19 of them are based in fairly remote locations?  
 20 A There are 18, 17 First Nations and Métis  
 21 agencies in Winnipeg.  
 22 113 Q You are saying they have offices, or they  
 23 are located and based in Winnipeg?  
 24 A They have offices, and are based in  
 25 Winnipeg.

1 workers -- yes.  
 2 120 Q You have mentioned in your affidavit, I am  
 3 referring to paragraph 8, that social workers,  
 4 have a professional obligation to advocate on  
 5 public policy matters.  
 6 **MR. SMORANG:** Which affidavit?  
 7 **MR. KROFT:** It is a couple of paragraphs.  
 8 **MR. SMORANG:** Of which affidavit?  
 9 **MR. KROFT:** I am sorry, of your first  
 10 affidavit.  
 11 **THE WITNESS:** Which paragraph, sorry.  
 12 **MR. KROFT:** Eight. I don't mean to  
 13 suggest that it is only there, because you come back  
 14 to it later.  
 15 **MR. SMORANG:** What was the question, I am  
 16 sorry?  
 17 **BY MR. KROFT:**  
 18 121 Q It is your view that social workers have a  
 19 professional obligation to advocate on public  
 20 policy matters?  
 21 A Yes.  
 22 122 Q And, reading through your affidavit, I  
 23 believe you are saying that your membership,  
 24 the union membership, feel that it is  
 25 important, in fact, that they testify at the

<p style="text-align: right;">29</p> <p>1 inquiry, if not on the specific Phoenix 2 Sinclair things, to advocate for general 3 systemic changes? 4 A Yes. Absolutely. 5 123 Q And, I take it, it is your intention to 6 have your members who are social workers, in 7 fact, testify, if they are able to, in respect 8 of how policy should be changed in Manitoba, or 9 how the system should be changed in Manitoba, 10 or not, but to speak to that issue of public 11 policy, right? 12 A Can you say the question again. 13 124 Q Is MGEU expecting that its members who are 14 social workers, are going to be making 15 representations, providing opinions, and their 16 views on public policy issues affecting child 17 welfare in Manitoba? 18 A I don't know if they will be asked 19 questions on public policy. 20 125 Q All right. But MGEU won't be leading any 21 evidence like that, will it? Or will it? 22 A I can't tell you definitively the answer 23 to that. I don't think. 24 126 Q Does MGEU take the position that it is 25 entitled to lead evidence in respect of matters</p>	<p style="text-align: right;">31</p> <p>1 131 Q And you have taken the position that it is 2 important for your members to testify, not only 3 in respect of Phoenix Sinclair, but to provide 4 the Commissioner with insight, or I am sorry, 5 let me re-ask that question, it is getting too 6 long. 7 You have taken the position in paragraph 8 47 of your affidavit that it is important for 9 your members to advocate for improvements and 10 changes to the system? 11 A Yes. 12 132 Q And when you say this, you are expecting 13 that they will do so at the inquiry? 14 A Yes. 15 133 Q And are you suggesting that people are 16 entitled to participate in public policy 17 debates like that, and contribute and advocate 18 for public policy, and do so anonymously, and 19 without telling the members of the public who 20 will be affected who they are? Is that the 21 position of MGEU? 22 A I don't think we have ever used the word 23 "entitled", that I can recall. I think they 24 want to see change, improvements to the child 25 welfare system. I think they want, an</p>
<p style="text-align: right;">30</p> <p>1 of public policy generally? 2 A No. No. 3 127 Q It is not going to be making submissions 4 on issues of general public policy, I take it? 5 A No. I don't think so. 6 128 Q All right. So when you refer to this in 7 in your affidavit, what you are saying is you 8 believe your members have the right to 9 advocate, or express views on those social 10 policy matters, and that it is part of their 11 professional obligation, is that what you are 12 intending to say? 13 A I believe -- that is not quite what I 14 think. I believe those social workers care 15 deeply about the effectiveness of the child 16 welfare system. 17 129 Q Well, I didn't really ask you what their 18 personal views are. In your affidavit, you 19 swear that your members have important 20 testimony to give regarding improvements to the 21 child welfare system don't you? In paragraph 22 45? 23 A Yes. 24 130 Q Is that true? 25 A Absolutely.</p>	<p style="text-align: right;">32</p> <p>1 opportunity to be a component of that change 2 because they live this work, they have 3 committed their lives to this work, and they 4 want to see it done better. 5 134 Q Right. 6 A Not just for their own benefit, but for 7 the benefits of those children, and families to 8 whom they provide service to every day. 9 135 Q Right. You probably feel the same way? 10 A I do. 11 136 Q And are you claiming the right, are you 12 claiming for your members the right to try to 13 influence public policy in that way, and to do 14 it secretly from the public? Is that MGEU's 15 position? 16 A No. 17 137 Q All right. And, you would agree with me 18 that when citizens want to advocate on behalf 19 of public policy, they are perfectly entitled 20 to do that. I am sure you would agree with me 21 on that? 22 A Yes. 23 138 Q Is MGEU taking the position that their 24 members have some special right to do that in 25 secret, that other people don't have?</p>

