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

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

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

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JULY 29, 2013

## **APPEARANCES**

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**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 Child and Family All Nation Coordinated Response Network

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

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

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

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

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

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

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

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

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

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

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1 JULY 29, 2013

2 PROCEEDING CONTINUED FROM JULY 25, 2013

3

4 THE COMMISSIONER: Good morning.

5 MR. TRAMLEY: Good morning, sir.

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

7 Just a slight change in the order of submissions,  
8 Mr. Tramley is going to go first this morning, he was  
9 accommodating Ms. Dunn's request because she was in court  
10 this morning. She is here now but Mr. Tramley is going to  
11 start.

12 THE COMMISSIONER: All right, that's fine. Mr.  
13 Tramley?

14 MR. TRAMLEY: Yes, good morning.

15 THE COMMISSIONER: Pleased to hear you.

16 Please proceed.

17 MR. TRAMLEY: In phases one and two of this  
18 inquiry, you, you heard evidence, both orally in terms of  
19 witnesses being presented, as well as reports being  
20 prepared, to deal with the, the significant issues of the,  
21 the circumstances surrounding the death of Phoenix Sinclair  
22 and, as well, in dealing with a look and a review at the  
23 Child and Family Services system in place at the time of --  
24 that she was in care and her death, the steps that have  
25 been taken after her, her death in terms of the changes to

1 the system and, as well, you've heard a lot of  
2 recommendations and information related to what further  
3 recommendations or changes or improvements could be made to  
4 the system.

5           And I've had an opportunity, over last week, to  
6 listen to the submissions that were made, as well as review  
7 the written submissions that were made by counsel in  
8 dealing with those obviously very important issues and  
9 trying to identify how things can be made better in terms  
10 of building a better system in the sense if the system is  
11 going to be there, how that system is going to be built  
12 better.

13           The focus of my submissions this morning and, and  
14 the participation of the Aboriginal Council is slightly  
15 different. We didn't particular in phase 1 and 2 and what  
16 we are really here to talk about is that elephant in the  
17 room that you identified back in April.

18           Back on April the 15th you identified sort of the  
19 parameters for moving into phase three, and I quote:

20

21           "The statistics that Commission  
22           counsel referred to in 2012,  
23           relating to the overrepresentation  
24           of aboriginal children, First  
25           Nations and Métis, in care in this

1 province, shows little improvement  
2 over recent years."

3  
4 "I have reviewed what I have this  
5 morning, particularly what I have  
6 said with reference to phase 3 for  
7 good reason, to mirror the  
8 disproportionate number of  
9 aboriginal First Nations and Métis  
10 children that continue to be in  
11 care, year after year, is  
12 unacceptable and yet little, if  
13 any improvement seems to occur,  
14 year after year. In the closing  
15 weeks of this inquiry, I want all  
16 the assistance available as I  
17 address two, in particular, if the  
18 many questions to be answered in  
19 the course of formulating  
20 recommendations I consider  
21 appropriate to better protect  
22 Manitoba children."

23

24 And there's two questions that you had framed at  
25 that time.

1           "Those questions are: ... What  
2           are the reasons for those  
3           disproportionate numbers? And (2)  
4           What are the solutions to  
5           significantly reduce the number of  
6           children in care, both aboriginal  
7           and non-aboriginal?"

8  
9           And that really is the, the elephant in the room  
10          that we think needs to be addressed as part of this inquiry  
11          process that you have actually identified already. It  
12          isn't something that's new to anyone, especially given the  
13          evidence that you heard in, in phase 3, and again, you have  
14          two parts of this inquiry that are going to be dealing with  
15          building a better system, a Child and Family Services  
16          system for people who are going to become involved in the  
17          system, how they're going to be treated, how they're going  
18          to be dealt with and hopefully the improvements that are  
19          going to be made as a result of that.

20          But that really isn't the answer. When you sit  
21          down and you talk to somebody about this inquiry, other  
22          than people who have been either involved in the system,  
23          in, in being in care themselves, or having children in  
24          care, or in professionals that are involved in the system,  
25          the general public knows very little about the Child and

1 Family Services' system, how it works, what's appropriate,  
2 that kind of thing. But the conversation switches very,  
3 very quickly to that elephant in the room that you  
4 identified, is why are so many children in care? Why are  
5 they so long in care? Why are there such a  
6 disproportionate number of aboriginal children that are in  
7 care? Why is there such a disproportionate number of  
8 aboriginal people that are in those high risk factors that  
9 are taking into account that you've heard from the experts,  
10 Dr. Santos and Ms. McCuaig, over the weeks when they, when  
11 they gave evidence here about poverty, lack of education,  
12 substance issues. Why? Those are really the issues that,  
13 that people focus on, those are the ones they can  
14 understand, those are ones that they are interested in  
15 knowing.

16 Well, it's great to build a protection, a fair  
17 and appropriate Child and Family Services system as it is  
18 to have a good justice system in place because there are  
19 circumstances where people are going to get into care, or  
20 require care, require whatever preventative assistance  
21 that's going to be, but that's not really the -- can't be  
22 the ultimate goal. The ultimate goal has to be to prevent  
23 people from even being in that kind of situation, to be  
24 able to shift those resources that we've heard over the  
25 last number of weeks about (inaudible) protection and



1 prevention and putting the protection arm of it out of  
2 business and creating it more in the prevention part and  
3 dealing fundamentally with those issues.

4           That's really the key because we're really in a  
5 unique situation at this particular time to be able to take  
6 a look at those particular issues and so when you've  
7 identified that -- those two questions, it's that second  
8 question that I wanted to focus on, in my submissions, and  
9 take a look at a couple of factors.

10           I can tell from sitting at the back of the room  
11 and listening to the submissions that have made over the --  
12 over last week, that you've clearly read the material, you  
13 understand it, and if you have questions of counsel as a  
14 particular of their written submissions you're going to ask  
15 them. What I would like to be able to do, though, is  
16 having that benefit is that I've had the -- what's  
17 interesting is that, in phase 3, there are certain themes  
18 that, that come out or principles that come out of the  
19 phase 3, whether it's from the evidence, whether it's from  
20 the written submissions, the oral submissions, or even from  
21 the recommendations, and I would like to touch on those  
22 themes, if I may, and follow that, as well, by touching on  
23 how they apply necessarily to the recommendations that  
24 we've made to you in our written submission.

25           One of the first principles identified and

1 that you identified is the problem. For too long too many  
2 children, aboriginal children, have been involved in the  
3 Child and Family Services system. There is an  
4 overrepresentation of aboriginal children in the Child and  
5 Family Services system, we know that. We also know that  
6 there is an overrepresentation and a disproportionate  
7 number of aboriginal people that hit those risk factors or  
8 those vulnerabilities, as they're described in the material  
9 that was put before you, related to poverty, lack of  
10 education/training, substance issues and involvement in the  
11 justice system, just to name a few. All of those risk  
12 factors, risk factors that give an indication as to whether  
13 or not someone is going to be involved in the -- has a risk  
14 of being involved in the Child and Family Services system.  
15 You identified the problem, not only in saying here there's  
16 this disproportionate number, that's the problem that we  
17 have to be able to look at, and so that theme runs  
18 throughout. And there isn't anyone who came before you in  
19 phase 3 or in any of the submissions that takes any issue  
20 with that at all and clearly that's the fundamental problem  
21 that we have.

22 The second principle that came through was the  
23 focus or the need to focus on education and training. One  
24 of the key risk factors that was identified by the experts  
25 that came before you was people who were in -- who didn't

1 have as much education, who were having difficulty in  
2 school, not getting through school, did not have the tools,  
3 the resources, to be able to then handle what came to them  
4 in life, in terms of being a contributing member of  
5 society, whether that means in being able to take care of  
6 their family, having a job, whatever that's going to be,  
7 one of the critical factors was a lack of education.

8           And in particular noted in the material was the  
9 idea related to early childhood education, that is the  
10 earlier the better seemed to be the phrase that was used by  
11 a number of the experts, Dr. Santos, in particular, Ms.  
12 McCuaig, who prepared a couple of reports. Both talked  
13 about really the earlier the better. Because it was quite  
14 frightening, when you looked at how the science was able to  
15 identify what we thought to be something that it wasn't  
16 necessarily a problem.

17           In our society we have what we think to be an  
18 equal opportunity, every child has an opportunity to go to  
19 school, go to Grade 12, maybe have an opportunity to be  
20 able to go on afterwards, but that's, scientifically, has  
21 been proved not necessarily to be the case, depending upon  
22 some underlying factors.

23           And I'll use the example that was used of the --  
24 a simple one of the summer, the summer loss, that is the  
25 summer schooling, where studies were, were taken of

1 children at the end of June, and if they were all at this  
2 particular level at the end of June they were then studied  
3 again and tested at the, at the beginning of September and  
4 then there was a difference, and there was a difference  
5 shown between people who would have had poverty, versus  
6 non-poverty, for example. And they looked at that and they  
7 wonder what was the reason for that? And a lot of that has  
8 to do with opportunities that they have, what are they  
9 doing over the summer? Some of these children are involved  
10 in camps, the parents are able to afford, you know, to send  
11 them to camps, go on a family trip to Banff, whatever it  
12 may be, there's learning opportunities and learning that's  
13 going on throughout the summer months. And so as a result,  
14 even though there's some loss for those children, it's not  
15 as significant.

16           The other children, where programs and the cost  
17 of programs is a barrier, travelling is a barrier, they're  
18 not having those same opportunities and so when they come  
19 back in September there's a gap. And that's a gap that  
20 reoccurs year after year. And so the experts were able to  
21 identify just simply something in our system, itself, when  
22 we shut down for those two months in the summer, that that,  
23 in and of itself, creates that inequality, creates those  
24 barriers, creates that larger mountain or that higher  
25 mountain for those children to be able to climb. Just as

1 an example, and so we can see from those experts how  
2 important it was for that early education and for that  
3 education to be able to continue.

4 The third principle that ran through the  
5 submissions is the need for -- and really it's almost two  
6 sides of one coin, that is the need for aboriginal control  
7 and it being on a local community control level.

8 And I say that two sides of one coin in this way.  
9 And that -- again, there's not really any dispute in this  
10 inquiry as it relates to the ideal that having a greater  
11 role, greater aboriginal control in the provision of  
12 services to aboriginal people is going to put them in a  
13 better position to be able to succeed, to be able to  
14 provide services that are more culturally appropriate, and  
15 there is a lot of evidence, and I don't need you to go  
16 through that, there was reference that was made by Mr.  
17 McKinnon to the AJI/CWI report or process that was involved  
18 and, in fact, that's what's happened here, as you can see,  
19 where there has been the shift for Child and Family  
20 Services, those kinds of services, being shifted and the  
21 opportunity then for aboriginal people and communities to  
22 be able to control and provide those kind of services. And  
23 so the benefit has already been identified and is without  
24 question as it relates to Child and Family Services and I  
25 would suggest that there isn't anything different when it

1 comes to providing other services. Education, for example  
2 is the one that I will be talking about this morning, there  
3 is absolutely no doubt, as well, that those kinds of  
4 opportunities, if given to the aboriginal communities,  
5 would have hopefully the same benefits in moving forward.

6           The second side of that relates, as well, to the  
7 local community control and we think that that's important,  
8 as well, from the Aboriginal Council's point of view in the  
9 sense that the local community we, we submit, is in a  
10 better position to be able to identify what the needs, what  
11 the strengths, what the desires are of each of those  
12 communities. That was a theme that you, that you heard  
13 throughout and there was submissions that were made by Mr.  
14 Cochrane, Mr. Funke, as well, that related to having to  
15 deal with, if there is things that are going to be  
16 occurring, they were making reference in the Child and  
17 Families Services system that there has to be that  
18 consultation, there has to be that involvement with local  
19 communities. And so I see that principle as well, it's a  
20 two-sided coin.

21           Another principle that we noted, as well, in the  
22 material was that Winnipeg is, is an aboriginal community,  
23 there's a, there's an aboriginal community in Winnipeg. A  
24 lot of times the general public may think, when they think  
25 of -- if you ask them what do they think about when they

1 think of an aboriginal community and a lot of times what  
2 they're going to think of, the first thing is they're going  
3 to think of is a reserve and there's no question that that  
4 is an aboriginal community, a community of aboriginal  
5 people that are living in those areas but that's not  
6 everything and that's not the same thing.

7           Right now in Winnipeg we have the largest urban  
8 aboriginal community in Canada, it's the fastest growing  
9 and it's the largest in Canada. And it is a community.  
10 It's not a community in the sense that where you have a  
11 territory that's, that's identified to say okay, well, this  
12 is where non-aboriginal people live, this is where  
13 aboriginal people live, in that context, but there is a  
14 community that's here. There's a functioning community  
15 that's here, that is in a position to be able to deal with  
16 issues that come up, whether they're from a Child and  
17 Family Services perspective, education, training, justice,  
18 whatever that may be, that's been recognized.

19           THE COMMISSIONER: Is that the largest apropos,  
20 the total population or is it relative to the size of the  
21 community, when you say it's the largest aboriginal  
22 population in Canada?

23           MR. TRAMLEY: I'm taking it from the -- from this  
24 -- the statistics that show as it relates to urban centres,  
25 whether it's comparing us to Toronto, Vancouver, Regina,

1 Saskatoon and Winnipeg has the largest number of aboriginal  
2 people, I think --

3 THE COMMISSIONER: Proportion to its population?

4 MR. TRAMLEY: Not proportion to population but in  
5 terms of total population --

6 THE COMMISSIONER: Largest, period.

7 MR. TRAMLEY: -- aboriginal population. That's  
8 correct.

9 As it relates to proportion, I don't know what  
10 those numbers are, the numbers that Mr. Helgason gave were  
11 approximately 72,000 people -- I'm using very rough  
12 numbers, his numbers were a little bit better in his  
13 evidence -- approximately 72,000 people that identified as  
14 aboriginal identity. And so that was, I think, the number  
15 that he was looking at, approximately, I think, 29,000 of  
16 which I think were identifying as First Nation, I believe  
17 there was 40 some thousand identifying as Métis, and then  
18 the remainder being made up, Inuit or, or otherwise. And  
19 so --

20 THE COMMISSIONER: Yes.

21 MR. TRAMLEY: -- that, as it relates to total  
22 population. The population of, of Winnipeg, I think is  
23 anywhere from 670,000, around 700,000 let's say, so you  
24 would say that the aboriginal population in Winnipeg would  
25 make up approximately 10 percent or so, in and around that



1 figure. How that compares to other communities, that I  
2 don't know, of comparable size, that I don't know. I would  
3 expect that the number is likely fairly high, as well. It  
4 may be fairly high maybe in some of the communities like  
5 Saskatoon or Regina, just given their relative size to  
6 Winnipeg but I think those numbers are still fairly, fairly  
7 consistent.

8 THE COMMISSIONER: Right.

9 MR. TRAMLEY: And what's important is that not  
10 suggesting that 70,000 people will sit down around a table,  
11 come to a meeting and say okay, we're a community, we're  
12 all together in this, this is what we're going to do. But  
13 that's not really the issue, there is a community that's  
14 here, there is a community that functions and does deal  
15 with issues that come up.

16 There was an -- I'll use an example of dealing  
17 with the issue of education. The report that was done by  
18 the Aboriginal Council, that was Exhibit 115, there was the  
19 Aboriginal School Division Workshop Report, and that's a  
20 good example, that was just one of the cases where the  
21 Aboriginal Council was involved and where the community was  
22 coming together to deal with the issue of in that case they  
23 were looking at the Children of the Earth High School and  
24 the possibility of what would be involved in an aboriginal  
25 school division.

1           And so stakeholders would be brought in to take a  
2 look at that, whether they would be political, whether they  
3 would be the service organizations, whether they be members  
4 of the community, themselves. They look at that, they look  
5 at an issue, they will determine what, as a result,  
6 happens. It may be a case where certain action is  
7 identified, it may be a case where certain service  
8 organizations are identified to do certain work, whether  
9 that's Ms. Dunn's client, Ma Mawi, you've heard of lots of  
10 organizations that provide services to aboriginal people  
11 that have a mandate from the community to be able to do so.

12           And it's not someone writing a piece of paper,  
13 and tacking it on the wall, but there is a mandate that  
14 they have from the community, that the community has given  
15 to them to be able to go forward and provide these services  
16 in whatever areas that may be. An example, whether it's  
17 education and training, whatever that justice, whatever it  
18 might be. It does function as a community, I think that's  
19 an important feature to be able to identify in this  
20 process.

21           The other component of that, as well, and I think  
22 this, this touches on a little bit, a couple of questions  
23 that you have --

24           THE COMMISSIONER: Is the Aboriginal Council of  
25 Winnipeg sort of the focal point of the community, itself?

1           MR. TRAMLEY: It's one of the -- the Aboriginal  
2 Council operates on a, sort of, pan-aboriginal all  
3 inclusive basis in the sense that it doesn't identify only  
4 with First Nation, Métis or otherwise. And so it's one of  
5 the political voices, certainly in Winnipeg, as it relates  
6 to the aboriginal community. And it doesn't identify  
7 itself as a service provider and so it is really what I  
8 would consider to be a facilitator, a political voice for  
9 Winnipeg.

10           When you heard Mr. Helgason talking about, for  
11 example, services that were provided through the Centre for  
12 Aboriginal Human Resource Development or CAHRD, and out of  
13 the Aboriginal Centre in Winnipeg, that is an organization  
14 that provides education and training, that is CAHRD.

15           The Aboriginal Council, itself, doesn't provide  
16 that education and training, what their, what their role  
17 and responsibility would be, and I'll talk about it in a  
18 moment when we get to the, the Ardock (phonetic) case that  
19 we did a few years ago, but it's really to facilitate in  
20 those circumstances. It was to advocate on behalf of the  
21 aboriginal community in Winnipeg, to be able to participate  
22 with, whether it's negotiations with the levels of  
23 government, provincial, federal; dealing with the  
24 stakeholders in the community, the organizations again  
25 represented by Ms. Dunn or Ma Mawi and being able to

1 linkage that, and also individual members, members of the  
2 community, themselves. And so it acts, really, as a bit of  
3 a go-between, as an organizer and as a facilitator, and for  
4 example if it was a case where one of your recommendations  
5 was that Manitoba Education look at the, the interest of a  
6 aboriginal school division, for example, that's one of the  
7 recommendations that we're making, we would see the  
8 Aboriginal Council as one of the partners at the table that  
9 would be consulted and involved in terms of the ultimate  
10 organization. It certainly wouldn't be the Aboriginal  
11 Council that would be that -- running the division or being  
12 involved in the operation of it, that would be taken,  
13 obviously, by whatever it is, the school division or  
14 whatever authority that there may be.

15           That is just sort of the role that they have in,  
16 in the community. And there's other roles, there's roles  
17 that both the, the MMF as well as the AMC as well, both two  
18 political organizations that again have a role, both in  
19 some of the communities that they represent as well as in  
20 Winnipeg, as well, as it, as it deals with their members.

21           One of the areas that I did want to touch on,  
22 because this was an area that you had asked a couple of  
23 questions, both of Mr. Cochrane, I believe, and of Mr.  
24 Funke, related to sort of the aboriginal landscape and, you  
25 know, being rather diverse and you're asking in some of

1 these recommendations, we want you to consult, we want you  
2 to establish and I'll use the example again of the, of the  
3 school division or of the education authority that's been  
4 put in our recommendations and you may have a question  
5 about well who, who is the government supposed to be  
6 talking to, who are they supposed to be dealing with?

7 THE COMMISSIONER: Yeah. And, and are you making  
8 a distinction between the authority that you talk about and  
9 the division you talk about or are they the same thing?

10 MR. TRAMLEY: Well, when I get to the  
11 recommendations I think they're different, I think an  
12 aboriginal school division is sort of at this level here  
13 and I'll talk about what would be involved in that, that's  
14 more of a formal structure that I -- that the Aboriginal  
15 Council has sort of argued as it relates to almost  
16 comparing it to the Franco Manitoban School Division and so  
17 very, very similarly they see that as a very similar kind  
18 of a model as it relates to that.

19 There commendation relating to the Education  
20 Authority I would see as sort of above that, taking on a  
21 different role and responsibility in terms of organizing  
22 not -- because the, the school division is related, really,  
23 to K to 12 and, and the focus of that and it's mandated as  
24 it's related to that, the education authority aspect of  
25 that, we see it as a broader basis. Mr. Helgason talked

1 about and some of the experts talked about the number of  
2 people that return to education, the number of aboriginal  
3 people that return to it and so while they may not be  
4 involved in education they may leave the traditional school  
5 system before they're 18 for various reasons.

6 THE COMMISSIONER: Yeah.

7 MR. TRAMLEY: There's a very high number that  
8 then returned and returned for whether that's getting their  
9 upgrading to Grade 12 and then on to a formal education,  
10 whether it's for training, whatever that may be, there's  
11 large numbers. And so our vision or idea would be the  
12 Authority would be looking at not just simply that K to 12  
13 so that when you're 18 or you're done Grade 12, sorry  
14 you're either on your own or you're going to have to look  
15 for different aspects of it, that authority would be trying  
16 to organize before "K" and after 12, as well. And it would  
17 be looking at it on a more broader blush and, and  
18 recognizing the reality of what's really there and not sort  
19 of saying we're going to compartmentalize it. And so  
20 that's -- I do see a bit of a difference that way.

21 And in, in sort of dealing with the principle --  
22 I do want to come back to that distinction --

23 THE COMMISSIONER: Well, if you're going to deal  
24 with it in your recommendations, that's quite satisfactory.

25 MR. TRAMLEY: Okay. Okay. But I, I do want to

1 come back to it but the one point that I did want to make  
2 about the landscape is that that was one of the arguments  
3 that we had in the Ardock case, and that the federal  
4 government, in that case, said you know we know who we're  
5 dealing with when we had the organizations that are related  
6 to the MMF in terms of representation for Métis people and  
7 we knew who we were dealing with, with the AMC, as it  
8 related to representations for First Nation people, but in  
9 Winnipeg oh, it's pretty diverse and there was lots of  
10 people that are there. We really didn't know we were going  
11 to be dealing with and it's not really sort of this defined  
12 territorial community.

13           And that was really a red herring because that  
14 had never been a problem and I don't see that being a  
15 problem, whether it's in Winnipeg or whether it's in other  
16 communities. And the reason for that is, is that the  
17 communities know who's involved, they know who's active,  
18 they know who's providing services, who's interested in  
19 these kinds of issues and it doesn't take that long to be  
20 able to figure that out, whether you're provincial, federal  
21 government, or anyone for that matter. And that's never  
22 really been a barrier and it ultimately wasn't a barrier in  
23 the Ardock case because they already had been dealing with,  
24 in this case, CAHRD, they already knew who they were  
25 supposed to be dealing with in the community, who had been

1 mandated by the community to be able to do it, and I don't  
2 think that it's anything different as it relates to  
3 education, whether it relates to justice, whatever that  
4 issue may be. It depends, doesn't it, really, in respect,  
5 and that what the issue is.

6           If it's something related maybe to Child and  
7 Family Services then you will be looking at the community  
8 in Winnipeg in dealing with who those stake holders are,  
9 who are providing services that plug into that system. Who  
10 are the ones that are interested in that?

11           Is -- they're known in the community, they're the  
12 ones that come forward, whether through the assistance of  
13 the Aboriginal Council or otherwise, it's not difficult to  
14 see. If it's an issue related to justice you look at the  
15 organizations that are providing services and of an  
16 interest in that area. It's again, not a difficult thing  
17 to be able to do.

18           Mr. Funke made reference to well, it depends in  
19 some respects, and I agree with him, that if you're talking  
20 about something that may be very local, on a First Nations  
21 community in and of itself, you may only maybe in that case  
22 be dealing with maybe a service organization that's based  
23 on that community, or dealing with the, with the band that  
24 is dealing with chief in council. On a broader level he  
25 identified maybe you would be dealing with a tribal



1 council. And so, again, it really depends on the focus,  
2 depends on the nature of the question that you're asking or  
3 the issue that you're taking a look at but it's not hard to  
4 do and so it's not -- we don't see that as a barrier to say  
5 okay, well, you know what, we can't get into this area  
6 because we think that that's too difficult.

7 First of all, we don't think it's difficult at  
8 all and second of all, that's part of the process, that's  
9 part of having to get down to it and do that kind of work  
10 and see who's there in the community because we think that  
11 if you look at any of the issues we've talked about and  
12 especially the issues that you see in this inquiry here,  
13 there won't be any difficulty in doing so, whether you're  
14 speaking to the Aboriginal Council of Winnipeg, whether  
15 you're speaking to the MMF, AMC or the other service  
16 organizations, whether it's Ms. Dunn's client, Ma Mawi,  
17 Social Planning Council, a number of different of  
18 organizations, it's not that difficult when you talk to the  
19 people that really are in the community, that operate in  
20 that respect.

21 The final principle that, that I had noted, sort  
22 of running through, was the schools as a focus. And again  
23 I'm -- our angel, it relates to education, with schools as  
24 a focus.

25 THE COMMISSIONER: The, the final thing was what?

1 MR. TRAMLEY: Schools as a focus.

2 THE COMMISSIONER: Schools was the focus. Yes.

3 MR. TRAMLEY: Schools as a focus.

4 And what that related to is that you, you heard  
5 the description, the experience that Mr. Helgason had had,  
6 as a social worker when he was first placed in a school  
7 many, many years ago, when he's first started out in the  
8 business and talked about sort of the importance that had  
9 been in terms of the relationships that he was able to  
10 develop with the teachers, with the students, the knowledge  
11 that he was able to have, whether some families were having  
12 a difficult time, whether some children were coming without  
13 a meal, and the other side of it, as well, is whether some  
14 families were really thriving, positive, maybe ones that  
15 could potentially be foster parents, that kind of thing as  
16 well. And so the school being a focus.

17 You also heard that -- the word hub being used, I  
18 think it was Ms. McCuaig, in either her evidence or  
19 certainly in her report where she made reference to the  
20 schools being a hub, and I think it was a point of contact  
21 that Mr. Helgason, the phrase that he used, point of  
22 contact. Ms. McCuaig, I believe used the phrase hub.

23 But they all really come down to the school being  
24 the focus of not just necessarily 9:00 to 3:00, providing  
25 this for the, for the children and that's it, they see it

1 as a broader ability because it's the one place they  
2 identified in the community where people are really --  
3 either have to go or are going. Their children are going  
4 there, they're really supposed to be going there and so it  
5 was something that really gave the ability of people,  
6 whether it was like Mr. Helgason or otherwise, the insight  
7 into the families and creating it more as than just simply  
8 a school. Whether it was someone that, that these children  
9 were spending time with later on, after three o'clock,  
10 whether it was something they were doing in the summer,  
11 through the community special investigators program that  
12 you've heard about, they see the school, really, as  
13 something more and something much more important.

14 THE COMMISSIONER: And extended use, both in time  
15 and content of what's offered.

16 MR. TRAMLEY: Absolutely. Absolutely. And the  
17 community special investigators program is sort of a good  
18 example of that, wasn't it, where you had about 15 schools  
19 that were participating and they have this program that was  
20 in place from the beginning of July till the first week of  
21 August, so approximately five weeks or so. So it -- during  
22 a time where those schools would otherwise be closed,  
23 completely, other than for maintenance, they were open and  
24 they were open to be able to provide this kind of  
25 programming, something totally outside of the education

1 system but these children were learning, they were having  
2 the opportunity to be able to participate, to address that  
3 problem of that summer loss both through, as you say, the  
4 content in terms of what they were doing, as well as even  
5 the infrastructure and the timing. And so it was much more  
6 eloquently put by both Ms. McCuaig and Mr. Helgason in  
7 their, in their material, but really the schools being a  
8 focus being critical.

9           If I may turn to our recommendations. And they  
10 began at page 15 of our submission. I'm not going to go  
11 through all of the recommendations in detail but what I did  
12 want to do is touch on a couple of points in going through  
13 them. One had been, in looking at those recommendations  
14 there were, there were three points that I had noted last  
15 week that you had raised with other counsel in their oral  
16 submissions. The first one had been, the question you had  
17 asked, is how will it help? You're making a -- you're  
18 asking for recommendations -- the first question was you  
19 had asked, one of them was, how will it help?

20           The second one that I noted was I don't mind  
21 going in a new direction, if you have a recommendation  
22 that's going in a new direction, that's fine, but is it  
23 sound and is it the right step to take? So something going  
24 sideways a little bit different than what's the status quo

1 is fine but does it sound in the right direction to take?  
2 That was the other point that I had noted.

