



**Third Session - Thirty-Sixth Legislature**

**of the**

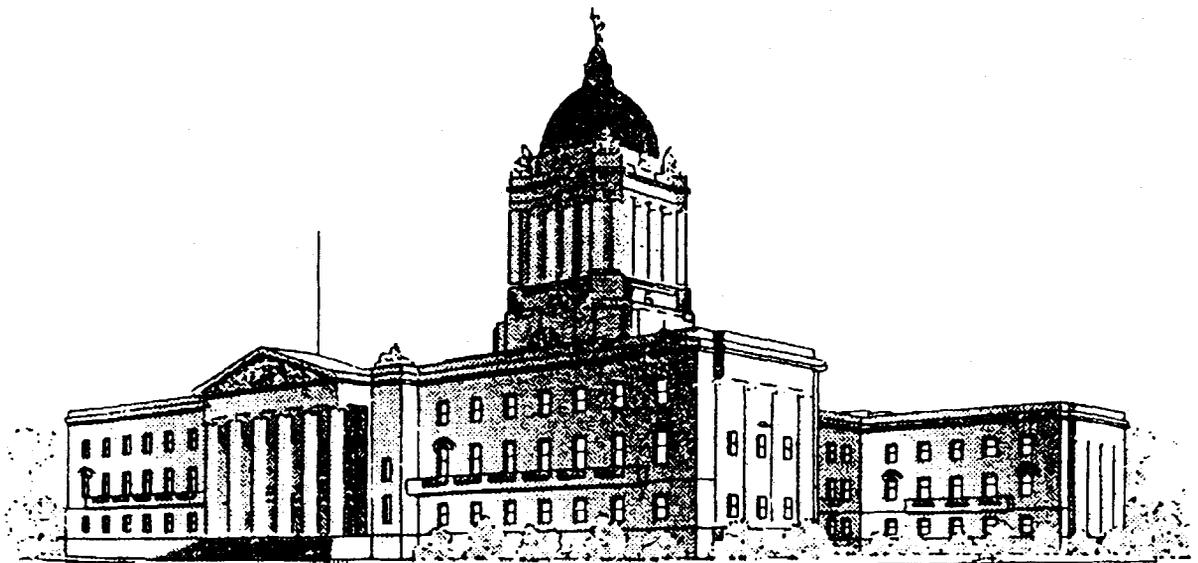
**Legislative Assembly of Manitoba**

**Subcommittee of the Standing Committee**

**on**

**Privileges and Elections**

*Chairperson*  
*Mr. Peter Dyck*  
*Constituency of Pembina*



**MANITOBA LEGISLATIVE ASSEMBLY**  
**Thirty-Sixth Legislature**

<b>Member</b>	<b>Constituency</b>	<b>Political Affiliation</b>
ASHTON, Steve	Thompson	N.D.P.
BARRETT, Becky	Wellington	N.D.P.
CERILLI, Marianne	Radisson	N.D.P.
CHOMIAK, Dave	Kildonan	N.D.P.
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DACQUAY, Louise, Hon.	Seine River	P.C.
DERKACH, Leonard, Hon.	Roblin-Russell	P.C.
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FINDLAY, Glen, Hon.	Springfield	P.C.
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GAUDRY, Neil	St. Boniface	Lib.
GILLESHAMMER, Harold, Hon.	Minnedosa	P.C.
HELWER, Edward	Gimli	P.C.
HICKES, George	Point Douglas	N.D.P.
JENNISSEN, Gerard	Flin Flon	N.D.P.
KOWALSKI, Gary	The Maples	Lib.
LAMOUREUX, Kevin	Inkster	Lib.
LATHLIN, Oscar	The Pas	N.D.P.
LAURENDEAU, Marcel	St. Norbert	P.C.
MACKINTOSH, Gord	St. Johns	N.D.P.
MALOWAY, Jim	Elmwood	N.D.P.
MARTINDALE, Doug	Burrows	N.D.P.
McALPINE, Gerry	Sturgeon Creek	P.C.
McCRAE, James, Hon.	Brandon West	P.C.
McGIFFORD, Diane	Osborne	N.D.P.
McINTOSH, Linda, Hon.	Assiniboia	P.C.
MIHYCHUK, MaryAnn	St. James	N.D.P.
MITCHELSON, Bonnie, Hon.	River East	P.C.
NEWMAN, David, Hon.	Riel	P.C.
PENNER, Jack	Emerson	P.C.
PITURA, Frank, Hon.	Morris	P.C.
PRAZNIK, Darren, Hon.	Lac du Bonnet	P.C.
RADCLIFFE, Mike, Hon.	River Heights	P.C.
REID, Daryl	Transcona	N.D.P.
REIMER, Jack, Hon.	Niakwa	P.C.
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ROBINSON, Eric	Rupert's Land	N.D.P.
ROCAN, Denis	Gladstone	P.C.
SALE, Tim	Crescentwood	N.D.P.
SANTOS, Conrad	Broadway	N.D.P.
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STRUTHERS, Stan	Dauphin	N.D.P.
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Vacant	Portage la Prairie	

**LEGISLATIVE ASSEMBLY OF MANITOBA**

**THE SUBCOMMITTEE OF THE STANDING COMMITTEE ON PRIVILEGES AND ELECTIONS**

**Monday, May 12, 1997**

**TIME – 7:30 p.m.**

**MATTERS UNDER DISCUSSION:**

**LOCATION – Winnipeg, Manitoba**

The Review of the Sections of The Child and Family Services Act pertaining to the Office of the Children's Advocate.

**CHAIRPERSON – Mr. Peter Dyck (Pembina)**

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**ATTENDANCE – 5**

*Members of the Committee present:*

Messrs. Dyck, Helwer, Kowalski, Martindale,  
Tweed

**Mr. Chairperson:** Good evening. Will the Subcommittee of the Standing Committee on Privileges and Elections please come to order. This evening the subcommittee will be considering a review of the sections of The Child and Family Services Act pertaining to the Office of the Children's Advocate.

The subcommittee will be holding hearings in Winnipeg this evening, May 15, at 10 a.m. and on the afternoons of May 20 and 21 commencing at 3 p.m. and on the evening of May 20 starting at 7:30 p.m.

**WITNESSES:**

Mr. Wayne Reid, Private Citizen  
Ms. Judy Reid, Private Citizen  
Ms. Lore Mirwaldt, Private Citizen  
Mr. Harvy Frankel, Faculty of Social Work,  
University of Manitoba  
Ms. Ingrid Zacharias, Private Citizen  
Ms. Susan Swaigen, Private Citizen

We have had a number of persons registered to speak, and I will now read aloud the names of the persons who will be presenting this evening: Wayne and Judy Reid, Lore Mirwaldt, Harvy Frankel, Ingrid Zacharias, Susan Swaigen, Gordon D. Gillespie and Claire Toews.

**WRITTEN SUBMISSIONS:**

Doug Crookshanks, Westman Child &  
Adolescent Mental Health Program  
Bettie L. Goossen, Private Citizen  
Ronald and Amelia Wesley, Private Citizens  
Evelyn Thorgeirson, Private Citizen  
Merlyn Rotter, Manitoba Youth Centre  
Neta Friesen, Claudette Dorge, Donna Pierce,  
Claire Milgrom, Child Protection Centre, Health  
Sciences Centre  
Glynnis Fiddler, Wood's Homes, Parkdale Centre  
Manitoba Association for Rights and Liberties  
Anishinaabe Child & Family Services Inc.  
Kathleen Tessier, Health & Family Services,  
Thompson Region  
Kenneth G. Knight, Child and Family Services of  
Western Manitoba

I should indicate to the public that it has already been agreed by the subcommittee that no additional registrations will be accepted. In addition, I would like to remind those presenters wishing to hand out written copies of their briefs to the subcommittee that 15 copies are required, and if assistance in making the required number of copies is needed, please contact either the Chamber Branch personnel located at the table at the rear of the room or the Clerk Assistant, and the copies will be made for you.

I have a list of written submissions received prior to the April 30 deadline, and I will read that list: Doug Crookshanks, Regional Program Supervisor; Bettie L. Goossen; Ronald Wesley; Evelyn Thorgeirson; Merlyn Rotter; Neta Friesen, Claudette Dorge, Donna Pierce and Claire Milgrom, all one; Glynnis Fiddler, Wood's Homes, Parkdale Centre; Manitoba Association for

Rights and Liberties (MARL); Anishinaabe Child & Family Services Inc.; Kathleen Tessier, Health & Family Services, Thompson Region; and Kenneth Knight, the CEO for the Child and Family Services of Western Manitoba.

Copies have been made for subcommittee members and were distributed at the start of the meeting. Is it the will of the subcommittee to have these submissions appear at the back of the subcommittee transcript prepared for today's meeting? [agreed]

For the benefit of the presenters, I should also point out that the subcommittee has established a time limit on presentations and questions. The time limit per presentation is 20 minutes with a maximum of 10 minutes for questions to be addressed.

Once again it is a pleasure for me to introduce to the Standing Committee on Privileges and Elections of the Manitoba Legislative Assembly the review of the Office of the Children's Advocate. This review is in accordance with the requirements of the section of The Child and Family Services Act which pertains to the Children's Advocate.

I would like to mention that the position of the Children's Advocate was established by amendment to The Child and Family Services Act in June of 1992. The legislation governing the position was proclaimed in May of 1993. The primary function of the Office of the Children's Advocate as set out in the legislation is to represent the rights, interests and viewpoints of children and youth involved in the Child and Family Services system. The Children's Advocate has the duty of advising the Minister of Family Services on matters relating to the welfare and interests of children who are receiving services under the act. The position also responds to and investigates complaints relating to children who are receiving or who are entitled to receive services.

One of the provisions of this legislation is that within three years of coming into force a committee of the Legislative Assembly shall undertake a comprehensive review of that part of the act which governs the Children's Advocate. I am pleased to chair the committee which will review this important legislation. The process is intended to be a public review, and

accordingly public meetings have been scheduled in Winnipeg, and several people from rural Manitoba have indicated their desire to be heard both here and via teleconferencing. I appreciate the co-operation of the members of the subcommittee and the public who agreed to delay the start of the proceedings until this evening due to the flood.

The committee will be accepting both written and oral presentations. The public was informed of the review and of the process for registering and submitting presentations on this matter through the placement of advertisements in newspapers throughout Manitoba. Even with the delay in the proceedings, I believe it is still the intention of the committee to report back to the Legislature by May 30. The views of Manitobans will be considered with respect to possible amendments to this legislation. Through this process Manitobans will have the opportunity to present their views directly to members of the Legislative Assembly. I am pleased to welcome all those who will present their views regarding the Office of the Children's Advocate to the subcommittee.

With that, I would like to welcome everyone here. As our first presenters, I would like to call on Wayne and Judy Reid. Please come forward. Do you have written copies of your brief for distribution?

\* (1940)

**Mr. Wayne Reid (Private Citizen):** Yes, we do.

**Mr. Chairperson:** Thank you. We will just wait till they are handed out. Again, I want to thank you for appearing here tonight. We do appreciate the time and effort that you have taken to do this. With that, I will ask you to proceed with your presentation, please.

**Ms. Judy Reid (Private Citizen):** Good evening. We are Wayne and Judy Reid. We reside in the city of Calgary. We are here tonight because we felt—or it was our understanding that the Office of the Children's Advocate was to work on behalf of the child or to be concerned about the best interests and what the child wants. We believe in our case that did not happen, and what our presentation is tonight is what we have gone through, us, our granddaughter and our family, over the past four years.

We would like to begin our presentation by reading you excerpts from letters we have received with respect to improprieties done by Child and Family Services regarding all issues surrounding our granddaughter Melissa. In a letter from Keith Cooper, Chief Executive Officer of Winnipeg Child and Family Services, dated November 3, 1993, he stated: "This matter has already been reviewed carefully and the staff of this Agency have performed their responsibilities appropriately and conscientiously . . . In my judgement, there is no need for further investigation, and there will be none."

In a letter dated November 15, 1993, from the Honourable Bonnie Mitchelson, she stated: "I wish to assure you that staff of the Child and Family Support Branch have reviewed the actions of the Agency to ensure that due process was followed in accordance with the provisions outlined in The Child and Family Services Act."

From a letter dated May 6, 1994, from Ron Fenwick, Executive Director of Child and Family Support, he wrote: "It was found that the Agency met Program Standards and requirements in the handling of the abuse investigation."

From Terri Hammerback, Children's Advocacy Officer, in a letter dated June 29, 1994, she wrote: "We feel that all the parties involved acted responsibly and within the provisions of the Child & Family Services Act." This letter also states "a complaint was made by the school." The complaint, in fact, did not come from the school.

From a letter dated July 18, 1994, written to us by Wayne Govereau, Children's Advocate, he stated: "I am of the opinion that the review conducted by the Child and Family Support Branch has addressed your concerns . . . The subsequent review done by Ms. Hammerback only further supports the original findings in that the agency acted according to the requirements of legislation and standards in its handling of the allegations and investigation."

Finally, a letter dated August 9, 1995, from the Honourable Bonnie Mitchelson stated: "I would like to assure you that staff had previously reviewed the handling of the abuse investigation and it had been

determined that Winnipeg Child and Family Services - East Area had acted in the best interests of your granddaughter."

In January 1993, our son, Ken Reid, had custody of his five-year-old daughter. He had been separated from Melissa's mother, Linda Farley, also known as Caskey, since September 1989. There was a verbal agreement that Ken should raise Melissa, as Linda had three other children from previous relationships. She felt it would be too much for her to care for four children.

In January 1993, Ken was preparing to move with Melissa to Calgary where we reside. He had found a job in Calgary. Linda gave him no opposition to moving away with Melissa. Ken took Melissa to her mother on January 22, 1993, for a visit before they moved at the end of January. When Ken went to pick up Melissa on Sunday, January 24, 1993, Melissa had been removed from the house. Linda illegally withheld Melissa from Ken, as he was the custodial parent.

Ken put his trust in the Manitoba family court system to have his daughter returned to him. However, his action for custody and divorce was delayed by the Manitoba family courts as an allegation of sexual abuse against him came forward. This allegation of abuse came from his stepdaughter. Ken was found not guilty of the sexual assault on November 2, 1995. In the opinion of an independent investigator, the allegation was false.

During the next few months, we, the paternal grandparents, became involved with the Manitoba family courts and Child and Family Services after we were cut off from any contact with our granddaughter.

As time passed, we had reason to question the actions of Cory Gira, an intake worker out of the Elmwood office of Child and Family Services.