33

1 A I guess I am disagreeing with you.  
 2 Because I am back to the definition of what is  
 3 secret, or what is going public.  
 4 139 Q Without letting the public know about it?  
 5 MR. SMORANG: It?  
 6 MR. KROFT: Their names. They are allowed  
 7 to give evidence, testimony, in some cases, I think  
 8 you are suggesting expert evidence, and that they are  
 9 entitled to do that with nobody knowing who they are?  
 10 THE WITNESS: No. I don't believe that is  
 11 our position.  
 12 BY MR. KROFT:  
 13 140 Q Okay.  
 14 A Not knowing, when you use the word "in  
 15 secret", or not knowing who they are, we are  
 16 saying their name and face doesn't have to be  
 17 on the six o'clock news, or show up on the  
 18 front page of the paper. But that the inquiry  
 19 is going to be an open room, so the public does  
 20 have the ability and the right to attend that  
 21 room. The press will be in the room, and will  
 22 be able to report on all of the information  
 23 that is given at the inquiry.  
 24 141 Q But not the names, or the identities of  
 25 the people who are providing these expert

34

1 suggestions to the Commissioner?  
 2 A Right.  
 3 142 Q So, we don't know the source, unless we  
 4 attend?  
 5 A Correct.  
 6 143 Q And that is the position of MGEU?  
 7 A Yes.  
 8 144 Q That applies not only to matters relate to  
 9 go Phoenix Sinclair, but it also relates to  
 10 matters relating to the general public policy  
 11 in respect of the child welfare system?  
 12 A Yes.  
 13 145 Q Now, MGEU has members in all sorts of  
 14 disciplines, I take it, they are not just  
 15 representing social workers?  
 16 A Correct.  
 17 146 Q What percentage of MGEU membership is  
 18 social workers? Can you guesstimate?  
 19 A May I say I am social worker, and not a  
 20 mathematician.  
 21 147 Q It is a small percentage?  
 22 A We have approximately 33,000 members of  
 23 which child welfare is in the neighborhood of  
 24 five or six hundred, if we count all of those  
 25 folks.

35

1 148 Q It is a small percentage?  
 2 A Whatever that percentage is that is what  
 3 it is.  
 4 149 Q In number of places in your affidavit you  
 5 testify about the positions taken by the MGEU.  
 6 You speak on behalf the MGEU, that is fair?  
 7 A Yes. I do.  
 8 150 Q When you do that, does that mean there is  
 9 a resolution passed by some body of the MGEU,  
 10 or some written policy?  
 11 A No.  
 12 151 Q Are you making up these positions, I  
 13 shouldn't have used the word making up, are you  
 14 formulating these positions yourself?  
 15 A No.  
 16 152 Q All right, who is ultimately in charge of  
 17 approving the positions that you have taken in  
 18 this affidavit?  
 19 A Sorry. But those to me are two different  
 20 issues. When you say am I creating these  
 21 positions? Or, whatever the words you used  
 22 instead of making up? No. The position we  
 23 have taken here, in both of my affidavits, and  
 24 in all of the work we have done, and letters we  
 25 have written, and all of those things, is based