3           The third one had been is it a good use of public  
4 money given, sort of, the financial constraints and  
5 circumstances that the government is in? So, in other  
6 words, is this recommendation a good use of the resources  
7 in terms of spending the public money. And so being  
8 mindful of those comments, and those questions that you  
9 have when you're going to be examining the recommendations,  
10 I'm going to go, go through ours and when you looked at our  
11 recommendations you've already identified a distinction in  
12 the recommendations as it relates to, for example, between  
13 the aboriginal school board and an aboriginal education  
14 authority and really when you look at -- to use some of the  
15 analogies that have already been used in oral argument last  
16 week, I know Mr. Gindin had used one relating upstream and  
17 downstream and being a fisherman I, I understand that one.  
18 I'm not a football player so unfortunately Mr. Rolston's  
19 and Mr. -- sorry, Mr. McKinnon's, I'm sorry, those  
20 analogies I didn't quite understand as much but I did play  
21 baseball as a kid and so I do understand the one as it  
22 relates to that and when you look at the recommendations  
23 that we've put forward some of these we -- could be  
24 described, really, as hitting a single, that is -- these --  
25 they're, they're a good recommendation, we think that they

1 are feasible, they meet those requirements, those three  
2 steps that you had talked about or points that you had  
3 spoken about but they're not everything. They're not the  
4 home run, they're not the run, they're not winning the  
5 game, and ultimately maybe not winning the pennant.

6 And so when you go through them there may be some  
7 ultimate goals that we're talking about but we see them as  
8 a graduation and a step-by-step, we're not suggesting that  
9 the recommendation from this inquiry simply be an education  
10 authority be put in place, this is what it's going to look  
11 like and that's it. We're not naïve enough to be able to  
12 believe that we're at that stage yet, that's going to  
13 occur. We would like those baby steps to start, that  
14 process to start, and we see that evolving over time but we  
15 don't see that coming right out of the shoot, we see some  
16 of these initial ones that can have immediate effect and  
17 that can meet those points that you've spoken about.

18 The first one talks about Manitoba education  
19 expanding the scope and availability of early childhood  
20 education programs, preferably in existing primary schools  
21 with emphasis on geographic areas, characterized by serious  
22 economic disadvantage.

23 This is one that's aimed at Manitoba education,  
24 this is one that deals with the providing of that early  
25 education which was identified as being absolutely

1 critical. Again, I won't go through the detail but there  
2 was the reports prepared by Ms. McCuaig, Dr. Santos clearly  
3 identified education being critical, early education being  
4 absolutely critical, and so we join with them in terms of  
5 supporting their arguments and their science and their  
6 studies being able to show that that kind of education,  
7 that kind of programming is critical and we're suggesting  
8 that that kind of program could be done right away, that  
9 that recommendation could be made and that could be  
10 implemented right away.

11 THE COMMISSIONER: You're quite correct, there's  
12 a volume of evidence that would support that.

13 MR. TRAMLEY: Absolutely. Absolutely.

14 And I think all of the submission that were made,  
15 even in the written submissions, a lot of the oral  
16 submissions touched on phases 1 and 2, to the extent that  
17 the written submissions touched on those aspects of it,  
18 they were absolutely in favour as well.

19 Recommendation number 2 had been that Manitoba  
20 education expand the CSI, which is the community -- make  
21 sure I get -- special investigators summer learning  
22 enrichment program, that that program be expanded, as well.

23 We know from the material that, that's in place  
24 that's at Exhibit 117 for your notes, is that this program  
25 has been in place for approximately nine years. It's in 15

1 schools now. While it's managed by the Boys and Girls Club  
2 of Winnipeg, it's -- also has an involvement from a large  
3 number of other partners, both financial, from Manitoba  
4 Education providing the schools, there's a number of  
5 different partners and agencies that are involved in  
6 providing that program.

7           This is a five week program we've spoken about,  
8 from beginning of July to early August and this program  
9 identifies that one aspect of education relating to that  
10 summer loss, education loss. And so you heard from Mr.  
11 Helgason about the success of that program, it's  
12 consistent, certainly, with the, the experts that you've  
13 heard from, Dr. Santos, Ms. McCuaig again, to name a few,  
14 that that kind of education is critical, that kind of  
15 experience is absolutely critical. And so we're suggesting  
16 that that kind of program obviously be promoted, as well,  
17 and be expanded.

18           And Mr. Helgason talked about Manitoba Education  
19 being quite good about letting, letting them into some of  
20 the schools but there is still some resistance to having  
21 the program broadened in terms of having a lot of the  
22 schools being open and doing it on a much larger basis, as  
23 well. And so we suggest that with that infrastructure  
24 that's already there, with the program that's already been  
25 known to be successful, then in those circumstances that's



1 something we recommend -- we strongly recommend be promoted  
2 as well and expanded.

3 And whether it's the CSI summer learning  
4 enrichment program or another program like it, we're not  
5 suggesting that that's the only program that's out there.  
6 If there's other programs like it, if there's other  
7 programs that, that create that same desire that deal with  
8 that need, those are ones to be promoted, as well. We're  
9 not suggesting that somehow it should only be the one or  
10 otherwise, we think that that is something that's critical  
11 that we would see as a recommendation, a viable  
12 recommendation from this, this inquiry.

13 The third one I've already spoken a little bit  
14 about but I did want to touch on and that relates to  
15 Manitoba Education establish in consultation with the  
16 aboriginal community in Winnipeg, an aboriginal school  
17 division to provide education, programming and services for  
18 aboriginal children and youth. And we've suggested that  
19 Manitoba Education should consider the Franco Manitoban  
20 school division as initial starting point to work from.

21 THE COMMISSIONER: Has it, has it got a statutory  
22 base?

23 MR. TRAMLEY: It is statutory based. The Public  
24 Schools Act of Manitoba provides for the establishment  
25 school divisions, one of the school divisions being the

1 Franco Manitoba School Division and so it is statute based  
2 and it's really, if you look at sort of the, the regular  
3 stream, if I can call it, of school divisions and you have  
4 the Franco Manitoban School Division, they're very, very  
5 similar. The main distinction, of course, relates to that  
6 the French relates to obviously providing those education  
7 in a French appropriate cultural surrounding circumstances  
8 with French students, in French communities, that kind of  
9 thing.

10 THE COMMISSIONER: Does it have its own school  
11 board?

12 MR. TRAMLEY: Yes, it does. And so it, it was  
13 established in 1994 so it's been around awhile and so the  
14 experience that Manitoba Education would have with it,  
15 they've now had a number of years under their belt. Theirs  
16 is a little bit different in the sense that they have  
17 approximately, if I'm -- if I read the material correctly,  
18 about 24 schools in Manitoba of which there is about, I  
19 think, eight schools in Winnipeg, and so their, their  
20 mandate is not only in Winnipeg because they have French  
21 schools in Winnipeg but also it's broader, there's French  
22 communities throughout the province that are also under  
23 their umbrella, St. Laurent, La Broquerie, a number of  
24 different other communities that have French schools that  
25 would be under the French school division, Franco Manitoba

1 School Division, as well.

2 THE COMMISSIONER: And that --

3 MR. TRAMLEY: So they're focused a little bit  
4 differently.

5 THE COMMISSIONER: -- that's the raison d'etre  
6 for its existence to teach French in, in the, in the  
7 schools under the division's responsibility?

8 MR. TRAMLEY: Absolutely.

9 THE COMMISSIONER: All right. And, and what  
10 would that be, what -- in, in what you're proposing with an  
11 aboriginal school division is, is it, is it to bring  
12 aboriginal children together or is it to teach a special  
13 curriculum?

14 MR. TRAMLEY: It's, it's to -- it's really to do  
15 very -- almost the same thing that's, that's being done in  
16 the Franco Manitoban School Division part in the sense that  
17 it's not to just have a situation where there's an  
18 aboriginal course that's taught in all schools, this is to  
19 be able to bring aboriginal children together who want to,  
20 who want to be able to have an aboriginal focused education  
21 and have that as their own school division that would be  
22 able to provide -- because we've seen it in the case of, of  
23 the French community, that it's important to the French  
24 community to have that opportunity to do so, we feel in the  
25 circumstances that the aboriginal community is also --

1 should be in the position that they, as well, would be best  
2 served by having that kind of school division being in  
3 place because it's more than just simply having the school  
4 being under the rest of, of a normal school division. For  
5 example, the Children of the Earth School, which is a very  
6 good school, but it's under the regular school division  
7 parameters, it doesn't have the autonomy that a French  
8 school would have or in a case an aboriginal school  
9 division would have.

10 THE COMMISSIONER: But it would have to comply  
11 with certain curriculum requirements, I assume?

12 MR. TRAMLEY: Absolutely. And, and we really  
13 would see the, the Franco Manitoban School Division as a,  
14 as a model for doing that at this particular level, in the  
15 sense that the -- I'm not an expert as it relates to the  
16 education but as I understand it, it's the same in a sense  
17 that there's provincial requirements and there's very  
18 standardized requirements and systems that are in place  
19 that relate to both the mainstream school divisions and the  
20 Franco Manitoban School Divisions, as well. The major  
21 distinction being French controlled, French operated and  
22 being culturally appropriate to the French community. That  
23 would be the distinction. But other than that it would be  
24 the same, and so as it relates to moving that one step  
25 over, in terms of the aboriginal community, we would see it

1 being much the same way. We're not suggesting, at this  
2 particular stage, that there be something different, that  
3 children going through that stream would have a different  
4 experience as it relates to whether you're having a Grade  
5 12, whether their having basic requirements of whether  
6 they're math, sciences or otherwise, that would still be in  
7 place but the community would then, obviously, have an  
8 ability to be able to make it culturally appropriate and  
9 provide for some of the flexibility that isn't there today  
10 in the regular mainstream system.

11 And that can include a number of different things  
12 and I, I don't profess to be able to suggest what that  
13 could be but you've heard about a number of different  
14 things that could be occurring as it related to aboriginal  
15 communities and aboriginal people involved in the school  
16 system.

17 For example, I think there was an example that  
18 was used relating to daycare and when people sometimes  
19 think of daycare and a school they think of you have one  
20 child that may be in Grade 1, you have another child that's  
21 two years old, as a parent you can drop your child off at  
22 the day -- school daycare, so they take care of the two  
23 year old while you can go off to work.

24 THE COMMISSIONER: Yeah.

25 MR. TRAMLEY: One of the examples that I heard

1 during this inquiry was well, in the aboriginal communities  
2 that's, that's critical, but also the case that it has to  
3 be -- and recognizing that in some cases it's for the  
4 students, not for the parents, it's for the students that  
5 require the daycare because they're having children at an  
6 age when they're in school.

7 THE COMMISSIONER: Yeah.

8 MR. TRAMLEY: And they need the opportunity. So  
9 in that particular case, there's a distinction that would  
10 be there. The other aspect of it relates, as well, tying  
11 into the hub and point of contact, is 9:00 to 3:00 doesn't  
12 always work.

13 THE COMMISSIONER: At the time of civic elections  
14 is there -- do candidates stand for election to the Franco  
15 Manitoba board?

16 MR. TRAMLEY: You know, that's a good -- I don't  
17 know how they're, they're elected, actually. I know the  
18 school divisions are -- it's easier because it's geographic  
19 and they're identified and they're elected in that sense.  
20 I don't know. I could, I could take a look at the Act --

21 THE COMMISSIONER: Well, I was just, I was just  
22 wondering what, what, what you are proposing --

23 MR. TRAMLEY: What the structure is.

24 THE COMMISSIONER: -- for, for governance of this  
25 aboriginal school division.

1           MR. TRAMLEY:    Um-hum.   Well, and I think that,  
2   again, would have to be something that would take place  
3   related to -- in this particular case we're, we're talking  
4   about at the school division we've, we've focused on  
5   Winnipeg, for example.

6           THE COMMISSIONER:   Yes.

7           MR. TRAMLEY:    Because of the difficulties we  
8   understand in trying to suggest well, how is that going to  
9   work when we're talking about the provision of education  
10  services, let's say for example, on reserve and the  
11  involvement that the federal government has, related to  
12  jurisdictional issues, funding, that's a whole different  
13  kettle of fish.  And so our proposal relates to Winnipeg.

14          THE COMMISSIONER:   Oh, I understand Winnipeg,  
15  because of numbers is a special case.

16          MR. TRAMLEY:    Well, in Winnipeg, Winnipeg we say  
17  fits, fits the bill.  If you look at an issue of do we have  
18  the critical mass, there's no question.  If you look at  
19  does it have the need we would say there's no question, as  
20  well.  And if you look at it does it have the interest in  
21  it?  There's no question as well.  And so we don't see any  
22  reason why there couldn't be this kind of proposal put  
23  forward, this kind of recommendation, and actually  
24  implement it in Winnipeg.

25          The governance role for that could take -- could

1 look at it, I guess could look at a couple of different --  
2 I think one would have to be in consultation with the  
3 community, would identify who those players are. It may  
4 very well be that it's done on a, on a broad basis,  
5 aboriginal, aboriginal people in Winnipeg voting in terms  
6 of you could even do it on the basis of, of a vote, if  
7 that's what's done in terms of the, the mainstream school  
8 division at large.

9           In Winnipeg we have ward systems still but if you  
10 were taking it from a Winnipeg point of view, where you  
11 might have schools in different areas, instead of trying to  
12 identify certain geographic areas because children may come  
13 from other areas, you might identify Winnipeg as a whole if  
14 you are a resident in Winnipeg then logically you could be  
15 in a circumstance where potentially there could be a vote.  
16 If, for example, if you're going to use a model that is  
17 close to the Franco Manitoban one where they're -- the vote  
18 structure is there. And to answer your question, I will  
19 take a look, once I get to the back of the room, as it  
20 relates to the, the model under the Public Schools Act as  
21 it relates to the Franco Manitoba because it -- because of  
22 the fact that they have to do it in other communities they  
23 must have a different system in place in terms of their  
24 school board representation, it can't be the same as it is  
25 for, for regular ones. So I'll make a note of that.



1 THE COMMISSIONER: Oh, that's fine.

2 MR. TRAMLEY: Yeah. The, the next  
3 recommendation, that is number four, I think this one ties  
4 in, as well, with number 6, and that relates to the  
5 establishment of an aboriginal education authority. And  
6 this one is a little bit harder to be able to put some meat  
7 on the bones in the sense that the, the school division is  
8 -- we think it's, it's much easier to be able to do because  
9 there is a model that's already there, there's already one  
10 that's outside of the mainstream that we've looked at and  
11 we think that's a good model to be able to start from as it  
12 relates from the school division point of view, it isn't  
13 something where someone is going to have to go out and  
14 recreate the wheel from scratch and say how is this thing  
15 going to look, how is it going to be structured?

16 You've identified an issue related to governance but  
17 other than those kind of features we think that it's  
18 something that's quite doable and meets the, the test that  
19 you've talked about in terms of the resource of the public  
20 funds and being something that, even though it's a new  
21 direction, it make sense. Those features.

22 Education authority we see as sort of one step  
23 beyond that, that is an education authority would be  
24 something that would look at education, training on a much  
25 broader basis, not just strictly linked to the K to 12, the

1 traditional school structure, but recognizing the  
2 importance of that pre-K opportunities in education that's  
3 required, that's -- again that the experts identified,  
4 being that early education model which is critical and, as  
5 well, is recognizing that this isn't just simply once Grade  
6 12 is finished, even if you have been successful enough to  
7 get to that point that that's the end of it, or you're 18  
8 years old, we don't, we don't have any further we can do  
9 for you, there isn't any sort of coordinated or organized  
10 way to be able to deal with it and so the, the vision, I  
11 guess, had been, from the Aboriginal Council's point of  
12 view, had been that that education authority would have --  
13 would be looking at those aspects, education from here to  
14 here on a much broader basis, and even looking at issues  
15 related to not what we think is formal education but also  
16 training, as well, because that's also a feature, it's not  
17 just simply about going to school, it's also about  
18 obtaining training, the appropriate training, depending  
19 upon the skills, the desires that you have, the jobs that  
20 you're interested in, the opportunities that are going to  
21 be there in whatever community that you may be in, whether  
22 that's Winnipeg, whether that may be in other communities,  
23 as well. And so they see an education authority having the  
24 ability to be able to look beyond that.

25 THE COMMISSIONER: And who would, who would

1 comprise the authority?

2 MR. TRAMLEY: Well, and that's where, that's  
3 where it's a little bit more difficult to be able to put  
4 the meat on the bones in the sense that the Aboriginal  
5 Council had felt that that was a process that they would  
6 see as, as being evolving; that is, it would really be what  
7 we're looking for from the inquiry is a start, is a push,  
8 is sort of a push offshore to get that boat starting to  
9 move. In the sense of what it would look like we really  
10 weren't in a position to be able to necessarily say here's,  
11 you know, the organizations that are involved or here's the  
12 services that would be provided, that kind of thing, what  
13 they're look at more on saying we think this is a reality,  
14 we think that this is something that can be done. It's  
15 likely going to involve not only the province but also  
16 Canada, as well. It's going to be looking at it on a  
17 broader basis and so what we're asking from the inquiry is,  
18 is a start.

19 THE COMMISSIONER: Phrased how?

20 MR. TRAMLEY: Similar to what you would find in,  
21 in four and six as it relates to our recommendations in the  
22 sense that we're not in a position to be able to say what,  
23 exactly, that education authority would look like. In an  
24 ideal world we would be able to be in that position but you  
25 can even see from the earlier exhibit related to the report

1 that had been prepared by the Aboriginal Council, related  
2 to comparing the Children of the Earth School versus a  
3 school division, these are things that, that take time and  
4 these are steps that take time.

5           We're not suggesting that to say we don't really  
6 have any idea what an authority would look like but what we  
7 do know is that we do know that there's a need and we do  
8 know that the system that's in place today is fragmented  
9 and doesn't deal, we feel, with those issues on a broader  
10 basis and so what that authority may look like, it may be  
11 something that is quasi-governmental in the sense of being  
12 done in conjunction with the province, Canada, and whether  
13 it's other organizations. It may be being done on that  
14 basis on that particular level.

15           It's not seen as the authorities providing  
16 services themselves, we don't see that, we don't see the  
17 Authority being the one okay, we're providing these  
18 services, it's more overseeing and organizing the provision  
19 of those services.

20           THE COMMISSIONER: But if, if establishment would  
21 be a matter for that task force you're referring to --

22           MR. TRAMLEY: Yes, that's --

23           THE COMMISSIONER: -- in number 6?

24           MR. TRAMLEY: -- that's correct, yes. Yeah.  
25 What we're asking for is the task force, we're asking for

1 the, the push off shore from this inquiry to get that  
2 process started. That's going to take time, it's going to  
3 take years to be able to do but this is an opportunity to  
4 be able to do that. And so while it may be difficult to  
5 say exactly what it's going to look like, that's not  
6 surprising. That's not surprising, given the, the number  
7 of parties that may be at the table, the issues that  
8 they're going to be looking at, those are significant and  
9 those are varied, and so for Canada, or the province or  
10 otherwise, to say well, we don't really have -- you haven't  
11 come to us and told us this is what it's going to look  
12 like, we don't see that being an impediment at all. We  
13 feel that that task force being put in place to be able to  
14 move forward with that, is the step that we're looking for  
15 at this particular stage.

16 That maybe winning the pennant sometime in a few  
17 years down the road but we're certainly in some of the  
18 rebuilding years at this particular stage, we're not at  
19 that particular point yet.

20 THE COMMISSIONER: Okay.

21 MR. TRAMLEY: And just a couple of final remarks,  
22 in conclusion. You have a unique opportunity and time  
23 right now. We don't know of another circumstances where  
24 these kinds of issues have been looked at in this capacity  
25 before in Winnipeg or in Manitoba, maybe even in Canada,

1 and we think this is a real unique opportunity to be able  
2 to take a look at that because it's a critical time,  
3 certainly in the case of the life of, of Winnipeg.

4           You have, again, the largest aboriginal  
5 population size community in, in Canada and you have a  
6 number of the issues that have been identified, I'm not  
7 going to go through them again in terms of the risks and  
8 the disproportionate number of aboriginal people that are  
9 represented in those risks. And some might see that as  
10 sort of the, the darkness that's cast and the shadows  
11 that's cast by those particular issues as being  
12 insurmountable or being the focus but the Aboriginal  
13 Council doesn't see it that way. Where they see that is  
14 that they actually see hope out of that, they see a  
15 tremendous, a young dynamic resource in aboriginal youth,  
16 an untapped resource that if there is real change that  
17 comes out of this kind of inquiry and the recommendations  
18 that you're making, we see that having a significant impact  
19 at this particular point in time.

20           And the last point I wanted to leave you with was  
21 Mr. McKinnon had identified, in his submission, in saying  
22 how important this inquiry was and the recommendations that  
23 it was going to be making as it relates to Child and Family  
24 Services being provided, not only in Manitoba, but being  
25 watched across the country in terms of how that's going to

1 be in place. And I completely agree with him but there is  
2 also an added feature, as well, that this is being watched  
3 very closely by the aboriginal community, both I would say  
4 in Winnipeg and, on a broader basis as well, across Canada.

5           The fact that you've looked at the issues that  
6 you're looking at under phase 3, don't underestimate the  
7 importance and the recognition of looking at those issues  
8 in a real and meaningful way, that is, in hearing experts  
9 as it relates to it, in hearing the community members  
10 talking about it and having their experiences put forward  
11 and then being in a position where recommendations are  
12 going to be made as a result of that. Don't underestimate  
13 how important that is, that recognition as it relates to  
14 the community in terms of what's there. That's --

15           THE COMMISSIONER:       We've certainly had the  
16 experts here.

17           MR. TRAMLEY:    You had the experts and you also  
18 heard from the community in terms of Winnipeg as it related  
19 to people that were providing the services, that were on  
20 the ground, and those, those experiences and their  
21 recommendations and their thoughts were heard, as well, and  
22 that's significant.

23           And I'll leave you with just this one small story  
24 just to add a little bit of, of pressure. When we were  
25 preparing our witness for giving evidence at this inquiry

1 and we were meeting and discussing with a few of the  
2 clients, they talked about okay, well, you know, what are  
3 we going to be giving evidence about and what are the  
4 issues they're looking at and they said okay, well, what's,  
5 what's going to happen out of this? Like what happens? If  
6 we get to go up there and we say that we want to, you know,  
7 be, be something that's going to be useful, what happens  
8 out of this stuff? And we said, well, recommendations are  
9 then made, based on a report prepared, recommendations are  
10 then made to the government, who has asked for the inquiry,  
11 to then be able to take a look at that.

12 And they said: Well, what happens with those  
13 recommendations? And we said: Well, you hope that the  
14 government is going to be able to do something about it and  
15 as I was trying to sort of explain how, how that system  
16 worked, I was interrupted by one of the clients and they  
17 said: Look, in this particular inquiry -- and I'll use the  
18 words that they used -- we have the rock star of inquiry  
19 commissioners and so if there is a -- if there is going to  
20 be a recommendation made it's something that's going to be  
21 important. And so that's not to add anymore pressure to  
22 you but if there is any question you have about the  
23 convictions in going through your recommendations over the  
24 last number of months that you have, you can keep that in  
25 mind.



1           THE COMMISSIONER: Let me just ask you this, in,  
2 in recommendation number 6, that the provincial government  
3 establish, in conjunction with the aboriginal community in  
4 Winnipeg, a cross-departmental task force is the Council  
5 prepared to be part of the aboriginal community that would  
6 be within that piece of work?

7           MR. TRAMLEY: Yes, yes. Yeah, they see that as  
8 part of their mandate from the community and they would  
9 absolutely be involved in that, not only with the, with the  
10 establishment of a school division, in terms of being a  
11 linkage with the community but certainly as it relates to  
12 that task force, as well.

13           THE COMMISSIONER: Well, I thank you, Mr.  
14 Tramley.

15           MR. TRAMLEY: Thank you.

16           THE COMMISSIONER: You have made some sound  
17 recommendations and they will receive serious  
18 consideration.

19           MR. TRAMLEY: I know Ms. Dunn had asked me to go  
20 first because she was going to be tied up in some other  
21 matter and I was supposed to go at least 15 or 20 minutes,  
22 it looks like I've succeeded in that but not succeeded in  
23 the rest of the counsel I told I would take a half an hour  
24 so --

25           THE COMMISSIONER: Well, you haven't gone over

1 the allotted time.

2 MR. TRAMLEY: Thank you.

3 THE COMMISSIONER: Ms. Dunn, do you want to take  
4 a break now and then start?

5 MS. DUNN: That's fine then, Mr. Commissioner.

6 THE COMMISSIONER: All right. We'll adjourn for  
7 15 minutes and then take the final brief.

8

9 (BRIEF RECESS)

10

11 THE COMMISSIONER: All right, Ms. Dunn.

12 MS. DUNN: Good morning, Mr. Commissioner. For  
13 the record, my name is Dunn and I appear on behalf of Ka Ni  
14 Kanichihk which is an aboriginal community based  
15 organization here in the City of Winnipeg.

16 I'll begin my submission this morning, Mr.  
17 Commissioner, by dealing specifically with the questions  
18 posed by the Commission in terms of those four questions  
19 that counsel has been referred to by the Commission.

20 THE COMMISSIONER: Now, are you going to be  
21 speaking from -- you -- when I got down to studying this  
22 yesterday, you've got -- one submission is 45 pages long,  
23 one is 40 pages long or is it the way -- did you turn in  
24 two versions?

25 MS. DUNN: No. In fact, do you mean paragraphs

1 or?

2 THE COMMISSIONER: Well, there's some -- there  
3 are some --

4 MS. DUNN: It should be 45 paragraphs, it's 19  
5 pages in length.

6 THE COMMISSIONER: It's the one with 45  
7 paragraphs?

8 MS. DUNN: Yes.

9 THE COMMISSIONER: Yeah, they're -- that's,  
10 that's -- explains it, that's the one I, I worked with.  
11 There is one that only has 40 paragraphs.

12 MS. DUNN: Oh, okay. There, there was an initial  
13 one submitted, subject to Ms. Spillet's review, so that may  
14 be --

15 THE COMMISSIONER: Oh, that's what it was.

16 MS. DUNN: Yeah.

17 THE COMMISSIONER: All right. Well, I've, I've  
18 studied the right one.

19 MS. DUNN: Okay, well, that's good.

20 THE COMMISSIONER: Yeah.

21 MS. DUNN: Mr. Commissioner, there was a number  
22 of recommendations raised by Mr. Gindin that the Commission  
23 has specifically asked that we, as counsel for the various  
24 parties and intervenors, respond to, so I will begin with  
25 what, in my submission, is the most important

1 recommendation, that is recommendation number 47 in Mr.  
2 Gindin's brief which states that:

3

4 "There should be a clear  
5 acknowledgement by the Manitoba  
6 government that the  
7 overrepresentation of aboriginal  
8 people in the child welfare system  
9 requires a concerted effort to  
10 increase funding and develop  
11 programs to deal with poverty,  
12 poor housing and substance abuse  
13 in all communities across  
14 Manitoba."

15

16 There is no question that my client and, in fact,  
17 everyone representing parties and intervenors at this  
18 proceeding throughout the various phases are doubtless in  
19 agreement with that recommendation.

20 The issue is what does the word acknowledgement  
21 mean in that recommendation and clearly there has to be an  
22 acknowledgement by the Province of Manitoba and I think the  
23 witnesses brought forward by the Province of Manitoba,  
24 certainly at phases 2 and 3 of this inquiry, show that they  
25 have made an effort to deal with the overrepresentation of

1 aboriginal children and people within the child welfare  
2 system. But an acknowledgement does not indicate why there  
3 is an overrepresentation and I think a key finding to this  
4 inquiry has to delve, at least in part, on why there is an  
5 overrepresentation, because in order to have the public,  
6 who are ultimately the people who elect the Government of  
7 Manitoba, they have to understand why there is an  
8 overrepresentation and that reason is obvious to some but I  
9 suspect not to every citizen in Manitoba, nor every citizen  
10 in Canada.

11 We do know that in 2008 Prime Minister Harper  
12 apologized on behalf of the federal government for their  
13 role in Indian residential schools in colonialism, the  
14 Sixties Scoop, et cetera. They took on their shoulders  
15 their responsibility on behalf of the Canadian people for  
16 what happened on a multi-generational basis to the  
17 aboriginal people in Canada.

18 THE COMMISSIONER: Took on responsibility by way  
19 of an apology.

20 MS. DUNN: By way of an apology.

21 THE COMMISSIONER: Did it go any further than  
22 that?

23 MS. DUNN: Not that I have seen and I have, with  
24 interest, watched that statement by the federal government  
25 from 2008, referenced again in Manitoba as early as last

1 week, asking the federal government what does that apology  
2 really mean when we learn just recently, through the news  
3 media that there was medical studies done on aboriginal  
4 children in the Indian residential school system.

5           So, an acknowledgement and an apology are not  
6 enough because although well founded and well meaning, they  
7 do not give support to the aboriginal people of this  
8 province in saying not only do we apologize, not only do we  
9 acknowledge but we are responsible as a government and as a  
10 people to make things right for you.