1. Cory Gira supplied Linda's lawyer with a letter to present in court at the custody and divorce case stating that an allegation of abuse had been levelled against Ken and that, if custody of Melissa was awarded to Ken, they, Child and Family Services, would seize her. This action was in contravention of The Child and Family Services Act. Before they can take such action, an investigation must be completed with proof a child is at risk.

2. Cory Gira did a one-sided, biased investigation. He refused to interview our son. He totally disregarded any information we tried to give him. The Winnipeg police department, Youth Division, were not advised of the fact that Child and Family Services had a long history with the accusing family and were aware Linda had a tendency to misrepresent facts to get her way, and in the words of Shirley Reimer, supervisor at the Elmwood office, the entire family has led a very checkered past. Cory Gira gave false information to the Winnipeg police by informing them that it was his understanding that Melissa was beginning to gain more control of her enuresis, which would indicate an increased feeling of safety. Melissa's enuresis was inherited from her paternal family. She still wets the bed almost nightly to this day. Cory Gira told us he would show us the power he had, and he hoped we had lots of money.

3. Cory Gira cut off our weekly phone calls with Melissa, misrepresenting to his supervisor a valentine card we had sent to her. It was a granddaughter card which we signed "To Melissa, With All Our Love, From Grandpa and Grandma Reid."

4. Even though Melissa gave no disclosure of abuse, Cory Gira put her, a five-year-old child, through the unnecessary ordeal of a medical examination at the Child Protection Centre.

5. In June 1993, at our hearing in family court for access to Melissa, Shirley Reimer and a lawyer from Child and Family Services attended and presented a letter to Madame Justice Davidson. This letter, signed by Cory Gira and Shirley Reimer, contained three misrepresentations of facts.

\* (1950)

The first misrepresentation was of facts concerning a babysitting incident while Melissa lived with Ken. In the letter they reported that she was found alone and crying outside her place of residence unable to gain entry. In fact, Ken had taken Melissa to spend the night with a friend and her parents, as he was going out for the evening. Melissa decided she did not want to stay overnight and left the house unnoticed. Following her dad's advice, when she found he was not home she went into the apartment building next door and knocked

on the door of friends. Unfortunately, they were not home. Melissa started to cry, at which point a woman on the same floor heard her and called the police, who in turn called Child and Family Services. As a report was written regarding the incident, Cory Gira and Shirley Reimer would have known the true facts. It was purposely worded to shed doubts on Ken's parenting.

The second misrepresentation concerned the medical examination of the child making the allegation. They said in the letter that a medical examination of the child, Ken's stepdaughter, confirmed that she had been sexually abused by Ken Reid. The diagnostic only said a cleft at eleven o'clock position on the hymen was consistent with the allegation. During testimony at the criminal trial, Dr. Pietak, witness for the defence, was being questioned by the prosecutor. They discussed a journal titled "Concuv (sic) Hymenal Variations in Suspected Child Abuse Victims." Congenital clefts are usually around the eleven, twelve, one o'clock positions. Breaks between the three o'clock and nine o'clock positions are more likely to be digital, and the breaks between the five and seven positions are more likely to be penile. Therefore, in Dr. Sue Wood's diagnostic, she misrepresented the facts. A cleft at the eleven o'clock position is not consistent with any type of sexual abuse.

The third misrepresentation was regarding information received which made it necessary to reinvestigate not only Ken but his family of origin. The information concerned a statement Melissa made to her maternal grandmother, Gail Farley. Melissa was spending a night at her grandmother's house. Gail's common law husband was out for the evening babysitting Linda's other three children. As Melissa was being tucked in for the night, she supposedly asked her grandmother not to let Grandpa in her bed when he got home. As Melissa's Grandpa Reid has never been inside Gail Farley's house, it was ludicrous for anyone to think she was suggesting her Grandpa Reid. It leads one to question whether Melissa actually made the statement or not.

6. In August 1993, believing that there was to be a custody trial in September, Cory Gira and Linda took Melissa to Emergency at Children's Hospital. They met

with doctors Steinberg and Warrien to discuss Melissa's enuresis as a symptom of sexual abuse. As a result of that meeting, Cory Gira was provided with a progress note. We received a copy of this note from Shirley Reimer. In that progress note, the issue of pictures drawn by Melissa was raised, but not by the mother. As Melissa was only five, one has to assume it was Cory Gira who raised the issue. He spoke of anatomically correct sexual representations of Ken, his girlfriend and her grandparents. It also mentioned other pictures of Melissa with tears watching these people who were naked. Needless to say, we were outraged. We have never been naked in front of Melissa. This confirmed to us that Cory Gira was doing everything in his power to help Linda retain custody of Melissa.

7. As a result of our own meeting with doctors Steinberg and Warrien and conversations with Dr. Thor Choptiany, we received a letter from Dr. Choptiany in which he agreed with us that they had been used by Child and Family Services and Melissa's mother to support her custody claim of Melissa. Cory Gira wanted the doctors to connect Melissa's enuresis to sexual abuse. This progress note was passed off to the lawyers involved and to the family courts as a psychiatric assessment of Melissa. The document was misrepresented and misused.

8. In October 1993, Keith Cooper wrote us a letter in which he said there was no evidence linking our son to the allegation other than the allegation itself. We question why this letter was not copied to the lawyers involved in the case as well as the family courts and the Crown in Ontario.

9. In Manitoba, Cory Gira misrepresented where the anatomically correct pictures drawn by Melissa came from. He said in that progress note that Melissa had drawn them at school. We were later to learn from Melissa that the pictures in question had been drawn at the suggestion of an aunt and with the help of the half sister who made the allegation against our son. In the table of contents of the Crown's case in Ontario presented to the defence under disclosure, the pictures were listed as copies of pictures, notes drawn by Melissa Reid and Jennifer Farley in the presence of social worker Cory Gira. In our opinion these pictures were manufactured to raise suspicions about an abuse which never occurred.

10. In short, Cory Gira lied; he misrepresented documents; he tried to use other agencies to support him; he gave false information to the police. Cory Gira tried to manufacture evidence to support the allegation, example, enuresis being a result of sexual abuse and stating the pictures had been drawn in his presence when they were not.

In the summer of 1993, we contacted the Minister of Family Services, Harold Gilleshammer. From there we were told to contact Dave Waters from the East office. He handed us to Dave MacDonald. In a phone conversation with Dave MacDonald, he stated that the medical examination did not prove how, when or who. This contradicted Cory Gira's letter stating the medical examination confirmed Ken Reid had sexually abused his stepdaughter. Dave MacDonald also stated it was the type of case where you flip a coin to see who is telling the truth, but they were believing the child. He also said the allegation might be suspect if a divorce and custody case were in progress. A divorce and custody case was in progress, but no one in Child and Family Services seemed to take that into consideration other than Cory Gira. He was fully aware of the divorce custody case and was doing everything he could to help the mother.

We once again contacted the Minister of Family Services office. We now dealt with Ron Fenwick, who promised to look into the matter. As a result of an investigation conducted by his staff, we received a letter stating everyone had acted in accordance with the act.

We then contacted the Office of the Children's Advocate. Their investigation was conducted by Terri Hammerback. She gave us a time limit of 30 days. Twenty-seven days into the investigation, she had only talked with members of Child and Family Services. At the end of the investigation we received the letter from which we read the excerpt. We were concerned as to the false statement of the complaint coming from the school when we knew it did not.

We met with Wayne Govereau. We explained to him everything that had happened. We showed him supporting documentation of what we told him. We showed him the pictures that Cory Gira said Melissa had drawn at school. Mr. Govereau agreed with us that

the pictures could not have been drawn by a five-year-old child, and a five-year-old certainly could not have printed the stories with the pictures. He told us he would check into the matter, and for the first time we began to feel hopeful that at last we may get some help. However, when we received a letter from him, once again the answer was that everyone had acted in accordance with the act.

If the Children's Advocate was separate from Child and Family Services, there would be a better chance their investigation would be less political. They would be more interested in discovering the truth rather than protecting the questionable actions of the employees of Child and Family Services. If the Children's Advocate is there to help and do what is in the best interest of the children, why did someone from the office not speak to Melissa? Melissa has said from the very beginning, to Juana Schoch, Child and Family Services employee, to doctors Steinberg and Warrien, to Wayne Ashley, independent social worker, and to us that she wants to return to live with her dad and visit her mother once in a while. Even though Cory Gira met with Melissa several times trying to get her to disclose she had been sexually abused by her dad, she consistently denied any bad touching other than when he sometimes spanked her when she was bad. When does someone start listening to the child?

Our son, Melissa and indeed our entire family have been the victims of a false allegation of sexual abuse. These false allegations have become an often used ploy during custody cases. Our son was charged but was acquitted by a jury of 12 at his criminal trial. He is still waiting for justice in Manitoba. If a proper investigation had been done by Wayne Govereau and Terri Hammerback of the Children's Advocate office, the allegation would have been proven false and there would have been no need for a criminal trial. The false allegation and subsequent investigation was a tremendous cost to the people of Manitoba. The trial was a tremendous cost financially and emotionally to our family. This trial was also a great financial cost to the taxpayers of Ontario. The false allegation and the length of time of the investigation put the status quo in the mother's favour. Had it not been for the false allegation, Ken and Melissa would be reunited already.

\* (2000)

Ken still only has a three-hour-supervised visit per month. He and Melissa are at the mercy of supervisors and Melissa's mother. Ken and Melissa have not had a visit since October 1996. This travesty of justice must be made right.

We are still working with Phil Goodman and Janet Wikstrom from Child Welfare and Family Support. An investigation conducted on their behalf has raised some questions concerning Child and Family Services. If the Office of the Children's Advocate had conducted such a diligent review of facts, this matter would have been settled long ago.

The Office of the Children's Advocate should not have ties or any responsibility to Child and Family Services. It is clear in our case that the intention of the Children's Advocate was to cover the unethical actions of the entire Child and Family Services department. The Children's Advocate had all the information and evidence contained in this report.

Until you have walked in our family's shoes, you will never understand the sleepless nights or the constant heartache and pain. The scars will be there forever.

Thank you for your attention.

**Mr. Chairperson:** We thank you for your presentation. Do the members of the subcommittee have any questions that they wish to address to the presenter?

**Mr. Doug Martindale (Burrows):** I would like to thank Mr. and Mrs. Reid for making the effort to come from Calgary to appear before us. I know, having met with them privately, that they are going to very great lengths to try and clear the name of their son and to restore their visiting rights and relationship with their granddaughter, and I can empathize with the trying circumstances that you have been going through for a number of years now.

Unfortunately, this committee is not really in a position to look into or even discuss very much the particular circumstances that you have presented to us, because this committee is basically restricted to reviewing the legislation. However, I would like to ask you a couple of questions.

On the second last page you state: If the Children's Advocate was separate from Child and Family Services, there would be a better chance their investigation would be less political. Why is it that you think that the Children's Advocate is not separate from Child and Family Services?

**Mr. Chairperson:** Who is going to be giving the answer? Judy Reid, please.

**Ms. Reid:** Well, when we were getting all these answers from everyone whom we had written and contacted, it was always that they had all acted in accordance with the act. It was our understanding that the Children's Advocate office was funded by the Minister of Family Services. If that is not true, then we apologize for that being incorrect in our report.

**Mr. Martindale:** It is true that the Children's Advocate and his staff are funded by the Department of Family Services, but structurally the way it works is that the Advocate reports to the minister on an annual basis and has the power to investigate Child and Family Services agencies and under the act can write a report to the director of a Child and Family Services agency. I am sorry that in your minds it is not separate, but according to the legislation it is supposed to be.

On the last page you said the Office of the Children's Advocate should not have any ties or any responsibility to Child and Family Services, and I am wondering if you have any recommendations for us on how you think we could recommend changing the legislation so that they would not have any ties.

**Mr. Reid:** We would just like to remind you that in Bonnie Mitchelson's last letter to us she very clearly said that everybody acted under the guidelines of the act in the best interest of our granddaughter, so our attempt to have Children's Advocate investigate what was in the best interest of our granddaughter should have been done on that basis. It was not. The only way that you can ever have anything done justly and impartially is if it is totally independent of the system.

**Mr. Martindale:** Some people have advocated that we change the legislation to give the Advocate more independence. For example, I have introduced a private member's bill to do just that, mainly by having

the Advocate report to the Legislative Assembly rather than to the minister. Other people have suggested that the Children's Advocate be given more power so that, for example, the mandate could be expanded from not just investigating but to making binding recommendations. Now the recommendations are just recommendations, and neither the minister nor the agency is bound to follow up or act on the recommendations.

In your view, do you think that having the Advocate report to the Legislative Assembly rather than to one minister would give the Advocate the kind of independence that you would like to see?

**Mr. Reid:** Most definitely, and one of the problems—you keep saying the word over and over and over again—it is the act. The act protects everybody. If you look at every single letter we received, it was always it was conducted within the guidelines of the act. I do not know if any of you have ever been put in a position to try and get information from the Children's Advocate or Child and Family Services, it is almost virtually impossible because the act protects their positions.

**Mr. Martindale:** Well, I regret that you have not had a very good experience with the Children's Advocate, because as the opposition Family Services critic, sometimes I have difficulty getting information from Child and Family Services agencies. When I get stuck there, then I appeal to the Children's Advocate, who has a lot more power to investigate than I do. Agencies do not have to co-operate with me; they do have to co-operate with the Advocate. So we probably have two different views of how that office is actually functioning. Thank you.

**Mr. Gary Kowalski (The Maples):** I am looking at the letter here, dated June 29, '94, to Mr. Wayne Reid from Terri Hammerback. In the fourth paragraph, I will quote: "I simply said that we do not redo the original sex abuse investigation. Therefore, I would not be reinterviewing all the complainants and I would not analyze pictures, reports, etc."

Did you ever discuss with Wayne Govereau or Terri Hammerback what they do to investigate your concern?

**Mr. Reid:** When we first met with Terri Hammerback, she indicated to us that she could not redo the investigation; however, she could look at it and tell us if it was done fairly. Obviously, when she came back with her report, she said everything fell within the guidelines of the act. I would only ask you to take a look at just the minute bit of evidence we have provided you and judge for yourself whether in fact the answer we got from her would be the same as all of the people on this committee.

**Mr. Kowalski:** I have some background in doing investigations, and I am looking for your opinion on this. If each investigation was not done within guidelines, it would be up to the subjective opinion of the investigator of what is in the best interests of the child. So do you agree there should be guidelines to be followed in investigations of sexual abuse?