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1 on information, that we have gotten from  
 2 members. So that is where those come from.  
 3 153 Q Okay. I am not talking about  
 4 information. I am talking about the  
 5 conclusions that you express in your affidavit,  
 6 as being what MGEU is expressing as its  
 7 position.  
 8 A I would say --  
 9 154 Q Who, who decides if that is going to be  
 10 the position taken by MGEU or not. Is it you?  
 11 A Those members decide.  
 12 155 Q Was there a vote?  
 13 A No. We didn't have a formal vote.  
 14 156 Q Right.  
 15 A We met with these folks, spoken to them  
 16 many times. And, that is where that comes  
 17 from. But there is not a formal resolution,  
 18 or policy, that says this is the direction we  
 19 are going on.  
 20 157 Q What you are expressing on behalf of MGEU  
 21 is what the social workers who have been  
 22 invited to your meetings say they want, is that  
 23 fair?  
 24 A It is that, and I have also worked in that  
 25 field for a number of years.

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1 158 Q I am going to stop you there, you are not  
 2 being qualified as an expert. So, is it you  
 3 who decides, or the members who decide?  
 4 A It is the members who decide.  
 5 159 Q You have told us the members you have  
 6 spoken to in your affidavit, and they are  
 7 primarily the people who you expect would be  
 8 participating in the Phoenix Sinclair inquiry.  
 9 A I would, I guess --  
 10 160 Q Answer that with what you think qualified,  
 11 is that right? When you talk about the members  
 12 have decided what positions you have expressed  
 13 in your affidavit, those are the people who you  
 14 expect would be called to testify at the  
 15 inquiry?  
 16 A In part. Yes.  
 17 161 Q Has there been a general membership  
 18 meeting?  
 19 A Yes.  
 20 162 Q Do you have any minutes of that meeting?  
 21 A Not here. And I don't believe the  
 22 minutes would reflect that level of discussion.  
 23 163 Q So, is it a decision made on behalf of the  
 24 entire membership of MGEU, or is it a decision  
 25 that has been made based on meetings you have

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1 disclosed here?  
 2 A Disclosed here.  
 3 164 Q In your affidavit?  
 4 A Yes.  
 5 165 Q It is on that basis that you say MGEU  
 6 takes this position, or that position, in your  
 7 affidavit?  
 8 A That's correct.  
 9 166 Q Paragraph 7 of your affidavit, your first  
 10 affidavit, one dated in June, you refer to  
 11 standards of practice created by the  
 12 department.  
 13 A Yes.  
 14 167 Q Were you consulting with those standards  
 15 of practice when you formulated this affidavit?  
 16 A Was I consulting?  
 17 168 Q Did you read them, when you were preparing  
 18 this affidavit?  
 19 A Not at the time. I have read them  
 20 previously.  
 21 169 Q Okay. And can you identify the standards  
 22 that you mean?  
 23 A The standards are these huge binders that  
 24 I have seen shared at a labour management  
 25 meeting.

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1 170 Q Those would be the binders that were not  
 2 produced, and that we talked about earlier  
 3 today?  
 4 A I don't know if those are the ones. I  
 5 will say to you that there is standards that I  
 6 am aware that the branch, and the authorities  
 7 have developed about how some work should be  
 8 done. And, I have, I have looked at them  
 9 before. But, I did not specifically look at  
 10 them the day I wrote this affidavit.  
 11 171 Q Can you tell me the specific document you  
 12 are referring to, so that I can get it?  
 13 A I just know they are the standards. That  
 14 is all -- I know the authorities had a roll  
 15 out related to standards, and that is.  
 16 172 Q Where did you see it?  
 17 A I can't recall definitively where I  
 18 saw -- I am trying to think of where I saw the  
 19 document. I know at a labour management  
 20 meeting we had with Winnipeg Child and Family  
 21 they discussed the roll out of standards that  
 22 had come about.  
 23 173 Q Did you see the document there?  
 24 A Not at that time. But it was shared with  
 25 me. And I apologize, but I can't recall the