11           THE COMMISSIONER:     When you say that you're  
12 speaking of what government?

13           MS. DUNN:     I can only speak because this is a  
14 provincially guided inquiry about the Province of Manitoba.  
15 I know, as a Canadian citizen, that the federal government  
16 has done, and this is not an expert opinion, this is simply  
17 my opinion on behalf -- or (inaudible) opinion on behalf of  
18 community based organizations as yet there has been little  
19 or nothing done in terms of that apology.

20           There has been some funding put into place. I am  
21 no expert and nor is my client an expert on the funding  
22 model but it's not based on that initial apology. Have we  
23 done enough to overturn the irreparable harm, in some  
24 cases, that have happened to these people?

25           Now, when I say irreparable harm I say some

1 people. Aboriginal people in this province and in Canada  
2 are a resilient people, they are a strength based people,  
3 they are survivors and they can lead their people to  
4 wellbeing. It is the responsibility of this government and  
5 of the federal government to allow them to lead their  
6 people back to a sense of wellbeing for themselves, for  
7 their children and for future generations.

8 How you do that is funded in part by the word  
9 acknowledgement which, in my humble opinion, does not go  
10 far enough. It is not an acknowledgement, it is an  
11 undertaking to these people that we will and are  
12 responsible for your continued resilience.

13 With respect to the issue of a separate  
14 government agency dealing with child protection and  
15 prevention issues, and now I return to Mr. Gindin's first  
16 recommendation which is -- reference is number 1 in his --

17 THE COMMISSIONER: Yeah, before you leave number  
18 47, I'm --

19 MS. DUNN: Yes.

20 THE COMMISSIONER: -- quite interested in what  
21 you had to say. I don't know if there is any doubt that  
22 Mr. Gindin's recommendation, considering this is a  
23 provincial inquiry, could only be worded the way it was.

24 MS. DUNN: Yes.

25 THE COMMISSIONER: But there's a lot more behind

1 it than, than simply the responsibility of Manitoba but  
2 this is a provincial inquiry.

3 MS. DUNN: It is a provincial inquiry but it  
4 would be important to let the federal government know that  
5 at least the Province of Manitoba is watching them, as all  
6 the rest of the provinces of this country are.

7 THE COMMISSIONER: Is, is what?

8 MS. DUNN: Is watching them and will continue to  
9 watch them. This funding paradigm is over in 2015. In  
10 judicial time that's just around the corner and it is time  
11 to put their money where their mouth is.

12 THE COMMISSIONER: Thank you.

13 MS. DUNN: Going back now to number 1 of Mr.  
14 Gindin's recommendations, Mr. Commissioner, his comment was  
15 family preservation and support services should be  
16 delivered by a separate government agency or  
17 non-governmental organizations with a special emphasis on a  
18 child's wellbeing as opposed to immediate safety. And you  
19 have heard, and I think I am speaking to the converted  
20 about the importance of community based organizations in  
21 returning aboriginal people to the strength based resilient  
22 people who they are and continue to be.

23 My client's comment with respect to that is, is  
24 difficult to expand because yes, it is difficult and you  
25 have heard from the people who represent the agencies, that



1 family issues sometimes flow upstream, sometimes flow  
2 downstream, and it's difficult to separate that in terms of  
3 administration.

4 Our suggestion is that there should be a separate  
5 government agency and -- not or but and non-governmental  
6 organizations who will be equal partners --

7 THE COMMISSIONER: A separate government agency  
8 and what?

9 MS. DUNN: Non-governmental -- community based  
10 organizations, basically.

11 THE COMMISSIONER: Oh, yeah, okay.

12 MS. DUNN: Who will be part of this mix until and  
13 unless the system and the philosophy of the system changes  
14 over time.

15 And when I say the philosophy of the system  
16 changes over time, Mr. Commissioner, you will have heard an  
17 abundance of evidence about differential response coming  
18 from the Government of Manitoba and we are no experts, Ka  
19 Ni Kanichihk, with respect to differential response but I  
20 do want to emphasize that in our research material, which  
21 is Exhibit 150, and specifically at pages 44 and 45 of that  
22 study, that study, incidentally is the only Manitoba study  
23 ever conducted which examines the experience and  
24 reflections of aboriginal mothers involved with the child  
25 welfare system and the principle researcher, Marlyn

1 Bennett, who at that time was with First Nations Child and  
2 Family Caring Society of Canada, has been quoted lock step  
3 with Dr. Blackstock in terms of the research studies.

4           What she noted, back in 2008, is a study by an  
5 individual named Waldfogel and just for your reference, Mr.  
6 Commissioner, because it's not in the written material,  
7 it's at page 42 on the right-hand side of that page, at  
8 paragraph two on the right-hand side of that page.

9           What that indicated, at that page, was that  
10 according to Waldfogel, a 2000 study:

11

12           "The current model of child  
13 protective services has five basis  
14 flaws; 1) the over-inclusion of  
15 families that are low-risk; (2)  
16 the under-inclusion of families at  
17 high risk who are not referred for  
18 services; 3) inadequate resources  
19 to meet the need for services; 4)  
20 fragmented and disruptive  
21 services; and 5) the inability of  
22 the system to customize services."

23

24           So this has been an issue within the child  
25 protection system for a long time and differential response

1 was noted, at page 45 of this study, in 2008, as being a  
2 way in which to respond to those flaws that I have  
3 mentioned. And I am now quoting, at page 45 of that  
4 report, about mid-way down the first long paragraph.

5

6 "Differential response models aim  
7 to connect children and families  
8 at lower risk to community based  
9 support services to help in  
10 strengthening families before  
11 crises occur --"

12

13 That is before crisis occur.

14

15 "-- so as to enhance their ability  
16 to provide stable and nurturing  
17 homes."

18

19 And Dr. Trocmé is, is quoted there.

20

21 "Less urgent cases are shifted to  
22 an alternative "assessment" or  
23 "community" track, where the focus  
24 of intervention is on brokering  
25 and coordinating services to

1 address the short and (the)  
2 long-term needs of these children  
3 and families. In some  
4 jurisdictions, such as Florida,  
5 workers in the assessment track do  
6 not have the authority to  
7 apprehend children. In such  
8 cases, responsibility for service  
9 provision is shared with community  
10 based resources and services are  
11 provided on a voluntary basis."

12

13 And Dr. Trocmé's 2005 report is quoted for that.

14 So, when we think about how to deal with the  
15 current model of the child welfare system, which is one  
16 system of family enhancement, one system of child  
17 protection, that need not be the exclusive model.

18 And we've heard some evidence going forward, I  
19 think particularly from Dr. McKenzie, who said we have  
20 invested all this time and money into making the system  
21 better, we can't go back to another philosophy or another  
22 paradigm because we've invested all this time and money in  
23 coming up with this current model. If that is a reason not  
24 to accept change then it is the wrong reason.

25 We have evidence from experts who have

1 emphasized, over and over again, the need for a role for  
2 community-based organizations. Their role is one of trust,  
3 that role is given to them by aboriginal people because  
4 they represent their own community. That trust is integral  
5 to any system, including the child welfare system, and if  
6 tomorrow somebody opens my back door without a warrant,  
7 walks into my kitchen without a warrant, removes my  
8 children without a comment and takes that child away, for  
9 one day, for a week, for an hour, for a year, there is a  
10 problem with trust. And to say that it is inconvenient to  
11 divert the two systems does not deal with that trust.

12           And, My Lord (sic), at your leisure I would  
13 invite you to, to read Chapter 4 of Jumping Through Hoops  
14 which talks about the aboriginal mothers and how they felt  
15 and the level of trust that they had in dealing with child  
16 welfare personnel.

17           I make no comment on whether those perceptions  
18 are correct or incorrect but the very nature of  
19 apprehension is such that it is impossible to create a  
20 trust situation without something else. That something  
21 else, Mr. Commissioner, was a suggestion raised by Ms.  
22 Spillet in her evidence, I believe that's set out at  
23 paragraph 33 of our report. She suggested a aboriginal  
24 mother's advocate.

25           That may be a permanent solution and that is in

1 the last sentence of that paragraph, Mr. Commissioner.

2 THE COMMISSIONER: Paragraph -- oh, of 33.

3 MS. DUNN: Yes, at page -- the top of page 16.

4 THE COMMISSIONER: Yes.

5 MS. DUNN: How does one bridge that trust? Well,  
6 we have a community-based organization that has the trust  
7 because they're not walking into their family's kitchen and  
8 removing the children, they're there to help. They're  
9 there to support, they're there to heal, they're there to  
10 show these families that you are resilient, you can become  
11 good parents. And good parents doesn't mean, oh, by the  
12 way, you live in poor housing, you have a substance abuse  
13 problem, you are a victim of domestic violence. We know  
14 why that it is so and it has got nothing to do with  
15 parenting, it has got to do with Indian residential  
16 schools, it has got to do with multi-generational trauma  
17 that resulted in unhealthy coping behaviours.

18 THE COMMISSIONER: Well, could, could the  
19 Children's Advocate take on an added role and fulfill that  
20 position?

21 MS. DUNN: I, I will get to that, Mr.  
22 Commissioner. The answer is maybe. But I'll -- if I just  
23 finish this point I can jump onto that one.

24 THE COMMISSIONER: Yes, that's fine.

25 MS. DUNN: The mother's advocate role would be

1 one that allows an advocacy position for aboriginal mothers  
2 who are predominantly involved in the child welfare system,  
3 not every single one but there is a high level of single  
4 parent apprehensions and most of those single parents are  
5 women. That's, that's a known fact.

6 So if we have an advocate's mother's office who  
7 came within the system to assist parents in that route  
8 between apprehension and return and back again, who can say  
9 on behalf of these women, I don't like what you're doing,  
10 you're not respecting me, I don't understand why you did  
11 that.

12 These women are traumatized by the loss of their  
13 children. Why can't they have a well informed advocate --  
14 it doesn't have to be a lawyer, it can be somebody from  
15 their own community who can say that's not right, you  
16 didn't return my call, that's not right. I didn't get my  
17 visit, that's not right. And is that going on? Are those  
18 complaints going on? They are, Mr. Commissioner, because  
19 you need only look at the Office of the Children Advocate's  
20 report which is Exhibit 82, and at page 17 they talk about  
21 the types of advocacy that they are doing now or did as of  
22 2011-2012.

23 The top issue, and I'm reading on the right-hand  
24 side of page 17, dealt with rights and that's described as  
25 right to information, i.e., information that has not been

1 shared with the individual. The percentage of complaints  
2 that they dealt with was 38 percent, 38 percent or 2512  
3 complainants.

4 The right to participation. The individual has  
5 not been included in the decision making process. This is  
6 the most recent report, the most recent set of complaints.

7 The right to consideration. The individual's  
8 viewpoints have not been considered and/or given sufficient  
9 weight.

10 The right to knowledge of advocacy. The  
11 individual has not been made aware of his or her right to  
12 advocacy services.

13 Rights to legal advocacy. The individual has not  
14 been given legal, legal advocate in the judicial process or  
15 has not been provided with effective legal advocacy.

16 That was their number one complaint. So is the  
17 system a trustworthy system now, based on these complaints?  
18 There has to be something else.

19 The next -- number two complaint in terms of CFS  
20 issues was case planning. Now, we have heard an immense  
21 amount of information about case planning, case load, how  
22 to deal with it, et cetera. What we do know is that at  
23 this point in time and without being judgmental and without  
24 being blaming, 28 percent of the complaints made to the  
25 Children's Advocate, at their last report, involved case



1 planning issues, 1,847 complaints.

2           Now, the system is evolving and the system is  
3 working to try and make things better but it comes back  
4 down to that kitchen door opening and somebody coming in  
5 and taking your children, and you saying to the mother get  
6 past that. It was for your own good, it was for the  
7 child's own good, we're here to help you. Do this, do  
8 that, take this program, here, do this, do that. Maybe  
9 you'll get your kids back, maybe you won't, but trust us.  
10 That is asking a lot of families in Manitoba and it is  
11 asking too much of aboriginal families in Manitoba who did  
12 trust the system, who gave their children away to the  
13 Indian residential school system and received them back the  
14 shadows of their former self.

15           THE COMMISSIONER: All right. So what are you  
16 advocating is the answer?

17           MS. DUNN: I am advocating for a women's -- a  
18 mother's advocate office who will work in the process  
19 within the system to advocate with the parents to deal with  
20 their social worker.

21           THE COMMISSIONER: Why couldn't the advocate's  
22 office be expanded to include an office for representative  
23 of children, youth and families?

24           MS. DUNN: Because they, they are not currently  
25 funded for that, because they are complaint based. They

1 are currently structured, and I believe statutorily  
2 structured to respond to complaints. That means you have  
3 to sit down and write a letter or make a phone call or send  
4 an e-mail and say I am complaining about the way I am being  
5 treated.

6 THE COMMISSIONER: All right. And what are you  
7 proposing for a woman's -- for a mother's advocate?

8 MS. DUNN: What I am saying is she is in lock  
9 step with an advocate throughout the process. So she  
10 doesn't have to complain, she doesn't have to ask, it is  
11 her right to have an advocate, not a lawyer, an aboriginal  
12 advocate who has been there, who knows what it's like to,  
13 to deal with systemic racism, who knows what it's like to  
14 endure the embarrassment of poverty.

15 THE COMMISSIONER: Well, the, the mother goes to  
16 the advocate, is that what you're saying?

17 MS. DUNN: The, the advocate goes to the mother.  
18 The, the advocate's office is assigned with the mother.

19 THE COMMISSIONER: How do --

20 MS. DUNN: How do you do that?

21 THE COMMISSIONER: No, no, how does, how does the  
22 advocate know that there is a mother in need of her  
23 services?

24 MS. DUNN: Because when that mother or, or that  
25 child goes into care, that's part of the prevention

1 process, whether it's child protection, whether it's family  
2 enhancement, she knows throughout that system, unless and  
3 until she receives a natural trust with the system, that  
4 she has someone on her side.

5           And is it more expensive? I suspect not. The  
6 reason I say that is because the last documentation that we  
7 received, in terms of exhibits in this matter, I believe it  
8 was Exhibit --

9           THE COMMISSIONER: Before you, before you --

10          MS. DUNN: Yeah.

11          THE COMMISSIONER: -- get to that, how is the  
12 mother going to appreciate that this person that comes to  
13 offering her help is just not part of the same system?

14          MS. DUNN: Because she's coming from a community  
15 based organization. She is not part of CFS, she is outside  
16 CFS. And that's why I say it's not an either/or, either  
17 part of the system or not, she is outside -- somebody like  
18 Ka Ni Kanichihk, who -- someone like Ma Mawi, who has been  
19 in the community for years and years and years and has that  
20 trust and will advocate on behalf of the mother and the  
21 mother knows that she'll get that advocacy because she has  
22 experienced it already.

23           And can you, as a poor disenfranchised person, be  
24 bullied by a bureaucracy? The answer is yes. Whether  
25 intentional or not, you can feel that sense of being

1 bullied because you really don't have the voice to complain  
2 because they have your children.

3 THE COMMISSIONER: And what kind of, of power and  
4 authority is this person going to have?

5 MS. DUNN: This person is an advocate and so this  
6 person has the authority to walk into a child protection  
7 worker's office, into a family enhancement worker's office,  
8 and say these are the issues, let's work this out together.  
9 If we're not able to work this out together I am going to  
10 the office of the Children's Advocate and they will  
11 investigate.

12 THE COMMISSIONER: So you say this person has the  
13 authority to walk into where?

14 MS. DUNN: Into the beginning of the file, into  
15 the office, into the office with the social worker --

16 THE COMMISSIONER: The, the agency?

17 MS. DUNN: The agency, the Child and Family  
18 Services agency. And some of these community-based  
19 organizations do this already, Mr. Commissioner, it's not  
20 as though this is a new idea, but some of them are welcomed  
21 and some of them aren't because it is at the pleasure of  
22 the agency as to whether or not these community-based  
23 organizations are there.

24 THE COMMISSIONER: And she walks in and says I  
25 want to know what's going on here, is that it?

1 MS. DUNN: Yeah. And they'll say get out, it's  
2 confidential, or they'll say okay but it's really up to the  
3 worker as opposed to the system.

4 THE COMMISSIONER: Well, is this something -- if  
5 your proposal was carried forward in, in some kind of an  
6 enforceable recommendation that I would make, is, is this  
7 something that would occur every time there was an  
8 apprehension or would, would --

9 MS. DUNN: Every time. It's -- when you --

10 THE COMMISSIONER: In, in other words --

11 MS. DUNN: -- go to the hospital --

12 THE COMMISSIONER: -- the mother wouldn't have to  
13 make the move to get the service?

14 MS. DUNN: The mother -- it's a seamless  
15 services. If you go to the hospital to have a delivery,  
16 it's automatic that there's a nurse there with you and  
17 you're -- this is your nurse, dealing with the, with the  
18 system. You don't have to ask for it, it is your right to  
19 have an advocate with you.

20 THE COMMISSIONER: If you want it.

21 MS. DUNN: If you want it.

22 THE COMMISSIONER: I see. Well, we'll look at  
23 it.

24 MS. DUNN: Thank you. The next question that you  
25 had, Mr. Commissioner, dealt with files being opened in the

1 name of the child as opposed to the parent or caregiver. I  
2 have no submission to make and no perspective or expertise  
3 in that area whatsoever.

4 The role of the Office of the Children's  
5 Advocate, and that is number three -- sorry, not number  
6 three, it is number 32, I believe. Yes, number 32 in Mr.  
7 Gindin's recommendations and that is the Office of the  
8 Children's Advocate be a truly independent voice for the  
9 children and youth of Manitoba. To remove any appearance  
10 of bias the Children's Advocate should not be a former  
11 child welfare social worker.

12 In that regard and in specifically with reference  
13 to your question, Mr. Commissioner, as has been mentioned  
14 by both the current and the prior child advocate, their  
15 roles are too restrictive at this point. They deal with  
16 child welfare cases, children have issues beyond child  
17 welfare, they have issues in the education system, they  
18 have issues in the health system, they have issues in the  
19 criminal justice system. The child -- the Office of the  
20 Children's Advocate should not stop when children are in  
21 care because when children are in care they are in constant  
22 contact with other systems and we want to give the  
23 opportunity to children in care to have someone to protect  
24 them, not only from one system but from all systems who  
25 deal with the most vulnerable in society.

1           Should that person be, that is the Children's  
2 Advocate, should that person be a child welfare social  
3 worker? Certainly that person should be, as far as Ka Ni  
4 Kanichihk is concerned, at this point in history be an  
5 aboriginal person, if not an aboriginal person then one who  
6 truly understands what it is like to be an aboriginal  
7 person at this time in history and to know the history of  
8 why these people are disadvantaged now and hopefully will  
9 not be in the future.

10           Should this person be a children welfare social  
11 worker? Obviously, this person has got to know the child  
12 welfare system but again, getting back to the trust issue,  
13 there has got to be -- we've talking about cooling off  
14 periods for staff within the office, nobody has talked  
15 about a cooling off period for the actual Office of the  
16 Children's Advocate.

17           What does one say to a mother who comes in with a  
18 complaint, let's say the mother is knowledgeable enough,  
19 because it does require knowledge on the part of a parent  
20 and a family to know that if I don't like this I can go to  
21 the Office of the Children's Advocate, not everybody is  
22 versed in that kind of information but if you know that  
23 that Children's Advocate has been, for the last 30 years,  
24 in the child welfare system exclusively, is there not a  
25 perception, at least, of bias in favour of the system.

1           I understand that there is an independence,  
2   statutorily, but can you change your spots if you have only  
3   lived in one house, and that is the house of child welfare.  
4   So I am suggesting that this person should be knowledgeable  
5   in child welfare, we've suggested lawyers, lawyers are  
6   always suggesting lawyers, it doesn't have to be a lawyer,  
7   it has to be somebody who knows child welfare and it has to  
8   be a person who has an understanding of something else in  
9   connection with the aboriginal community. Not just child  
10   welfare, but a real understanding of what community is, a  
11   real understanding of what it's like to be poor, a real  
12   understanding of how it's -- difficult it is to overcome  
13   substance abuse and addictions. You have to come in as a  
14   holistic person and not with one view of life and that is  
15   the view of life as a child protection worker.

16           So that is our comment with respect to that, Mr.  
17   Commissioner.

18           THE COMMISSIONER: Thank you.

19           MS. DUNN: I think I have addressed the four  
20   questions that you posed to counsel and I will return, very  
21   briefly, to --

22           THE COMMISSIONER: The only other one was on  
23   registration.

24           MS. DUNN: Yes. And I have no comment whatsoever  
25   on that, we don't --



1 THE COMMISSIONER: All right.

2 MS. DUNN: -- have any expertise or even  
3 knowledge, really, beyond sitting here, on that issue.

4 Before I address -- and I'll, I'll try and keep  
5 within my half hour commitment, there is a few  
6 typographical errors in the final submission, which may be  
7 an irritant if you chance to review it again, so I'm just  
8 going to bring those to your attention.

9 THE COMMISSIONER: All right.

10 MS. DUNN: At page 3, footnote 2, did not put the  
11 date of Dr. Brownell's testimony in there but it's June the  
12 5th.

13 THE COMMISSIONER: That's page 3, paragraph what?

14 MS. DUNN: Page 3, footnote 2.

15 THE COMMISSIONER: Oh, yes.

16 MS. DUNN: And Dr. Brownell's name is spelt  
17 incorrectly in that footnote.

18 THE COMMISSIONER: Yes.

19 MS. DUNN: And Dr. Brownell's name is also spelt  
20 incorrectly in paragraph 14 and 15.

21 THE COMMISSIONER: But what about the date?

22 MS. DUNN: The heard -- transcript is June the  
23 5th.

24 THE COMMISSIONER: That's page 39?

25 MS. DUNN: Yes.

1 THE COMMISSIONER: Yes. Okay.

2 MS. DUNN: Also, at paragraph 36, when I am  
3 citing the Child Advocacy complaints, the report should  
4 read page 17 and not page 15.

5 THE COMMISSIONER: Page ...

6 MS. DUNN: That's at paragraph 36.

7 THE COMMISSIONER: Paragraph 36.

8 MS. DUNN: It says -- it references Exhibit 82 at  
9 page 15.

10 THE COMMISSIONER: Yes.

11 MS. DUNN: That should be page 17.

12 THE COMMISSIONER: Page 17. All right.

13 MS. DUNN: Now, just turning quickly to the  
14 submission, itself, I, I really want to stress our  
15 introductory comments which, I think, sums up a lot of some  
16 of the evidence that the inquiry has been exposed to in  
17 terms of community-based evidence and so I'll just read  
18 paragraph six of that submission, which is at page 4. And  
19 what it says in the second line there is that:

20

21 "Ka Ni Kanichihk ... stresses the  
22 need for equal partnership with  
23 government funders in all  
24 decisions with respect to the  
25 delivery and funding of community

1 based services ..."

2

3 So all decisions means policy, all decisions means funding,  
4 all decision means connectiveness with the client such as  
5 the Mother's Advocate's office or something along that  
6 line. All decisions.

7 And the reason for that is that Dr. Trocmé, Dr.  
8 Blackstock, Dr. Brownell, Dr. McCuaig, experts world-wide  
9 in the field, recognize the need for community-based  
10 involvement and Ms. Spillet, in her evidence, said we need  
11 to be an equal partner, we need to be at that funding  
12 table. We don't need to be the recipient of the funding at  
13 the pleasure of the province or at the pleasure of the  
14 federal government, we need to be there because we know our  
15 community, we are our community, we want this program to  
16 continue in this area of the city because we know this area  
17 of the city and we know this program will work.

18 She mentioned a gang program that she thought was  
19 doing very well that was funded by the federal government,  
20 it was a one off, went for two or three years, doing well,  
21 the funding dried up.

22 We've got to prevent that kind of thinking for  
23 community-based organizations. And you heard that as a  
24 general theme throughout many of the community people who  
25 spoke on behalf of their organizations. So all decisions,

1 not just funding, not just policy, they have to -- you have  
2 to allow the aboriginal community to lead because they know  
3 how to lead.

4 THE COMMISSIONER: So their voice will be heard.

5 MS. DUNN: Voice will be heard as an equal  
6 partner not as oh, by the way, you're an invitee, you are  
7 there together as an equal partner to resolve whatever  
8 issues come out of those community-based programs.

9 You also heard Ms. Spillet say that there is a  
10 "need for more Aboriginal workers delivering ... services  
11 in mainstream organizations." That is very important.  
12 That is integral because we are going to be, if not  
13 already, a very vibrant community of aboriginal workers and  
14 they need to work within their communities. And if there  
15 is a mainstream organization dealing with aboriginal  
16 people, then there had better be aboriginal people leading  
17 that mainstream organization.

18 We also say, and this is important in terms of  
19 Ms. Spillet's evidence, that aboriginal organizations are  
20 not getting the amount of funding they should be getting as  
21 compared to non-aboriginal organizations. Again, if we are  
22 going to allow the aboriginal people to lead us to their  
23 wellbeing you have to give them the opportunity and the  
24 tools in which to do that.

25 What will the result be? If you hand over

1 control of policy and programming to aboriginal community  
2 agencies you will have revenues flowing directly into the  
3 community because there are aboriginal people in those  
4 mainstream communities, in those community-based  
5 organizations, who have jobs now, have more opportunity to  
6 provide that economic base that we've heard so much about  
7 that is key to resilience, that is key to independence.

8           If a non-aboriginal organization goes into the  
9 community and funds, for a certain amount of time, and then  
10 leaves as noted by Ms. Spillet, there is no natural  
11 connection there because they are dealing with, quotes,  
12 "clients" as opposed to, quotes, "family". Family in the  
13 community sense. Family in the real sense. And that is  
14 important and crucial in order to move forward with this  
15 very important issue.

16           Dr. Brownell, and I am now referencing paragraph  
17 15 of my submission, at page 8, talked about:

18

19           "a health based approach to child  
20 welfare which she feels would not  
21 only reduce the number of children  
22 in care, but reduce cost and  
23 increase the detection of child  
24 maltreatment by using upstream  
25 preventative measures targeting

1 daycare, domestic violence, mental  
2 health, substance abuse and  
3 parenting programs."  
4

5 That reference is out of her report, Exhibit 139  
6 and specifically mentioned at page 15 of her report.

7 What the health based approach does, as far as I  
8 can understand it, is to take away blame and to replace it  
9 with here's a problem, let's get through it. It's not  
10 you're a bad parent, it's these are your parenting issues  
11 and this is how we're going to deal with it.

12 That hasn't happened, I would suggest, in the  
13 current philosophy of the child welfare system which places  
14 -- and you've heard a lot of evidence about poor housing  
15 and how that affects the ability to function as a family so  
16 I'm not going to beat that point to death, I'm simply  
17 saying that that is a reference to -- for the Commission to  
18 continue.

19 At page -- sorry, paragraph 17 at page 8 of the  
20 submission, I talked about current provincial funding  
21 models for perfection -- or prevention, sorry, and the  
22 allocation to mandated Child and Family Services agencies.  
23 That was Exhibit 160, that was submitted post-hearing.

24 Some of that money can be used to deal with  
25 beefing up community-based organizations in the way of a

1 mother's advocate office, in the way of allowing  
2 community-based organizations to set the tone and the  
3 policy for programming in their areas. Some of that money  
4 or maybe even all of that money, who knows, maybe 75  
5 percent of that money if we are really going into a  
6 prevention model, should be going to community-based  
7 organizations.

8           How much money is enough? I have no idea. All I  
9 know is, is that money continues to be fed into a system  
10 and the number of children in care continue to rise.

11           The next point that I want to deal very briefly  
12 with because it is in the, it is in the submission  
13 presented already is the issue of oversight and oversight  
14 is covered at page 9, paragraph 18 of the submission and it  
15 talks about -- and this is really, I guess, the doubting  
16 Thomas principle, we've heard a lot about how everybody  
17 wants to pull together to make this system work, et cetera,  
18 and I am sure that is very true, but what we need is to  
19 ensure that there is proper oversight with respect to child  
20 welfare, in particular, and I, I have set out the various  
21 statutory obligations, et cetera, of the Auditor General,  
22 of the Office of the Children's Advocate, and the  
23 Ombudsman, and how they interrelate and sometimes don't  
24 interrelate in terms of oversight.

25           One of the big issues that came out of these

1 reports is that the authority agencies have never been  
2 audited, not because nobody wants to, it's simply at the  
3 time the first audit was done devolution was so early that  
4 there really was nothing to audit because it was just a  
5 very new factor in the system and they haven't been audited  
6 yet. But now it's 2013 and that is time it happened  
7 because it's a good thing not because aboriginal agencies  
8 are not able to monitor themselves, it is because for the  
9 public good we need oversight when it comes to the most  
10 vulnerable portions of our population, being our children.