**Mr. Reid:** Absolutely. One of the things that we have found in regard to sexual abuse is the fact that just mention the words "sexual abuse," and everybody goes into this defensive mode that says: If it was said, it had to be done.

We have had judges say to us that we do not care whether you are innocent or guilty, we only care that sexual abuse was alleged. That is all they were interested in. In the case of Terri Hammerback, she was provided with a list of people that could have verified our position. I will give you one example. She gave us 30 days. She would do her investigation in 30 days. One of the issues was how Child and Family Services was using Melissa to produce a document that would support sexual abuse. In the best interest of the child, why would anybody put a child through that to get them to say something that did not happen? Terri Hammerback had the names of the people who had already made their thoughts known. Dr. Thor Choptiany, who was the supervisor of these doctors, said that they were misused, the document was misused and misrepresented. So was that in the best interest of the child?

**Mr. Chairperson:** I want to thank you for appearing before the subcommittee. Thank you very much. We will take that under advisement.

**Mr. Reid:** We appreciate the time you have given us. Thank you very much.

\* (2010)

**Mr. Chairperson:** I would now call on Lore Mirwaldt. Do you have written copies?

**Ms. Lore Mirwaldt (Private Citizen):** No, I do not.

**Mr. Chairperson:** Okay. I guess later on you could give us a copy so that we could—

**Ms. Mirwaldt:** Certainly. I really have not prepared anything written. I apologize. It is unusual for a lawyer to appear before you without a lot of documentation, but I think it will be a little bit different.

I am from The Pas. I understand that the reason that I am appearing in Winnipeg—and I do thank you for the opportunity—is that you will not be coming to The Pas. I understand that I was the only one who expressed interest, and that kind of leads me into my first point, that I do not think the Office of the Children's Advocate has any presence in northern Manitoba. When the office was first opened, as lawyers in the North, we welcome that. As a defence lawyer for children, I welcome that. As a lawyer for parents, I welcome that.

I later began representing an aboriginal child caring agency that I have been representing for five years, the Cree Nation Child and Family Caring Agency. I certainly welcomed the advent of a true advocate, but what we got instead was not an advocate. What we got was somebody who basically was serving, I guess, a need that the government or the minister of the day had to say, hey, we are doing something about child abuse. Quite frankly, my honest opinion is that has not happened. I think that a Child Advocate simply reporting to a minister is not an advocate. That is another person working for the minister. I think Mr. Govereau himself has been extremely brave, forthright and outspoken on behalf of children, but I think the way the legislation has been written ties his hands. I think that simply reporting to the minister means very

little. It depends upon the political will of that minister to do something about child abuse.

I think the political arena, with the pressures that members of the opposition and even members of the minister's own party could put upon the minister, if an independent person were to report to the Legislature, it would be far more valuable. We have an Ombudsman in Manitoba for any citizen who wants to complain about governmental processes within Manitoba. Why do we not give children that same right? Children do not have any rights in Manitoba, and we are not serious about child abuse, because an advocate is someone who is independent. I do not see that Mr. Govereau's office can be independent the way the legislation is written. I do not mean any disrespect or any criticism of anybody from that office. I find most of them were very professional. But I was listening to the couple before me, and I understand their frustration.

I am very concerned that the Office of the Children's Advocate has simply become just another branch of the minister's office and it does not represent children. Certainly, I have seen that in northern Manitoba.

When Mr. Govereau first came up and was introducing himself in northern Manitoba, I asked him: Is there anybody who speaks Cree at your office? He said no. I know Mr. Govereau is from a First Nations background, and I think that was a good move on the part of the government, but if you look at the statistics, most of the referrals they get from children themselves are by phone, so the kids have got to speak English. How is a child in Pukatawagan going to phone anybody for help? First of all, it is a long distance call. If you are using a radio phone, the 1-800 number does not always work. Secondly, English is a second language for most of these kids. They are not street-savvy kids. These are the children that you need to protect. I would submit to you, gang members and kids living on the street in Winnipeg have developed some survival instincts and can advocate for themselves, but you have a kid on the northern reserve who does not speak English, whose only outside people, perhaps looking at their situation, might be a teacher who then phones an agency, and the person who is providing the services in that area is a local worker, perhaps a member of that child's own family. Then we are

offering to that child a service that is not even in their language.

I think there is no advocacy there for anybody, certainly not for that child. The investigators that we have had come up North, Ms. Hammerback and Ms. Minenko, while I feel they are both very professional, have never lived on a reserve. They have never lived in a northern community. You have no idea what it is like when your nearest sexual abuse expert is in Winnipeg. So, first, we have got to get this poor little kid to tell us what happened, then tell the RCMP what happened, and then we have to take them to a place they have never been before, to Winnipeg, to the Child Guidance Clinic and tell it all over again. Who advocates for the child all during this? No one. The workers who are coming down with them often do not speak English. Nobody is helping them.

I will give you an example. We send kids from the North down to Winnipeg all the time, to Seven Oaks, Manitoba Adolescent Treatment Centre. As soon as one of those kids decides to make a break for it, do you know what happens? We get a call from the centre: One of your kids is missing; come down and look for them.

In a city of 600,000 people, we are supposed to come down from the North and look for a child. Where is the Child Advocate at that point? It is okay to say we have got an 800 number and we are accessible and we go to the schools and that, but if you are coming into a totally foreign situation for these kids, you have not made it accessible or friendly for them, that advocate has no role for those children. I think the fact that I am the only one here from The Pas who tells you that your Advocate has no presence in our community. They do not hold a regular intake. They do not come into the reserves regularly. They do not come to the agency unless there is a problem. I have been on the receiving end of that problem as the lawyer for an agency. That leads me into my next point.

The Child Advocate can scream and yell all they want about an agency, and the agency does not have to do a damn thing about what the Advocate said, because nobody will challenge an aboriginal agency because it is not politically savvy to do so or because this

government has decided that these are federal people and this is a federal responsibility. So, while they are signatories to tripartite agreements, and they say you are supposed to have this program and that program, you are supposed to protect children and the feds pay the money, nobody is watching what is happening in many of these reserves.

\* (2020)

I am not being critical of child welfare agencies in the North, but we went from having the department of Child and Family Services going and scoop kids out of reserves to a situation now where you have aboriginal agencies trying to provide services under extremely difficult conditions with very little resources. The resources that we do have are stretched to the limit every time we have to send a kid to the Knowles Centre. We had 20 children in care in one year from Cree Nation Child and Family that cost \$1 million to that agency to house in Winnipeg. That is a waste of our resources. That \$1 million could have been spent in the North on a treatment facility, but we are constantly told there is not the caseload, there is not the interest in having that kind of advocacy for those children.

I have to ask why, and the answer is a political question, because this government does not want to take responsibility for those people who are of First Nation ancestry, because they do not believe that they are a provincial responsibility. I think that is a really sad commentary, because while the chiefs may find that politically expedient or attractive and self-government is a good thing, what happens to the women and the children? That is who I deal with. I do not deal with chiefs and councillors and their bid for political power or whatever they want to do. I think they have the best interests of their people in mind, but in the meantime that steamroller goes over women and children, and I do not think that is fair.

I think Mr. Govereau, most of all, will be surprised by my next comment. I think his role should be expanded, and I think it should be expanded beyond the child and family services system. I think we need to look at the justice system, because when a child makes

a complaint that they have been assaulted either sexually or physically, two things happen. One, an agency goes in to investigate. Whether it is an aboriginal agency or a white agency does not really matter. So that investigation starts. Then the police are called in. Another investigation starts. They are parallel, and sometimes the workers are involved and sometimes there is a cross between them. Then the police decide a crime has been committed and they lay a charge. The accused is brought before the court and the victim, the child, is brought before the court. That is where the real travesty begins, and that is where there is no advocacy for a child, because the Crown attorneys' office has no time. That is what they keep telling me. We do not have time to prepare these child witnesses. We have never done cases like this. And I would challenge you as a committee—and this may be beyond your purview, but if you are serious about child abuse and about advocating for children, I do not think you can turn a blind eye to what happens to children in our court system. What happens is that nine times out of 10 the Crown stays the charge. We have one successful conviction in four years up north.

I had a case which I wrote to both ministers about, about three years ago, where I proved in—as the lawyer for the agency I got a permanent order. I proved to the judge through videotape evidence, the first time that was allowed in Manitoba, that a grandfather had sexually assaulted, through intercourse, his six-year-old granddaughter. We proved that. The judge said there was no doubt in his mind whatsoever that the abuse occurred. The uphill battle, however, I faced is that the Crown attorney had stayed the charge before we got to trial. Despite that, the judge agreed with the agency's evidence, the evidence of the child on the videotape. I then asked the Crown to reconsider its stay. I wrote to the Crown, I provided the videotapes, I provided the transcripts, I offered the child as a witness. I prepared the child myself at no cost to the agency, because the agency cannot afford the time it takes to advocate for children properly. I wrote to the minister, and the reply that I got back from the minister was that, while she appreciated what I was trying to do, there were not a sufficient number of sexual abuse cases in northern Manitoba to train her Crown attorneys properly or to have a special court like they do in Winnipeg. Now if anywhere an advocate is needed for children, it is there.

I think most child welfare workers I met, whether they be white or aboriginal, do have the best interests of the children in mind. I do not have a lot of criticism of our Child and Family Services system. I think it is stretched to the limit. I think our health care system dovetails with that. We do not have enough doctors or psychologists coming up north to deal with the glut of problems that we have there. But all these systems need to work together as a team, and what we tend to do is we tend to compartmentalize. You will say to me, well, that is all very nice, but we are only here to talk about The Child and Family Services Act, but there has got to be a starting point.

If you are going to have a starting point, you have to look at abuse in its whole context, not just in what is going to happen, because I have seen what happens to children. They can have a really great worker, they can have an agency on their side protecting them, and then they go to that criminal court. The charge gets stayed, and the kid says to me: Why do they not believe me? Why does he walk around scot-free and I have to live in foster care? Why does he get to live in Moose Lake, in my home community, and I have to live in The Pas or in a specialized foster home in Winnipeg?

Why are we punishing that kid? That is what we are doing. We are removing the victim and we are rewarding the abuser. The only way child abuse is going to stop and where you can have real advocacy is if you give people like Mr. Govereau power, power to make recommendations that are binding upon an agency.

One area that I am really confused about, and I know lawyers are confused about generally when I speak to them is once a child advocate starts an investigation and you are in the middle of a court case, what happens? Should your court case stop? Should the defence lawyer be allowed to use that information in a court? I do not know. I do not know the answers to that, but I do know that I have had lawyers try to delay child welfare hearings, saying to the judge: Oh, we contacted the Child Advocate's office; we are not happy with the agency.

Well, quite frankly, my answer to those lawyers is if you are not happy with what the agency is doing, let us

have an access hearing right now if that is the problem. There are remedies under the act, but many lawyers, defence lawyers, use the Child Advocate's office as one more arrow in their quiver to say, aha, we will throw everything at them that we have. What it does is it uses up the worker's time, because the minute you get a letter from the Child Advocate's office, my directive to the workers, the agency I represent, is you stop, stop right there, get your files out, and you co-operate, because that is what the act says. So we co-operate. How many man hours do we waste doing that if what the Child Advocate says does not have any effect? I say to them, you have to co-operate, that is the law, co-operate, and they say, what if they tell us we cannot do this, and I say, well, too bad for them. It is a recommendation; we will take it under advisement. If you think your plan is best, we are going to go with that, and I say that especially representing an aboriginal agency, because these are white people telling these people what to do. Quite frankly, I do not think anybody at the Child Advocate's office has sufficient background or language skills to make judgments about a northern aboriginal agency.

I have real problems when they come up, because the first job I have, if I meet with the Child Advocate's office, is to explain to them yet again how my agency works, because it is very unique. We have local child-caring committees, we have community-based social work, and I think Cree Nation has an excellent reputation. We have not had one child die in care in the last five years. I think that is an enviable record, because it is community-based social work. These people view children as a community asset that everybody gets involved in. When you have one person coming from Winnipeg saying to you, oh, no, no, you cannot do it that way—that person has to be somebody from the North, it has to be somebody who speaks their language, because there are different nuances, and it has to be somebody who is familiar, who is not going to be shocked that there are 20 people living in a home in Pukatawagan, because—guess what?—there are 20 people living in every home in Pukatawagan, because there is no housing right now. That is not a reason for me to take a kid away. That is not a reason for any agency to take a kid away, so I do not need somebody who lives in Tuxedo in Winnipeg coming up to Pukatawagan and saying this is not

appropriate or this does not fall within the act because foster care home guidelines prohibit that number of people in a house. So are all these homes illegal? Where are we going to put these children?

I think we need a reality check on what the Child Advocate is going to do, how they are going to do it, who they report to. If you want to advocate, then advocate, do not pay lip service to a minister or to any agency or to the act itself. As I said again, I do not mean any criticism of Mr. Govereau. I think he has been very brave, but I think he has been fettered in his discretion, and I think that is really unfortunate.

I do thank you for your time. I appreciate the fact that you are prepared to listen to us.

**Mr. Chairperson:** Thank you for your report, Ms. Mirwaldt. We will open it up for questions now, and I think Mr. Martindale had the first question, please.

**Mr. Martindale:** Mr. Chairperson, I would like to thank the presenter for an excellent and thought-provoking presentation. You need not apologize that it was not presented in writing, because within a day or two we will have it in writing in Hansard.

The Children's Advocate I believe would also like to have a presence in northern Manitoba. I think the main obstacle is an insufficient budget, so we could be talking about either a budget problem here or a legislative mandate problem. Do you think it would be necessary to change the legislation to give his office more staff so that they could have an office in Thompson, for example?

\* (2030)

**Ms. Mirwaldt:** I think any change you need to do to accomplish the end is what you need to do. I do not think it needs to be spelled out in an act that you need a Cree-speaking person. I think that is a matter of common sense if you are dealing with Cree-speaking people, that you have someone who speaks their language. I do not think you need a lot of big changes there, but whatever regulations you need to change, please change them.

**Mr. Martindale:** I agree with the presenter that it would make sense to have staff in his office who were aboriginal and who did speak an aboriginal language, and hopefully that recommendation will go to the minister as well, if we have a majority agreement on the committee.

One of the ongoing debates has been about whether or not the Advocate should report to the Legislative Assembly or to the minister. In your view, would reporting to the Legislative Assembly mean that the Advocate would be more independent and would have more independence and would be less fettered, to use your words?