40

1 exact date.  
 2 174 Q Can you give me anymore particulars, at  
 3 this time, about the document that you are  
 4 referring to in paragraph 7 of your affidavit?  
 5 A No. I don't think I can. Sorry, yes, I  
 6 can. Some of the standards were also related  
 7 to, there was a document but it was also  
 8 related to changes to CFIS (ph), the Child and  
 9 Family Service information system which is  
 10 their database they use. And, so some of the  
 11 standards were imbedded in that system. That  
 12 is how they have monitored face-to-face contact  
 13 with children, that is how they have monitored  
 14 the number of moves kids had, and what action a  
 15 social worker, or supervisor ought to take in  
 16 those circumstances. So if a child has not  
 17 been seen for a period of time, if they have  
 18 had a certain number of moves, those standards  
 19 are imbedded in that system. So that was the  
 20 information that I saw.  
 21 175 Q So, that is the information that you are  
 22 referring to, in paragraph 7?  
 23 A Yes.  
 24 176 Q All right. And that doesn't apply, that  
 25 doesn't have anything to do with publication

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1 bans?  
 2 A It does not.  
 3 177 Q Doesn't have anything to do with  
 4 restrictions on publication?  
 5 A It does not.  
 6 178 Q In your affidavit, you refer to social  
 7 workers, and I think we might have had a little  
 8 conversation about it earlier, when you say  
 9 social worker in this affidavit.  
 10 A Yes.  
 11 179 Q Are you, who are you referring to?  
 12 A I am referring to child protection social  
 13 workers.  
 14 180 Q So somebody who is a registered social  
 15 worker?  
 16 A No.  
 17 181 Q In order to be a social worker, in your  
 18 use of that term, do they need to have a degree  
 19 in social work?  
 20 A Not necessarily. Generally.  
 21 182 Q What you are describing as social workers,  
 22 is anybody who is working in the child welfare  
 23 area?  
 24 A No. I would say anyone who is, I would  
 25 say case coordinator, coordinator service, I

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1 guess I am trying to qualify it, when I say  
 2 anyone in child welfare, I don't mean the admin  
 3 staff who are working child welfare, I am not  
 4 referring specifically, to the support workers,  
 5 in the child welfare worker area. I am  
 6 referring to those who work directly with  
 7 families and children, do the risk assessments,  
 8 do that type of work.  
 9 When I said generally, most of those folks  
 10 have a Bachelor of Social Work, but there was  
 11 some of the First Nations and Métis agencies,  
 12 many of them have equivalency policies, as does  
 13 the civil service. So there are times when  
 14 they do not necessarily have to have a BSW to  
 15 do that work.  
 16 183 Q All right. So the people that you are  
 17 suggesting should be entitled to the  
 18 publication ban, is not restricted to people  
 19 who necessarily have a social work degree, it  
 20 would be anybody who is operating in the field?  
 21 A Anyone who has the job title at the work,  
 22 within their agency of the social worker  
 23 case --  
 24 184 Q What would the title be?  
 25 A Their working title?

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1 185 Q Yes?  
 2 A Usually, they are social workers, and then  
 3 there is a program word behind it, so  
 4 permanency planning social worker, adoption  
 5 social worker, intake social worker, that is  
 6 usually how they are described. Unless they  
 7 are in a generic position.  
 8 186 Q Repeat that last part?  
 9 A There are some that are in generic  
 10 positions, where not every agency will divide  
 11 themselves up into intake worker, and  
 12 permanency planning worker.  
 13 187 Q What I am asking about is who you mean in  
 14 your affidavit, when you say the word social  
 15 worker?  
 16 A They have a working title of social  
 17 worker.  
 18 188 Q That is how I would know, if their job  
 19 title says social worker, you are including  
 20 them in that, in how you use the term?  
 21 A Yes, that's correct.  
 22 189 Q In paragraphs 19, and 20, and following  
 23 you describe the organization of social  
 24 workers, and the system.  
 25 A Yes.