11 Finally, and lastly, My Lord, with respect to our  
12 conclusions, they are few in number but important and they  
13 are set out at page 17 at paragraphs 37 and beyond.

14 THE COMMISSIONER: Just a minute.

15 MS. DUNN: Yes.

16 THE COMMISSIONER: Paragraph 24.

17 MS. DUNN: Yes.

18 THE COMMISSIONER: You talk about all four of the  
19 mandated agencies. Are you referring to the authorities?

20 MS. DUNN: I am referring to the authorities,  
21 yes.

22 THE COMMISSIONER: And the same would apply later  
23 on:

24

25 "As noted in Ms. Bellringer's



1                   testimony,       Service       Contract  
2                   Agreements are contracts between  
3                   the       department       and       the  
4                   (authorities) ..."

5

6                   MS. DUNN: Yes, the authorities.

7                   THE COMMISSIONER: Just let me see if I have  
8 anything else marked for before you get to the conclusions.

9                   MS. DUNN: Okay.

10                  THE COMMISSIONER: No, that's, that's fine.

11                  Wait a minute now. I'm looking at -- I've got a  
12 question on 25, on page 13.

13

14                   "That mandated agency boards were  
15                   to ensure financial performance is  
16                   fully monitored and that each  
17                   mandated agency was to cooperate  
18                   with the authorities in reviewing  
19                   the needs and assessment tools in  
20                   place with a view to utilizing a  
21                   standard needs assessment tool.  
22                   With respect to the latter the  
23                   assessment tools utilized by the  
24                   agency ..."

25

1 I was confused about the agency. It's the agency  
2 that's, that's involved in the particular case?

3 MS. DUNN: That's right, in a, in a generic  
4 sense, Mr. Commissioner. And really what I was getting at  
5 there is some of the evidence of the experts is that SDMI  
6 tools are relatively untested, they are used in some  
7 jurisdictions. Whether they will correspond in lock step  
8 with this jurisdiction I don't know and frankly, don't have  
9 the expertise, on behalf of Ka Ni Kanichihk, to comment  
10 other than to say that that's an issue that was raised.

11 THE COMMISSIONER: And in this 27, the reference  
12 to "between the department and the agency" that's again the  
13 apartment -- department and the authority?

14 MS. DUNN: And the authorities, correct.

15 THE COMMISSIONER: Then in number 30.

16

17 "As at May 2012, a "draft  
18 strategic plan" to 2013/2014 is  
19 being developed by the Division."  
20

20

21 What's the division?

22 MS. DUNN: You know what, I don't even know what  
23 the division is, I just know that that is one of the --

24 THE COMMISSIONER: Is, is it an internal branch  
25 of your client?

1           MS. DUNN:    No, it is a division of Child and  
2 Family Services, it's -- I believe it's one of -- and Mr.  
3 McKinnon perhaps can answer this question better than I,  
4 but it's one of the policy makers at the very top.

5           THE COMMISSIONER:   But within, within government?

6           MS. DUNN:    Yes, within government.   And it's at  
7 Exhibit 43.   So that is a working draft that the -- it's --  
8 that the Child and Family Services are dealing with right  
9 now, not, not our client.

10          THE COMMISSIONER:   All right.   So now I am ready  
11 for your recommendations.

12          MS. DUNN:    All right.   They are set out at  
13 paragraph 37, perhaps not the most important but  
14 nevertheless something that should be considered by this  
15 Commission in my submission.

16

17                       "Aboriginal       community       based  
18                       organizations    need    to    have  
19                       flexible funding to cover "off the  
20                       table"    expenditures    necessitated  
21                       by    the    daily    contact    between  
22                       community    organizations    and    ...  
23                       users    in    building    capacity."

24

25           And that's that whole block funding idea that was

1 discussed by, by Ms. Flett. And when you have control of  
2 the money and it doesn't have to go in a particular silo,  
3 it gives you a little bit of independence that you don't  
4 otherwise have, in terms of dealing with day-to-day needs  
5 of your community.

6 The second recommendation was, I think, the most  
7 important recommendation made by Ms. Spillet.

8  
9 "Aboriginal community based  
10 organizations need to have long  
11 term sustainable funding at all  
12 levels of government."

13  
14 Federal and provincial. Long term sustainable  
15 funding. She mentioned, as did a number of other  
16 community-based organizations, the frustration of having to  
17 fill out endless funding application for programs that work  
18 and everybody knows they work but they have to jump through  
19 those hoops in order to make sure that that particular  
20 program continues.

21 The next recommendation is that:

22  
23 "Aboriginal community based  
24 organizations --"

25

1 And I think I have repeated this.

2

3           "-- should have (an) equal  
4 partnership with all government  
5 funders. (And that) Healthy Child  
6 Manitoba should (in particular)  
7 partner with Ka Ni Kanichihk at  
8 the funding and policy levels ..."

9

10 Because their approach, which is issue approach as opposed  
11 to child welfare approach, works as far as we can see.

12           I have already said that aboriginal community  
13 based organizations are important because they are the  
14 community in which they represent and are trusted by them.

15 I say that a:

16

17           "shift in funding from mainstream  
18 organizations to Aboriginal  
19 community based organizations will  
20 not increase cost --"

21

22 As Ms. Spillet testified.

23

24           "-- but will encourage economic  
25 independence for the community as

1 a whole."

2

3 I have mentioned the oversight issues with  
4 respect to the three government or independent agencies  
5 currently having oversight with respect to child welfare.

6 We heartily endorse the "public policy, housing  
7 reforms and poverty reduction strategies", education reform  
8 that has been discussed in this inquiry.

9 And on a final note can only, once again, say  
10 that at the forefront of the inquiry has to be a  
11 recognition that the cultural devastation caused by  
12 colonialism, residential schools, the Sixties Scoop, has  
13 got to be not only acknowledged but taught to the  
14 aboriginal people who don't -- not everyone understands why  
15 their family is in a state of dysfunction but to every  
16 other Manitoba in order to get them onboard with the  
17 funding model.

18 So with that and subject to any questions Mr.  
19 Commissioner has, that would be my submission.

20 THE COMMISSIONER: No, I have no more questions,  
21 Ms. Dunn.

22 MS. DUNN: Thank you. And I would --

23 THE COMMISSIONER: And thank you very much for  
24 your participation.

25 MS. DUNN: And I would like to take this

1 opportunity, Mr. Commissioner, to thank you for listening  
2 so carefully throughout this entire inquiry in terms of  
3 certainly when I have been here, for phase 2 and phase 3,  
4 doubtless the same for phase 1.

5 I would like to thank Ms. Walsh and her legal  
6 team for their excellent presentation of a very complicated  
7 legal matter. I would like to thank Ms. Ewatski for never  
8 getting angry with me for asking continuously stupid  
9 questions and her always politely saying it's on our  
10 website.

11 So I appreciate that and I also appreciate  
12 Transcription Services for doing a really bang up job in  
13 terms of keeping us up to, up to pace.

14 I would also be remiss if I didn't thank council  
15 for the intervenors and parties for their helpful and  
16 cooperative way in which they have dealt with myself and  
17 with each other and, of course, the witnesses who have  
18 testified at this proceeding.

19 Thank you, Mr. Commissioner.

20 THE COMMISSIONER: Thanks, Ms. Dunn.

21 Well, that takes us to the replies. Mr. Gindin?

22 MR. GINDIN: Thank you, Mr. Commissioner.

23 I expect that I can conclude my remarks by 12:30,  
24 certainly. I wanted to begin by just making a few  
25 corrections to my brief that I noticed after my earlier

1 submission and, first of all, I'll take you to paragraph 80  
2 which is on page 23.

3 THE COMMISSIONER: Paragraph number which, 80?

4 MR. GINDIN: Number 80.

5 THE COMMISSIONER: Yes.

6 MR. GINDIN: Page 23.

7 THE COMMISSIONER: Yes.

8 MR. GINDIN: The very last sentence in that  
9 paragraph says November 2001, it should be November 2000.  
10 It actually doesn't make much sense the way it was.

11 THE COMMISSIONER: So two --

12 MR. GINDIN: It's November 2000.

13 THE COMMISSIONER: 2000.

14 MR. GINDIN: That's correct.

15 THE COMMISSIONER: Yes.

16 MR. GINDIN: And at page 41 of my brief,  
17 recommendation number 1, the one that I will spend some  
18 time discussing again, the reference at the end of that  
19 paragraph to the evidence of Ms. Wright, I've got the date  
20 wrong, it's got April 24th and, in fact, it's May the 15th  
21 when she testified to --

22 THE COMMISSIONER: Right.

23 MR. GINDIN: -- the particular reference that I  
24 mention there.

25 THE COMMISSIONER: Right.



1           MR. GINDIN: I want to begin by saying that I  
2 appreciate you requesting other counsel to comment on  
3 certain of my recommendations, I think that was very  
4 necessary and important that you heard from everyone on  
5 those particular recommendations, those certainly were the  
6 ones that needed some discussion and I intend to, to deal  
7 with those responses from others at, at some length.

8           You did ask a question of me as I was completing  
9 my submission, I was commenting on the fact that there was  
10 evidence that Ms. Kematch had told someone that she really  
11 didn't have a visitor on March the 9th of 2005 and that she  
12 just told CFS that so they wouldn't come in. That's  
13 actually referenced in my brief, at paragraph 107, and the  
14 witness was SOR #9, and paragraph 107 actually references  
15 the evidence where that was stated by SOR #9 very clearly  
16 and I think if you looked up the reference you would see  
17 that it is exactly as I commented on.

18           THE COMMISSIONER: Paragraph 107?

19           MR. GINDIN: 107 does refer to that, there's a  
20 reference there and, again, it refers to SOR #9 and her  
21 evidence as referenced in that paragraph.

22           THE COMMISSIONER: Yes.

23           MR. GINDIN: I -- before I get to the  
24 recommendations I do wish to just make a few remarks  
25 relating to some of what counsel has had to say. And I

1 won't be very long in this area.

2           Mr. Ray, in his submission, when he referred to  
3 the evidence of Mr. Chabai, which is -- comes out in  
4 Exhibit 83, and he gave the impression that I was unaware  
5 of that additional evidence because I referred to the  
6 evidence of Ms. Willox and I may have said that she didn't  
7 do a search for Wes McKay in reference to the December '04  
8 matter at the hospital. I may have said that it would have  
9 been an easy thing to do, if I did say that, that would be  
10 incorrect, based on the new piece of evidence which tells  
11 us that it wasn't that simple, it was a little more  
12 complicated. I don't believe the evidence suggested it was  
13 impossible but it just told us that it wasn't quite as  
14 simple as we were once led to believe.

15           Now, with respect to that issue, it's my  
16 submission that it's of no moment because if one were to  
17 look at the evidence of Ms. Willox, January the 8th, 2013,  
18 and in particular pages 73 to 74, it should become clear, I  
19 submit, that a search wasn't done at all and I think that  
20 was the point that I was making, I think Mr. Rice said well  
21 it's a little unclear because we don't have notes but if  
22 you look at those particular pages, Ms. Willox agrees with  
23 me that certainly if she was going to do a search for  
24 another party, that would be recorded in her notes, and  
25 certainly if she began to make a search and got anywhere at

1 all, clearly that would be in her notes and the fact that  
2 it isn't we can assume that no search was made.

3           So that was only part of the point that I made,  
4 the main other point, really, was that that wasn't the only  
5 opportunity in any event, to search out Mr. McKay, that  
6 opportunity arose with Ms. Forbes attending on May the  
7 13th, '04 to Samantha's residence and Wes McKay came to the  
8 door and we talked about that already and obviously another  
9 opportunity to look into the issue without having to go to  
10 a computer or a program of any kind just by asking certain  
11 questions and, again, July the 23rd, '04 Ms. Forbes attends  
12 to Samantha's residence, is advised that Wes is her main  
13 support and again, no questions are asked. She then goes  
14 to see Samantha's mother and again doesn't ask her anything  
15 about Wes McKay and that's all contained in paragraph 38 to  
16 39 of my brief and I think those are the more important  
17 points as compared to how difficult that search might have  
18 been in the computer system with respect to Ms. Willox's  
19 evidence. So those references are at page 38 to 39 of my  
20 brief.

21           THE COMMISSIONER: Yes, all right.

22           MR. GINDIN: With respect to Ms. Bowley's  
23 comments, just have a couple of points to make here. She  
24 attempted to somewhat minimize the significance of notes by  
25 arguing that I might have over, overemphasized those

1 because I'm used to dealing with criminal cases where the  
2 police obviously take very detailed notes. I would just  
3 point out that social workers have the statutory authority  
4 to apprehend children, just walk right into your house and  
5 get them and the police don't really have that authority,  
6 that's a pretty important authority to have. So their  
7 involvement is every bit as serious and important in many  
8 ways as the police, with the addition that their notes, of  
9 course, add to the history as the case progresses and it  
10 becomes more important, clearly, that the next social  
11 worker would have all of the facts and all of the notes and  
12 I don't think you can really overemphasize the significance  
13 of notes.

14 Ms. Bowley, as well, in her submissions,  
15 discussed common sense and argued that common sense should  
16 be applied as well to higher ups, not just to the front  
17 line workers or the supervisors and I agree with that, I  
18 think common sense has to go all the way through the  
19 system, not just at the lower end, so I accept those  
20 remarks of hers.

21 I believe it was Mr. Cochrane talking about  
22 seeing the child and that particular issue of seeing the  
23 child referenced the evidence of Ms. Stoker where he  
24 quoted, I think, a portion of her testimony or at least  
25 summarized it to the effect that seeing the child was not

1 necessarily something that was done in that environment and  
2 used that phrase in that environment.

3           Perhaps a better word might have been in that  
4 culture at the time because if you use the word environment  
5 in a, in another way and take it directly down to what was  
6 doing on March the 9th when you're actually there, seeing  
7 things develop, the environment they were presented with,  
8 and all the suspicious circumstances that changed what they  
9 originally knew, made it even more imperative, I suggest,  
10 to see the child.

11           I'm not sure if this was referred to earlier but  
12 I would refer you to page 2000 -- 20,260 of the disclosure  
13 which is a reference to --

14           THE COMMISSIONER: 20,260?

15           MR. GINDIN: 20260, yes.

16           THE COMMISSIONER: Yes.

17           MR. GINDIN: And that was a reference to a  
18 meeting that took place February the 3rd, 2004 which would  
19 be over 13 months prior to this March 9th, '05 incident.  
20 And this was a meeting where Ms. Faria was present, Chris  
21 Zalevich was present, Bill Leskiw was present, and a number  
22 of other individuals. Shelly Willox, Diane Verrier, et  
23 cetera, and this was a CRU joint meeting minutes and at, at  
24 point number 13, which is actually on the very next page,  
25 20261, this again is in the minutes of what's being

1 discussed, assessments is the topic at point number 13.

2

3 "There were concern raised about  
4 assessments being made over the  
5 phone that should be done by a  
6 field to the home. As much as is  
7 possible, when there is a concern  
8 about a child in the home, the  
9 home and the child should be seen  
10 by a worker."

11

12 So even back then meetings are being held and  
13 people are discussing the fact that that should take place.  
14 So I just point that out because that was some time prior  
15 to the March '09 incident where people are saying well,  
16 there wasn't an actual policy in place, my position was  
17 that it was pure common sense but there were also  
18 discussions being had and -- about that subject back then.

19 Mr. Cochrane, in his submission, spent a few  
20 minutes talking about this issue and you agreed completely  
21 that he probably didn't need to but he did talk about the  
22 fact that no one in Fisher River may have known about what  
23 was going on with respect to Phoenix. He referenced a  
24 comment in Ms. Edward's brief that in a vague way might  
25 have suggested that otherwise. My position is that if one

1 looked at her submission it would be clear of what she was  
2 talking about, and she talked about people coming forward  
3 and maybe knew something, she was talking about the family  
4 members who were -- who observed certain things, may have  
5 witnessed certain things and, and that's what her reference  
6 was to, not the rest of the community who might not know,  
7 or not to the social workers up there who may have known  
8 something because there wasn't evidence on that issue. So  
9 just to clarify that.

10 THE COMMISSIONER: Yes.

11 MR. GINDIN: I think it's quite obvious, what she  
12 was referring to was members of the family who observed  
13 certain things and should have done some things.

14 Now, with respect to Mr. Cochrane's submission,  
15 he did reference in his recommendations, in his own  
16 recommendations that is, recommendation number 3 that he  
17 talked about of his own -- I'm just looking it up for a  
18 moment.

19 And his recommendation number 3 was:

20

21 "Upon the request of a CFS agency,  
22 peace officers shall provide all  
23 documentation and records (such as  
24 police occurrence reports) in  
25 their possession or control that

1                   may assist a CFS agency in  
2                   determining the safety and (the)  
3                   well being of a child."

4

5                   And he spent some time explaining to you why he  
6 was putting forward that recommendation. That shows up at  
7 page 4 of their brief and again as recommendation number 3.

8                   Do you have that in front of you?

9                   THE COMMISSIONER: Yes, I do.

10                  MR. GINDIN: That is a recommendation that I  
11 would endorse and I say that because I've had experience in  
12 cases of that nature, in fact with Mr. Cochrane on the  
13 other side and that's an issue that arises very often when  
14 there's an allegation of abuse and there's a request to  
15 have the alleged offender put on the child abuse registry  
16 permission. The problem that that deals with is that, for  
17 example, if, if the alleged offender is not an accused then  
18 even the offender doesn't get particulars or disclosure  
19 from the police, that only comes to you once you've been  
20 charged with something.

21                  So even in those circumstances, it's a problem  
22 for both sides because they don't have disclosure and it's  
23 a common occurrence in these types of matters that defence  
24 counsel actually agrees with the request to get a court  
25 order to get all this material because there's no real



1 argument against it. And so I agree that it's an  
2 unnecessary step, it just impedes the progress of the case  
3 somewhat, and it shouldn't even be something that's  
4 available to the parties to the issue so they can deal with  
5 it without, without having to necessarily go for court  
6 orders. So, that's something that I would agree with Mr.  
7 Cochrane --

8 THE COMMISSIONER: Would --

9 MR. GINDIN: -- would be --

10 THE COMMISSIONER: -- would that require a  
11 statutory provision?

12 MR. GINDIN: Well, at the present time the  
13 statute says that you need a court order to --

14 THE COMMISSIONER: Yeah.

15 MR. GINDIN: -- to get this.

16 THE COMMISSIONER: So it would have to be  
17 amended?

18 MR. GINDIN: So -- yes, it would have to be, it  
19 would have to amended.

20 Ms. Harris, in her submission, referred to my  
21 comments with respect to a discussion of the evidence of  
22 Jay Rodgers, when I talked about how the General Authority  
23 was doing some good things and things were working out well  
24 and they didn't seem to be necessarily sharing some of  
25 these good ideas with the other authorities and I think her

1 response to my submission was that what the General  
2 Authority was doing may not necessarily be the best way or  
3 the only way, it's just one of the ways.

4 My point was not that if it was shared that  
5 people must adopt it, my point was that it should be  
6 shared, and so everyone knows what's going on and, and then  
7 they can adopt whatever they like, whether it's the best  
8 way or not.

9 I would refer you to the evidence of Mr. Rodgers,  
10 which I won't read out, May the 14th, 2013 pages 318 to 324  
11 and it's my submission that as you read that it becomes  
12 clear that as I suggested to him perhaps a little more  
13 aggressive an approach be taken to make sure that the other  
14 authorities are aware of some of the things that they are  
15 doing that seem to be working. And it -- I think it's  
16 clear, when you look at that evidence, that that is  
17 something that should be considered.

18 On the issue of trust, which we've all talked  
19 about at some length, Ms. Harris was questioning whether  
20 there was really enough evidence about that issue from the  
21 witnesses that testified. My submission is that there was  
22 a lot of evidence on that subject, many social workers  
23 agreed that trust is a problem, that there are resistant  
24 clients, there are clients that fear them, and that it  
25 makes their job more difficult. I think the evidence was

1 quite clear and many academics also agreed with the notion  
2 that there is a problem with perception and image in the  
3 system.

4 And I just want to refer you to one portion of  
5 Mr. Rodgers' evidence on that issue. It's his evidence of  
6 February the 4th, 2003 at page --

7 THE COMMISSIONER: Thirteen?

8 MR. GINDIN: 2013, February the 4th, 2013, pardon  
9 me. Page 156. And there's a discussion there about the  
10 image problem and how we can deal with it and the question  
11 asked by myself is:

12

13 "Has there been some thought given  
14 to how to do 9 that, how to  
15 improve that image, so that there  
16 would be more trust towards the  
17 system or social workers?"

18

19 Sounds like a big topic. His answer is as  
20 follows:

21

22 "... let, let me talk about that  
23 from a, maybe a couple of  
24 different perspectives. The  
25 importance of workers building a

1 relationship with families, for  
2 this kind of work, cannot be  
3 underestimated. The literature  
4 talks about the dual mandate of  
5 child protection services where,  
6 because of working in a threshold  
7 system, your initial involvement  
8 with a family is about child  
9 protection concerns and you're  
10 investigating. But once you're  
11 able to, as a worker, ensure that  
12 children are safe and hopefully  
13 can be kept safe at home, then  
14 you're in a role of collaborating  
15 and building trust with families.  
16 So that's what's known as the, the  
17 dual mandate. It's a very  
18 difficult job for workers to do if  
19 they're expected to do both of  
20 those."

21

22 And I think that even refers in a way to that  
23 number one recommendation of mine, he's talking about how  
24 it's a very difficult thing for workers who are expected to  
25 do both of those things, certainly in the context of, of

1 trust, that definitely needs to be looked at seriously.

2 With respect to the issue of the number one  
3 amendment or recommendation that I made, in terms of the  
4 new philosophy, Ms. Harris' response with respect to  
5 splitting it into two branches was that we have no evidence  
6 that splitting the system will work and I would just remind  
7 you of the evidence of Dr. Trocmé, who told us if there was  
8 no evidence that the present system is working or does,  
9 does more harm than good and I referred to that in, in my  
10 brief, as well.

11 Mr. McKinnon, with respect to this number one --  
12 or my number one recommendation, quotes at his paragraph  
13 115, this is a quote that he emphasized and Mr. Cochrane,  
14 when he was talking about that first recommendation of  
15 mine, also made the same quote. I just want to quote that  
16 again for the record, the quote that they both referred to  
17 in their argument that this would not work.

18 I don't know if you have that handy, but I'm not  
19 sure you need it, it's a fairly brief quote and I'll read  
20 it out for the record.

21 THE COMMISSIONER: All right.

22 MR. GINDIN: Paragraph 115 of Mr. McKinnon's  
23 brief is where it can be found but Mr. Cochrane also, I  
24 believe, quoted the record from the evidence I'm not sure  
25 and here's what it says:

1 "I wish they could (sic) --"

2

3 This is the evidence of Ms. Knol, who was part of a panel  
4 of community workers.

5

6 "I wish they would just give us  
7 extra money, know we work with  
8 families and that. My fear is  
9 that if I have to start keeping  
10 files on families that I ... work  
11 with in order to get money, then  
12 keep your money because that's not  
13 going to help my families. My  
14 families are not going to come to  
15 my centre because they're going to  
16 lose trust because they're going  
17 to feel that I work for CFS not  
18 Andrews Street."

19

20 And to me that emphasizes the problem, it doesn't take it  
21 away. She is saying that these families, if they have the  
22 impression that these workers work for CFS, they don't  
23 trust them. And that's exactly the point that I'm making  
24 so it seems to me that that quote actually emphasizes the  
25 need to do something about this issue.

1           So moving on then to those particular  
2 recommendations that you had asked counsel to comment on,  
3 and I just want to be a little more specific and refer to  
4 those. The first one about splitting the system in some  
5 way, I don't think it's an answer to simply say it would be  
6 difficult, Ms. Dunn said yes there might be some issues, it  
7 might be inconvenient, that's not, I submit, a reason to  
8 abandon it. If we had a system where, for example, you had  
9 child protection services doing one particular thing,  
10 another department called family enhancement services that  
11 did something else, certainly they could refer matters back  
12 and forth. There's nothing to prevent that.

13           I can't say that I am surprised that most of the  
14 authorities or agencies are against this idea because it  
15 requires some change and most people would like it to  
16 continue the way it's been. Obviously, if, if this is  
17 recommended some thought has to go into how it could work,  
18 clearly. Some of the others, for example, Ms. Versace, for  
19 the university, said it may not work unless it's  
20 coordinated, these two parts are coordinated with each  
21 other. Well, obviously I would want them to be coordinated  
22 with one other.

23           I think Mr. Haight indicated his disagreement  
24 with this notion by saying there's a need for collaboration  
25 and again, clearly, I'm not suggesting that these two

1 branches not collaborate with one another. They have to  
2 collaborate, they have to communicate, there has to be some  
3 sort of way that they work in unison, to some extent. I'm  
4 not suggesting they never speak to each other.

5           The fact that there might be some difficult  
6 issues to solve does not mean we should abandon the, the  
7 idea. In fact, both sides should still go along with  
8 standards and policies that have been developed, they  
9 should have similar protocols. I am not suggesting that we  
10 have a new system or we're starting all over necessarily,  
11 the -- there have been some good recommendations, some  
12 progress being made in terms of new standards and policies  
13 and there's no question they should apply to both sides of  
14 the equation.

15           So I don't simply agree that there are some  
16 issues, some difficulties, so that makes it something we  
17 shouldn't do.

18           With respect to the -- number three of my  
19 recommendations, again this is something most others have  
20 disagreed with. I am advised by Mr. Funke, this morning,  
21 that he may indeed agree with this one but most of the  
22 others have voiced some disagreement with that. Mr.  
23 McKinnon makes -- and they make very good points that you  
24 should consider and they certainly know about the system  
25 and how it works than I do, but Mr. McKinnon, for example,



1 in dealing with his position on this recommendation says  
2 yes, it might have been a good idea in a scenario similar  
3 to Phoenix Sinclair but there might be some difficulties in  
4 dealing with other scenarios.

5 Mr. Cochrane made the point well, what if there  
6 are 10 kids in a family, that might cause some, some  
7 difficulty. It was called an administrative hassle by some  
8 counsel.

9 It's interesting because the reason that it was  
10 recommended by myself I think is fairly obvious.  
11 Throughout the evidence given, particularly in phase one,  
12 it just seemed like there was an awful lot of bureaucracy  
13 and energy spent on opening and closing files, it seemed as  
14 though there was information that got lost between that  
15 process and it's interesting, that's the reason for my  
16 making the recommendation and it is also seems to be the  
17 reason for people objecting to the recommendation by saying  
18 that it will cause an administrative hassle and things may  
19 get lost and that kind of thing. So, again, it's just a  
20 question of how you look at it.

21 Our system is based on the child being paramount,  
22 and so maybe a child should have their file, even if there  
23 is many children in a family. We know that sometimes these  
24 children get separated, they don't all necessarily go to  
25 the same place. It's a problem, very often siblings are

1 separated to different homes and so while it may be  
2 difficult and a particular example where there is many  
3 children, I am not so sure it should be abandoned  
4 completely just because of, of that reason, alone. So it's  
5 all about the children and maybe there should be a file  
6 that deals with the children and some sort of system where  
7 other files related to the children should be easily  
8 accessible when you're dealing with that particular child  
9 rather than having to close and open another file and  
10 trying to make sure that the file -- the material is  
11 transferred from one to the other. So, yes, I am sure  
12 there are going to be some administrative hassles in doing  
13 that but the whole purpose is to relieve some of the  
14 administrative hassles we've heard about during the  
15 evidence.

16 THE COMMISSIONER: Well, when you go into the  
17 file you're going to have know where else that child was --  
18 is referenced in other, in other files.

19 MR. GINDIN: Yes, absolutely, there have to be a  
20 system of coordination.

21 THE COMMISSIONER: The system will have to tell  
22 you that.

23 MR. GINDIN: Yes, it would have to do that.

24 Number 17 was another one of the ones you  
25 requested some response and that dealt with registration.

1 And again, I'm not surprised that some of the others are  
2 either opposed or have no comment to make. This  
3 recommendation really relates to the same topic of image  
4 and perception as do, as do most of the ones that you have  
5 pointed out should be discussed.

6 The purpose of making that suggestion was to  
7 enhance accountability and to add some governance with  
8 respect to social workers and what they do which goes to  
9 the issue of trust once again.

10 And Mr. McKinnon referred you to the evidence of  
11 Miriam Browne at pages 30 to 45 and I would ask you to go a  
12 little bit further and take a look at pages 45 to 50 of her  
13 evidence, which was December the 19th, 2012 in which she  
14 talked about all of the advantages of having this type of  
15 registration.

16 So again, I would urge you to recommend that  
17 particular point, I think it's important, it will add to  
18 the image and the perception, if there is a place that you  
19 can complain to, and you know that social workers have to  
20 take continuing education and there's a governance system  
21 in place.