**Ms. Mirwaldt:** Definitely I think that reporting to the Legislature means you are reporting to all the people of Manitoba and not just to the minister, and while I think Mr. Govereau has a lot of personal integrity and bravery, I do not know that any successor he had, through a strict reading of the legislation as it exists now, is going to feel that they have that same kind of licence. I think the opposition parties have been very effective in bringing up issues that the Child Advocate's office has, but again—the people who spoke before me—it is frustration, it is everybody has followed the act. Sometimes you have to go beyond the law when you are talking about families and children, and I think that this is a social question, not a legal question, and I think that if you are going to talk about social issues, the proper people to be doing that are the elected representatives of the people and not just the minister.

**Mr. Martindale:** When the Children's Advocate sections were inserted into The Child and Family Services Act several years ago, one of our concerns as official opposition was that we would not know what the Children's Advocate's recommendations were. Now we were pleasantly surprised when he came out with his first annual report with very strong recommendations which were repeated again in the second and third annual reports. It seems to me that a lot of this, maybe even all of it, is due to the fact that Mr. Govereau is the Children's Advocate. Do you think that there is a possibility or a concern that his successor might not be as courageous and might write a report to the minister that did not have tough

recommendations, and therefore that is a good reason to require the Advocate to report to the Legislature, so that Mr. Govereau's successors feel unfettered in terms of what they write in the report? After all, the individual is appointed by the minister, at the pleasure of the minister, by Order-in-Council, by cabinet, and there is nothing to stop that appointment, as far as I understand, from being a political appointment. It could be somebody who has no experience in child abuse or in children's issues. So do you think reporting to the Legislature is necessary so that the independence of future Advocates is protected?

**Ms. Mirwaldt:** I definitely do. I think that the issue should not be about who the Advocate is but what the Advocate does. Very simply, yes, of course.

**Mr. Kowalski:** There is not that much time, so I will just get right down to some questions here. One of the things that Mr. Govereau said when he talked to the committee was his concern about the dual roles of the Advocate, both as an advocate and as an investigator. He said having those two roles sometimes were in conflict, and he would like to see somehow those roles separated. As an advocate, the example he used to clarify was a child who always wants candy for supper. It is probably not in the best interests of the child, but as an advocate your role is to give that child a voice. But in investigation purposes, we would investigate whether it was in the best interests of that child's diet to always eat candy. Do you have any recommendation about that? I guess what Mr. Govereau was getting to was almost having a separate child ombudsman. What do you think of that idea?

**Ms. Mirwaldt:** I think that Mr. Govereau—I do not know that he—it is a difficult question. Over the years as a lawyer I have been appointed as *amicus curiae* for many children, which means that, especially if you have an infant six months old, the court charges me to investigate, recommend to that court what is in the best interests of that child, so in a sense I was playing Mr. Govereau's role. I do not think there is a problem if you are doing your role of advocacy correctly and if you understand, if you have a good idea of what is in the best interest of any child, that you have to have the two going hand in hand. I know there has been legislation tabled to investigate abuses in foster homes,

that there be an independent investigation unit, but are you creating a great bureaucracy out of investigating your own agencies? I mean, I think there is a need for true advocacy for children, but I think we are looking for demons sometimes where they do not exist. If Mr. Govereau has a problem with both investigation and advocacy, then with the greatest of respect, I do not think he understands advocacy correctly, because you must know your facts in order to advocate. You cannot know your facts unless you investigate.

**Mr. Kowalski:** One of the other comments I have heard in regard to this greater presence in northern Manitoba, throughout Manitoba, is that you would be creating a dual bureaucracy. We have a child welfare bureaucracy now that government funds to look after the children, to look after abuse. Now we have a Child Advocate to watch the child care agencies to make sure they are doing it. How would you comment? Do not mistake my question for a position, that what we would be doing by expanding the Child Advocate's office to have a Child Advocate work in every child care agency, that we are taking away resources that could be put into those child care agencies. In other words, my parallel would be in the police force, if we put a watchdog in the back of every cruiser car to watch every policeman to make sure he is doing his job properly.

**Ms. Mirwaldt:** You know, you have a human rights officer in every town where there are government offices in Manitoba. We do that for adults. We do nothing for children, and I think that to disenfranchise, to silence the voice of thousands of children in northern Manitoba and rural Manitoba is a travesty, and a 1-800 number just does not cut it. That is like doing court by telephone, which is another committee I think I will have to appear before.

You cannot provide services to people unless you are there and you see what is happening, and you cannot see what is happening when you get off the plane in Thompson in the morning and the first question you ask when you get off that plane is: Gee, what time does the plane leave tonight? That is what happens. That is what happens when Winnipeggers go up north. What is the fastest way home, and how can I quickly find out what is happening? I admire their fiscal responsibility at not wanting to spend the night up north, but you do

not understand what is happening if you are not there, and a watchdog is no good in The Pas if the watchdog is in a backyard in Winnipeg.

I guess that is my point. If you have got to spend the money—if you spend the money now watching the agencies and helping them develop—because keep in mind, you can use this as a tool to educate and to train the workers that many of your committees have complained are improperly trained. I do not really agree with that, but if you want to use as it as a tool, make something positive out of it, then the agencies can also turn to the Child Advocate when it is having problems with the Crown attorney or the police or any other agency that is not helping the agency advocate for that child, and certainly that is the experience I have had with Cree Nation, where they have hired me to intervene with the Crown's office because they are not prosecuting the child abuse case. Why is the agency spending money on me as a lawyer to go and advocate for them and a child in a system that is supposed to be protecting the victim? That is where a child advocate can come in. When you are advocating for a child, it does not have to be the little kid sitting there with Wayne Govereau, it can be the worker and the kid together saying to Wayne Govereau: Hey, there is a real problem with the way we prosecute, or that doctor does not know what they are doing, or we need a new psychologist in the North. There is a great more to advocacy than I think Mr. Govereau wants to take part in right now.

\* (2040)

**Mr. Chairperson:** Ms. Mirwaldt, I want to thank you for appearing before the subcommittee and for giving us your presentation. Thank you very much.

I would next like to call on Harvy Frankel, please. You do have written copies, Mr. Frankel?

**Mr. Harvy Frankel (Faculty of Social Work, University of Manitoba):** Yes, I do.

The Child and Family Services Act mandates the Children's Advocate to review and investigate complaints related to services provided under the act and to advise the minister on matters relevant to those who receive or may receive such services. Child

welfare services in general, and specifically child protection services, often include highly intrusive interventions. While this may be necessary, it also highlights the importance of providing for a strong independent voice for the children of Manitoba, and especially for those children or their families for whom there is reason to believe that they have been intruded upon unnecessarily, unfairly or unjustly.

The need for a strong, independent voice is especially acute, given the lack of external, alternative voices in the province that was once provided by organizations such as the Manitoba Coalition on Children's Rights and the Foster Parents Association of Manitoba. The recent increase in child deaths involving children served by the child welfare system is another element that adds immediacy to the issue. Finally, the fact that the Office of the Children's Advocate opens approximately 500 new cases a year speaks to this need.

My presentation is built around several key issues. Our views are shaped by our involvement and connections with service providers, our experience in the evaluation of child welfare services and our examination of issues regarding children's rights and children's needs. Our views are somewhat limited by the fact that we have not directly consulted with young people, and while we have consulted with some service providers, we have certainly not conducted a detailed examination of the experiences of service providers in dealing with the Office of the Children's Advocate. We have also worked collaboratively with the Office of the Children's Advocate on both issues and specific cases. In these matters we have found the Children's Advocate to be helpful and responsive.

Based on our experience, our study of the legislation in Manitoba and elsewhere, and our continuing involvement with children's issues, we identify the following key issues.

First, there continues to be a need for a strong independent voice which can speak out on children's issues and investigate cases where the rights of a child or youth may have been violated.

Secondly, there are several limitations which hamper the work of the Office of the Children's Advocate,

especially with respect to its casework, and I would like to mention three of these. These are, first, that the office has limited resources to respond fully and adequately to the need to investigate all individual case referrals. As well, the powers of the office are limited under the legislation to investigation and the provision of recommendations and to representation of the rights, interests and viewpoints of a child who is receiving services under The Child and Family Services Act when decisions relating to that child are being made under the act. Thirdly, the office does not always engage actively in efforts to resolve differences which may arise in its investigations because, at least in part, of the limited resources and limited powers cited above.

The third issue is that there is a need to design special approaches and/or services which reflect the service models being utilized in First Nations and aboriginal communities. These service models include a strong commitment to culturally relevant and community-based decision making. The role and powers of the Office of the Children's Advocate must be adapted to respect these traditions.

Fourth, the Office of the Children's Advocate has limited capacity and is not mandated to speak out or investigate issues affecting children and youth who are not receiving or who may not be entitled to receive services under The Child and Family Services Act. Thus, children and youth with concerns related to health, juvenile justice and other matters are unable to access the services of the Children's Advocate.

The fifth and final issue is that the accountability of the Office of the Children's Advocate is narrowly defined in the legislation, with the Children's Advocate being accountable to the Minister of Family Services. The question of children's rights should be a concern which transcends a single ministry of the government.

From these issues we would like to propose eight recommendations.

The first is that there should continue to be legislation which mandates the Office of the Children's Advocate.

Secondly, the Office of the Children's Advocate should have sufficient resources to respond to and to fully investigate all individual case referrals.

The third recommendation is that the Office of the Children's Advocate be expanded to allow for advocacy on all issues that affect the well-being of Manitoba's children. British Columbia's Youth and Family Advocacy Act may be instructive in this regard as their legislation allows the Advocate to "make recommendations about legislation, policies and practice respecting services for or the rights of children, youth and their families."

Our fourth recommendation is that there is a need to mandate methodologies that fit with the social and cultural diversity of Manitoba's children and the agencies that serve them. The Province of Manitoba might adopt wording similar to British Columbia's which states: "In fulfilling the duties of the office, the Advocate may try to resolve any matter through the use of negotiation, conciliation, mediation or other dispute resolution services." Such wording would be consistent with the general thrust of the recommendations made by the Civil Justice Review Task Force on general matters affecting family law. As well, it would be quite consistent with Manitoba's tradition of trying advance alternate approaches to dispute resolution.

Fifth, currently the Children's Advocate has the authority to investigate complaints and make recommendations to the agencies involved. The extent to which such recommendations are considered depends entirely on the agency that is the subject of the complaint. There is clearly the need to develop a mechanism for follow-up to ensure that agencies actively consider the recommendations put forth by the Advocate. In cases where the Advocate and the agency continue to disagree, a referral to the minister or perhaps an arbitration body might be indicated.

Six, given the need for special approaches which reflect the service models utilized in First Nations and aboriginal communities, we recommend that a model which designates a specific advocate or deputy advocate as responsible for serving First Nations and aboriginal agencies be explored. This may allow for the development of approaches that are more culturally specific.

Seven, under the current legislation, the Children's Advocate is accountable to the Minister of Family Services. While this may be consistent with the

Advocate's current advisory function and its focus on The Child and Family Services Act, it does not allow for a truly independent voice for Manitoba's children. In addition, the needs and rights of children transcend the narrow responsibility associated with a single ministry. It is our opinion that the Children's Advocate should be accountable to the people of Manitoba through their elected representatives. This would allow the Advocate to operate with increased autonomy while serving the best interests of our children.

Finally, this review of the legislation of the section of the act pertaining to the Office of the Children's Advocate is certainly an important provision of the act. It is also important, however, that there be an independent evaluation of the activities and services provided by the Office of the Children's Advocate. This should include an examination of the extent to which the role of the Advocate has actually been implemented as well as an assessment of the impact and effectiveness of the services provided. Such an evaluation should be sure to include the voices of children and youth who actually receive child welfare services.

That is the end of my presentation.

**Mr. Chairperson:** Thank you, Mr. Frankel, for your presentation, and we open it up for questions.

**Mr. Martindale:** I would like to thank Mr. Frankel for an excellent presentation. I hope that in our final report we will address a number of concerns which may not directly pertain to legislation, for example, the size of the budget of the office. I think if the Children's Advocate is going to have a northern Manitoba presence and aboriginal staff and more powers, then that will have to be addressed in the budgetary process. But I do not see any reason why we could not make that recommendation in our final report, so I agree with a number of your recommendations that I have mentioned there.

A number of people have suggested that the role of Children's Advocate be expanded to make that office more like an ombudsman, which I understand to be an office or an authority which is empowered to investigate all kinds of complaints and not limited to one area. For example, now the Advocate is limited to

Child and Family Services complaints. Are you recommending that children's concerns in all areas be investigated? I think you mentioned several, and of course I think health, education and justice would be the main ones, although also in the Department of Family Services is Social Assistance. Are you recommending a more universal mandate to investigate and make recommendations on any concern in any government department?

\* (2050)

**Mr. Frankel:** Yes, we are. I guess our basic point is that the lives of children are touched by all of those departments and probably some others, and that it is really our sort of artificial distinction that sets out Child and Family Services as separate, for example, from income maintenance or from education.

**Mr. Kowalski:** A question I was going to ask the previous presenter but ran out of time I will put to you is: Are children aware when they are dealing with child care agencies that they have the right if they are not happy with the worker's actions that they can see the Child Advocate? What is the use of having a Child Advocate if the children are not aware? Do you see a need in the legislation to actually mandate a mandatory unformed consent to a child over a certain age or something to make that child aware of the Child Advocate's Office?

**Mr. Frankel:** I think that would actually be quite helpful. I would say at this point children are not universally aware. I think it depends very much on the practices of a particular agency or of a particular social worker. Some agencies may have a poster in the waiting room that talks about the Children's Advocate, but workers may not let the child know. Other agencies may be very active in letting children know. So I think there is a wide range of practice.

**Mr. Martindale:** I wonder, Mr. Frankel, if you can explain for me the difference in recommendations No. 4 and No. 5. What is the difference between negotiation, conciliation, mediation and arbitration?

**Mr. Frankel:** I think what we are saying in No. 4 is, especially in reference to First Nations and aboriginal agencies, that the Advocate needs to look at alternative

ways of resolving differences between the Advocate and the agency. I think what we are saying in No. 5 is that there are occasions where the Advocate and the agency are going to disagree and there is not going to be a resolution, and that that is not sufficient, that there needs to be some mechanism to go beyond that. We are not sure whether that mechanism should be the minister or should be some sort of quasi-independent body that may help with resolution.