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1 190 Q Are these paragraphs 19, and 20, in  
 2 particular, are these paragraphs intended to  
 3 apply everywhere in Manitoba?  
 4 A No. As I was just saying, there are some  
 5 organizations, I would say this describes  
 6 primarily how a large organization would  
 7 operate, more likely in an urban setting. But  
 8 in some of the smaller agencies, one social  
 9 worker, excuse me, may do the work of the CRU  
 10 worker, the intake worker, and the family  
 11 service worker.  
 12 191 Q So in terms of who does what, and how they  
 13 interrelate that can change from place to  
 14 place, and time to time, right?  
 15 A Yes.  
 16 192 Q So, you are not suggesting when you  
 17 describe this, that this is the only way to do  
 18 it?  
 19 A No.  
 20 193 Q Could you look at paragraph 26 of your  
 21 first affidavit, your June affidavit. You  
 22 make the statement in paragraph 26 that, Social  
 23 workers have the right to expect that they will  
 24 not be recognized, and approached by strangers  
 25 in the day-to-day events of their private

45

1 lives.  
 2 A Mh-hmm.  
 3 194 Q Are you intending that to be a legal  
 4 statement?  
 5 A I don't know what that would mean.  
 6 195 Q Well, you are claiming that people have a  
 7 right. On what basis do you say people have a  
 8 right not to be approached by strangers?  
 9 A I guess I am using my own --  
 10 196 Q Just your personal opinion?  
 11 A Right.  
 12 197 Q And that is true of a number of the  
 13 statements that you make in this affidavit,  
 14 isn't it?  
 15 A Yes.  
 16 198 Q Now you, in the same paragraph, talk about  
 17 social work is keeping the nature of their work  
 18 private.  
 19 A Yes.  
 20 199 Q I take it from what we have already  
 21 discussed there is no written policy that you  
 22 can point to that talks about that?  
 23 A No.  
 24 200 Q You are aware that the -- I want to get  
 25 this right, The Manitoba Institute of -- what

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1 is the name of the organization?  
 2 **MR. SMORANG:** Registered Social Workers.  
 3 **BY MR. KROFT:**  
 4 201 Q The Manitoba Institute of Registered  
 5 Social Workers, publishes a list of all of the  
 6 names of registered social workers on their  
 7 website.  
 8 A I did not know that.  
 9 202 Q You did not know that at the time you  
 10 swore this affidavit?  
 11 A I did not.  
 12 203 Q Are you aware that there are a number of  
 13 social service agency, child welfare agencies  
 14 in this province that on their website post the  
 15 names and positions of their child welfare  
 16 worker staff?  
 17 A No. I was not aware of that.  
 18 204 Q You are aware that there has been inquests  
 19 into the deaths of children in care in Manitoba  
 20 other children than Phoenix Sinclair?  
 21 A Yes.  
 22 205 Q And I assume you have probably followed  
 23 those fairly closely in your position?  
 24 A Some. Yes.  
 25 206 Q And you would know that the names of the

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1 social workers who testify in those inquests  
 2 are not subject to any publication bans?  
 3 A I am not aware of that. But I have no  
 4 reason to challenge that. I can't say that  
 5 conclusively.  
 6 207 Q Well, if we look at some reports, have you  
 7 looked at any of the reports of other inquests,  
 8 of inquests on child deaths involving children  
 9 under care?  
 10 **MR. SMORANG:** You mean has she ever seen  
 11 one or --  
 12 **MR. KROFT:** Do you read them in the course  
 13 of your work, do you monitor them?  
 14 **THE WITNESS:** I follow them to some extent,  
 15 but I have not read any other inquest reports.  
 16 **BY MR. KROFT:**  
 17 208 Q I am -- I pulled out one, there are a  
 18 number that we produced in an affidavit by  
 19 Cecil Rosner, but have you seen the inquest  
 20 into the death of Patrick Norman Redhead?  
 21 A That name rings a bell.  
 22 209 Q He hung himself, do you remember, does  
 23 that ring any bells?  
 24 A Sorry. No.  
 25 210 Q I am showing you a copy of the report, and