22 There are some issues, I know, that they have to  
23 deal with but I think there should be a very strong  
24 recommendation that that should be put into place as soon  
25 as possible.

1           And number 32 was the recommendation that deals  
2 with the Office of the Child's Advocate. Most counsel have  
3 agreed that it should be independent, some have suggested  
4 there should be some conflict of interest rules put in.  
5 Mr. Cochrane said a cooling off period would be appropriate  
6 on the issue of whether a social worker or a former social  
7 worker should be the Children's Advocate. Ms. Harris  
8 talked about that, said she agrees with the cooling off  
9 period but it should be short.

10           My position on that, which I didn't actually  
11 discuss the first time around, was that there will always  
12 be an apprehension of bias if the Children's Advocate is a  
13 social worker or --

14           THE COMMISSIONER: Would always be what?

15           MR. GINDIN: An apprehension of bias.

16           THE COMMISSIONER: Yes.

17           MR. GINDIN: An appearance of bias if the Child's  
18 Advocate is a social worker or a former social worker.  
19 That's not to say that they will be biased, we're concerned  
20 about the apprehension and the image. And Ms. Dunn had  
21 referred you to Exhibit 82 which was a chart prepared by  
22 Darlene MacDonald, when she testified. And it goes through  
23 the complaints that are made to the Children's Advocate and  
24 just by looking at that, and considering the evidence of  
25 Ms. MacDonald, which was given May the 16th, 2013 and I

1 won't read out her evidence but from pages 127 to 136, she  
2 goes through that chart and explains what sort of  
3 complaints are being received. And there are all, to a  
4 large extent those complaints deal with complaints about  
5 social workers.

6 And it's, it's set out very carefully and it  
7 becomes very clear, as you go through her evidence, which  
8 had a heading such as children's rights, responsiveness,  
9 various other headings, and they asked her about what they  
10 meant and her evidence was clear that most complaints were  
11 about social workers. And that's why I make this  
12 recommendation.

13 I can just foresee social workers, who are making  
14 -- or I mean, the families and children who look to the  
15 Children's Advocate to deal with their complaints, are --  
16 whatever they are told, what will they say? Well, he's a  
17 social worker, what do you expect?

18 The Advocate could be completely correct but it's  
19 the apprehension and the image and the trust that I'm  
20 concerned with. So it's my submission that -- in fact, the  
21 evidence of Ms. MacDonald, when she talked about how, when  
22 she prepared the annual report, she would send a draft copy  
23 over to the General Authority before it was completed and  
24 on the surface of it there may be some good reason to do  
25 that, I think she said that maybe there's a date that's

1 wrong or something so she wants to make sure that's  
2 correct. As long as that's what it is I can't see any  
3 actual bias but I can certainly see someone looking at that  
4 and saying, hmmm, before you prepare your report you send  
5 it over to the social workers to have a look at and then  
6 you prepare your report? So, really it all comes down to  
7 this apprehension of bias, not necessarily actual bias or  
8 bias that can be proven, but it just doesn't look right and  
9 that's why I recommend that it should be independent in  
10 every way, it should not be a social worker, even though  
11 they may be in a very good position to do it.

12 That's not to say there shouldn't be a social  
13 worker on staff, it's not to say they can't speak to a  
14 social worker or speak to some experts and get some  
15 opinions or check out certain facts, they certainly can do  
16 that, it just doesn't look right when you are also a social  
17 worker who may have worked in that department.

18 It's my submission that the -- a good suggestion  
19 would be that a lawyer would be in a very good position to  
20 hold that position because they are an advocate and when  
21 they're advocating on behalf of children that's what they  
22 have to do.

23 THE COMMISSIONER: What about a social worker  
24 whose field of endeavour has taken them in areas that  
25 aren't involved in child welfare, social worker at a

1 hospital or --

2 MR. GINDIN: Yes.

3 THE COMMISSIONER: -- some other environment  
4 where -- and social workers do have opportunities in a  
5 number of areas.

6 MR. GINDIN: Absolutely. I have that actually  
7 marked down as another alternative, social workers not  
8 involved in the child welfare system, who have worked in  
9 some other capacity altogether.

10 THE COMMISSIONER: You wouldn't have the same  
11 concern if, if --

12 MR. GINDIN: I wouldn't have the same concern.

13 THE COMMISSIONER: -- if that was the background.

14 MR. GINDIN: I wouldn't have the same concern.

15 We've heard a lot of other interesting ideas from  
16 other counsel, Mr. Cochrane talked about social workers in  
17 schools, or social workers in hospitals.

18 THE COMMISSIONER: Yeah.

19 MR. GINDIN: Social workers in certain police  
20 stations, social workers in the home, those are all  
21 excellent ideas and I would endorse them.

22 I think that completes my reply unless you have  
23 some questions, Mr. Commissioner?

24 THE COMMISSIONER: No, I think that's everything,  
25 Mr. Gindin. Again, thank you for your contribution you've

1 made here on behalf of your clients.

2 MR. GINDIN: Thank you. Thank you, Mr.  
3 Commissioner.

4 THE COMMISSIONER: All right. We'll -- what  
5 time, two o'clock, Ms. Walsh?

6 MS. WALSH: Sounds -- that sounds fine, thank  
7 you.

8 THE COMMISSIONER: All right. We'll adjourn to  
9 two o'clock and then carry on with the, with the replies.

10

11 (LUNCHEON RECESS)

12

13 THE COMMISSIONER: Mr. Ray, it's your turn.

14 MR. RAY: Yes, good afternoon, Mr. Commissioner.  
15 Thank you. I was going to start my reply submission by  
16 saying I'm, I'm going to continue to try to be the shining  
17 example of brevity but some might point to my written  
18 submissions and, and laugh at me but I'll just start by  
19 addressing the five recommendations --

20 THE COMMISSIONER: Well, I'm here to listen.

21 MR. RAY: Well, I won't be using the three hours,  
22 I can tell you that much.

23 With respect to the five recommendations that you  
24 asked for comments on, to the extent that it's our issue, I  
25 guess our issue being the MGEU social workers, I can



1 comment. With respect to the, the suggestion that there be  
2 a separation between child protection and child prevention,  
3 we support the comments of other parties that first this is  
4 probably a step that is not necessary at this point and  
5 second, that it's not necessarily going to improve services  
6 to child welfare. I'll just add that we've heard a lot of  
7 changes, heard a -- heard about a lot of changes that have  
8 happened in the system and we've heard evidence from the  
9 MGEU and as well as Dr. Alexandra Wright about the need for  
10 adjustment to learn those types of changes and let them  
11 take, take -- have some effect within the system and I  
12 think we're just really on the, on the heels of a, of a  
13 recent massive change. So I'll, I'll let the department  
14 and others, who are much more expert than I am in speaking  
15 to that.

16 But the concept of separation of there going --  
17 there's going to be more trust in a person that is there as  
18 their advocate, I think that that's dangerously false and,  
19 and I suggest to you that in many respects that already  
20 exists. In fact, we heard evidence from Nikki Taylor at  
21 this inquiry, who was effectively the type of advocate that  
22 people are encouraging you to recommend in this hearing and  
23 she was a very successful advocate on behalf of Mr.  
24 Sinclair and Ms. Kematch and represented them effective  
25 vis-à-vis of a relationship with their social worker. And

1 the social worker worked with that advocate and, and you  
2 heard evidence about that in phase 1. So that possibility  
3 is entirely there already.

4 And secondly, the concept that somehow there is  
5 going to be trust in an advocate, which is an admirable and  
6 noble concept, doesn't remove the fact that that advocate,  
7 notwithstanding the fact that the person is there for the  
8 parent, he still has a professional and ethical and moral  
9 obligation to report child protection concerns that they  
10 witness and that they see. And the minute that that  
11 happens, that person who is putting, that parent who is  
12 putting faith in this advocate, is going to now have a lack  
13 of faith, perhaps in that advocate, and so I think it cuts  
14 many different ways and I think that the suggestion that is  
15 being made that somehow there is going to be an immediate  
16 ability to trust somebody, while that person has an  
17 obligation to report child protection concerns if, if they  
18 do in fact exist and to report them to CFS or to a social  
19 worker.

20 THE COMMISSIONER: Well, like everybody else --

21 MR. RAY: Like --

22 THE COMMISSIONER: -- has the obligation.

23 MR. RAY: That's correct, yes. But if that's a  
24 trust barrier, I don't think that having an advocate is  
25 necessarily going to create a situation where you're going

1 to all of a sudden have -- and a person who is going to be  
2 solely your advocate. They may advocate for you but they  
3 are still going to have to refer things to CFS if that's  
4 appropriate.

5           The second issue was the fact that, when you talk  
6 about opening files in a child's name, as opposed to the  
7 parent, I, I defer the MGEU, would defer and social  
8 workers, would defer primarily to the, the opinions of the  
9 authorities and the employers on that issue but we can --  
10 we do agree that from an administrative standpoint and the  
11 works that social workers are performing, it could add  
12 additional work, it could add additional steps in having --  
13 instead of having one file under the parent now you're  
14 going to have potentially four or five files that are  
15 really duplicating information and that could be time  
16 consuming, firstly, and it could also result in information  
17 getting placed in one child's file and perhaps not another  
18 child's file.

19           I don't know, we could go round in circles  
20 forever, really, depending on people's views and I'm sure  
21 there's pros and cons to both sides but we defer to, to the  
22 opinions of the employers on that regard.

23           Mr. Commissioner, with respect to the, the  
24 college and the registration issue, this is something that  
25 certainly is going to bring accountability to the

1 profession which the MGEU has advocated for in its  
2 submissions and that's consistent with our position.

3           The only thing I would say about, if you were  
4 going to be making comments or recommendations regarding  
5 registration, is that you consider making note of the fact  
6 that there -- by creating a -- creating this situation,  
7 creating a registration and creating a professional system  
8 that's going to review the work of social workers you also  
9 create a system for complaints and you also create a system  
10 for vindictive complaints.

11           And we've heard about a lack of trust that exists  
12 within the system, and we would encourage you to ensure  
13 that there is some method of investigating and dispensing  
14 with complaints that, on their face, appear to be of little  
15 value because otherwise there is going to be, I think, a  
16 heavy cost built within the system and that is going to be  
17 a heavy cost to the taxpayers that support that type of an  
18 investigation and complaint system.

19           I know, just by my own experience, having done  
20 work on behalf of police officers within the Law  
21 Enforcement Review Agency system, that often times you get  
22 complaints that are not well founded and lack a lot of  
23 legitimacy and they have a very efficient system and they  
24 have a very effective way of dealing with those complaints.  
25 That's our only comment with respect to the registration,

1 that that needs to be built into the system, and I think  
2 that's of benefit to everybody, not just to the people who  
3 are the subject of complaints.

4           With respect to the Child Advocate's office  
5 issue, we share the position of the MMF as expressed by Mr.  
6 Haight, that we don't feel there is a need for a blanket  
7 rule that excludes any particular group, including social  
8 workers. There are no doubt many social workers out there  
9 that would be excellent candidates for that position. When  
10 you get into that role and, and into that system, and into  
11 that office, you are conducting yourself as a professional.  
12 If you fail to do that then there are consequences for that  
13 and we would expect that anybody, regardless of their  
14 background or profession would handle themselves  
15 accordingly in carrying out the role that they're supposed  
16 to carry out, regardless of what they did prior to that.

17           With respect to the, the comments about the  
18 acknowledgement of over, over representation of aboriginal  
19 people within the child welfare system, I think that that's  
20 certainly something that's been covered at great length by  
21 this, by this inquiry. Obviously it's something that we  
22 brought to your attention within our brief, and identified  
23 it as a concern and it's a concern that does impact the  
24 ability of social workers to effectively do their jobs and  
25 to the extent that you can make good recommendations

1 towards solving even a small amount of those problems, you  
2 will be making recommendations that will assist social  
3 workers in, in doing their job better, so we obviously  
4 support that.

5           With respect to the issue of anonymity of social  
6 workers that was raised by Mr. Gindin, again we would share  
7 the position of the MMF on that. Whether social workers do  
8 or do not remain anonymous, in child protection proceedings  
9 under the Act, really has nothing to do with improvement of  
10 service delivery. If they -- in fact, I would suggest to  
11 you that if they continue to remain anonymous it's going to  
12 assist in service delivery but removing that, I don't see  
13 how removing that anonymity at all is going to improve  
14 services to family and children. It's been placed into the  
15 Act for a very good reason, making the changes that impact  
16 that is not going to assist you, I would submit, in  
17 achieving your mandate.

18           Addressing some of the concerns and some of the  
19 points that Mr. Gindin had made in his submission, one of  
20 his comments he suggested that social workers, at least  
21 some of them, were perhaps not very forthright in their  
22 evidence and, with respect, I submit that's not a very fair  
23 characterization.

24           Social workers all acknowledged to the extent  
25 they were involved in service delivery that better work

1 could have been done, to the extent it was their  
2 responsibility to do better work, I think that was  
3 acknowledged by those individuals. They also tried to  
4 rationalize for you, sir, why perhaps work may or may not  
5 have been done in a particular fashion and some have used  
6 the word excuses. I don't view them as excuses, I view  
7 them as explanations to you for why certain work could not  
8 be performed in the way that they wanted to perform it and  
9 that's why we're here, is to figure that out, why, what was  
10 the problem, what led to services being delivered in a less  
11 than thorough manner. And without knowing the answer to  
12 those questions, as explained by social workers, it makes  
13 your job very difficult to make recommendations.

14 Social workers had the challenge of having to  
15 recall one file that they've dealt with between eight and  
16 13 years ago, and the fact that they necessarily couldn't  
17 remember every detail is hardly a reflection on the fact  
18 that they were candid and honest with you in their  
19 testimony.

20 Just commenting on an exchange that you had with  
21 my friend, Ms. Bowley, and it's not something that comes  
22 out of her submission but rather out of a question that you  
23 asked her in her submission and we were talking about, or  
24 you were talking about an issue about who, within CRU, has  
25 the responsibility of conducting a thorough history review,

1 whether that be on the paper file or whether that be CFSIS,  
2 prior to a CRU person going out and fielding to the home as  
3 some, as some of them did. And you asked a question would  
4 that have been Mr. Buchkowski, just as an example. And Ms.  
5 Bowley's response to you was that she didn't know that  
6 anybody within CRU would have that responsibility.

7           And I think it's important to emphasize, again,  
8 the role of CRU, which -- and in fact the acronym -- which  
9 is crisis response unit and just carrying it -- that right  
10 down to its basic form, the crisis response unit goes out  
11 and deals with emergent crisis situations.

12           Mr. Berg, in his evidence, I think, and I'm  
13 trying to quote him, essentially said CRU does not have the  
14 luxury of doing a thorough review of a very thick file  
15 prior to going out to conduct a field and we know in this  
16 case that by the time it got to CRU at various stages, the  
17 combined files of Ms. Kematch, Mr. Sinclair had Phoenix's  
18 child in care files plus the child in care files of Mr.  
19 Sinclair and Ms. Kematch, herself, were in totaling in the  
20 hundreds of pages and as Ms. Faria said, in her evidence,  
21 from start to finish, from the moment that a social worker  
22 gets a file to the moment they're signing off on their  
23 recommendation to her, they've got about an hour per file  
24 on average and they just cannot do the type of thorough  
25 detailed review that we would want in every case within



1 that hour period.

2 THE COMMISSIONER: How is that -- at what stage  
3 does that hour come into play?

4 MR. RAY: Well, the evidence was, you will recall  
5 there was a document, I'm sorry I don't have the, the -- it  
6 is referred to in our brief but from the time that a social  
7 worker would receive a file from their supervisor --

8 THE COMMISSIONER: Yes?

9 MR. RAY: -- to the time that they actually hand  
10 in their written report to their supervisor, making a  
11 recommendation, on average a social worker would have about  
12 an hour.

13 THE COMMISSIONER: In other words get --

14 MR. RAY: A CRU social worker.

15 THE COMMISSIONER: You mean get the file, study  
16 the file, go out, make the visit, come back to the office  
17 and make their report.

18 MR. RAY: And, and interact with their  
19 supervisor, perhaps, if that's necessary, conduct a --

20 THE COMMISSIONER: At beginning and end?

21 MR. RAY: Correct. And, and every, everything  
22 that that CRU social worker would have to do on that file.  
23 So if that involves phoning EIA or a school, or a public  
24 health nurse and speaking to them and making recordings,  
25 and doing up their report, and reviewing their paper file

1 if it was available, and reviewing the CFSIS history. And  
2 that, I, I suspect, is why Ms. Bowley said to you I don't  
3 know that anyone within CRU would have that responsibility.

4 In a perfect world, we would like them to be able  
5 to do as thorough an assessment as possible but it's just  
6 not possible with the amount of volume that they were  
7 dealing with.

8 Just moving to the, the comments of the  
9 department, I just have a few brief areas to cover, Mr.  
10 Commissioner. My friend, Mr. McKinnon, had suggested that  
11 simply adding more social workers to do the same type of  
12 work isn't the answer. Absolutely agree. Pure numbers is  
13 not going to do anything unless they're properly trained,  
14 unless they're properly supervised and unless they have  
15 proper tools. But not adding them is not going to help  
16 either. And I suspect that's why all of the authorities,  
17 Mr. Commissioner, have told you that at this point workload  
18 remains a concern and they could use more social workers.

19 And obviously the MGEU agreed that fundamental  
20 changes were necessary. Going back to devolution, those  
21 changes were supported by the MGEU, they worked together to  
22 make those changes happen, they advocated for change. Now  
23 we have new tools, we have more training, we have training  
24 on standards, we have more people. There's no suggestion  
25 at all and you shouldn't take any suggestion from us that

1 change wasn't necessary and change was not supported.

2           There is a -- there's consequences for that and  
3 if things aren't done appropriately and if change is not  
4 administered appropriately, then it becomes difficult but  
5 there is no question that change was needed.

6           The term common sense has been thrown around a  
7 lot at this inquiry and if you want to talk common sense  
8 principles, I would suggest to you that it doesn't get any  
9 more basic than more people equals better attention to  
10 files, it equals better assessments and it equals better  
11 results.

12           The department had noted that in their respectful  
13 submission that part of the problem was that social workers  
14 were closing files, or not opening files with the comment  
15 or with the belief that there was no known child protection  
16 concern and I, I think that's probably right and that's  
17 precisely our point.

18           Due to the lack of training, due to the lack of  
19 supervision, due to case loads and workloads being too  
20 high, people were not doing assessments that should have  
21 been as detailed as we wanted them to be. That all leads  
22 to less accurate assessments and it means less accurate  
23 decision making.

24           There was the topic of quality assurance checks  
25 was discussed quite a bit and the department, I noted,

1 acknowledged responsibility for the lack of those  
2 assessments and assurances but then went on to say that it,  
3 it relied on supervisors to do two things. Firstly, to do  
4 those quality assurance checks and secondly to train social  
5 workers on standards.

6 With respect, I did not hear that question or  
7 suggestion put to a supervisor once when they testified.  
8 If that was the department's expectation then it was never  
9 communicated to social -- or excuse me, to supervisors.  
10 There was no evidence, Mr. Commissioner, that that was the  
11 expectation nor that supervisors accepted that that was  
12 their responsibility and I don't even recall the question  
13 being put to the supervisor.

14 THE COMMISSIONER: Just repeat that, no evidence  
15 that it was the responsibility of the supervisor to?

16 MR. RAY: To, to train social workers on  
17 standards or to perform quality assurance checks on files.  
18 At least not to the extent that I understand quality  
19 assurance checks were -- was being discussed as a, as a  
20 concept.

21 Certainly, acting as a supervisor of a social  
22 worker could also result in informal quality assurance  
23 being done to ensure that a social worker is doing the work  
24 that we would want them to, to do, that's acceptable but to  
25 say it was their job to randomly pull files and to perform

1 quality assurance, is at least that that concept has been  
2 discussed, I don't recall any evidence or any suggestion to  
3 any supervisor that it was their responsibility to do that.

4           Onto the topic of standards, quickly, again the  
5 department accepted responsibility for the lack of clarity  
6 and the lack of training on standards. They went further  
7 and suggested that standards are really more of a vague  
8 guideline and that it's up to the, the agency or WCFS, for  
9 example, to establish policies and procedures that would  
10 then spell out for the social worker what they ought to do  
11 and it wasn't really in the standards.

12           I'm not going to go into this in any detail, Mr.  
13 Commissioner, you have the standards, in their various  
14 forms, at various periods, I would encourage you to just  
15 look at them randomly, they are quite detailed and they do  
16 provide quite a bit of instruction for social workers in  
17 terms of how to take certain steps on certain files at  
18 certain times.

19           My, my friend is correct when he says it's a bit  
20 of a non-issue because people weren't trained on them, in  
21 any event, and people didn't turn their minds to them in  
22 any event, so whether they were clear or not clear probably  
23 didn't impact this file but it certainly would have been  
24 helpful to be trained well on standards and I suspect the  
25 GA would tell you that that's why they do it twice per year

1 now.

2 My friend, Mr. McKinnon, on behalf of his  
3 clients, noted the, the number of times the words workload  
4 and case load appeared in our brief. I chuckle to myself  
5 that someone with the department would actually take the  
6 time to perform and determine that statistic. Sadly it --

7 THE COMMISSIONER: I'm assuming there's a word  
8 process that does that.

9 MR. RAY: Well, and you, you hit run, I'm  
10 assuming they didn't count it when -- and number it every  
11 time but the task was performed, nonetheless.

12 The fact that it's repeated, I think, bears some,  
13 you know, concept as to why -- how important and how  
14 fundamental this is to good social work and we're certainly  
15 not the only party standing here and telling you that. All  
16 the other authorities are telling you that, I've heard Ms.  
17 Brownlee say it, I've heard Mr. Rodgers say it, I've heard  
18 people say we need to have case loads under, under check,  
19 and need to make sure that they are appropriate so that  
20 people can deliver good services.

21 We've heard about a lot of very positive changes  
22 to the system, lots of very positive improvements that  
23 could have possibly changed the outcome of Phoenix's file  
24 but we've also heard the unchallenged evidence of social  
25 workers and of senior people within various agencies and

1 authorities that there still exists a problem. And none of  
2 the improvements that are being made are going to be as  
3 effective as they could be, unless social, social workers  
4 have an opportunity to implement them and to do so in a way  
5 that best uses the tools that they have been given.

6 Subject to any questions, Mr. Commissioner, those  
7 are my submissions. Again, I would like to thank you for  
8 the opportunity to appear before you, I hope that our  
9 evidence and our submissions have been helpful to you in  
10 conducting your, your final report.

11 THE COMMISSIONER: Thank you, Mr. Ray.

12 MR. RAY: Thank you.

13 THE COMMISSIONER: All right. That brings Ms.,  
14 Ms. Bowley, I guess you're next.

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

16 For the record, Mr. Commissioner, it's Bernice  
17 Bowley, appearing for a witness at this inquiry, Diva  
18 Faria.

19 Before starting my reply in earnest I have one  
20 brief housekeeping matter, just a possible miscommunication  
21 that I would like to clarify, if I can.

22 THE COMMISSIONER: Just get the ...

23 Yes?

24 MS. BOWLEY: During an exchange between yourself  
25 and Ms. Harris, I thought I heard and I may have -- I may

1 be incorrect in my understanding but I thought you had  
2 asked her whether the structured decision making tools were  
3 available to the system in Manitoba during the years 2000  
4 to 2005 and I think that Ms. Harris understood your answer  
5 -- or your question, sorry, as being whether they were in  
6 use in Manitoba at the time and she answered no. And I've  
7 spoken with her about this and I just want to make sure  
8 that the record is clear, she agrees that the SDM tools,  
9 through the Children's Resource Center, that they have been  
10 available to various jurisdictions since the late 1990s and  
11 I, myself, as a result of some on-line searching, have seen  
12 evaluations on their use in other jurisdictions going back  
13 to the late 1990s and Ms. Harris further advised that it  
14 takes some time to develop and, and make appropriate these  
15 tools to particular jurisdictions and that that process can  
16 be -- can take months and years. But the fact of the  
17 matter is, and I just did not want it to be left unsaid,  
18 that SDM tools have been around since the late 1990s.

19 THE COMMISSIONER: But were they in use by  
20 Winnipeg Child and Family Services?

21 MS. BOWLEY: No, they were not. They were not  
22 put into use until 2008?

23 THE COMMISSIONER: Yes.

24 MS. BOWLEY: Or nine, or thereabouts.

25 THE COMMISSIONER: Right.



1 MS. BOWLEY: And I just should further say that  
2 it was on the General Authorities' initiative that the  
3 tools were brought to Manitoba and then later endorsed by  
4 the province and the other authorities.

5 And I'll move on now to my reply, Mr.  
6 Commissioner, which is a bit of a variation on my earlier  
7 theme, but with some points in response, primarily to Mr.  
8 McKinnon, on behalf of the department and Winnipeg CFS.

9 And as I said before, throughout the course of  
10 the inquiry many questions were intensively focused on  
11 responsibility for day-to-day social work and conversely  
12 while management and high level management conceded that  
13 they had ultimate responsibility for the services  
14 delivered, it's my submission that little evidence was  
15 heard as to how those people went about ensuring good  
16 service delivery over a five year period and longer.

17 And again, I'm not submitting that senior  
18 management, Winnipeg CFS or the department need to be  
19 blamed that, that does not serve a useful purpose here, and  
20 you have my earlier submission on that. However, I do want  
21 to ensure, today, that if there were to be any blame  
22 leveled that it be done fairly and not on the front line  
23 people, like Diva Faria, who as I said many times, last  
24 Tuesday, did not have power and authority to effect  
25 substantive change on the system.

1           What we have now heard, in closing argument, in  
2 summary, from Winnipeg CFS and the department, is that they  
3 say there was a fundamental failing during the years that  
4 services were provided to Phoenix and her family and that  
5 fundamentally there was a failure to appropriately assess  
6 safety and risk. That over the course of those five years,  
7 all or many of the social workers who touched Phoenix's  
8 file or her families' files were asking the wrong question.  
9 They were analyzing the file based on no noted protection  
10 concerns or no immediate protection concerns instead of  
11 asking whether identified risk factors had been reduced or  
12 resolved.

13           According to Mr. McKinnon, on behalf of his  
14 clients, that wrong question was asked repeatedly at both  
15 family services and at intake and that this approach  
16 occurred at various stages on the files.

17           THE COMMISSIONER: So are you saying what Mr.  
18 McKinnon said was the right question was, in fact, asked?

19           MS. BOWLEY: No, sir, I'm summarizing what the  
20 department now --

21           THE COMMISSIONER: Oh, okay.

22           MS. BOWLEY: -- the department and Winnipeg CFS,  
23 looking back now --

24           THE COMMISSIONER: Yes.

25           MS. BOWLEY: -- say --

1 THE COMMISSIONER: Yes.

2 MS. BOWLEY: -- was a wrong approach, a  
3 fundamentally flawed approach.

4 THE COMMISSIONER: Yes, I understand that.

5 MS. BOWLEY: Yes.

6 THE COMMISSIONER: And so what are you saying  
7 about it?

8 MS. BOWLEY: I'm coming to that, sir.

9 THE COMMISSIONER: Okay.

10 MS. BOWLEY: All right. I did a global search of  
11 the evidence, transcripts, at this inquiry, something that  
12 I may teach Mr. Ray later --

13 THE COMMISSIONER: Yes.

14 MS. BOWLEY: -- and virtually every social worker  
15 and many intake supervisors, including Mr. Orobko, referred  
16 at some point in their evidence as immediate protection --  
17 no immediate protection concerns or no current protection  
18 concerns, those concepts as informing their decision making  
19 throughout 2000 to 2005.

20 So, it may be then, to get back to your question,  
21 Mr. Commissioner, that there was, in addition to what I  
22 said last Tuesday, a systemic difficulty in handling low to  
23 medium risk of abuse and neglect cases and/or there was  
24 this wrong approach over the course of at least five years,  
25 to risk assessment.

1           And that may -- that wrong approach may well be  
2 what was going on, although no one testified and, and gave  
3 that kind of, of conclusive or opinion based evidence, and  
4 I'm not necessarily disagreeing with it but I submit, Mr.  
5 Commissioner, that that then leads to an obvious series of  
6 questions or issues. Why was the entire system operating  
7 on this basis? Why was the entire system operating on this  
8 basis for more than five years? Why was that the practice  
9 model for so long?

10           THE COMMISSIONER:       Operating on this wrong  
11 system?

12           MS. BOWLEY:       Yes.       This approach to risk  
13 management, there are no immediate protection concerns,  
14 there are no known protection concerns, therefore we can  
15 close a file or therefore we cannot open -- we need not  
16 open a file.