**Mr. Martindale:** Certainly mediation and conciliation makes sense to me, and I frequently recommend to people who phone me for assistance that they go to mediation, especially when it is a dispute between two neighbours, which does not really have a lot to do with my role as an MLA. But I am wondering, if we were to give substantially more power to the Children's Advocate, for example, if the Advocate could order mediation or order arbitration, do you think that there would be the need to have another level of appeal, for example, the right to appeal to the Court of Queen's Bench?

**Mr. Frankel:** My thinking is that one needs to be very cautious around the Advocate's power over agencies, and that this is an especially sensitive issue with First Nations agencies. We would be pleased to see provisions that would enable the Advocate to make sure that the agencies had considered their recommendations rather than just sort of shelve them. But I am not sure we would like to see the legislation go beyond that, and we would rather see the issue of reconciling the differences go beyond the Office of the Children's Advocate.

**Mr. Martindale:** Do you think that the mediation role should be played by staff in the Children's Advocate office, or would it be preferable to refer people to organizations like Mediation Services?

**Mr. Frankel:** I think it would depend on the nature of the difference. I think if it is a difference between a particular advocate or deputy advocate and the agency, there might be a primary attempt at the Children's Advocate level at mediating. I think beyond that, one might take it to a more independent body.

**Mr. Martindale:** What do you think the advantage would be of having an advocate or deputy advocate

responsible for serving First Nations and aboriginal agencies specified in the act as opposed to, say, just being designated by the minister or the Advocate? Do you see some sort of advantage to putting that in the legislation?

**Mr. Frankel:** I guess the advantage we would see is that it would protect that position, if you will, but having an advocate or deputy who is mandated to work with First Nations agencies, you are more likely to end up with someone who has a developing and continuing developing expertise and relationship with those agencies. I think it is possible that if service demand decreases in a given year, one might want to look at diluting that special role and special duty. So I think we would rather see it in the legislation.

**Mr. Martindale:** One last question on recommendation No. 8. I agree that it is important that the legislation on the Children's Advocate be reviewed by a legislative committee. Who do you think should do an independent evaluation of the activities and services? We certainly do not have the staff or the expertise to do that, so I assume that you are suggesting some nongovernment agency doing that.

**Mr. Frankel:** Absolutely. It is not uncommon for the department to put out a request for research proposals, and I think this could be done in that fashion.

**Mr. Kowalski:** Yes, once again, do not confuse my question with a position. I would like to advocate the opposite viewpoint just to get a response. Now in regard to recommendation No. 6, for those who would argue about the need for a culturally sensitive child advocate in the Hutterite community, in the Mennonite community, in the Filipino community, and I can go on and on, how would you respond to those critics who are saying why are we looking for a two-tier advocacy system?

**Mr. Frankel:** I guess I would point out two things. One is that First Nations children do have a different status in Manitoba, and secondly that there are child welfare agencies that are specifically mandated to care for First Nations children, and that that is not true in terms of those other groups, and that there really are discernible models of social work and child welfare practice that emanate from those First Nations.

**Mr. Chairperson:** On behalf of the subcommittee, I want to thank you for appearing before us and for your presentation.

**Mr. Frankel:** Thank you for the opportunity.

**Mr. Chairperson:** Next I would like to call on Ingrid Zacharias, please. I am just told by the Clerk that your presentation is being photocopied at this time, so it will be handed out. Welcome here, and I would ask you to proceed, please, Ms. Zacharias.

**Ms. Ingrid Zacharias (Private Citizen):** Good evening. When I first planned to make this presentation to you, I thought I would do a little research so that I would be able to provide you with an informed, well-thought-out presentation. However, as I began my journey in search of knowledge I found myself going off on a variety of different tangents.

At first I thought perhaps I lacked focus, but the more research I did, I realized how integrally so many of our ministries overlap. It is not possible to deal with only social services issues if we are talking about children. There are often health, education and justice issues that all impact the same child. So when I began doing research for this presentation, I found myself not just researching social issues but health, education and justice issues as well.

\* (2100)

The Office of the Children's Advocate was established by an amendment to The Child and Family Services Act during the Manitoba legislative sitting on Thursday, November 26, 1992. The Children's Advocate was intended to advocate for children and youth receiving or entitled to receive services under The Child and Family Services Act.

I must commend the Manitoba government for its actions in setting up both the Office of the Children's Advocate and the Children and Youth Secretariat which they established on December 1, 1994. Their actions showed foresight and were responsive to the needs of children in Manitoba.

As you may or may not know, 21.7 percent, or 59,000, children living in Manitoba are poor, according to the Poverty Profile 1994. Manitoba had the third

highest child poverty rate in Canada. If you turn to Figure 1 when you get the presentation, at the back of the brief you will see that the national rate of poor children of single-parent mothers was 60.5 percent in 1994. Manitoba was well above the national rate and the highest in Canada at 71.5 percent.

If you look at Figure 2, you will see that child poverty has been on the increase in Manitoba since 1980. In 1980 we had a child poverty rate of 18.1 percent which increased to 22.4 percent in 1992. You notice there was a slight dip by 4.5 percentage points in 1992. That, I believe, was the result of the introduction of the federal-initiated child tax benefit.

As you can see, child poverty is on the increase. In fact, child poverty will probably continue to increase as the federal government offloads costs on provincial governments and they in turn offload onto municipal governments. The sad thing is the big losers in all of this are the children, who are at the bottom of the food chain and have no control over their circumstances.

The issue of poverty and its effects can be traced through social services, health, education and justice.

Poverty forces people to depend upon social assistance and social services supports. Social services must not just put a roof over a child's head and food in its stomach, they must also deal with the emotional, mental, physical and social effects of poverty on that child. Along with poverty often comes neglect or emotional, physical or sexual abuse. This is not to say that child abuse does not exist in other populations as well but is much more predominant when poverty exists. Children who have been mistreated are much more likely to use cigarettes, alcohol and drugs. If you look at Figure 7, it shows that children who had been mistreated are 25 percent more likely to use cigarettes frequently than children that had not received mistreatment. Figure 8 shows that 55 percent of children who were mistreated used alcohol occasionally. Figure 9 shows us that children that have been mistreated are much more likely to use drugs, as well as being more likely to become frequent users of drugs.

Children who have been mistreated are much more likely to commit risk behaviours. Risk behaviours are

defined as truancy, running away from home, committing criminal offences and having thoughts of suicide. Figure 10 in the document illustrates this.

Sadly, 24.4 percent of mistreated children commit criminal offences as opposed to only 11.1 percent of children who have not been mistreated. Also true is that almost four times as many children who have been mistreated have thoughts of suicide as compared to children who were not mistreated.

Simply by reading the figures that I have mentioned, it becomes obvious that children who become known to social services also become known to our health, education and justice systems.

Poverty in Canada, a document prepared for the Library of Parliament, states: Research suggests a link between child poverty and poor physical and mental health, illiteracy, chronic unemployment, criminality and other problems in adult life. While it is not known whether low income itself is the cause of these problems, it is known that there is an association between them which is both additive and interactive. An increase in child poverty therefore raises concern about the perpetuation of poverty and these associated problems.

The document *Monitoring the Winnipeg Hospital System: The First Report 1990-92* was published July of 1994 and states: Factors associated with differences in neighbourhood income levels have a substantial impact on hospital use. Each rise in income level from poorest to the wealthiest segment of the population results in better health and fewer days spent in hospital. This suggests that improving the health status of low- and middle-income persons could reduce the utilization of hospital beds. Finding the means to achieve this goal is a major challenge to public social policy.

The link between social services and health becomes more clearly defined, so we cannot say that social services can work in a vacuum by itself.

In fact, if you refer to Figure 11 in the brief, you can see the link between low income and hospital usage. Poorer populations within the city of Winnipeg require admission to hospital 25 to 40 percent more often than populations in higher income brackets.

If you refer to Figure 12 in the brief, you will see that the poorest populations have a much higher mortality rate than more affluent populations. The mortality rate of males who are poor is double the rate of males who are wealthy. The poorest of Winnipeg's population are much more likely to die of selected chronic illnesses, cancer and all other injuries.

Most of the children known to social services would be children whose parents are on social assistance. Therefore, as a result of this, these same children would be some of the same people that I have been describing to you in reference to population health. So not only would these children be the most needy, but they would also be the most unhealthy.

How does this affect our education system? Well, as you have already seen, low income has direct ties to poor health, maltreatment and social skills of children. The unhealthy child is unable to attend school as often due to illness. The child who is mistreated and known to social services often has parents who lack parenting skills, social skills and education themselves. Thus they are unable to provide their children with valuable role modelling that a child needs to develop normally. As a result of this, many children that are known to social services and health care start school at a much lower developmental age than their gestational age. These children continue to fall further behind their peers as they progress through the school system. More and more children are entering the school system suffering from fetal alcohol syndrome or FAS, fetal alcohol effect or FAE, attention deficit disorder or ADD and many other learning disabilities. The reality is that these disorders are health and social related, and the education system has been forced to deal with them because they impact the education of all children.

I am not alone in identifying this as a problem. The Manitoba health promotion task force interim report of the health promotion task force quoted Evergreen School Division as saying: Over the past decade we have seen transfer of responsibility from other social agencies to education for children with social, emotional and/or physical problems. We find ourselves providing a level of care which in previous decades was undertaken by the family and/or health and social agencies outside the school system. The provision of physiotherapy, behavioural modification, care and

supervision has fallen increasingly upon the school system. There is in our opinion a need for the highest level within government to address the need of co-operation between the caring agencies and education. Jurisdictional disputes over turf often affect our ability to look at the individual client and meet the client's needs.

\* (2110)

Presently in Manitoba, a child is covered by Manitoba Health for speech and language therapy, psychological therapy, occupational therapy, physical therapy and developmental therapy until they enter kindergarten. Once a child enters school these therapies are expected to be provided by the education system. For children under five, the waiting list for most of these disciplines can be as long as one and a half to two years. In many cases, the child is in school before they ever get into therapy. For children in the school system, because of the ever-increasing number of children requiring support from these disciplines in the education system, the waiting list for many of these disciplines is also one and a half to two years.

Many of these children do not qualify for the special education funding provided by the province, because they are not severe enough. However, for a child requiring these supports, the education system must attempt to offer some supports in the interim in order that the child can feel some success.

Presently the province only provides special education funding for children who have a totally modified program. While it is true that the province provides block funding to cover the child with slightly modified programs, it gives a flat support level of 4 percent of the student population, while the reality is that more than 4 percent of the student population requires partially modified programs. In some schools it can be as high as 25 percent of the student population.

The Children and Youth Secretariat, in their brief entitled *Strategy Considerations for Developing Services for Children and Youth*, states that: Children with disabilities in Manitoba represent a large, heterogeneous group of children with diverse needs for support for them and their families. Five to 10 percent

of all children have moderate to severe physical disabilities or chronic illness. In Manitoba in 1991, 6.7 percent of children aged zero through 14 had an intellectual, sensory, physical and/or learning disability. That is on page 9 around the middle.

The Children and Youth Secretariat was established to deal with the crossover between different jurisdictions. While I applaud their efforts—they have initiated numerous valuable joint teaming efforts—but in the overlap between social services, Health, Education and Justice, they have only set up subcommittees, which is a start but by no means a solution.

As for the Children's Advocate, I can only imagine how frustrating it must be for Mr. Govereau. For the government to create the position of the Children's Advocate and only allow him to deal with social service issues is like making a pie and being told that you can only make it in one quarter of the pie plate. If the Children's Advocate is to be an advocate for children, then he must be for all children.

As I have already proven to you in my brief, you cannot deal with the whole child by dealing with only social services. I believe the Office of the Children's Advocate should be expanded to include social services, Health, Education and Justice.

However, I also feel this change should be accompanied by defining separate goals for each of the four areas to avoid putting excess financial burden on any one system. The child's needs should be the focus of these goals rather than the wants of the child or his or her parents.

In broadening the scope and powers of this office, changes must also be made to the present political system. What I suggest is that the Premier create a new cabinet position entitled the minister of the child. This cabinet office would be created to facilitate the overlap between all jurisdictions that deal with children. This office should be provided with funding, just as the ministries of social services, Health, Education and Justice are. This funding should be used for the overlaps in systems that provide services to children. The Office of the Children's Advocate and the Children and Youth Secretariat should report to the minister of the child.

I hope you will consider the creation of the minister of the child and broadening the powers of the Children's Advocate. I hope that you will also give the position of the Children's Advocate more power to facilitate change.

Thank you for the opportunity to share my views with you.

**Mr. Chairperson:** And thank you for your presentation. I will now open it up for questions.

**Mr. Martindale:** Thank you, Ms. Zacharias, for a thoughtful presentation. I wonder if you could tell us what effect you think the Children's Advocate could have if their mandate was expanded. For example, a lot of your brief was expressing your concern about child poverty, a very legitimate concern. Supposing the Children's Advocate was expanded and could investigate and made recommendations about child poverty, supposing the mandate was expanded to welfare but limited to investigation and recommendation, do you think the Advocate would have a positive effect on the government if, for example, he or she commented on rate reductions in the city of Winnipeg caused by standardization by the provincial government or rate reductions on reserves caused by the federal government lowering their welfare benefits to meet the provincial standardization, something which they do voluntarily; they do not have to reduce them.

Do you think, if the Children's Advocate commented on that, that it would have a beneficial effect on child poverty?

**Ms. Zacharias:** I do not know if his commenting on it would have such an effect as the fact that, if all of these organizations were working together, all of the ministries, there would be money saved, I would think, in the overlap areas, because they would not be fighting against each other, they would be working together. Then probably the Office of the Children's Advocate could offer suggestions on where that money could be redirected.

**Mr. Martindale:** Would you recommend that the money saved be spent on children then?

**Ms. Zacharias:** Oh, yes, definitely on children.

**Mr. Martindale:** I wonder if you could expand on your recommendation that there be a minister of the child and that the mandate be expanded to include social services, health, education and justice. I wonder if you could, in addition to your concern about child poverty, expand on why you think the mandate should be greatly expanded in that way.

**Ms. Zacharias:** Now, do you mean the mandate of the minister of the child? Okay. I think that it is important that we have a minister of the child because sometimes, when the systems are working separately, the children get lost in the shuffle. If you have one cabinet post that is set up entirely to deal with children's issues, then I think they would be at the forefront and be the most important. As for the funding of this, I realize that you probably could not take away from Health, Justice or Education, so what I would suggest instead is that possibly—government has a lot of lotteries already. Could we not set up a lottery for raising funds for the minister of the child, the creation of it?