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1 just flip through that, and you can look at the  
 2 parts that we have marked.  
 3 A Yes.  
 4 211 Q You can see that the social workers are  
 5 named there.  
 6 A Well sorry, I don't know, that I will --  
 7 because the first names are all not social  
 8 workers.  
 9 212 Q Keep reading. And I shouldn't have  
 10 restricted it to that. The people who are  
 11 involved in the care of Mr. Redhead gave  
 12 evidence and their names were used in the  
 13 public report.  
 14 A Okay.  
 15 213 Q Are you not disagreeing with that?  
 16 A No.  
 17 214 Q Were you --  
 18 A I see two social workers names, three,  
 19 yes.  
 20 215 Q Were you aware that that is the practice  
 21 in Manitoba at the time that you swore your  
 22 affidavit?  
 23 A No. No.  
 24 **MR. SMORANG:** Mr. Kroft, it is about ten  
 25 after 12, should we carry on and finish?

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1 (DISCUSSIONS HELD OFF THE RECORD)

2

3 **BY MR. KROFT:**

4 216 Q Could you turn to paragraph 41 of your

5 affidavit. In the second sentence of

6 paragraph 41, you make a statement about who

7 the confidentiality provisions that you have

8 cited are intended to apply to, and in what

9 circumstances.

10 A Yes.

11 217 Q Intended by whom?

12 A As the legislation is written by the

13 legislature, that is who I would assume that

14 was intended, that the government would have

15 had an interest in ensuring the confidentiality

16 of all of those proceedings.

17 218 Q This is your personal assumption and

18 opinion, correct?

19 A Correct.

20 219 Q You have no legal basis or other basis for

21 stating that?

22 A Correct.

23 220 Q And you have made a number of statements,

24 in fact, in your affidavit of that nature?

25 A Correct.

50

1 221 Q Yes. If we go over to paragraph 46 of

2 the affidavit. I take it you are speaking for

3 the MGEU, in paragraph 46?

4 A Correct.

5 222 Q I want to make sure I understand the

6 MGEU's position, is it suggesting it is going

7 to withdraw its support to social workers who

8 participate in the inquiry if it is not

9 successful in this application?

10 A No. That is not correct.

11 223 Q Does MGEU intend to discourage its members

12 from participating in this inquiry if it loses

13 this application?

14 A Discourage? No.

15 224 Q Will MGEU provide the same support and

16 encouragement regardless of whether it wins or

17 loses this application?

18 A I am not sure that we would. No.

19 225 Q No. You would holdback, if you lose this

20 application, is that what you are saying on

21 behalf of MGEU?

22 A I think the emphasis, is on the word

23 encourage. All of those members that come

24 forward to participate, we will support them

25 absolutely. Because, we believe in people's,

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1 we believe their participation is meaningful to

2 the process. So, all of those who either are

3 selected by Commission counsel to participate,

4 or who elect to participate, we will support in

5 the process without hesitation. But I think

6 the word encourage, is something different.

7 226 Q Are you going to do less to help the

8 inquiry, if you lose this motion, than if you

9 win it?

10 A No.

11 227 Q So the answer is regardless of what

12 happens, you are going to do the same thing, in

13 terms of supporting the process, and your

14 people, isn't that correct?

15 A We are going to support the people,

16 and -- I guess where I am struggling to answer

17 your question, in as clear a way as you might

18 like, is because to me the issue is on what is

19 "encourage participant"?

20 228 Q But you, are you saying you are going to

21 act differently, in terms of trying to bring

22 forward the evidence if you lose this motion?

23 I say you, I mean MGEU?

24 A Right. I would say, it is about

25 encouraging individuals as opposed -- that is

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1 what it is about. So if folks are looking for

2 reassurance, if we are not successful in this

3 motion, I can't reassure them of what the

4 consequences of our loss will be. And, that

5 may impact their decision on how they proceed,

6 or what they elect to bring forward.

7 229 Q You better explain that to me, I don't

8 understand. I think you have said you are

9 going to do something differently if you lose

10 than if you win? Is that correct?