17           We heard evidence at this inquiry from several  
18 program managers who acknowledged that they were  
19 responsible for service delivery in their area of authority  
20 and we heard from CEOs and former CEOs who said they were  
21 ultimately responsible for service delivery. We did not  
22 hear from them as to why file audits, quality assurance  
23 measurement and performance measurements weren't being  
24 performed over what I submit is a long period of time to  
25 ascertain what services were being delivered and whether

1 those services were good and appropriate for Manitoba  
2 children and families.

3           And I don't want to belabor the point of Winnipeg  
4 CFS's ostensible reliance on supervisors to do quality  
5 assurance except to echo Mr. Ray's observation that  
6 questions weren't asked of those people as to whether that  
7 was part of their job responsibility or whether they were  
8 given adequate resources to allow them to fulfill that  
9 responsibility or whether they were even aware of that  
10 ostensible reliance. And I submit that on the evidence  
11 that you've heard, that front line supervisors, a CRU  
12 supervisor like Diva Faria, was not responsible for quality  
13 assurance measures which need to be undertaken by an  
14 organization in order to meet good practices.

15           There was no evidence that anyone above the level  
16 of CRU supervisors were doing quality assurance  
17 measurement, reporting it upward and developing policy on  
18 that basis. There was mention that Darlene MacDonald  
19 pulled some files on a random, random basis but it's  
20 important to note, Mr. Commissioner, that that informal  
21 practice review, by her alone, ceased when she left as  
22 program manager in early 2003. That was the only file  
23 audit or quality assurance steps that we heard taken at  
24 intake from 2000 to 2005.

25

1           And it would appear then that that limited random  
2 file pulling was not sufficient to give the organization an  
3 understanding that the wrong question on risk assessment  
4 was being asked on a system-wide basis or perhaps that was  
5 noted and no changes were implemented because that was how  
6 the system was operating and she, like the front line  
7 workers, did not perceive then that that approach was so  
8 flawed. And again, we don't know the answer to those  
9 questions because that evidence was not given.

10           And similarly, assistant program managers at CRU  
11 said that they handled files when supervisors were away,  
12 that they handled files when times were busy in CRU, and  
13 that they were resource for consultations by supervisors.  
14 Those people did not give evidence as to whether they  
15 picked up on this wrong question, repeatedly being asked as  
16 it certainly was over the course of several years. What we  
17 may know now, as we've heard on behalf of the department  
18 and Winnipeg CFS, is that the whole system seems not to  
19 have known that this was not the appropriate way to assess  
20 risk. As was said, these kinds of questions, no noted  
21 protection concerns, were asked at both family services and  
22 intake over the course of years from 2000 to 2005. We've  
23 heard to accept that theory that over the course of five  
24 years most social workers who handled the file may have  
25 taken this wrong approach.

1           And to again then return to the question as, as  
2 to why the system, as a whole, was operating this way, one  
3 answer is because of a lack of good standards, policies and  
4 procedures and tools.

5           My focus is on CRU here and so the only policies  
6 and procedures document that that unit had was the intake  
7 program manual. The accompanying tool to that program  
8 manual was the safety assessment form and you've heard  
9 evidence and you've heard submissions on the inadequacy of  
10 that safety assessment form, it is to build on this idea of  
11 the wrong question being asked, overly focused on immediate  
12 issues, whether an incident of abuse has occurred, whether  
13 there is immediate risk and whether there are known  
14 protection concerns. And these tools are part of the  
15 reason, I submit, Mr. Commissioner, for the long term wrong  
16 approach which has been suggested to you.

17           And I further submit that this long term approach  
18 to risk and safety assessments could have been improved or  
19 corrected at some point during all of those years. They  
20 weren't and what happened or what didn't happen for years  
21 there can't be the front line worker's fault. The overall  
22 approach to a child welfare system, whether it's standards,  
23 policies, procedures, quality assurance, service delivery  
24 measurement, all of those kinds of organizational best  
25 practice tasks is top down, it comes from the top.

1           The front line people, in the midst of crisis and  
2 business ought not to be expected to know that they were  
3 operating on the basis of what has been characterized as an  
4 institutionally flawed approach to risk assessment.

5           You've heard, Mr. Commissioner, various  
6 acknowledgements by Winnipeg CFS and the department about  
7 lax or failures and I was somewhat relieved by parts of  
8 those acknowledgements because I had been concerned, based  
9 on the focus of some evidence at the inquiry, that the  
10 front line people might be sacrificed in the search for  
11 blame.

12           Winnipeg CFS and the department have acknowledged  
13 confusion about the standards. In response, it is my  
14 submission that confusion was not the issue, the, the issue  
15 was, among other issues, the lack of updates or  
16 improvements of standards, policies, procedures, tools,  
17 oversight, monitoring of service delivery over those years.

18           Winnipeg CFS and the department have acknowledged  
19 a lack of training and say that there is no comparison to  
20 the training that is given now and they also say that the  
21 training is improved because more workers doing the same  
22 thing does not improve outcomes. And that training is now  
23 given on very different work tools, including very  
24 particular and detailed and substantively improved risk and  
25 separate safety assessments.



1           And, Mr. Commissioner, you asked during the  
2 course of Mr., Mr. McKinnon's submission, whether he would  
3 go one step further and say that shortcomings in service  
4 delivery were attributable to a lack of training and I  
5 would like to answer that question, too. And I want to  
6 link that answer to another submission made to you by Mr.  
7 McKinnon. He said that safety and risk are different  
8 assessments and that's correct. And with respect to the  
9 assessments being done then and that question is to known  
10 or immediate protection concerns, he said that if you ask a  
11 different question you may get a different answer and he  
12 said that Winnipeg CFS shares responsibility for that and  
13 shares responsibility is, I submit, careful phrasing. My  
14 answer to your question is that had workers been adequately  
15 trained on proper safety and risk assessments, whether it's  
16 the probability of future harm tool, the caregiver  
17 strengths and needs assessment or some similar tool, all of  
18 which were available in those years just not in use, the  
19 quality of their work would have resulted in better  
20 outcomes for children during the years 2000 to 2005.

21           The various front line decisions made that have  
22 been at issue in this inquiry were not made because all of  
23 these people and supervisors lacked common sense over the  
24 course of five years. Instead, their decisions were based  
25 on professional judgment and their professional judgment

1 arose out of their clinical experience and their clinical  
2 experience arose out of their environment and by  
3 environment I mean the same thing that Sandy Stoker spoke  
4 of in her evidence, the organization, its cultures, the  
5 practices that have developed.

6           The worker's clinical experience was in  
7 navigating this unimproved system, as I have characterized  
8 it, without up to date or improved standards, policies and  
9 procedures with what I submit were poor quality risk and  
10 safety assessment tools, without training on those risk and  
11 safety assessments or note taking and with an entrenched  
12 approach based on immediate safety or known protection  
13 concerns which approach was known to, to management.

14           So to the extent that front line decisions could  
15 have been better or did not meet what we now say was best  
16 practice or common sense, it's my submission that these,  
17 what I will call institutional inadequacies as they existed  
18 were not the front -- the fault of front line personnel and  
19 that the standard of common sense, and I mean standard with  
20 a small "S" and common sense in a very generic sense. And  
21 I've heard Mr. Gindin agree with me, that must be applied  
22 upward.

23           That constitutes my reply, Mr. Commissioner, to  
24 the extent that you may have questions. I look forward to  
25 review of your final report and I'm optimistic that the

1 recommendations here will have a positive and substantive  
2 effect on the child welfare system here in Manitoba.

3 THE COMMISSIONER: Thank you, Ms. Bowley.

4 MS. BOWLEY: Thank you.

5 THE COMMISSIONER: I appreciate the way you and a  
6 few others got up to speed so fast.

7 All right. Mr. Rolston?

8 MR. ROLSTON: Thank you, Mr. Commissioner. I  
9 appear on behalf of Dianna Verrier and I certainly don't  
10 want to rehash my entire argument, as brief as it was but I  
11 did want to clarify some comments, just to make sure that  
12 you have our position with respect to what occurred in Ms.  
13 Verrier's very limited role. And I want to just start with  
14 -- by reminding you, Mr. Commissioner, that there is really  
15 two documents that were being dealt with by Debbie De Gale  
16 with Ms. Verrier that led to some confusion that I talked  
17 to you about last time.

18 There was the safety assessment --

19 THE COMMISSIONER: Yes.

20 MR. ROLSTON: -- which was changed from 24 hour  
21 response time to 48 hour response time and there, at the  
22 same time that -- and that document had her signature on  
23 it, had Debbie De Gale's signature on it.

24 THE COMMISSIONER: Yes.

25 MR. ROLSTON: At the same time, in the same

1 package of information that would have went from Ms. De  
2 Gale to Ms. Verrier, there is a document called the CRU  
3 intake and A8HU form which was effectively the report and  
4 that's the one that was unsigned that, that Mr.  
5 Commissioner, that you're concerned about.

6 THE COMMISSIONER: By, by De Gale?

7 MR. ROLSTON: By De Gale. Was not signed by De  
8 Gale. And I think it's important to remember that because  
9 those two documents weren't -- or submitted together it  
10 sort of changes the fact that one document perhaps didn't  
11 have a signature on it just because when Ms. Verrier would  
12 have been looking at it she would have had her signature on  
13 at least the one document that she changed and initialed,  
14 the other document, as you know, wasn't signed and there  
15 was some issue about whether or not some, some information  
16 was taken out of that second document that was unsigned.

17 And certainly our client's position has always  
18 been that that document was not changed by her, that it was  
19 submitted as is, and certainly you have my arguments on why  
20 we feel that that's a credible argument in her written  
21 materials and I am not going to rehash those for you.

22 But ultimately, what occurs then is -- or what,  
23 what I want to just reflect on here is Mr. McKinnon's  
24 comments about the confusion about why I'm suggesting that  
25 because Ms. Verrier was doing this work after hours, that,

1 that this somehow was a workload issue. And certainly the,  
2 the answer to that really comes in terms of, of the timing  
3 of when people were doing what and the fact that the form,  
4 the, the safety assessment form wasn't being used properly  
5 that creates the disconnect and that's really what I was  
6 trying to get at with my submissions is to say that because  
7 of the fact that workers were so pressed for time, because  
8 of the fact that supervisors had to do their work after  
9 hours sometimes to complete things, and because of the fact  
10 that the safety assessment was really left virtually blank  
11 and then submitted along with this other form, or in a  
12 situation where Ms. Verrier, objectively speaking, would  
13 have been reviewing both forms and seeing quite clearly  
14 that, based upon what's on the face of the form, the proper  
15 response time was a 48 hour response time rather than a 24  
16 hour response time. And if Ms. De Gale's intention was to  
17 make it a 24 hour response time then that's where the  
18 disconnect occurs.

19 And so I just wanted to clarify that for you, Mr.  
20 Commissioner, and hopefully clarify the issue with respect  
21 to whether or not a signature was really all that  
22 important. I think really what the important  
23 consideration, in terms of Ms. Verrier's conduct is, is who  
24 took information out of that document, if anybody did, and  
25 I say probably nobody did but if somebody took it out it

1 wasn't Ms. Verrier and that's pretty clear, in my  
2 respectful view, of, of what the evidence tells you.

3           Ultimately, I guess, at the end of the day, as we  
4 have all said and, and Mr. Ray said specifically, the real  
5 question is why are these things happening and I wanted to  
6 give you my thoughts on that, just based on this one  
7 scenario. Thank you.

8           THE COMMISSIONER: Thank you, Mr. Rolston.

9           All right. I guess, Mr. Cochrane, you're next.

10          MR. COCHRANE: Yes, sir.

11          Mr. Commissioner, just before I begin, I note the  
12 time is four minutes to 3:00.

13          THE COMMISSIONER: Yes.

14          MR. COCHRANE: And I am wondering if you are  
15 looking at taking a break, I would prefer to do that prior  
16 to my beginning --

17          THE COMMISSIONER: All right.

18          MR. COCHRANE: -- this afternoon. Otherwise I am  
19 ready to proceed right through.

20          THE COMMISSIONER: A break would suit you now?

21          MR. COCHRANE: If you're going to, yes, a break  
22 would suit me now.

23          THE COMMISSIONER: Well, we would, we would be  
24 breaking in about 20 minutes from now, ordinarily, so and  
25 you will still be in --

1 MR. COCHRANE: I will still be --

2 THE COMMISSIONER: All right, in, in --

3 MR. COCHRANE: -- rolling, I hope.

4 THE COMMISSIONER: -- in motion. All right,  
5 we'll take a break now then for 15 minutes.

6 MR. COCHRANE: Thank you.

7

8 (BRIEF RECESS)

9

10 THE COMMISSIONER: Mr. Funke.

11 MR. FUNKE: Good afternoon, Mr. Commissioner.  
12 Before we took the break, you had indicated that it was Mr.  
13 Cochrane's turn to next address you --

14 THE COMMISSIONER: Yes.

15 MR. FUNKE: -- with respect to the replies. Just  
16 after we took a break I spoke to Mr. Cochrane and because I  
17 have significant comments to make with respect to the  
18 recommendations that have been proposed by counsel for ANCR  
19 and the two authorities, the Southern and Northern  
20 Authority, and he has few, if any, comments to make with  
21 respect to the recommendations submitted by my clients, it  
22 seemed only fair to Mr. Cochrane and his clients that I  
23 take the podium first so that he has the benefit of hearing  
24 my comments before making his submissions.

25 THE COMMISSIONER: All right.

1 MR. FUNKE: So with your permission --

2 THE COMMISSIONER: Sure.

3 MR. FUNKE: -- Mr. Commissioner, I'll proceed.

4 THE COMMISSIONER: That's fine.

5 MR. FUNKE: Thank you.

6 One other housekeeping matter before I proceed.  
7 It became clear to me late last week, Mr. Commissioner,  
8 that the memorandum of understanding which I have referred  
9 to on numerous occasions during my submissions before you  
10 throughout the inquiry, had never actually been introduced  
11 into evidence, I thought that it had and that was an  
12 oversight on my part and I apologize for that.

13 I obtained a copy of the memorandum of -- or  
14 sorry, the memorandum of understanding between the AMC and  
15 the province off of the provincial website for the AJI/CWI  
16 and circulated that to Commission counsel late last week.  
17 We then circulated that to the rest of counsel, today, and  
18 the understanding that I had reached with Commission  
19 counsel is that because it is a public document and a  
20 matter of public record, both Commission counsel and I are  
21 of the view that it is a document that we may refer to and  
22 that you may refer to in your, in your consideration of the  
23 recommendations that are being proposed without actually  
24 having to tender it as an exhibit in the, in the inquiry.

25 So I sent an e-mail to all counsel this morning,



1 proposing that we proceed in that fashion and ask that if  
2 anyone had an objection that they bring it to my attention  
3 before I presented this afternoon. I have received no  
4 response from anyone indicating that they have any  
5 objections and I'll just pause for a moment to see if  
6 anyone wants to rise.

7           Seeing no objection --

8           THE COMMISSIONER: All right.

9           MR. FUNKE: -- I'll ask the Commissioner to, to  
10 accept the proposal that, that we had negotiated and  
11 proceed on the basis that it's a public document, a matter  
12 of public record, and it doesn't need to be formally  
13 entered as an exhibit before the, before the Commissioner.

14           THE COMMISSIONER: Agreed.

15           MR. FUNKE: Thank you very much, Mr.  
16 Commissioner.

17           I should warn you that I expect to probably take  
18 up the rest of the time that we have today. My clients and  
19 I have met extensively to review the various submissions  
20 that have been made on behalf of the parties and  
21 intervenors before the, before the inquiry and I have a  
22 fairly extensive comment to make on behalf of both the AMC  
23 and the SCO with respect to the recommendations and  
24 submissions that have been made before you to date.

25           THE COMMISSIONER: Well, if you need it, we've

1 got an hour and a half to sit today.

2 MR. FUNKE: I don't know that I'll take all of  
3 that time but I don't know that there will be much of a day  
4 left by the time I finish so I'm -- but I do appreciate  
5 that, Mr. Commissioner.

6 THE COMMISSIONER: That's fine.

7 MR. FUNKE: I'll start by dealing first with the  
8 submissions made by Mr. Gindin on behalf of Kim Edwards and  
9 Steve Sinclair and I note that in response to Mr. Gindin's  
10 submissions you asked the various parties and intervenors  
11 to consider the five questions that we're all now very well  
12 aware of.

13 So I'll turn first to the very first issue which  
14 is --

15 THE COMMISSIONER: Yeah, they've got them a bit  
16 of -- blown out of significance in that they were, they  
17 were -- I was interested in them but not to the exclusion  
18 of others.

19 MR. FUNKE: No, and I certainly appreciate that.

20 THE COMMISSIONER: I want that understood.

21 MR. FUNKE: Yeah.

22 THE COMMISSIONER: They were just ones that I was  
23 interested in, people comment on, but, but they're, they're  
24 not going to form the, the basis of everything I do.

25 MR. FUNKE: No, certainly not but I, but I do

1 appreciate why you asked for comment on those five topics,  
2 Mr. Commissioner.

3 THE COMMISSIONER: Yes. And I, and I am happy to  
4 hear you.

5 MR. FUNKE: They are, they are five of the themes  
6 that were quite consistently raised throughout the inquiry  
7 so I think that they were topical.

8 The first one is with respect to the first  
9 recommendation made by Mr. Gindin on behalf of his clients,  
10 at page 41 of his submissions. It was the very first  
11 recommendation which is:

12

13 "That the CFS Act be changed to  
14 reflect child protection as the  
15 only purpose of the mandated child  
16 protection agencies. Family  
17 preservation and support services  
18 should be delivered by a separate  
19 government agency or  
20 nongovernmental organizations with  
21 a special emphasis on a child's  
22 wellbeing as opposed to immediate  
23 safety."

24

25 And that's a complex issue because a variety of

1 different parties and intervenors in response to that have  
2 dealt with it in different facets and different ways. Some  
3 have dealt with it in terms of two different streams of  
4 service, whether or not they're ought to be a division  
5 between the workers who provide prevention services and the  
6 workers who provide protection but they've dealt with that  
7 within the context of a single agency. Others have talked  
8 about it from the context of two distinct agencies, as Mr.  
9 Gindin is proposing in his recommendation, but there is  
10 another aspect to that recommendation that hasn't been well  
11 fleshed out in any of the responses which is that Mr.  
12 Gindin has recommended that there actually be a change to  
13 the legislation, to change the Act to deal only with  
14 protection with respect to the role of mandated agencies.

15           And first and foremost, I have to advise the  
16 Commission that the AMC and the SCO do not endorse any  
17 recommendation that the Act be amended in this way.  
18 Moreover, because of the AGI/CWI process and the detailed  
19 implementation plan, that identifies a number of  
20 outstanding issues that have yet to be addressed between  
21 the First Nations leaders and the Province of Manitoba,  
22 which includes a legislative review, my clients take the  
23 position that no such amendment to the legislation should  
24 be considered outside the context of that legislative  
25 review between those two partners to the MOU and the, the

1 protocol agreement that arose there from.

2           The next comment that they wish to make is that  
3 the, the -- excuse me -- the provision and prevention and  
4 protection services are, for the most part, closely  
5 interwoven with most agencies, particularly First Nations  
6 agencies, and separating those two different service  
7 streams can not only be quite difficult to do, which you've  
8 heard, but it may also lead, in our respectful submission,  
9 to gaps in the provision of service. And this is because  
10 the transition from prevention to protection can sometimes  
11 be a rather gradual process where the family is first  
12 identified as requiring prevention services and over time  
13 their failure to respond to those interventions can  
14 actually result in the child coming into need of protection  
15 or not being in a safe environment in the home and that can  
16 then result in that file becoming a protection file. And  
17 as a result, because there's often that type of natural  
18 progression from prevention to protection, there is a value  
19 that's seen, in many First Nation agencies, in having  
20 continuity of service with the client so that that -- if  
21 not the same worker, and very often in smaller agencies it  
22 is the same worker who is providing prevention services and  
23 protection services to the family, at least if it's within  
24 the same agencies there's that continuity in service, that  
25 continuity in knowledge and there's no opportunity for that

1 family to either fall through the gaps or have a delay in  
2 service or having to face the challenges of having to  
3 re-establish a trusting relationship with a new worker from  
4 a new agency when the file eventually becomes a protection  
5 file. So our -- my clients see that there is a very real  
6 and significant benefit in, in not dividing the two service  
7 streams.

8           The next issue that we were asked to consider is  
9 contained within recommendation three of Mr. Gindin's brief  
10 and that was a suggestion that files be open in the name of  
11 the child as opposed to the parent or caregiver. And most  
12 of the responses that I have heard so far with respect to  
13 their -- that recommendation have indicated that the, the  
14 parties and intervenors have responded to indicate that  
15 they do not support that because it is either impossible or  
16 impractical as a result of the way the current CFSIS system  
17 is structured.

18           And I don't pretend to be an expert on CFSIS but  
19 I do know a few things about modern information management  
20 systems. In a previous life I actually sold -- I was a  
21 sales representative for a company here in Winnipeg who  
22 developed modern information management systems so I know a  
23 fair bit about them and the response to that issue, which  
24 is that while it's impractical or, or impossible with the  
25 current information management system, I submit to you is

1 not a fair response.

2           If it would result in improved service to  
3 children, if it would result in better access to  
4 information, the fact that it's expensive or impractical is  
5 an irresponsible response. We should say it ought to be  
6 done and we ought to talk about when it can be done and how  
7 it can be done.

8           Now, I appreciate that there is not an unlimited  
9 number of resources from the province, I respect, as well,  
10 that from Ms. Loeppke's evidence that we heard earlier at  
11 the inquiry, the request was made to Treasury for a  
12 replacement to the CFSIS system and that that request was  
13 denied by Treasury. So, fault ought not to be laid at the  
14 feet of the department in that regard, and I want to be  
15 fair in my comments, but the province does have to make  
16 that a priority. There has been significant evidence  
17 called at this inquiry, reports have been written in the  
18 past, studies have been conducted, all of which have come  
19 to the same conclusion, which is that CFSIS is an  
20 antiquated and outdated system that cannot provide for the  
21 needs of the current child welfare system and that needs to  
22 be, that needs to be stated.

23           In our submission, the --

24           THE COMMISSIONER: Now, do you -- are you -- is  
25 that position being taken by anyone else at the hearing

1 besides yourself?

2 MR. FUNKE: Not so far as I am aware of.

3 THE COMMISSIONER: Okay, right. Okay.

4 MR. FUNKE: Not so far as I am aware of --

5 THE COMMISSIONER: Fine.

6 MR. FUNKE: -- Mr. Commissioner.

7 THE COMMISSIONER: I just was interested to know.

8 MR. FUNKE: Yeah.

9 THE COMMISSIONER: Yeah.

10 MR. FUNKE: We haven't yet heard from everyone  
11 else so it's --

12 THE COMMISSIONER: No.

13 MR. FUNKE: There's still a possibility that  
14 others may come to my support but so far I stand before you  
15 alone in that regard.

16 THE COMMISSIONER: Right.

17 MR. FUNKE: We're suggesting that there is an  
18 alternative and that's development of a modern information  
19 management system and, and those systems are set up in such  
20 a way that instead of having stove pipes of data, which is  
21 the way the current CFSIS system is set up, so that you  
22 don't have a unique file within the data management system,  
23 for CFSIS, for a child, everything is recorded under the  
24 parents. And so when you do a search you search for the  
25 parent, you don't search for the child or even if you do



1 search for the child, it's the, it's the parent file that  
2 comes up, not an individual unique file for each child.

3           A modern information management system sets data  
4 up in such a way that you have unique person files for  
5 every individual in the system, whether that be a child,  
6 whether that be a parent, whether that be an alternate  
7 caregiver, whether that be a support worker or a social  
8 worker, everyone has a person file within the system and  
9 then it's all a process of logical connections between  
10 them, links between the files that exist within the  
11 database.

12           And that's just a process of the advent of modern  
13 database structures that make it possible to now do that,  
14 whereas when CFSIS was developed that type of technology  
15 didn't exist.

16           So when they say it can't be done, it -- they  
17 only mean it can't be done with the current CFSIS system  
18 and I suggest to you that Mr. Gindin's recommendation is an  
19 excellent one and it is yet another reason that we need to  
20 look at whether or not maintaining the current CFSIS system  
21 makes any sense in the modern context.

22           The next issue that we were asked to address was  
23 in response to the recommendation number 17 in Mr. Gindin's  
24 brief, and that was with respect to the registration of  
25 social, social workers, rather, with the Manitoba Institute

1 of Registered Social Workers. And in response to that, the  
2 AMC and the SCO take the position that they, they don't  
3 object to that recommendation so long as there is no  
4 requirement that all case managers employed by agencies in  
5 fact be registered social workers.

6 And the difficulty that we have and the concern  
7 that's been raised is that that creates a particular burden  
8 to First Nations agencies that have to provide services in  
9 remote northern communities. It becomes a challenge, both  
10 with respect to recruitment, and hiring of social workers  
11 or case managers in those communities that would meet those  
12 criteria.

13 THE COMMISSIONER: You're saying you, you support  
14 it, providing it's a voluntary --

15 MR. FUNKE: Exactly.

16 THE COMMISSIONER: I'm not sure that's what the  
17 intention is.

18 MR. FUNKE: No, we're -- I think what the  
19 intention is, is that with the Institute of Registered  
20 Social Workers the requirement would be that no one is  
21 allowed to call themselves a social worker unless they're  
22 registered and they meet the criteria which would include  
23 having a BSW. It's not my understanding that the  
24 recommendation is, is that all service workers, frontline  
25 service workers, who are called case managers by many

1 agencies when they don't have a BSW, it's not my  
2 understanding that the recommendation is that all case  
3 managers be social workers and if you don't have a BSW  
4 you're not allowed to work as a front line social worker.  
5 In that case a case manager, if you don't have a BSW.

6           So we have no objection to the requirement that  
7 in order to call yourself a social worker you have to be  
8 registered, our only concern is that agencies are not  
9 required to only hire social workers in order to do front  
10 line service delivery because in the experience of client  
11 agencies that belong to First Nations that are members of  
12 both the AMC and the SCO, their experience is, is that  
13 retaining, recruiting and hiring workers in remote  
14 communities is extraordinarily difficult if they have to  
15 try and find workers who have a BSW. Most, most  
16 individuals who would otherwise be eligible for that  
17 employment in the community don't have a BSW and most  
18 individuals who have a BSW are not prepared to relocate to  
19 those remote northern communities where that has to be --  
20 that work has to be performed.

21           THE COMMISSIONER: Okay.

22           MR. FUNKE: Thank you. The next recommendation  
23 that Mr. Gindin raised was at number 32 in his brief and  
24 the recommendation was:

25

1            "That the Office of the Children's  
2            Advocate be a truly independent  
3            voice for the children and youth  
4            of Manitoba. To remove any  
5            appearance of bias, the Children's  
6            Advocate should not be a former  
7            child (child) welfare social  
8            worker."

9

10           And the AMC and the SCO say, in an ideal world  
11           that would be the case, that ideally we would prefer not to  
12           have the Children's Advocate be a previous social worker,  
13           child welfare social worker so that any apprehension of  
14           bias would not exist.

15           But very often the most qualified person is a  
16           previous child welfare social worker and the AMC and SCO  
17           respect the professionalism of people who are selected for  
18           that position and the AMC and the SCO are satisfied that a  
19           previous child welfare social worker can be the Children's  
20           Advocate, provided that there are safeguards in place such  
21           as the cooling off period that others have recommended and  
22           particularly a strict conflict of interest guideline that  
23           was imposed.

24           So subject to those two provisos, the AMC and the  
25           SCO do not suggest that there ought to be an absolute

1 prohibition on a previous child welfare social worker  
2 taking on the position of the Children's Advocate.

3 In addition, any change to that that would  
4 prohibit a child welfare social worker would in all  
5 likelihood also require a legislative amendment and my  
6 earlier comments that any legislative amendments to the  
7 child welfare system ought to be discussed within the  
8 AJI/CWI process between First Nations leaders and the  
9 Province of Manitoba and needs to occur before any  
10 legislative amendment was actually undertaken.

11 THE COMMISSIONER: Well, are you saying I can't  
12 recommend legislative changes?

13 MR. FUNKE: No, not at all. I'm saying that you  
14 can make any legislative -- any recommendations with  
15 respect to legislative change that you think are  
16 appropriate, however, my comment is, is that before any of  
17 those recommendations should be implemented by the  
18 province, they ought to be a matter of discussion through  
19 the AJI/CWI process as one of the outstanding matters on  
20 the detailed implementation plan is a legislative review  
21 and until that legislative review is conducted, hopefully  
22 with the benefit of your recommendations, there should not  
23 be any further amendments to the legislation.

24 THE COMMISSIONER: But if I recommended the  
25 province change its legislation and it agrees, are you

1 suggesting that your client would have a veto over having  
2 the legislation amended?