**Mr. Martindale:** Are you aware that there have already been proposals to take money from different government departments and put them into one concentrated area? For example, when the Children and Youth Secretariat was set up, they were supposed to take \$2 million from each of five departments for a total of \$10 million, so that idea has already existed. Unfortunately, nothing happened to it, but are you familiar with that concept?

**Ms. Zacharias:** Yes, I am aware of that, and I had also heard that the money never came through. If the Youth Secretariat had been given funds and was allowed to function the way it was intended to set up, then you probably would not need a minister of the child, but if the Youth Secretariat is simply going to be a voicing-of-opinion ground where people can come and talk, which is great, we need that, but we need action too.

**Mr. Martindale:** Are you aware that the government is sitting on the Fiscal Stabilization Fund, also known as the rainy day fund, also known by other names that we will not get into—the member for The Maples (Mr. Kowalski) says the Tory re-election fund. Since they already have \$400 million in this rainy day fund, do you think that spending it on children would be a good priority?

**Ms. Zacharias:** Yes, I think that kids in Manitoba have been shortchanged a lot over the last few years, and while I understand that there has been a push across Canada, not just in Manitoba, for fiscal restraint, I do not think that we should be becoming fiscally restrained on the backs of the most needy of our population. And, while I understand the government's need to try to pay down the deficit, that is important, but I do not think it is more important than our children, because they are our future.

**Mr. Chairperson:** I want to thank you, Ms. Zacharias, for appearing before the subcommittee and for giving us your presentation. Thank you very much.

I will move on to our next presenter, Susan Swaigen, please. Good evening and welcome here. I believe you have copies for us, is that correct?

\* (2120)

**Ms. Susan Swaigen (Private Citizen):** Good evening, and thank you for setting the time aside to listen to me.

For all the problems of defining and empowering the Office of the Children's Advocate, I want to say at the onset, thank God the children of the state have a voice at all.

But the question this evening is not one of putting flesh on the bones of an idea but of putting bones into the flesh. I would prefer that the state's children have not only a voice but limbs as well to shake up those folks who do not want to know what is going on, because if you do not know what is going on, then you do not have to be responsible.

I have come to these hearings exercising my democratic right as a citizen. I draw on 30 years of social service employment in Child Welfare and Corrections, as a foster mother to two adolescent boys, and most recently as a unit manager at Seven Oaks Centre for Youth, the repository of the province's throwaway kids, kids for whom few or no resources exist. From this perspective I have a bird's-eye view into the province's agencies, the daily working hell of most child care workers, and the system as a whole.

Initially in my reflections on what I wanted to say this evening, and I must confess that my first thoughts were

not very enlightened, I wanted to ask you to give the Advocate the power to discipline, embarrass, disenfranchise and ultimately sue agencies who operate as if the child welfare act, in the words of one social worker, is a nice idea.

For 18 years I worked in the federal correctional system, a bureaucracy that functions like a well-oiled machine. Machines do not have hearts, but that is another discussion. What this machine does accomplish is ensure that every recipient of service is assessed, participates in a time-framed plan, accesses resources and programs, is reviewed regularly, and any decisions are based on shared information and subject to appeal. Workers complain that much of their time is spent accounting to the inmate and to their lawyers, to managers in the form of evaluations, audits and inquiries, to the Parole Board, to the Correctional Investigator or ultimately to the courts.

This system is charged with providing for every need of its population, physical, intellectual, spiritual, psychological, and social. The objective is to produce a better person, and they better do it, and they do. There is no shortage of public funds for this endeavour, and there is no shortage of public censure if the objective is not met.

This is a system charged with a very heavy responsibility and motivated by fear, but a system motivated by fear performs only in a perfunctory manner. I am not recommending perfunctory service for children whose guardian, protector and nurturer is the people of Manitoba. Right now, however, the children of our state do not receive even perfunctory services; they are not as well served as criminals. It is important that this committee hear and know that the state's children are not as well served as criminals. If they were as well served as criminals, the present accountability of the Office of the Children's Advocate may be sufficient.

The parallel role in the Correctional Service is called the Office of the Correctional Investigator, and his findings and recommendations are taken very, very seriously. The numbers and kinds of complaints received reflect directly on a manager's status, performance evaluations, and ultimately career potential. There is a healthy fear of the Correctional

Investigator. Disputes and complaints are resolved at the local level, and redress is speedy. That is because prisoners are smart, they know their rights, and there is a whole army of hungry lawyers, ready and waiting to take action when regulations are ignored, abused or not enforced.

Increasingly the Correctional Service has had to pay out large settlements for their incompetence. These settlements may raise eyebrows, but they are real, and taxpayers foot the bill. This litigation stems from such things as an inmate injuring himself by slipping on a wet floor, failure to provide orthopedic running shoes, failure to correctly diagnose a medical problem or to provide culturally relevant spiritual direction.

I could open the child welfare act, never mind the regulations, at any page and give examples of potential litigation: the best interests of the child are met, the family unit is preserved and supported, the right to continuous family environment, and entitlement to participate in decisions. Originally I had included examples of all of these abuses, but I did not include them in my presentation. I think that Mr. Govereau has done that adequately.

The point I am trying to make is that if the child welfare system does not ensure compliance with legislation and regulations and if the Office of the Children's Advocate is not given sufficient power in legislation or in practice to have abuses and neglect of mandate redressed immediately, another form of redress will evolve.

The Correctional Service serves an involuntary, informed, and hence powerful population who can cost them a lot of money, embarrassment and loss of votes for their political masters. Hence no resources are spared to provide professional services.

The child welfare system serves a largely involuntary, uninformed, and hence powerless population in any manner that suits them. The Child Advocate presently is their only source of information and hence empowerment.

These kids are growing up into a world which says no more marginalization. Disenfranchised groups one after another have come forward to claim their rights.

Will adult child welfare kids not do the same? Do we want to pay those bills?

The child welfare system, for a whole lot of reasons, has never made the transition from charity to public duty to civic responsibility to mission. This system, for whatever reasons, never enjoyed the structure and discipline, strong management and accountability required to oversee this transition. The system is in chaos.

Mission moves beyond benevolence, is more than duty and fear of reprimand, encompasses responsibility and accountability, and is effectively an attempt to bring the locus of control down from the hierarchy and into the hearts and minds of every person in the organization.

The present structure of the Office of the Children's Advocate, to advise the minister and make recommendations, presupposes a responsible, compassionate, accountable, and well-resourced child welfare system striving for excellence, committed to children and appreciative of the Advocate's wisdom.

The folks who drafted the legislation are guilty of a fundamental oversight, a design flaw, a dangerous and potentially expensive mistake, because the child welfare system is not like that. It is defensive and adversarial at best, indifferent at worst.

The Children's Advocate's burden should be moving from one of quality control, the 1,500 or so individual cases of complaint, toward one of quality inspiration, not just, how do we ensure the minimum standards of service are met?—that is the director's job—to, what are the legislative, social and systemic barriers which keep us enslaved in mediocrity?

The disarray, despair, fatigue and cynicism of our present system is not up to the Child Advocate, as presently defined, to fix; it is up to every citizen of Manitoba to fix. Failures of our system reflect through our government on society as a whole, not a single minister, not on a single civil servant, not on a single agency, and certainly not, as is too often the case, on a single worker.

Every citizen felt the anguish of Baby Sophia's death, just as every citizen struggled to comprehend the horror of the Headingley riots.

The annual report of the Children's Advocate should be received as an annual, independent public inquiry into the state of child welfare in Manitoba, presented to the people through the Legislature to be reported on and debated publicly.

The era of denial, protecting turf and careers, and simply keeping our fingers crossed is over. It is time for radical change. To plan for, to finance, and publicly account for that change, the Legislature has to know what it is looking at, where we are starting from, and where we need to go.

We as citizens have a right to know that this information will be heard and acted upon by those entrusted with civic responsibility. This truth and our children's welfare is too precious to be viewed through the eyes of those vested in the perilous status quo.

**Mr. Chairperson:** Thank you very much for your presentation. I am going to open it up for questions now.

\* (2130)

**Mr. Martindale:** I would like to thank the presenter. It is good to have the viewpoint of someone who works in the Child and Family Services system and, as you pointed out very nicely in your brief, someone who has practical experience working for another level of government, in a bureaucracy.

How do you think we can change The Child and Family Services Act to empower children, as you recommend the Children's Advocate should do? What can we do to give the Children's Advocate more power to actually empower children?

**Ms. Swaigen:** Give the Children's Advocate more power to empower children—I guess my main point that I want to make is that I really do not like to see the Child Advocate as being the police officer, the security guard, the quality control arm of the child welfare system. I think that there should be a separate thrust to look at the child welfare system as a whole and why it

functions the way it does, and the Child Advocate should be, I think, more a role of looking at what the problems are in making recommendations to the government in terms of what the needs of the child welfare system are and why service cannot be delivered properly.

**Mr. Kowalski:** In your answer you said, make the recommendations to the government, and one of the suggestions that has come forward is that the recommendations go not to the government but to the Legislative Assembly.

**Ms. Swaigen:** Yes, that is what I meant, the Legislative Assembly, absolutely.

**Mr. Kowalski:** So one of the recommendations is that the Child Advocate presently reports to the Minister of Family Services and it be changed in this review, the recommendation from the subcommittee be that he reports to the Legislative Assembly. Do you support that?

**Ms. Swaigen:** Yes, that is the point that I am trying to make in my presentation, that if the child welfare system was functioning as it should, then I think the Child Advocate, as the parallel example I gave of the Correctional Investigator, that would work, but the Child Advocate cannot be burdened down with case upon case upon case of neglect of duty. I mean, if that is the case, if that is where this committee sees that office going, then you would have to be prepared to resource it heavily, and I think that is putting, as someone mentioned earlier, much more—you know, it is laying another level of bureaucracy. We have got a level of bureaucracy. I think what we have to do is, we have to make sure that that level of bureaucracy functions the way it should.

**Mr. Kowalski:** In the one paragraph you compare and contrast, the Correctional Service serves an involuntary, informed and hence powerful population, then you compare the child welfare system as a largely involuntary, uninformed and hence powerless population. So this informing the child of the child's rights seems to be the important part. Do you think that should be something that should be included in the legislation, that the children involved with the family services system should receive information about the

Child Advocate and it should be part of this legislation that they have to?

**Ms. Swaigen:** Well, that certainly would not hurt. That could be the worker's responsibility. I know in the centre that I work in we have posters all over the place: If you have a problem, need to talk, phone, it is confidential. And children do. What I find is happening, sadly, is in the few cases that I have been involved with dealing with the Children's Advocate, it seems like the Children's Advocate, the officer acts as a caseworker and will go and do what the caseworker should have done in the first place, because the Advocate has a bit of clout and can phone up resources and say, you know, what do you mean, the waiting list is four months, this kid has been waiting already six months. There is this and there is that and then, presto, things happen. That is nice, but I do not think that that is the intended role of the Child Advocate.

I was more taken with the comments of the previous speaker when she was talking about poverty and unemployment and social problems and abuse and drug abuse and poor health and crime and suicide and poor education and FAS and all of those interconnected things, and I liked what she said about—well, she was talking about a ministry of the child, but I mean, if the Child Advocate could distill those things and bring them to the Legislature and just a mirror of our society and say, hey, lookit, this is what is happening, you know, the people have to know, the government has to know.

Another thing that I want to throw in while I am at this is just listening to some of the speakers, and one thing that struck me, drawing the parallel between the Correctional Service and the child welfare system, is that the correction system is very, very politically sensitive. If any member stands up in the House of Commons and asks a question about the behaviour of an inmate or a released inmate, a parolee, I mean, bingo, everything just topple, topple, topple, until that information is provided and passed back up and brought, you know, does the government care? I mean, the government has to know what is going on.

If some child in a foster home runs away and is found dead someplace, do people bring that up in the House? Do they demand that the minister account—what kind of

child welfare system are you running? And why does the community not have that kind of sensitivity? I think it is because we do not have anybody that is putting it all together for us, anybody to say, this does not have to be this way.

\* (2140)

**Mr. Martindale:** The Advocate has made recommendations regarding changing the system, in fact some very strong recommendations about systemic change of the system, but his recommendations in my view have been ignored. How can we recommend changes to the legislation so that this does not happen in the future?

**Ms. Swaigen:** Well, as it stands right now it is basically an internal recommendation, but the Child Advocate is, to all intents and purposes, an employee of the minister, and the minister can take his comments under advisement or not. I think that attitude prevails throughout the department, and as Ms. Mirwaldt was saying, basically the Child Advocate can make all the recommendations they want; we do not necessarily have to go with them.

**Mr. Martindale:** So should the Children's Advocate have the power to, for example, enforce his or her recommendations? Should the Children's Advocate have the authority to recommend mediation or reconciliation?

**Ms. Swaigen:** I am not exactly sure how to respond to that. I feel very uncomfortable. As I said, when I started my presentation, it would be very simple and easy and nice to just give the Child Advocate all kinds of powers. I am not sure that that is not a shortsighted response. I think the real problem lies in ensuring compliance with the child welfare act in the agencies that provide service, and that includes the native agencies. There are culturally sensitive issues there but, nonetheless, we do have a child welfare act, and that act has to be adhered to.

**Mr. Martindale:** So if you are not in favour of giving the Children's Advocate more power to enforce his or her recommendations, what you are saying is that the Advocate should have the power to ensure compliance.

How would that work? How could the Advocate ensure compliance with the existing act, for example?

**Ms. Swaigen:** Well, I think that if the Child Advocate reported to the House and those issues were set out for discussion and members could question the minister on any and all issues related to child welfare, I do not think it would be too terribly long before you got compliance with the act. I mean, that is a start. And then the Child Advocate could—I just would like to see the Child Advocate more in an advisory, sort of inspirational kind of role.

**Mr. Martindale:** I wonder if you are aware that now the recommendations in the annual report of the Advocate are public. The minister tables them in the Legislature and then we as opposition critics and government members if they so choose can ask unlimited questions in Family Services Estimates about those recommendations, which I as the opposition and Family Services critic do every year in Family Services Estimates. But in spite of asking all those questions and in spite of the fact that the minister even responds to the recommendations in the annual report, in next year's annual report, in many cases we do not think it makes a difference. So what should we or could we do differently, or what should the Advocate do differently, or what should the legislation say differently?

**Ms. Swaigen:** I do not pretend to really understand all the mechanics of the political process, and perhaps I should have briefed myself more carefully before I came. I think that there could be some mechanism or time frames for response. Maybe the agencies respond back to the Child Advocate, maybe the Child Advocate can ask for certain things to be done, certain forms of redress, and the agencies are required by law to address certain issues or to account to the minister for what kinds of actions that they have taken in response to enquiries from the Child Advocate.