11 A What I am saying is, if we are not

12 successful in the publication ban.

13 230 Q Yes.

14 A And if someone says to me, you know, I

15 think I may have something to offer, but I am

16 afraid whatever. Can you assure me that I am

17 not going to have a problem walking down the

18 street, can you assure me? I would have to

19 say, no, I can't.

20 231 Q But you would have to say no, you can't

21 even if there is a publication ban wouldn't

22 you?

23 A I would have to say I can't guarantee it,

24 but I would feel a greater level of certainty

25 in that circumstance.



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1 232 Q That is another one of your personal  
 2 opinions?  
 3 A Yes, it is.  
 4 233 Q You haven't done any research to see if  
 5 that is correct?  
 6 A No.  
 7 234 Q There are lots of social workers in  
 8 Manitoba, from the websites, who, who people  
 9 know.  
 10 A Yes.  
 11 235 Q And so whether you win, or whether you  
 12 lose, you don't know what is going to happen  
 13 after the fact. You have no basis for that,  
 14 do you?  
 15 A I would not say I have no basis for that.  
 16 236 Q Okay.  
 17 A Do I have data to suggest that this will  
 18 happen, or that will happen, in an empirical  
 19 way? No.  
 20 237 Q You just have an opinion?  
 21 A I have an opinion, but also, we have some  
 22 experience from which that opinion is based on.  
 23 238 Q Where people's names have been published,  
 24 and they have been hurt, is that the experience  
 25 that you are talking about?

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1 A Or there has been a negative consequence  
 2 as a result.  
 3 239 Q Can you give me an example of where the  
 4 publication of the name of a social worker,  
 5 resulted in a social worker being hurt that you  
 6 have knowledge of?  
 7 A A social worker from one of the agencies  
 8 that we represent, in a matter not related to  
 9 the inquiry, in another child welfare matter.  
 10 As a result of that, her name was published  
 11 somewhere. She went to visit another client,  
 12 not related to the original matter. That  
 13 person hadn't met her before, that family, they  
 14 googled her name, and when she came to the door  
 15 as a result of that, she faced increased  
 16 conflict, concern, from those people. So, I  
 17 would say to me, that is a concrete, recent  
 18 example.  
 19 240 Q Sorry, was she hurt?  
 20 A She wasn't physically harmed.  
 21 241 Q Who is this person?  
 22 MR. SMORANG: You are asking for her name?  
 23 MR. KROFT: Yes.  
 24 MR. SMORANG: I don't think we are going to  
 25 give you her name.

55

1 MR. KROFT: All right.  
 2 BY MR. KROFT:  
 3 242 Q You weren't there, you didn't see any of  
 4 this?  
 5 A I did not see it.  
 6 243 Q All right. And that is the nature of the  
 7 evidence that you have that is one of the  
 8 things --  
 9 A That is the one of the examples, yes.  
 10 When I said it is based on some other  
 11 information, that is --  
 12 244 Q That is the sort of thing it is based on?  
 13 A Yes.  
 14 245 Q All right.  
 15 MR. KROFT: I am just going to take a  
 16 minute to review my notes. I think I am done. But  
 17 I think Mr. Gindin may have some questions.  
 18 I am done.  
 19 BY MR. GINDIN:  
 20 246 Q I have a few additional questions. And,  
 21 again, I am referring to your first affidavit.  
 22 Which you essentially adopt in your second  
 23 affidavit, with some additions, correct?  
 24 A Correct.  
 25 247 Q If I can refer you to paragraph 23. You

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1 have that now in front of you?  
 2 A I do.  
 3 248 Q What you are referring to there is that  
 4 since the death of Phoenix Sinclair, and some  
 5 of the publications in the media, stress has  
 6 increased, that is what you are essentially  
 7 referring to?  
 8 A Yes.  
 9 249 Q Now, of course, that has already occurred  
 10 in the past? Correct?  
 11 A Yes.  
 12 250 Q And the publications in the media that you  
 13 are referring to were not anything that named  
 14 anyone in particular, but just generally  
 15 talking about social workers?  
 16 A Correct.  
 17 251 Q I take it that would increase the stress  
 18 somewhat, the fact that everyone seems to be  
 19 tainted by the same brush, without any  
 20 specifics?  
 21 A Correct.  
 22 252 Q And part of the stress would certainly be  
 23 from the mere fact that a child had died.  
 24 A Correct.  
 25 253 Q It became known?