3 MR. FUNKE: No, because a veto would be too  
4 strong a word but there is an agreement in principle  
5 between the province and my clients, as reflected in the  
6 memorandum of understanding and in the AJI/CWI process,  
7 where the province has agreed that one of the next steps in  
8 the AJI/CWI is a legislative review. They've agreed to  
9 that. They have that legislative review in partnership  
10 with my clients. And all we're saying is that if you are  
11 going to make recommendations with respect to legislative  
12 change, and by all means if you feel that's appropriate we  
13 invite you to do so, all we're saying is that before the  
14 province implements any of those legislative changes or  
15 reviews that it do so in partnership with my client because  
16 that's a process that they have already committed to.

17 THE COMMISSIONER: And is that agreement you  
18 refer to within the document you've -- you made reference  
19 of earlier in your remarks --

20 MR. FUNKE: No.

21 THE COURT: -- since coffee break?

22 MR. FUNKE: The memorandum of understanding was  
23 the original agreement between the -- in this case the AMC  
24 and the province which gave rise to the AJI/CWI process  
25 which also gave rise to the Authorities Act. So it's a

1 multi-layered process with a variety of different  
2 components, one of which is the protocol agreement, another  
3 is called the detailed implementation plan.

4 So there's a variety of documents and agreements  
5 that have been drafted to give effect and meaning to that  
6 agreement in principle and purpose.

7 THE COMMISSIONER: I see.

8 MR. FUNKE: Yeah. and we didn't call all of that  
9 evidence at the inquiry because -- and I think you were  
10 quite correct to point this out from the outset -- was that  
11 your mandate did not include a systemic review of the  
12 system and so we didn't go into a lot of that background  
13 information by agreement with Commission counsel because it  
14 was felt to be outside the, the, the strict mandate that  
15 you were given.

16 Having said that, you need to understand the  
17 context within which your recommendations are going to be  
18 considered, both by the province and by my clients. So I'm  
19 just trying to provide that to you, in terms of context.

20 The next recommendation that my client would like  
21 to comment on is number 47 in Mr. Gindin's brief, and that  
22 reflects the, the recommendation that:

23

24 "There should be a clear  
25 acknowledgement by the Manitoba

1                   Government               that               the  
2                   overrepresentation   of   aboriginal  
3                   people in the child welfare system  
4                   requires a concerted effort to  
5                   increase funding and develop  
6                   programs to deal with poverty,  
7                   poor housing and substance abuse  
8                   in all communities across  
9                   Manitoba."

10

11                   Certainly the AMC and the SCO endorse that  
12                   recommendation. I would like to point out, however, that  
13                   the recommendation does refer to all communities in  
14                   Manitoba and if that is going to include reserves then by  
15                   implication that has to also include the federal  
16                   government.

17                   And we, we recognize that you are not here to  
18                   make recommendations to the federal government, and it's  
19                   outside your mandate, we recognize that. Having said that,  
20                   there is a role for the province to play in bringing their  
21                   federal counterparts to the table in discussion of these  
22                   issues because there is overlap in the system. We have  
23                   certainly heard plenty of evidence about the migration from  
24                   reserve to urban centers and that the failure to provide  
25                   services in one environment can impact upon the later



1 demand for services in another environment so there is no  
2 question that there is an interconnectiveness and an  
3 interrelationship between the provision of services both on  
4 and off reserve and to that effect there ought to be better  
5 communication with respect to providing these integrated  
6 services between both the federal and provincial  
7 governments and --

8 THE COMMISSIONER: And, and --

9 MR. FUNKE: -- including First Nations governance  
10 as well.

11 THE COMMISSIONER: -- and you said there is a  
12 role for, for the province to play. What are you saying  
13 that role is?

14 MR. FUNKE: To invite the federal government to  
15 the table to have those discussions.

16 THE COMMISSIONER: On?

17 MR. FUNKE: With respect to the implementation of  
18 this recommendation.

19 THE COMMISSIONER: All right. Okay.

20 MR. FUNKE: Now, the federal government doesn't  
21 have to come to the party just because they're invited but  
22 we're asking you to make, make a recommendation to the  
23 provincial government to work with us in terms of trying to  
24 engage our, our federal counterparts.

25 Now, Mr. Gindin made a couple of other

1 recommendations on behalf of his client that, that you have  
2 not invited specific comment on but I do want to discuss it  
3 very briefly.

4 THE COMMISSIONER: Yes, I want to hear you.

5 MR. FUNKE: Sure. That's number 6 of his  
6 recommendations and that is he recommended that?

7

8 "All children with an open file in  
9 the system must undergo a medical  
10 check-up within one month of the  
11 file being opened."

12

13 And I suspect this is a recommendation to  
14 parallel the requirement that all children in care be seen  
15 face-to-face by workers every 30 days. I -- and the AMC  
16 and the SCO don't have any objection to that recommendation  
17 but I -- my comment is, is that it needs to be pointed out  
18 that the only children that agencies could require to  
19 attend for a medical checkup would be children in care.  
20 Children who are simply in contact with the Agency on the  
21 prevention stream of services or even under protection  
22 files where the family -- or sorry, where the children have  
23 not been apprehended, the Agency doesn't have the legal  
24 authority to require those children to attend for a medical  
25 checkup, those children remain in the care of their parents

1 and as result the Agency has no legal authority to compel a  
2 child who is not in care to attend for a medical  
3 examination.

4           So I just wanted to make that comment because I  
5 thought that that was important that you understood that in  
6 terms of the limitations that are, that are on agencies  
7 with respect for requiring children to attend for medical  
8 treatment.

9           And the last recommendation that Mr. Gindin made  
10 that I want to comment on is at number 12 of his brief, at  
11 page 43. And the recommendation was:

12

13           "That each CFS unit should employ  
14 a 'court worker' who can take  
15 instructions and appear on behalf  
16 of the social workers routine  
17 matters before the Court. This  
18 should free up considerable time  
19 for social workers to engage with  
20 their clients."

21

22           And in principle that sounds like an excellent  
23 idea but there are a number of lawyers in this room who do  
24 work in child protection court and I'm sure they'll tell  
25 you, as will I, that the difficulty with that

1 recommendation doesn't reflect the reality of child  
2 protection work. Workers go to court not as a matter of  
3 routine but because they are required to come to court to  
4 put evidence on the record for the court's consideration,  
5 either to address the rights of children so that they can  
6 explain the plan to the parents who have a right to know  
7 what the Agency's expectations are, what the Agency's plan  
8 for their children is, et cetera. So, so Agency workers  
9 who come to court are there because they're required to  
10 give evidence. They need to be familiar with the file,  
11 they need to be familiar with the circumstances of  
12 apprehension and they need to be familiar with both the  
13 plan for the child and the expectations of the parents.

14 My concern is, is that this recommendation  
15 becomes impractical and starts to frustrate the court  
16 process and unfortunately coming to court is just an  
17 inherent function of being a social worker in an  
18 adversarial system.

19 I turn now to the submissions filed on behalf of  
20 ANCR and the Northern and Southern Authority and I'll warn  
21 you, in advance, I have significant submissions to make  
22 with respect to the recommendations made on behalf of those  
23 parties.

24 There were a number of recommendations that my  
25 clients wish to comment on. We don't wish to comment on

1 all of the recommendations that are made but there are a  
2 number of them.

3           The very first one is with respect to -- perhaps  
4 I should start off by indicating that I have broken them  
5 down into groups or categories to make it a little easier  
6 to follow. The first group that I am going to deal with  
7 are recommendations that have been made which, in our view,  
8 are systemic in nature, some of which are either, in our  
9 view, outside the scope of the inquiry or require further  
10 study and evaluation before being endorsed and/or  
11 implemented.

12           The very first one is recommendation one at page  
13 1 of their report.

14           THE COMMISSIONER: Well, give me the numbers that  
15 fall under that heading.

16           MR. FUNKE: Recommendation number 1.

17           THE COMMISSIONER: Yes.

18           MR. FUNKE: Number 3, number 13, 28, 36, 43 and  
19 44.

20           THE COMMISSIONER: All right.

21           MR. FUNKE: And I'm mindful of the time so I'm  
22 going to try to move them quickly, without missing any  
23 details.

24           So the very first recommendation, and I don't  
25 propose to read it out in full, basically what it suggests

1 is "the establishment of Child Wellbeing Units" within  
2 various organizations and departments. And the AMC and  
3 SCO's position on this is that that may be a valid  
4 suggestion but it requires significant systemic changes in  
5 order to achieve this result. That would require further  
6 discussion between, in some cases, the federal government,  
7 the provincial government and First Nations leadership and  
8 any of those types of significant systemic changes are the  
9 very sort of thing that is the focus of the outstanding  
10 issues in the AJI/CWI process which the province is  
11 currently engaged in with my clients.

12 And so we're suggesting that before anything like  
13 this ought to be endorsed or implemented, it probably bears  
14 further study, first of all, but certainly further  
15 discussion between those three levels of government.

16 And again, I'm mindful of your comments at the  
17 very outset of this inquiry, Mr. Commissioner, which is  
18 that this was not intended to be a systemic review of the  
19 system and I'm respectful of that direction and many of my  
20 submissions and comments are made in light of that  
21 direction.

22 Number 3, at page 4 of their submissions is a  
23 recommendation that really seeks a clarification of Section  
24 18.4(1.1) of the CFS Act. And a comment that Mr. Gindin  
25 made and I believe inadvertently this morning prompted me

1 to include this recommendation in my submission, this  
2 afternoon, I hadn't intended on addressing it but Mr.  
3 Gindin had correctly described to you the process which has  
4 evolved, which is that of agencies seek records from a  
5 police department with respect to an investigation that's  
6 ongoing by the police that may be even running in parallel  
7 with a CFS investigation, very frequently the police simply  
8 refuse to provide that documentation even though the CFS  
9 Act creates an obligation for them to do so and they take  
10 the position that we don't do it without a court order.  
11 And as a result agencies are forced to go to court to get  
12 that court order compelling the police department to  
13 disclose the record.

14           That process of going to court and obtaining the  
15 order is not in the Act, it's not set out in 18.4(1.1). If  
16 you look at 18.4(1.1) it is a clear expression of the  
17 obligation on a police department to disclose records when  
18 requested to do so by a CFS agency.

19           So really what -- and I'm not purporting to speak  
20 on behalf of the Southern Authority, the Northern Authority  
21 or ANCR in this regard, but really when I read this  
22 recommendation what they're seeking is a clarification of  
23 that and that's all well and good. It's not a request for  
24 any type of legislative change because it doesn't require  
25 legislative change, the legislation could not be more clear

1 in that regard. In our view the difficult is, is that  
2 there is a practice that has grown up around it and in my  
3 respectful submission that is probably a matter that better  
4 be addressed by the courts.

5 The next recommendation is number 13 and this is  
6 a recommendation for:

7  
8 "A standardized maintenance rate  
9 structure (that) should be  
10 developed that reflects the needs  
11 of the child, the training and  
12 experience of the foster parent(s)  
13 and the cost of the geographic  
14 area."

15  
16 This is at page 17 in their submission.

17 THE COMMISSIONER: Yes, I have it.

18 MR. FUNKE: And again, the AMC and the SCO  
19 believe that this recommendation may, in fact, be  
20 worthwhile. Unfortunately, there is no cite in their  
21 submissions that tie this, tie this back to the evidence  
22 that we heard and so I am not entirely sure what the  
23 context is for the recommendation. I am not sure what the  
24 words "standardized maintenance rate structure" mean and so  
25 hopefully Mr. Cochrane, if he intends tomorrow to respond



1 to my comments, perhaps he can flesh that out for us a  
2 little bit better so that we understand exactly what it is  
3 he is suggesting.

4 At this point we take the position that it lacks  
5 sufficient detail at this point that you can actually make  
6 a recommendation in that regard because I don't know what  
7 that means and I don't know that it's been well enough  
8 explained to the Commission that you understand exactly  
9 what they're suggesting.

10 The next recommendation I can deal with is number  
11 28. It appears on page 38 of their brief. The  
12 recommendation for:

13

14 "Higher qualification requirements  
15 and higher compensation schemes  
16 (to) be put in place and funded  
17 for experienced child welfare  
18 staff occupying intake positions."

19

20 And I understand, I believe, what, what they're  
21 getting at with respect to this recommendation. The AMC  
22 and the SCO take the position that if what they're  
23 suggesting is that there is a need for better trained and  
24 qualified staff at the intake level we certainly endorse  
25 that, however, we question whether or not it's the role of

1 this Commission to endorse the creation of new positions  
2 within ANCR as the solution. That seems, to me, that's  
3 that a matter that ought best be left between the employer  
4 and the bargaining group.

5 I don't have any difficulty, nor do my clients,  
6 with respect to the recommendation that you suggest that  
7 steps or measures be taken to try to promote more senior  
8 staff at the intake level but the actual mechanisms to do  
9 that seem to me to be a matter of bargaining between those  
10 two parties.

11 Number 36 at page 47, is the next one I can  
12 address. This is a recommendation that proposes "the  
13 creation of a specialized Domestic/Family Violence  
14 positions within CFS Agencies."

15 Again our -- my client's position is that this  
16 may, in fact, be a worthwhile recommendation that bears  
17 further consideration, however, there was little evidence  
18 offered at the inquiry to suggest how this type of a  
19 position would operate and what the specific benefits would  
20 be, how it fits within the overall scheme of the child  
21 welfare system.

22 So, again, it may very well be a laudable  
23 recommendation, it's one that my clients take the position  
24 that there is further study, however, before a  
25 recommendation ought to be made.

1           The next recommendation I am prepared to deal  
2 with, number 43. That appears at number 54 -- page 54 of  
3 ANCR and the Authorities' brief. And this is a  
4 recommendation that:

5

6           "The Authorities and their  
7 agencies should have the ability  
8 to assist in building and  
9 sustaining safe, secure and  
10 healthy housing resources on  
11 reserves and in other  
12 communities."

13

14           And there's no question that there's a serious  
15 need for housing, particularly on reserve and in major  
16 urban centers like Winnipeg in the downtown. The concern  
17 that the AMC and the SCO have is that they're not sure that  
18 this is an appropriate role for the Authority to play but  
19 they're prepared to concede that it does, does warrant some  
20 further consideration.

21           Their position is this ought to be something that  
22 is discussed between First Nations leaders and the  
23 province, particularly because of the need for housing on  
24 reserve.

25           Right now, agencies are not allowed to own

1 capital assets and one of the challenges that Mr. Walker  
2 referred to in his evidence was the difficulty with group  
3 two on reserve because the agency is not allowed to own a  
4 capital asset.

5           So, for example, one of the things that they like  
6 to be able to do is they would like to be able to create a  
7 treatment home in Nelson House but because agencies can't  
8 own capital assets there's no way that they can have that  
9 setup on reserve, not within the scope of the agency and  
10 there are no non-profit privately held corporations that  
11 are currently in that community that are in a position to  
12 do so.

13           So it's certainly something that bears further  
14 consideration, we're -- the position of the AMC and the SCO  
15 is that at this point there's not enough evidence before  
16 the inquiry that, in our view, it would submit -- or that  
17 it would support a recommendation.

18           Similarly, recommendation number 44 on page 55:

19

20           "There should be adequate funding  
21 provided to child welfare agencies  
22 for the provision of food for the  
23 families they serve that are in  
24 need of food security."

25

1           Again, we agree that this is a genuine concern  
2 and needs to be addressed, we're not sure, however, that  
3 this is the appropriate manner or the best approach to  
4 doing that. One of the alternatives that the AMC and the  
5 SCO is proposing is that consideration be given to  
6 enhancing the service purchase dollars that are available  
7 under the current FE funding. If there were sufficient  
8 funds available to the agencies, in terms of those  
9 discretionary funds for service purchase dollars, then they  
10 would be better equipped to assist families who come to  
11 them in acute need who do have that type of food security  
12 issue that, that they present with and the agencies would  
13 be in a position to respond to that.

14           The next group of recommendations are  
15 recommendations that, in our view, require a legislative  
16 or, or systemic change and purely within the realm of the  
17 AJI/CWI process. And I can identify those recommendations  
18 for you, as well.

19           Recommendation number 2 --

20           THE COMMISSIONER: Just a minute.

21           MR. FUNKE: Yes.

22           THE COMMISSIONER: All right.

23           MR. FUNKE: Recommendation number 2, number 15,  
24 number 16, number 17, number 41.

25           So number 2, recommendation number 2, talks about

1 information sharing amendments to the legislation,  
2 including PHIA/FIPPA, the CFS Act and other relevant  
3 legislation policies so that information could be more  
4 easily shared between agencies and organizations.

5           The AMC and the SCO have no difficulty with  
6 changes to legislation that makes it easier for CFS  
7 agencies to obtain information, however, their position is,  
8 is that reciprocal changes in the CFS legislation that  
9 allow agencies to share information with outside  
10 organizations needs to be approached very cautiously  
11 because of the requirements under Section 76 regarding  
12 confidentiality.

13           Again, they also take the position that any  
14 legislative changes being proposed or considered form the  
15 subject of further discussions between the province and  
16 First Nations as part of the AJI/CWI process.

17           Recommendation number 15 again speaks to a better  
18 delineation between prevention and protection in the  
19 legislation and I just make the same comments that I made  
20 with respect to Mr. Gindin's recommendation that that type  
21 of major change to the legislation ought not to occur  
22 before the province is able to conduct a legislative review  
23 with my clients as part of the ongoing AJI/CWI process.

24           Recommendation number 16 talks about expanding  
25 the definition of abuse. Again, that would require a

1 legislative change. My clients take the position that that  
2 would be bound up in the legislative review process under  
3 the AJI/CWI.

4 Recommendation number 17 talks about essentially  
5 a comprehensive review of the CFS legislation through a  
6 cultural lens. Although I suspect I know what ANCR and the  
7 two authorities are referring to as a cultural lens, that's  
8 not specified in their brief and as a result it's difficult  
9 to understand exactly what that cultural lens comment  
10 means.

11 In any event, they talk about incorporating SDM  
12 tools or other specific practices into a review of the  
13 legislation and I echo my learned friend, Mr. McKinnon's  
14 comments, on behalf of the department, which is legislation  
15 ought not to be changed to reflect current practices,  
16 legislative -- legislation should be enabling as opposed to  
17 perscribing or prescribing certain behaviours, rather. And  
18 it's to that extent any type of legislative review needs to  
19 occur, as I have already indicated, within the context of  
20 the AJI/CWI process.

21 The one comment that they do make that we  
22 certainly encourage and endorse is the comment with respect  
23 to customary care arrangements. Certainly the AMC and the  
24 SCO agree that that should be incorporated into the Act and  
25 that's something that they will take up during that

1 legislative review.

2           The last recommendation within this category is  
3 recommendation number 41 on page 52 of their brief.

4           THE COMMISSIONER: Forty or 41?

5           MR. FUNKE: Forty-one on page 52.

6           And this is a recommendation that, that:

7  
8           The Province and the Authorities,  
9           with input from stakeholders,  
10          should develop a long term,  
11          evidence based, system wide  
12          strategic plan for child welfare.  
13          (And) any further systemic changes  
14          to the child welfare system should  
15          be consistent with this plan."

16  
17          And our respectful submission is, is that that  
18 puts the process upside down. Policy should be determined  
19 by leadership, implemented by the department and the  
20 authorities, down through the agencies. The authorities  
21 should not be dictating policy to the elected leadership.

22          Now, certainly that doesn't mean that the  
23 authorities don't have a fundamental role to play in  
24 providing advice, information and even some -- to some  
25 extent guidance to the elected leadership in terms of what



1 the current evidence is with respect to best practices, et  
2 cetera. So there's certainly a role to play but the idea  
3 that the elected leadership that has the obligation to  
4 enact legislation should be bound by that, in the  
5 respectful view of my clients usurps their role as the  
6 demographically elected leadership of the First Nations  
7 people of Manitoba.

8 The next category of recommendations are  
9 recommendations that AMC simply wishes to make a comment  
10 on. This is a slightly longer list. The first is  
11 recommendation number 5, page 7 of ANCR and the  
12 authorities' brief.

13 THE COMMISSIONER: Give me the numbers? Five?

14 MR. FUNKE: Number 5, 14, 18, 19, 20, 22, 24, 29,  
15 30, 31, 34 and 42.

16 THE COMMISSIONER: I've got them all by now, I  
17 would assume?

18 MR. FUNKE: Actually, you would be surprised, we  
19 actually skipped probably about half of them but we'll get  
20 to them.

21 Recommendation number 5 at page 7, Mr.  
22 Commissioner, recommends that:

23

24 "The Province should consistently  
25 fund agencies and the Authorities

1           for the specific development and  
2           provision of culturally competent  
3           services to children and families  
4           involved with the child welfare  
5           system."

6  
7           And the Agency and the SCO certainly agree with  
8           this recommendation, however, they note that the Southern  
9           Authority has had 10 years to pass culturally appropriate  
10          standards and has not done so. In their view, it's failed  
11          to meet its obligation in this regard to ensure the  
12          culturally appropriate standards for services, practices  
13          and procedures have been developed.

14          Nevertheless, the AMC and the SCO endorse this  
15          recommendation, encourage the authorities to take whatever  
16          steps are necessary to ensure that culturally competent  
17          services are developed and delivered. So the AMC, SCO does  
18          endorse that recommendation.

19          Recommendation number 14 is on page 18. This is  
20          a recommendation that case load should be adjusted to  
21          reflect the Child Welfare League of America ratios. And  
22          the AMC and SCO support that position in principle but we  
23          wish to point out that as was suggested by both Dr.  
24          Blackstock and, and by Dr. Trocmé, First Nations Child  
25          Welfare files are often more difficult to manage and often

1 require greater resources due in large part to the systemic  
2 factors that influence their circumstances  
3 disproportionately. As a result the AMC and the SCO take  
4 the position that in addition to adjusting case loads to  
5 reflect the Child Welfare League of America ratios, there  
6 should also be some form of complexity weighted assessment  
7 performed to reflect not just case load but also work load.

8 So, in other words, First Nations agencies that  
9 routinely provide services to First Nations families that  
10 the evidence dictates suffer from those systemic and  
11 structural factors, at a disproportionate rate will  
12 require, on a case by case basis, more time, more energy  
13 and more resources. As a result of what we're looking for  
14 is a structural equity or a substantive equity as Dr.  
15 Blackstock referred to it.

16 We may, in fact, have to recognize that workers  
17 within First Nations agencies that deal predominantly with  
18 families that suffer from greater extent of disadvantage  
19 may, in fact, benefit from and we may need to recognize  
20 that they need lower case ratios than non-First Nations  
21 agencies.

22 That's the comment that we make with respect to  
23 recommendation number 14.

24 Recommendation 18 on page 24, the AMC and the SCO  
25 endorse the first half of that recommendation. So it's a

1 recommendation that the province ensure the standards are  
2 current and general enough to allow the authorities to  
3 develop culturally specific standards.

4           The concern is that the second paragraph also  
5 refers to the SDM tools and suggests that specific  
6 standards be developed around those. Again, I just echo  
7 the comments that I made last week with respect to the  
8 concern that the AMC and the SCO have with respect to the  
9 fact that validation tests have not yet been performed and  
10 that there are still, despite the comments of the General  
11 Authority, a concern with respect to the culturally  
12 appropriateness of those tools, i.e., is there a cultural  
13 bias that has yet to be identified and eliminated. I'll  
14 speak more to that later.

15           Recommendation number 19 is a recommendation that  
16 the province, in conjunction with stakeholders, develop a  
17 new information management system that is consistently used  
18 by all mandated agencies. And again, the AMC and the SCO  
19 endorse this recommendation for a new information  
20 management system to replace CFSIS on the understanding  
21 that that system is able to respect the OCAP principles  
22 that I discussed last week. So First Nations frequently  
23 assert their right to ownership, control, access and  
24 possession of their membership data and the modern  
25 information management systems that I was talking about

1 earlier are structured in such a way that it makes it  
2 possible to respect those principles. The current CFSIS  
3 system does not. The current CFSIS system operates off a  
4 single database that is maintained by the province and then  
5 the agencies, when they add data, that data goes into that  
6 data base that's maintained and owned by the province. And  
7 he who owns the database owns the data.

8 Modern information systems have what's called a  
9 multi-site server array which allows to -- the system to  
10 have different servers located in different communities in  
11 different geographical locations and it allows a single, a  
12 single program to access different databases and that  
13 allows agencies to maintain their own data locally but that  
14 data is accessible to everyone on the system. The only  
15 difference is they have the, they have the data on their  
16 computers.

17 The next recommendation is number 20 at page 28.  
18 The recommendation is that an SDM screening tool be  
19 developed with respect to intake. Again, the AMC and SCO  
20 believe that this sounds like a reasonable recommendation,  
21 the only concern is that it be cautiously implemented to  
22 identify whether or not there is a cultural --

23 THE COMMISSIONER: What's that?

24 MR. FUNKE: The AMC and SCO's only concern is  
25 whether or not that intake screening tool will suffer from

1 the same possible cultural bias that the SDM tool has. So,  
2 if it's going to be implemented, it be implemented on a  
3 trial basis until we know whether or not there's a cultural  
4 bias.

5 Recommendation 22 at page 30 discusses extending  
6 time for families to receive family enhancement services.  
7 So this is the program that we heard about throughout the  
8 inquiry where families are allowed to receive prevention  
9 dollars, under the family enhancement program, up to nine  
10 months, 180 days. So this recommendation says is that for  
11 families whose issues aren't able to be addressed within 80  
12 days, the authority and agencies ought to be able to  
13 provide those prevention services to them for more than 180  
14 days before that file automatically gets turned into a  
15 protection file.

16 The AMC and the SCO think that that is a  
17 excellent suggestion, one that they endorse. However, they  
18 would also like to see the amount of money available  
19 through the FE program, through the service purchase  
20 dollars, increased. Right now the limit is \$27 per week  
21 per family and that's to provide for all fee based services  
22 that a family may require when they're involved in the  
23 protection stream with a mandated agency.

24 So whether that family requires a homemaker, they  
25 may require some sort of counseling services, they may

1 simply require groceries, they may require transportation  
2 to attend cultural events, there is a variety of different  
3 things that they may require, each family is capped at \$27  
4 per week and that doesn't provide a lot of resources to  
5 meet that family's needs.

6           Number 24, page 32 is a recommendation that:

7

8           "The Authorities should adopt a  
9           scheduled approach for Agency  
10           Quality Assurance ... which will  
11           consider performance incentives."

12

13           My clients are quite concerned with what  
14           constitutes a performance insensitive. There was a move  
15           towards a business model approach, a business model  
16           mentality, with respect to the delivery of child and family  
17           services or child welfare services in this province and the  
18           concern is, is that there is an entire industry that's  
19           growing up around children in care, particularly First  
20           Nations children in care and the comment that's frequently  
21           made is that First Nations children are becoming  
22           commodities, it's a commodification of First Nations  
23           children and that this, this business speak that is  
24           developed only serves to reinforce that perception and to  
25           reinforce that attitude.

1           The idea that we are now approaching child  
2 welfare as some sort of a business model where there needs  
3 to be performance incentives for agencies to meet their  
4 quality assurance goals is concerning to my clients. And  
5 so, they're asking that this recommendation with respect to  
6 performance incentives be better outlined and better  
7 explained by the Authority before you consider making a  
8 recommendation that endorses it.

9           THE COMMISSIONER: You're expecting then to do  
10 that tomorrow?

11           MR. FUNKE: I expect that Mr. Cochrane, when he  
12 follows me, will respond to a number of the concerns that I  
13 am raising.

14           THE COMMISSIONER: And then that meet, meet, may  
15 meet your concerns?

16           MR. FUNKE: It may. I, I don't know that I'll be  
17 given another opportunity, Mr. Commissioner, I suspect that  
18 I will not, so I am raising the concern for your  
19 consideration at this time so that when you hear from Mr.  
20 Cochrane you might ask him what it is he's -- his client is  
21 suggesting constitutes a performance incentive and whether  
22 or not that's appropriate within the context of child  
23 welfare work.

24           Recommendation number 29 deals with the  
25 University of Manitoba and it is a recommendation that the



1 U of M Social Work program should offer courses tailored  
2 specifically for child welfare work in Manitoba. And AMC  
3 and SCO endorse that recommendation to a degree, however,  
4 they hasten to add that not all case managers, as we  
5 discussed earlier, employed by CFS agencies, are  
6 necessarily graduates of the U of M, Bachelor of -- sorry,  
7 Bachelor of Social Work program. They may, in fact,  
8 graduate from other technical institutions, they may  
9 graduate from universities outside this jurisdiction or, in  
10 fact, they may come to that employment with no previous  
11 educational background.