I do not really have my finger on the critical difference, but I know that the Correctional Service that I worked in for 18 years, if there is a question about service, everything stops dead, and that oversight or abuse or complaint or whatever is dealt with immediately because, if it is not dealt with immediately, it is going to get bigger and bigger and bigger. It is going to go to the Correctional Investigator, it is going

to go to a person's member of Parliament, or it is going to go to a lawyer or it is going to go directly to the minister, and then all hell will break loose, so you better keep your house clean daily, and if there is some issue that requires attention, you better attend to it or your job is on the line, your head is on the block.

I do not advocate an authoritarian, hierarchical system like that, but I do have to tell you that it works, things get done, and there is no interest in excuses. If someone has not acted in accordance with the regulation, there are no excuses. It is not like, oh, well, we did not have time or we do not have the money or, gosh, I am short staffed or whatever. It just does not wash. You just do it, you get it done.

**Mr. Chairperson:** Ms. Swaigen, I want to thank you for appearing before the subcommittee. I want to thank you for your presentation and certainly wish you well.

I would like to inform the subcommittee members that Gordon Gillespie, our 10 p.m. presenter, indicated this afternoon that he wished to have his name removed from the list of presenters as he no longer wishes to make a presentation.

Our final presenter this evening, Claire Toews, called this afternoon and asked to submit a written submission in lieu of making an oral presentation, with the written submission to be mailed in. Do the members of the subcommittee agree to this? [agreed]

The time is now 9:50. What is the will of committee?

Before we rise, I would like to remind the subcommittee that additional Winnipeg meetings have been called for May 15 at 10 a.m., May 20 at 3 p.m., May 20 at 7:30 p.m., and May 21 at 3 p.m. to continue consideration of this matter.

**Mr. Kowalski:** I just want to inform the committee, the teleconference scheduled for tomorrow I am unable to attend due to a death in the family, and I have asked a colleague to sit in on the teleconference if that would be allowed.

**Mr. Chairperson:** Is that the will of the committee, to allow a substitute? [agreed] Tomorrow is quarter after twelve. Thank you very much. Committee rise.

**COMMITTEE ROSE AT: 10:48 p.m.**

**WRITTEN SUBMISSIONS PRESENTED BUT  
NOT READ**

Presented by:

J. Doug Crookshanks  
Regional Program Supervisor  
Westman Child & Adolescent Program  
1035 1st Street North  
Brandon, Manitoba

Dear Sir/Madame:

I have received a copy of the notice pertaining to public review of legislation regarding the Office of the Children's Advocate; although I do not have a copy of the Child and Family Services Act, I would very much appreciate an opportunity to make the following comments in writing regarding the Office of the Children's Advocate and, therefore, regarding impact of the legislation in day-to-day services provided to children and adolescents of Manitoba.

Staff of the Westman Child and Adolescent Mental Health Program have on a number of occasions made contact with the Office of the Children's Advocate due to concerns regarding the well being of children and adolescents who are receiving treatment and who are under the care of Child and Family Services agencies. In some cases, staff concerns focused on the impact of placement decisions that might be made regarding the youth in question. In other cases contact was made with the Office of the Children's Advocate when child welfare agencies were failing to provide input which was regarded as necessary.

On all occasions, representatives of the Office of the Children's Advocate were prompt, thorough, and professional in responding to our concerns. Recommendations made regarding meeting the needs of clients were clear, nonblaming in manner, and included time lines for implementation. The Office of the Children's Advocate clearly has a relevant and valuable role in ensuring that the needs of children and adolescents under care are being met. If there are any changes in the powers of the Office of the Children's Advocate, we would suggest that recommendations

made be increasingly binding. At present, as we understand it, their role is primarily advisory in nature and not of the variety which can result in consequences for failure to adhere to recommendations.

Contact with the Office of the Children's Advocate on the part of our program, as should be the case, has been in those infrequent cases where efforts on the part of Child and Family Services staff have failed to alleviate a situation where safety for the client is at risk. As a resource, the Office of the Children's Advocate has proven to be both effective and much appreciated.

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Presented by:

Bettie Goossen  
Winkler, Manitoba

Dear Sir/Madam:

I read your advertisement in the Winkler Times where you invite interested members of the public to submit a brief with concerns as to the office of Children's Advocacy which is under the CFS Act. I am not fully cognizant of the act, of the Children's Advocacy Act, but I felt I wanted to take this opportunity to express some concerns I have.

My concern is for a family here in Winkler that I have been involved with since the early '60s. I would like to, as briefly as possible, tell you about them and their involvement with Child and Family Services, and that resultantly, I saw a worker at the Children's Advocate office.

This family and their parents are Mexican Mennonite families with little or no formal education. They arrived in Canada with fair-sized families and no means of support. In time, the mother's father obtained a welding job and made a meagre living. There was much to be desired in the family, having never learned good parenting skills and impoverished social skills. Their oldest daughter, as far as I know, never formally attended school and was taught housekeeping skills of cooking, sewing and cleaning. She married at the age of 16, still a child herself, to a young man who also was young and emotionally slow. They had four children in

close succession, one of them was operated for Reyes disease. Because of their youth, lack of training and lack of employment, they needed much help, and guidance, and encouragement. Their twins were placed in a foster home for one month (babies at the time), since the mother was overwhelmed.

With time and much encouragement on my part, and others who helped, things started to improve and a desire to get on their feet prompted them to find employment on a farm in Alberta. On their return (1989), they discovered that their children had been put in a foster home because the father reportedly had sexually touched the daughter. He did not deny that he had done this and was ready to take the punishment and went to jail for nine months (let me add that because of his background, this had not seemed to be wrong). He went through years of counselling—individual, marital and offender. He has been remorseful to the point of wanting to end his life. They were constantly assured that after counselling they would be reunited. They worked hard at this. I must add that their response is commensurate with their background. Very reserved with, at times, not being able to understand everything but acknowledging how wrong he was.

Their love for their children is like that of any normal parent. They co-operated in their sessions to the extent that they were able. They were constantly denied contact with the children, appointments were not kept by CFS, and the parents often were ridiculed. They were sent to see Dr. Eric Ellis who, consequently, wrote a report based on the short interview they had. He had never seen them before, yet he made a diagnosis. The report I read sounded like a form letter.

The children were all placed in a foster home, although the three boys (the family consisted of one girl and three boys) had never been abused. They had a difficult time in this home. In fact, the judge at the father's trial in Morris made the statement: It wasn't enough that the father has abused the daughter, the foster father took the same liberty.

When I questioned the social workers and the lawyer, they claimed the judge was misinformed.

The next foster home they were in had never had any training in fostering. They were allowed to keep the

children, because they claimed they were very capable. They, as was discussed later, took them as free labour in their restaurant and other business ventures. The girl, who was 12 at the time, was made responsible for the family laundry. This often took till the early hours of the day. When she did not get this done, she was put in her room and denied food for seven days. I heard of the abuses from neighbours and let the social worker know, but she dismissed the allegation. The girl also had books thrown at her and had nail scars on her neck. The children performed poorly in school, because they were always tired from lack of sleep and could not get homework done. Eventually, they were able to convey this to neighbours, and the RCMP got involved, and the children were removed.

They, then, were placed in a home in Morden. Here they were exposed to town life, and because of lack of parenting and direction, the boys have been involved in a variety of crimes. The oldest stole a truck, gave the police a chase and was eventually placed in a boys' home in Portage. The second boy is receiving treatment for drug use. The youngest boy's account of theft is regularly in the local paper. They run away from the foster home and live wherever. When I recently approached their social worker and discussed with her the situation and how these children have turned out, I said, "You took these children because you felt you could do a better job of parenting than the parents." Her answer was, "That is not true. We took them to keep them safe." This is what is called "safe"?

The analogy is that of native children being taken from their own people. These children have been denied family, church, community, culture and extended family. They recently were at a family gathering of extended family. Their reaction was: We hate these people; they are weird.

I went to see someone at the Child Advocate's office in Winnipeg. The worker patiently listened me out and said she would be in contact with CFS. I knew then that no intervention would follow as they are under the same jurisdiction, and her letter confirmed my feelings.

I am extremely concerned for these young people and the parents, but there seems to be no recourse. I have spoken to several lawyers, and they all assure me that taking a stand is a lost cause. I am often asked by CFS

workers, "What is in it for you?" Nothing. I have nothing to gain. I am a mother who has raised four young men who are all professionals. I am concerned for the children.

Except for a few times, the children were denied contact or visits with the parents. When they were allowed a visit, they were watched closely, so that no private conversation could take place.

The parents are not perfect but have made great strides to change, to mature and grow. The mother is a good, clean housekeeper and cook, and loves her children. The father has a very good relationship with his boys when he is allowed contact. He is gainfully employed. He suffers greatly, as does the mother.

You may say: What would you have done? What the father did was very wrong and heinous. His background precipitated his act. This is no excuse, but he has repented, regretted, asked for forgiveness, and has a thousand times condemned himself for what happened. He is a quiet, caring man, but "without a voice." He does not have the words we have.

I believe the father should have initially been removed from the home, and the children returned to the home where the mother should have been supervised, encouraged and taught. The children would have grown up with roots and would have had a future. It is almost too late now. It has cost the province hundreds of thousands of dollars to keep these children as wards "to keep them safe." And what has happened to them? God only knows the damage done.

I had hoped the Child Advocacy service would intervene, but they were unwilling. There is much more that could be said, but I have found no one who will help.

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Presented by:

Ronald Wesley and Amelia Wesley  
Winnipeg, Manitoba

To the Subcommittee of the Standing Committee of Privileges and Elections:

Sir;

In response to your review of the section of the CFS Act pertaining to the Office of the Children's Advocate.

I feel this office is a waste of taxpayers' money. Winnipeg has a high ratio of child poverty and child abuse, not to mention the gang-related issues of which children are involved in at the early ages of between eight to 12 years.

Wayne Govereau and his office are well aware of these issues, but do not advocate for all these children.

We once fostered a special needs child for whom we needed a lot of help with, from CFS. We did not get the response we looked for, so we got Child's Advocate to intervene. They did not advocate for the child at all; they sided with CFS, stating they were right, and we were wrong. At one point the child in question made allegations against us, and the Child Advocate's office worked with CFS in their attempts to prosecute us.

They had no regard for the child (other child of which we now have legal custody of) that was taken from us as a result of allegations. To make a long story short, we won the battle in court and got custody of our other little boy.

I feel a Child Advocate office should be privately funded. Being funded through different levels of government leaves it open to too much conflict of interest when coming into contact with agencies such as CFS, the social services, and the police department.

It seems to me, when real trouble arises, CFS and the police do all the advocating for the children. Where is the Child Advocate's office at this point? I guess my question is: What does this office advocate for children for and to whom? They pick and choose their cases. Aboriginal people know nothing of this office and would have nothing to do with them if they knew it was a spin-off of CFS. Advocates should be present on the streets when kids are picked up, in youth centres, in group homes, schools, etc.

In conclusion, my vote is no for the Child Advocate office as it sits at present. Thank you.

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Presented by:

Evelyn Thorgeirson

Attention: The Standing Committee on Privileges and Elections

A representation to the sections of Child and Family Services Act on the legislation pertaining to the Office of the Children's Advocate in response to:

Section 18.1(2) Identity of informant

Section 18.2(1) Director reports to professional organizations

Section 18.4(3) Restrictions of disclosure

Section 19.1(6) Objection referred to minister

Section 20.3 Judges' Judgments of six mnths. increments

Section 27(4) Burden of proof (New Rule 27(4b)) as the invitation from a subcommittee of the Standing Committee on Privileges and Elections. The purpose of the proposal is to describe the public review on product/market orientation for Children's Advocate, that will protect parental/guardian noninjurious compensative sign of aggression in child discipline from social worker and judicial rights of law jurisdiction, and from legislations that abdict the right of recession in the realm of parenthood.

Morden, Winkler, Carman, Portage la Prairie catchment areas, all have the natural resources of parents/guardians who are Rabelaisian, who are marked by or manifesting of a bold naturalism, in that they are the children's natural advocate whose natural desires and instincts would be to have discernment of destructive environmental heresies, such as "test the spirits", to see whether they are expressions of: "I have you in my heart"; corporal punishment, and under it, inappropriate disciplines that cause pain but not injury to the child, as opposed to the expressions of "hardness of their heart" as in child in need of protection for events that bring about, "so great a peril of death," and of such actions from anyone who tries to be the "one who catches the wise in their craftiness" by saying that all burden of proof at the hearing under subsection (3) which states where the parents/guardians do not consent to the access provided by the agency, they

make application to court for a hearing to determine what access provisions are of any limitation of access is reasonable.

This is the right of recession, which is the right of the injured party (parent/guardian and the children right to do this) to cancel or rescind a contract to Child and Family Services Act of parents' rights and freedoms in the Canadian Charter, which is a source of delight to the many ethnic and cultural people of this local population, and this provides the background for a firmer foundation on tourist and business.

Indescribably so, the definition of an outstanding protagonist statesperson who have the art or science of developing a reciprocal understanding and goodwill between a person or institution and the public pertaining to the Office of the Children's Advocate to the sections of The Child and Family Services Act have eroded.

The problem began many years ago and came to a head when (1) Child's Advocate Wayne Govereau, frustrated by his lack of power, yesterday, April 22, 1997, lashed out at social workers and government bureaucrats and called for a separate ombudsman for the province's children. (2) NDP Family Services critic Doug Martindale noted his party has long advocated that Govereau report to the legislation rather than the minister, to give him more independence. (3) Reform Party Werner Schmidt talk on making families a priority, a vision in which stronger families and communities, not more government programs, are the principal pillars of social security.

These breakwater statements from all of Canadian-Quebec part of Canada to constituents has altered the way referrals are handled. In addition, it has effetely exhausted The Child and Family Services Acts and linkages on their procès-verbal (written record).

The government need to readdress these sections of The Child and Family Services Act to provide more in-depth subsections that will, as Minister of Family Services Bonnie Mitchelson, as recorded by Winnipeg Free Press on April 23, 1997, of, she did not rule out possible changes in the role of the Children's Advocate when legislation amendments are introduced later this session to co-ordinate services."

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Presented by:

Mr. Merlyn Rotter  
Manitoba Youth Centre

The Office of the Children's Advocate was very helpful to us last fall when our granddaughter and her brothers were in Child and Family Services' care. The situation got to the point where we could not get any answers from Child and Family Services. We could not believe or trust what they were saying or what they were going to do next.