57

1 A Correct.

2 254 Q And you also mention in that paragraph,

3 that one of the other sources of stress was

4 that little was known about what actually

5 happened, correct?

6 A Correct.

7 255 Q You actually used that phrase.

8 A Yes.

9 256 Q Of course, at that time, no evidence was

10 heard yet?

11 A Correct.

12 257 Q In any public way?

13 A Correct. Just the media reporting.

14 258 Q And an inquiry, of course, evidence would

15 be heard, facts given, and opinions would be

16 given? Which is somewhat different than what

17 you referred to here, when they just outright

18 general criticism of a profession as a whole?

19 A I guess the common thread, though, would

20 be what people get is still whatever the media

21 reports, and that is what is the same thing.

22 259 Q But in this paragraph you are referring to

23 criticism that was leveled in a general way,

24 that if it happened in legal profession I as a

25 lawyer would be somewhat upset that we are all

58

1 tainted by the same brush, without anything

2 specific being said?

3 A Yes.

4 260 Q Now, I refer you to paragraph, back to

5 paragraphs 45, and 46, that Mr. Kroft touched

6 on briefly. And, in paragraph 45, you

7 indicate that social worker with important

8 testimony to give would be reluctant to come

9 forward?

10 A Mh-hmm.

11 261 Q If everything was publicized along with

12 their names, that is what you are suggesting?

13 A Yes.

14 262 Q I take it you agree most witnesses in any

15 cases, in many cases, are somewhat reluctant to

16 come forward, it is not a pleasant activity?

17 A Yes.

18 263 Q When you say reluctant to come forward,

19 you don't suggest that they won't come forward.

20 They just might not be happy about it? Or are

21 you suggesting that in principle, they would

22 have important testimony to offer, but they

23 would holdback, and keep it in private?

24 A I would say that, of course, every witness

25 that is subpoenaed by Commission counsel, will

59

1 attend. Every witness, at the inquiry who is

2 asked a question, will answer the question that

3 is asked of them. I wasn't quite done. So

4 they will all attend, they will all answer the

5 questions that are asked of them. But will they

6 offer additional information that is not

7 specifically asked of them? If they are

8 concerned that they don't know where that is

9 going to go, and that their face is going to be

10 on the six o'clock news, I can't guarantee that

11 in the same way.

12 If someone has information that might be

13 important to the inquiry, but their name

14 doesn't come forward through Commission

15 counsel, will they as likely put their hand up

16 to say, I think I have something of value to

17 this issue, I don't think they will be as

18 likely, if they believe their face will be on

19 the six o'clock news.

20 264 Q Are you suggesting that the testimony

21 would be different in any way, whether their

22 name was in the paper or not?

23 A I don't think I can add much to what I

24 said. Other than I would just reiterate, they

25 will answer the question asked of them, but

60

1 will they offer additionally what they think is

2 important to the inquiry? I can't offer the

3 same guarantee.

4 265 Q You are not suggesting they would be less

5 honest in their answers?

6 A I am not suggesting they would be

7 dishonest in their answers, I am suggesting

8 they might not come put their hand up to offer

9 the additional information in the same way.

10 266 Q Even if they felt it might improve the

11 system in some fashion as a matter of

12 principle?

13 A I can't guarantee with the same level of

14 certainty that they would do it.

15 267 Q I presume there are a lot of things you

16 wouldn't be able to guarantee for us?

17 A I think you are correct in that.

18 **MR. GINDIN:** I think that is all I have.

19 One more thing, pardon me. If I can be given one

20 moment. No, I think that is all I have.

**(CROSS-EXAMINATION CLOSED).**

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I, Jill Proctor, Official Court Reporter, hereby  
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