12 So in that regard, AMC and SCO are suggesting  
13 that those courses should not only address the factors  
14 identified by ANCR and the authorities in their brief but  
15 should also be non-elective, provide instruction both on  
16 First Nations history and the colonial history of Canada  
17 and also provide child welfare specific courses.

18 With respect to the recommendation that technical  
19 training, such as jurisdictional specific issues,  
20 assessment and tracking tools, training, et cetera, should  
21 be taught at the university level, we take the position  
22 that that would not be appropriate, that all incoming  
23 workers would benefit from that technical training and as a  
24 result a separate program should be set up, much like Dr.  
25 Blackstock described, when she talked about her aboriginal

1 social work training program that was piloted in BC. As  
2 she described, a 16 week kind of boot camp for social  
3 workers before they actually started doing social work.  
4 That gave them the necessary skills and knowledge that they  
5 needed to, to actually do the work of child welfare before  
6 they took a position with a child welfare agency.

7 Recommendation number 30 by ANCR and the  
8 authorities deals with a third party assessment of the SDM  
9 tools, specifically to be completed at an appropriate time  
10 so that they can be refined and improved upon and to ensure  
11 that those no -- there is no inherent cultural bias.

12 The AMC and the SCO fully endorse this  
13 recommendation. They only wish to add that the third party  
14 assessment process should include First Nations  
15 representation and should be commenced immediately.

16 The next recommendation is number 31 at page 42.  
17 This is a recommendation for a stakeholder symposium to  
18 address the shortage of treatment resources throughout the  
19 program -- throughout the province. Again the AMC endorse  
20 -- the AMC and the SCO endorse the recommendation but point  
21 out that if we're talking about the lack of these resources  
22 across the province, once again, that necessarily involves  
23 our friends at the federal government. So I make the same  
24 comments I did earlier with respect to a recommendation  
25 that the province should intrigue their federal

1 counterparts to enter into that stakeholder symposium as  
2 well.

3           The next recommendation I can address is number  
4 34, at page 45. This is a recommendation for the  
5 restoration of First Nations jurisdiction over child and  
6 family matters and not surprisingly my clients fully  
7 endorse this recommendation.

8           As we discussed earlier last week, the  
9 restoration of First Nations jurisdiction over child  
10 welfare is the ultimate goal of First Nations towards which  
11 the AJI/CW, CWI process is a fundamental first step.

12           The province referred to that process in their  
13 submissions last week, as well, and committed to the --  
14 sorry, the AJI/CWI process.

15           I was unclear, based on Mr. McKinnon's use of  
16 phrase during his submissions whether that meant the  
17 province also endorsed the full restoration of First  
18 Nations jurisdiction as the ultimate goal of this process  
19 or whether the province only endorsed the AJI/CWI process  
20 as a step in that direction. I'm happy to announce that in  
21 discussions with Mr. McKinnon earlier today he confirmed  
22 that the province's position is, is that they also endorse  
23 the restoration of First Nation's jurisdiction over child  
24 and family services. And they should be commended for  
25 that.

1           The last recommendation in this category is  
2 number 42.

3           THE COMMISSIONER:       Sorry, did you say Mr.  
4 McKinnon told you he, he supports this recommendation?

5           MR. FUNKE:       On behalf of the department he  
6 confirmed that that is the department's position, as well.  
7 And if I have misstated that I am sure that Mr. McKinnon  
8 will correct me.

9           THE COMMISSIONER:   Well, he's have another turn.

10          MR. FUNKE:       He will, indeed. There may be nuance  
11 that, that I missed but I'm sure that Mr. McKinnon will  
12 represent the department's position completely.

13          THE COMMISSIONER:   Forty-two. All right.

14          MR. FUNKE:       This is at page 53, Mr. Commissioner.  
15 And this is a recommendation that:

16

17                   "The Authorities should be  
18 adequately resourced to support  
19 the development and delivery of  
20 child welfare services in such a  
21 way that they respect community  
22 values, and that wherever possible  
23 those services be provided in such  
24 a way that they are integrated  
25 with other community services to

1           minimize or eliminate service gaps  
2           that would cause hardship for  
3           children, their caregivers, and  
4           their community."

5

6           We fully endorse this recommendation, the only  
7           comment that we make is that that recommendation should not  
8           be limited to the authorities, it should also include the  
9           agencies that operate underneath the authorities.

10           The last two recommendations made by ANCR and the  
11           authorities, that I am going to address specifically, are  
12           recommendation number 7 and recommendation number 33.

13           With respect to recommendation number 7, this is  
14           a recommendation that quality assurance positions should be  
15           scaled to the size of the agency, the AMC and the SCO take  
16           no position with respect to this recommendation.

17           And similarly, with respect to the recommendation  
18           at number 33, that refers to the suicide prevention  
19           strategy. The AMC and the SCO take no position, again,  
20           with respect to that recommendation.

21           With respect to the balance of the  
22           recommendations made by ANCR or on behalf of ANCR and the  
23           Northern and Southern Authority, the AMC and the SCO  
24           endorse those recommendations.

25           And although I appreciate your comments that it

1 seems that that might be a fairly narrow list, there are  
2 still a significant number of recommendations that they do  
3 fully endorse.

4 THE COMMISSIONER: I counted them up, you're just  
5 over half.

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

7 With respect to submissions made on behalf of the  
8 MGEU, AMC and SCO take no position with respect to the  
9 recommendations made on behalf of MGEU.

10 Turning next to submissions made on behalf of the  
11 General Authority. At paragraph 39 on page 18 of the brief  
12 filed by the General Authority, they note --

13 THE COMMISSIONER: Just a minute while I find it.

14 MR. FUNKE: Certainly. At page 18, paragraph 39.

15 THE COMMISSIONER: Page 18?

16 MR. FUNKE: Page 18, paragraph 39.

17 THE COMMISSIONER: Okay.

18 MR. FUNKE: Counsel on behalf of the General  
19 Authority, in that paragraph, notes that there are  
20 subsidies available to youth aging out of care in other  
21 provinces that are not available in Manitoba and the AMC  
22 and the SCO have instructed me to point out that they think  
23 that that is a very good idea and ought to be implemented  
24 in Manitoba, as well.

25 On paragraph 19, at paragraphs 43 and 44, counsel

1 for the General Authority summarizes Mr. Rodgers' evidence  
2 in describing a program for children who are aging out of  
3 care where they have received funding from, among others,  
4 the Royal Bank of Canada to help pay for this program for  
5 transitional supports. And the SCO and the AMC don't want  
6 to be misunderstood, they certainly support transitional  
7 programs and they respect the General Authority's duty and  
8 right to pursue programming that it feels best assists the  
9 children that it serves, however, the AMC and the SCO, once  
10 again, raised the concern that the involvement of private  
11 funders, such as the Royal Bank, tends to reinforce the  
12 perception that child welfare has become part of this  
13 industry in which our children have become commodities and  
14 we urge caution with respect to the comingling of private  
15 and public funds in providing services by mandated  
16 agencies.

17 And so we make that comment for your  
18 consideration, Mr. Commissioner, in assessing any  
19 recommendations that relate to private funding for mandated  
20 agencies. Or in this case the Authority.

21 There is only one recommendation made by the  
22 Authority that my clients wish to comment on specifically  
23 and that's at paragraph 100 on page 34 of the brief filed  
24 on behalf of the General Authority and that is with respect  
25 to a specific recommendation regarding legislative change

1 wherein the recommendation is, is that extensions of care  
2 be extended to 25 rather than 21 and that children who are  
3 eligible to receive extensions of care should not only be  
4 permanent wards but should also be available to temporary  
5 wards.

6 AMC and SCO support both of those  
7 recommendations, we think that that's wise, however, the  
8 difficulty is, is that again it requires a legislative  
9 change and our position is that that can only happen as  
10 part of the AJI/CWI legislative review process which is  
11 already committed to by both First Nations leaders and the  
12 province.

13 And if I may, just to have a brief opportunity to  
14 comment on that recommendation, part of the difficulty that  
15 First Nations agencies and other agencies have with respect  
16 to extensions in care is that a child can only be extended  
17 in care beyond the age of 18, Mr. Commissioner, when the  
18 child consents to that application. Very often children  
19 are of mixed feelings with respect to an approach by the  
20 agency to extend them in care beyond the age of 18, because  
21 they perceive that as being some sort of an infringement on  
22 their liberty or that there are other negative connotations  
23 that flow with not being able to live on your own after  
24 you're 18 and for a variety of other reasons sometimes  
25 they're initially reluctant to accept that.



1           In some cases, children don't agree to the  
2 request for an extension in care until shortly before their  
3 18th birthday. If that child is not already a permanent  
4 ward it doesn't give the agency an opportunity to then go  
5 to court and have that child's status converted from a  
6 temporary order to a permanent order before they turn 18.  
7 If that doesn't happen before they turn 18, even though the  
8 agency wishes to extend them in care and the child wishes  
9 to be extended in care, there is no mechanism within the  
10 current Act that allows them to do that.

11           Another frequent situation is where a child may  
12 come into care fairly shortly before their 18th birthday on  
13 a temporary basis, not -- the agency doesn't realize or the  
14 child doesn't indicate that they want to be extended and,  
15 again, it's too close to their 18th birthday to enable that  
16 to be properly handled under the Act, and so although  
17 everyone is willing there is no mechanism that allows for  
18 that.

19           If the Act was amended, as suggested by the  
20 General Authority, it removes the obstacle of having to  
21 have a permanent order in place before the child can be  
22 extended in care. So I think it's a very good -- and my  
23 client has instructed me to take the position that it's a  
24 very good recommendation in terms of making that available,  
25 not only to permanent wards but also temporary wards and

1 certainly there are a number of young people who would  
2 benefit from having services extended beyond the age of 18  
3 and beyond the age of 21 and as a result the recommendation  
4 to carry that through to 25 is also a recommendation that  
5 my clients are prepared to endorse.

6           The AMC and SCO take no position with respect to  
7 the balance of the recommendations made by the General  
8 Authority. However, I, I do have an obligation to respond  
9 to some of the comments made by Ms. Harris in her oral  
10 submissions last week in response to some positions that  
11 the AMC and the SCO took and are submissions in chief.

12           Ms. Harris made a number of comments in which she  
13 suggested that the AMC and SCO's criticism of the SDM tool  
14 was either not based in evidence or was born of a  
15 misunderstanding of how the tools are used in the practice  
16 of child welfare. We disagree with both of those remarks  
17 and I will attempt to explain why.

18           Contrary to Ms. Harris' comments, we take the  
19 position that there was significant evidence before you  
20 that there is a risk of a cultural anomaly in the tools.  
21 In addition to the concern expressed by Dr. Blackstock  
22 regarding a cultural bias inherent in such tools, Mr. Jay  
23 Rodgers, in his testimony, acknowledged the Children's  
24 Research Council, who are the company that developed the  
25 tools -- I should say non-profit organization that

1 developed the tools, issued a specific caution against  
2 transporting the tool from one jurisdiction to another  
3 without first performing or without performing a validation  
4 test.

5           So the concern is, is that they have issued a  
6 specific caution with respect to the use of that tool in a  
7 jurisdiction where it wasn't developed without a validation  
8 test being performed.

9           We have also heard evidence that where a  
10 validation test was performed on that tool, in Minnesota,  
11 it demonstrated an anomaly with respect to native  
12 Americans. We also heard evidence from Elsie Flett, the  
13 Executive Director of the Southern Authority, who indicated  
14 in her evidence that there was concern at the Authority  
15 with respect to potential cultural bias in the application  
16 of the SDM tools, that was her evidence.

17           Sandie Stoker, Executive Director of ANCR, also  
18 acknowledged that the evaluation study of the DRFE pilot  
19 project conducted by the Southern Authority included a  
20 number of interviews with both workers and families arising  
21 from which they identified two major concerns, one of which  
22 was that the SDM tools were not culturally appropriate in  
23 all instances.

24           And for your benefit, I can provide the dates and  
25 transcript locations for that evidence. With respect to

1 Elsie Flett it comes from her transcript or evidence on the  
2 1st of May, on pages 41 to 42. And with respect to Sandie  
3 Stoker, it comes from the transcript of her evidence on May  
4 2nd at pages 209 to 214.

5 Moreover, the AMC and the SCO are not the only  
6 party before you who has raised concerns in this regard, in  
7 fact, we just reviewed a recommendation by the Southern  
8 Authority, the Northern Authority and ANCR, at number 30 in  
9 their recommendations that specifically called for:

10

11 "An independent third party  
12 assessment of the (SDM) tools be  
13 completed at an appropriate time  
14 so that they can be refined and  
15 improved upon --"

16

17 And this is the important part.

18

19 "-- and to ensure that there is no  
20 inherent cultural bias."

21

22 So although Ms. Harris singled my clients out for  
23 criticism in that regard, we're certainly not the only  
24 party before you who has that concern and who has raised  
25 it.

1           With respect to the use of the tools and Ms.  
2 Harris' suggestion that this concern was borne out of an  
3 ignorance in terms of how they're applied, the concern that  
4 we raised is not that the tools will immediately result in  
5 wrongful apprehensions, which is what Ms. Harris described.  
6 Rather, our position is, is that the misapplication of the  
7 risk of future harm tool may result in the substantiation  
8 of risk where it would otherwise be inappropriate which in  
9 turn causes families to be identified for interventions and  
10 unnecessarily drawn further into the child welfare system.

11           Now, it's important to remember that this is  
12 contrary to the declaration of principles set out in the  
13 preamble of the CFS Act which recognizes the family's right  
14 to the least interference with their affairs to the extent  
15 compatible with the best interests of children and the  
16 responsibilities of society.

17           To the extent that the incorrect application of  
18 the risk of future harm tool contributes to further agency  
19 involvement in the family affairs with or without an  
20 apprehension we take the position that it offends this  
21 basic principle.

22           Moreover, it's important to understand how the  
23 risk of future harm tool impacts on protective services.  
24 If a family has gone through an assessment and the  
25 application of the risk of future harm tool identifies that

1 there is an ongoing concern with respect to neglect or  
2 abuse, and the family -- but there is no immediate safety  
3 concerns so the child is not apprehended but there is a  
4 protection file that's opened, if the family refuses to  
5 participate in those interventions that have been  
6 identified by the agency as being required to address those  
7 risk factors, the refusal to work with the agency to  
8 address those identified risks, can result in apprehension.

9           It's important to note that unless a child has  
10 been apprehended, even though a family service or a  
11 protection file can be opened with respect to that family,  
12 their involvement with the agency remains voluntary. The  
13 agency cannot compel the family to receive services where  
14 it's only -- if the child has not been apprehended there is  
15 no legal mechanism that the agency can use to compel the  
16 family to accept services. It's voluntary.

17           If the agency, through the use of these tools,  
18 has identified a significant ongoing risk factor,  
19 particularly with respect to neglect which we know from Dr.  
20 Trocmé's evidence, can be one of the most severe forms of  
21 maltreatment, if the family refuses to work with the agency  
22 and refuses to take the remedial steps that the agency has  
23 requested to address that concern, that can result in the  
24 apprehension of a child.

25           THE COMMISSIONER: Can what?

1           MR. FUNKE:     It can result in the ultimate  
2 apprehension of a child.   So the idea that these tools  
3 could never result in the apprehension of a child is dead  
4 wrong.

5           As a result, we take the position that the  
6 probability of future harm tool definitely can contribute  
7 to the constellation of factors that may result in the  
8 apprehension of a child and as a result you should be  
9 concerned, in our respectful submission, about the  
10 possibility of an apprehension -- or the possibility of  
11 inherent bias that's in the tool.  And I suspect that this  
12 is one of the reasons that ANCR and the Southern Authority  
13 and the Northern Authority made a similar recommendation in  
14 their submission.

15           As a result, we maintain that caution should be  
16 recommended in the use of these tools until such time as a  
17 validation test has been completed and it has been  
18 determined that there is no bias inherent in the tool.  To  
19 merely suggest that corrections can be incorporated into  
20 the tool at a later time demonstrates, in our respectful  
21 submission, a callous disregard to the impact that the  
22 application of a tool with an uncorrected anomaly may have  
23 on affected families.

24           Ms. Harris also incorrectly attributed the  
25 argument to the SCO and the AMC that our submissions with

1 respect to the increase in prevention dollars should be  
2 reallocated from protection services was not our  
3 submission. We took the position that there needs to be an  
4 immediate and significant investment in primary and  
5 secondary intervention programs and that over time this  
6 investment in prevention will result in a natural reduction  
7 in protection spending and that when I talked about the  
8 balance in spending being achieved that was as a result of  
9 a natural reduction in the requirement for protective  
10 services because the number of children coming into care  
11 will naturally go down over time with an increase in  
12 prevention dollars.

13           So what the AMC and the NCO are recommending is  
14 that at this point what the system requires is a  
15 significant influx of new dollars for prevention services  
16 at this time. And the idea is, is that over time, as those  
17 new prevention services take effect, based on the evidence  
18 that we've heard from Dr. Trocmé, Dr. Santos, Dr.  
19 Blackstock, from all the experts that we heard, a dollar in  
20 prevention services can save you anywhere between five and  
21 17 dollars down the road in social services. So if that's  
22 true and we reinvest in prevention service now we will save  
23 money over time in terms of protection. And when we look  
24 at the expenditures right now, that the province was  
25 talking about in terms of the total funding that's



1 allocated to CFS in Manitoba, out of that -- I think that  
2 the total was 450 million or something in that, in that  
3 range, over half of that was on maintenance funding.  
4 Maintenance funding is simply the cost of maintaining  
5 children in care in out of home placements. That's pure  
6 protection dollars.

7           If we can reduce the reliance on out of home care  
8 we can reluse (sic) the biggest portion of spending that we  
9 have in the CFS system which is on maintenance.

10           Those are the comments that I have with respect  
11 to the submissions of Ms. Harris on behalf of the General  
12 Authority.

13           With respect to the Intertribal CFS the AMC and  
14 the SCO made no comment with respect to the submissions  
15 made on behalf of the ICFS other than to assert their  
16 respect for the right of each individual First Nations  
17 agency to advance the position that reflects their  
18 interests and priorities.

19           With respect to the submissions on behalf of the  
20 province, the AMC and the SCO make the following comment.  
21 At page 34 of the province's submissions, at paragraph 114  
22 -- and I'll give you a moment to find it.

23           THE COMMISSIONER: What page?

24           MR. FUNKE: Page 34, Mr. Commissioner.

25           THE COMMISSIONER: Yes.

1 MR. FUNKE: Paragraph 114.

2 THE COMMISSIONER: Yes.

3 MR. FUNKE: Mr. McKinnon, in his brief on behalf  
4 of the Department of Winnipeg CFS is essentially suggesting  
5 that non-mandated agencies should not be considered as an  
6 alternative to FE services currently be provided --  
7 currently being provided by mandated agencies.

8 So in that paragraph, and I'll just read it for  
9 the benefit --

10

11 "The Department accepts that  
12 non-mandated agencies provide a  
13 valuable service to the community  
14 and play an important role in  
15 supporting families who are  
16 struggling. Much of the funding  
17 for the community-based agencies  
18 who testified at the Inquiry comes  
19 from the Department. The  
20 Department urges caution, however,  
21 in accepting that community-based  
22 agencies are a viable alternative  
23 to the Family Enhancement services  
24 now being provided by mandated  
25 agencies. The Department agrees

1                   with the evidence of Dr. Brad  
2                   McKenzie, who was asked to comment  
3                   on whether it would be a good idea  
4                   to divert funding for family  
5                   enhancement to community-based  
6                   organizations."

7

8   The implication being that that would not be a good thing.

9                   The AMC and the SCO agree with that, we take the  
10                  same position, but this doesn't mean that non-mandated  
11                  agencies shouldn't, shouldn't be given additional funding,  
12                  it just means that that funding should not be reallocated  
13                  from current prevention service dollars that are being  
14                  provided through mandated agencies.

15                  So that ties into my earlier comment, what we  
16                  need is significant new dollars in prevention.

17                  Paragraphs 115 to 116 that follow directly from  
18                  that, Mr. McKinnon on behalf of the department of CFS  
19                  agencies talks about the evidence of Ms. Knol, the  
20                  Executive Director of the Andrews Street Family Centre,  
21                  where she says:

22

23                         "I wish they would just give us  
24                         extra money, know we work with  
25                         families and that. My fear is

1           that if I have to start keeping  
2           files on families that I ... work  
3           with in order to get money, then  
4           keep your money because that's not  
5           going to help my families. My  
6           families are not going to come to  
7           my centre because they're going to  
8           lose trust because they're going  
9           to feel that I work for CFS not  
10          Andrews Street Family Centre."

11

12           The concern is, is that this reluctance to  
13          provide reporting information means that non-mandated -- no  
14          mandated agencies ought not to be entrusted to provide  
15          prevention services. And with respect, we think that  
16          that's an overstatement of the, of the position of most  
17          non-mandated agencies. That was one witness that you heard  
18          from at the inquiry, dealing with one specific issue.

19           The majority of non-mandated agencies already  
20          provide significant prevention services and they're not  
21          required to keep records because these are universal  
22          services that aren't designed to be targeted to any  
23          specific family or, or target group and as a result there's  
24          no requirement to keep track of who receives those  
25          services.

1           So to a certain extent it's a red herring. There  
2 are a number of those agencies, however, that do provide  
3 targeted interventions for families that are involved  
4 already with CFS and in many cases are directed to attend  
5 those programs based on a referral from the agency that  
6 either has their children in care or is providing services  
7 to the family.

8           In those circumstances those non-mandated  
9 agencies are already reporting back to the agencies so this  
10 is really a non-issue in our respectful submission.

11           More importantly, there is no genuine debate  
12 about who should be providing tertiary protection services,  
13 that's -- sorry, sorry, tertiary prevention services,  
14 everyone agrees that that should stay within the mandate of  
15 CFS agencies, except for those parties and intervenors that  
16 are recommending a hard distinction between protection and  
17 prevention services. But even some of those positions are  
18 that there ought to be additional mandated agencies that  
19 are, that are specific to prevention and specific to  
20 protection.

21           In closing, at paragraph 130 on page 40 the  
22 department writes the following:

23

24                   "The Department submits that,  
25                   while no model is perfect, the

1                   current       model       in       Manitoba  
2                   represents    a    careful    balance  
3                   between    the    need    for    central  
4                   control    and    the    desirability   of  
5                   allowing   Aboriginal   people   to   have  
6                   control    over   their   own   social  
7                   services;   particularly   child  
8                   welfare   services."

9

10                   Now,   initially   when   my   clients   read   that  
11   paragraph   they   were   somewhat   concerned   because   on   their  
12   reading   that   seemed   to   them   to   mark   a   departure   from   the  
13   position   that   they   understood   the   province   to   maintain   with  
14   respect   to   the   restoration   of   First   Nations   jurisdiction  
15   over   child   welfare   services.   In   light   of   my   discussion  
16   with   Mr.   McKinnon   this   morning,   that   concern   is   alleviated  
17   and   I   make   no   further   comment.

18                   In   response   to   some   of   the   submissions   that   --

19                   THE   COMMISSIONER:   Now,   Mr.   --   pardon   me,   how  
20   much   longer   do   you   expect   to   be?

21                   MR.   FUNKE:   With   respect   to   the   department   not  
22   much   longer.

23                   THE   COMMISSIONER:   How   much   after   the   department?

24                   MR.   FUNKE:   Probably   another   half   hour.   About   20  
25   minutes   to   half   hour.

1           THE COMMISSIONER:     Oh, well, you finish the  
2 department today and then we'll adjourn for the day.

3           MR. FUNKE:     That's what I was going to propose.  
4 Thank you, Mr. Commissioner.

5           In response to Mr. McKinnon's comments in his  
6 oral submissions I make the following comments on behalf of  
7 the AMC and the SCO.     Mr. McKinnon, in his submission,  
8 suggested that although the new funding model wasn't  
9 perfect, he said even Mr. Funke would admit that it was  
10 much better than before.     He was right and my clients do  
11 admit that but that doesn't address our criticism that the  
12 new funding model is still insufficient to meet the needs  
13 of First Nations agencies to provide services to the  
14 families and children that they are responsible for  
15 serving.

16           Their response is, is that if the, if the  
17 department is suggesting that we should be satisfied with  
18 the fact that things are better but not yet adequate then  
19 we are essentially admitting that the cost of assisting  
20 those children is simply too high and they aren't worth the  
21 investment.     I do not believe that that is the position of  
22 the department.

23           He also suggested that the current funding model  
24 is, in some cases -- sorry, the current funding model in  
25 some cases may actually provide more funding to agencies

1 than the federal model and that's true but it's only true  
2 in a very narrow range of circumstances where the federal  
3 model is based on an assumption. The assumption is, is  
4 that seven percent of the First Nations population on  
5 reserve, under the age of 18, will be involved in child  
6 welfare services at any given time. So that's how they --  
7 that's the assumption that their funding model is based on.

8           If that percentage is actually substantially  
9 higher, if it gets close to 14 percent or double the, the  
10 federal estimate, then the provincial system does start to  
11 provide more dollars because it provides funding on an  
12 actual number of cases as opposed to a presumption about  
13 the level of service required. However, our response to  
14 that is, is that if Mr. McKinnon's point is that there are  
15 also significant deficiencies in the federal model we agree  
16 with him but the fact that there are significant  
17 deficiencies in the federal model is no response to the  
18 deficiencies in the provincial model and for the most part  
19 the provincial model significantly underfunds on a  
20 comparative basis.

21           Mr. McKinnon also pointed out that the new SDM  
22 tools are an improvement over the practices of the past.  
23 Again, the AMC and the SCO agree, we're not suggesting  
24 otherwise nor are we suggesting that the SDM tools are  
25 inherently unreliable and should not be used. Our concern



1 is that there may be a cultural anomaly and that that needs  
2 to be identified and if it exists it needs to be corrected.  
3 As a result, until that happens, we're taking the position  
4 that there needs to be a greater role for the professional  
5 judgment on the part of social workers who apply them,  
6 particularly in light of the fact that there remains no  
7 data to demonstrate that they are culturally attuned to  
8 First Nations people and, therefore, accurate and reliable  
9 in that context.

10           At the end of the day we have to stop treating  
11 social workers as anything less than professionals. They  
12 take their jobs very seriously, they apply their  
13 professional judgment to the best of their ability.

14           The SDM tools are designed to assist them in that  
15 regard and we trust that they do, however, there needs to  
16 be the ability to override a static tool in light of social  
17 workers' professional judgment and we take the position  
18 that that emphasis is skewed to the favour of the tool and  
19 against the professional judgment of professional social  
20 workers.

21           Mr. McKinnon also argues that the refusal to  
22 adopt CFSIS on reserve places children at risk and that  
23 there is essentially no way to resolve this other than by  
24 requiring agencies to use CFSIS on reserve.

25           I have already talked about modern information

1 management systems and how that can address that, that  
2 concern and I, I am not going to go into it any further.

3 Mr. McKinnon has suggest as an alternative that  
4 this problem with CFSIS on reserve could be addressed  
5 simply by the current permission controls that exist within  
6 CFSIS and with respect, all that does is it controls who  
7 has access to the provincial data. It doesn't matter who  
8 enters it, it always goes onto the provincial data base and  
9 that's the central component, that's the central feature of  
10 that system that offends First Nations OCAP principles. So  
11 to suggest that there is safeguards in place that prevent  
12 other agencies from accessing your data completely misses  
13 the point. It's about the possession of that data, it's  
14 about the ownership of that data, and that data residing  
15 within the ownership of the First Nation.

16 Finally, Mr. McKinnon made a comment with respect  
17 to the SDM tools and he commented that really what's the  
18 harm in an SDM tool that may be guilty of moderate over  
19 reach. He said families end up receiving services that  
20 they otherwise wouldn't be entitled to and how is that a  
21 bad thing? I think in respect to my earlier comments in  
22 response to Ms. Harris' submissions, that it can very much  
23 be a bad thing because it tends to substantiate neglect in  
24 families that would otherwise would not have neglect  
25 substantiated, it involves them very often in this spiral

1 of greater and greater involvement in the child welfare  
2 system. If that is only the results of a cultural anomaly  
3 that hasn't been properly reflected in the tool, then we  
4 take the position that that's very much a situation to be  
5 avoided.

6 I've tried to keep my comments as brief as  
7 possible with respect to the department's submissions, Mr.  
8 Commissioner, in light of the time those are my submissions  
9 for today. I can advise that I don't expect to be long  
10 tomorrow morning, the only submissions I have is a brief  
11 comment with respect to the U of M, the Aboriginal Council  
12 of Winnipeg and Ka Ni Kanichihk.

13 THE COMMISSIONER: All right, we'll --

14 MR. FUNKE: Thank you.

15 THE COMMISSIONER: -- rise till 9:30 tomorrow  
16 morning.

17

18 (PROCEEDINGS ADJOURNED TO JULY 30, 2013)