We had asked for a meeting with Child and Family Services with all parties concerned, and we needed someone there to reinforce our concerns and questions, because Child and Family Services seem to be under the impression they do not have to tell anybody anything, if they do not want to. So we asked a worker from Child Advocate to attend as well, and she was very good. She knew the proper questions to ask and insisted until she got an answer. By the end of the meeting, she had a plan of what Child and Family should do and find out before they did any detrimental moves with these children.

We were glad the Child Advocate has the authority to look at Child and Family Services files, because the file in this particular case was very poorly documented, and Child and Family Services never followed up on these children, and they had been in their care for a few years already. The situation was getting worse every time they were apprehended instead of them being helped.

At the meeting and other meetings to follow, Child and Family Services would answer the Child Advocate's questions, but they had no inhibitions about saying they did not know why they did not do something that was so obviously the next step to take in taking care of these kids, and they also had no qualms about saying that they did not know about something, when it was very obvious that they should have known in their position as caregivers to these children. C & FS know there are no repercussions if the children are not properly cared for, and it happens time and time again.

Children's Advocate is a very important office to have right now, because they will pursue C & FS until

they talk to them, and they do follow up to an extent. We had hired a lawyer, and the worker at C & FS would not even return his phone calls. They would not talk to him. I feel that the Children Advocate's office does not have enough power to follow up properly on their good recommendations because Child and Family Services always has the final say, and they make no bones about it either.

The Children's Advocate should also have more staff, so they can devote more time to a case once they start on it, and this would also make the follow-up process for efficient.

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Presented by:

Ms. Neta Friesen, Social Worker  
Ms. Claudette Dorge, Social Worker  
Ms. Donna Pierce, Social Worker  
Ms. Clair Milgrom, Social Worker  
Child Protection Centre, Children's Hospital  
Health Sciences Centre, Winnipeg

Dear Sir/Madam:

As social workers employed by the Child Protection Centre, Health Sciences Centre, in Winnipeg, we are writing to express our support for the viewpoint expressed by Mr. Wayne Govereau in the annual report of the Office of the Children's Advocate.

We agree that the Office of the Children's Advocate should be accountable to the Legislature as a whole, as opposed to reporting only to the Minister of Family Services. This would ensure greater openness and accountability and would allow for public debate on issues that pertain to the welfare of the children of Manitoba. We agree that a greater level of independence is necessary as well, in order to allow for critical feedback of the child welfare system and of the agencies operating within this system. The Office of the Children's Advocate also needs to be granted greater authority, so as to ensure that the recommendations that are made by them with respect to the management of cases are implemented.

By implementing the above suggestions, the Office of the Children's Advocate would operate more in line

with the provincial Ombudsman's office. We see this as a step in the right direction in the ongoing effort to protect children.

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Presented by:

Glynnis Fiddler

To: Standing Committee on Privileges and Elections

My Experience with the Children's Advocate Office

"We already know you're dealing drugs for her. That is why we are sending you to Calgary, to get help. She will be getting help too. Your plane will be leaving on Monday, June 17, 1996. I will pick you and your brother up."

My name is Glynnis Fiddler. I turned 17 on June 6, 1996. My brother, Glen, and I were sent to Calgary for drug treatment. For a long time I have been dreaming of moving out on my own to start a new life. I had little hope because I tried several times, but I always ended up back at the same place.

When I was heading to Calgary, I was thinking of giving it another try. Glen and I were planning to move together to start fresh. I had a lot of problems I had to sort out first. Treatment helped out a lot. I was all messed up. I had a lot of hard times, but there were people that cared who helped me go through them. I was glad I was in treatment.

A couple of months later, I had doubts about moving away from my mom. I could not eat, sleep, and I felt sick. Weeks later, I finally realized that I was getting brainwashed into going home. Then I knew how I always ended up back to the same lifestyle I hated, always arguing, no food, lots of drugs, nothing to do, pretending nothing is wrong around others, lots of problems, can't stand it. It only took me a week or less to get back up on my feet. I did not talk to my mom for a while. I felt happy again.

In the middle of November, there was a death in the family. Glen and I went home for the funeral. Glen came back to Calgary; I did not. I was messed up, and

I did not know what to do. I wanted to stay with my mom so badly, and I did not want to leave her, but I was sad. A couple of days later my mom and I went to Calgary. I cannot really remember how we got into going back to Calgary. It only took me a couple of days in Calgary to get me back up, and knew I was brainwashed again. It hurt me so much because I wanted so badly for my mom to change. My workers told me my mom was going to get help. For a while my mom told me she was taking counselling, but then I found out she was lying. She never attended any of her appointments. When my mom left, I cried a lot because I was hurt.

My discharge date, December 17, 1996, came, and I was scared that I would have to go home. Everything was screwed up. I did not know who to believe. My workers from Awasis kept saying different things, and my mom too. That is when I first heard of the Children's Advocate. At first I did not know who they were and what they do. I got to know Terri Hammerback from Children's Advocate over the phone. She sounded like a person to trust. When I heard Glen and I were staying till January, I was glad. January 17 came, my discharge date. Glen chose to go home. That hurt so much. I wanted to give up. I never cried so much. Glen told me it was like a game. He lost, and he did not want me to give up my dream. I promised I would not. Glen meant so much to me, I kept thinking if he was not around I would have been gone by now. I stayed in treatment again with the help of the Children's Advocate.

February came, and again it was all screwed up. I wanted to give up, because my workers from Awasis said they were just going to discharge me and send me off to Thompson, Manitoba. I did not want to go. I was scared. The Children's Advocate helped again, and I was extended till June 5, 1997. My funding is to stop on the fifth because my birthday is on the sixth of June and I will be 18 years old.

Right now I have about a month-and-a-half to get ready for independent living here in Calgary. I will be back at school in the fall to finish high school. Right now I am doing upgrading. I have never been so happy before. I feel really safe here. I have no connections with the street life or for drugs. Even today the Children's Advocate is still by my side to help me get

what I want or need. Terri continues to be involved in finding funding for me, so I have help to get set up.

If Terri had not been there I would have probably been lost, because I would probably be smoking up all the time, arguing with my family and not going anywhere with my life. I used to dream of getting my own place, but I do not have to now. Now I dream of meeting Terri in person to thank her for making my dreams come true.

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Presented by:

The Manitoba Association for Rights and Liberties  
(MARL)

#### Introduction

The Manitoba Association for Rights and Liberties (MARL) is a provincial, nonprofit nongovernment volunteer organization established in 1978 as a human rights and civil liberties advocacy group. MARL's objectives are to promote respect for and observance of fundamental human rights and liberties and to defend, extend and foster the recognition of these rights and liberties in the province of Manitoba.

The idea that children even have rights was slow to evolve. It was not until after World War I that the international community even noticed children's rights. In 1924 the League of Nations adopted a document that concentrated on the material needs of children. However, in 1948 when the United Nations formally adopted a Human Rights Declaration, children were not even mentioned. The Declaration of Rights of Children was finally passed 11 years later. Although it emphasized the duties owed to children, the articles were vague and the Declaration had little substance.

Finally, in 1989, the United Nations Convention on the Rights of the Child created 54 articles to set an international standard for the welfare and care of children. This time the rights of children were clearly identified and comprehensive.

It is MARL's position that two of the articles set out in the Convention on the Rights of the Child have special relevance to the issues that this subcommittee is

looking at. Specifically, Article 4 of the convention states: States Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present convention.

Article 19 further provides: 1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programs to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up instances of child maltreatment described heretofore and, as appropriate, for judicial involvement.

Accordingly, we appreciate the opportunity to address the subcommittee of the Standing Committee on Privileges and Elections as it is our belief that, by supporting the office of the Children's Advocate, the government of Manitoba is taking one important step towards fulfilling its obligations under the Convention on the Rights of the Child.

MARL wishes to make several recommendations in four key areas concerning the mandate of the Children's Advocate. It is our position that the current legislation needs to be revised to allow the Children's Advocate to more effectively advocate for children in need and ensure that their rights are upheld.

#### 1. Jurisdiction

One of the major deficiencies of the current legislation is that the jurisdiction of the Children's Advocate is restricted to children who receive or may be entitled to receive services under The Child and Family Services Act. To truly advocate for the children of Manitoba, it is our position that the mandate of the Children's Advocate must be expanded to respond to

the concerns of all children who are encountering problems in their lives, whether that be in the child welfare, mental health, judicial or educational domain.

## 2. Investigation

Another recommendation that we wish to make to the subcommittee is to amend The Child and Family Services Act, so that the Children's Advocate would have access to other government departments while investigating matters. The Children's Advocate would be better able to ensure that the rights of children were upheld if he/she was able to consult with other ministers, not just the Minister of Family Services. This would be especially important if the jurisdiction of the Children's Advocate was broadened as we recommend.

## 3. Reporting

Another problem with the legislation is that the Children's Advocate reports directly to the Minister of Family Services. It is sometimes difficult for a minister to be neutral when dealing with issues related to his/her own jurisdiction. Further, the potential for interference or pressure from cabinet or the minister (or the perception of interference or pressure) exists.

It is our position that the Office of the Children's Advocate should be made as independent as possible. It would be preferable if the Children's Advocate reported directly to the Legislature as the provincial Ombudsman does.

## 4. Recommendations

It is MARL's position that one of the most serious difficulties with the legislation is that the Children's Advocate's recommendations can be ignored. Presently the legislation states that after an investigation is conducted, the Children's Advocate is to provide a written report to the Director of Child and Family Services and to any agency of Child and Family Services outlining his/her conclusions and the reasons for such conclusions. In addition to the reporting requirements, the Children's Advocate may make recommendations to the director and the agency after

the investigation is concluded. However, once recommendations are made, it appears that the power of the Children's Advocate to ensure that recommendations are considered and followed is extremely limited.

In contrast, under The Ombudsman Act, the office of the provincial Ombudsman has much greater powers to make recommendations and have them acted upon. It is our position, therefore, that the mandate provided by the Legislature to the Ombudsman be carefully reviewed by the subcommittee. We can see no reason for providing greater protection to the citizens of Manitoba than we do to those who are the most vulnerable, the children of the province.

The Ombudsman Act provides that the Ombudsman may report his/her opinion to the appropriate minister of the government and to the appropriate agency or department, not just the Director of Child and Family Services, as the Children's Advocate is restricted to. Further, the Ombudsman may make recommendations as he/she sees appropriate. The Ombudsman can recommend that the matter be further referred, rectified, a decision cancelled or varied, that a particular practice be altered, a law reconsidered, reasons be given or that other steps be taken.

In addition, the Ombudsman can request that the appropriate department or agency notify him/her of the steps that it has taken or proposes to take within a specified time period. Moreover, if the action taken does not seem to be adequate or appropriate, the Ombudsman, pursuant to the legislation, has the option of reporting the matter to the Lieutenant Governor in Council. The Ombudsman may mention the matter in his/her annual report to the Legislature.

In sum, we believe that the Children's Advocate needs the ability to be able to request notification of the steps that will be followed after recommendations are made. Further, if action is not taken or the Children's Advocate deems the action taken to be inappropriate, we believe that the Children's Advocate should have the ability under the legislation to report to the Lieutenant Governor in Council and highlight it in his/her annual report. By doing so, the Children's Advocate's recommendations would be strengthened.

We thank you for the opportunity to report our concerns to the Standing Committee on Privileges and Elections.

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Presented by:

Anishinaabe Child & Family Services Inc.  
Head Office, Fairford First Nation  
General Delivery, Fairford, Manitoba

Anishinaabe Child & Family Services Inc. is presenting its views on the role of the Office of the Children's Advocate.

The role of the Children's Advocate is to represent the rights, interests and viewpoints of children receiving or entitled to receive services under The Child and Family Services Act. This is not often the case of the current system. The Children's Advocate has to be both an advocate and an investigator. These dual roles will create conflicts with the Children's Advocate. These conflicts result in the Children's Advocate becoming directly involved in the case. This is viewed as contradictory and contravenes its mandate which in part states that the Office of the Children's Advocate does not have the authority to:

- 1) Make decisions regarding children in care
- 2) Intervene in private custodial disputes
- 3) Intervene in matters regarding youth corrections
- 4) Provide child protection services
- 5) Act as a parent's advocate
- 6) Act as legal counsel for children

The current reporting mechanism in place requires the Office of the Children's Advocate to report directly to the Minister of Family Services. This can create problems, especially if the Minister of Family Services does not want to create controversy within their department. This in effects amounts to cover-up. This could be better served if an Ombudsman agency were created. The creation of the Ombudsman would safeguard the rights of the children, parents, caregivers, including child welfare agencies and the Office of the Children's Advocate.

The issue of giving the Office of the Children's Advocate "sweeping" powers sounds very scary and

very undemocratic. This would in all reality remove decision-making powers from everyone involved. This in effect would set us back to the days of the Children's Aid Societies.

The role of the Office of the Children's Advocate should be limited to children receiving services or entitled to receive services within the child welfare system. The broadening role of the Advocate to include children in other areas such as educational systems is not supported by our agency. The balance of decision-making powers must rest with the parents and other primary caregivers without contravening the rights of the children.

In summary, our recommendations are:

- 1) Create an Ombudsman position
- 2) The Office of the Children's Advocate maintain its advocacy role on children in care or entitled to receive services under The Child and Family Services Act.

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Presented by:

Kathleen Tessier  
Health & Family Services, Thompson Region

Dear Sir or Madam:

Re: Public Review - Legislation Pertaining to the Office of the Children's Advocate

Please accept the following comments and recommendations on behalf of Child and Family Services Thompson Region.

1. The Office of the Children's Advocate provides a valuable service in the following areas:

- a) Providing a support person in a neutral position who can assess and determine the child's viewpoint in case planning and to relay this information back to the agency and/or parents.
- b) Acting as a mediator on issues where disagreement occurs between the clients and agency.
- c) Providing recommendations around treatment planning for the child.

d) Assisting in accessing appropriate placements for children in care.

e) Identifying systemic issues as they relate to the lack of resources for children in care.

## 2. Recommendations

a) The Office of the Children's Advocate needs to have more of a physical presence outside the city of Winnipeg.

b) In the event that the Office of the Children's Advocate is mandated to report to a legislative body other than the Minister of Family Services, that their role of advocator be expanded to include the mandate to make recommendations to all systems that deal with Manitoba's children. In this manner the Office of the Children's Advocate would become an ombudsman for children.

c) There needs to be an identified body to act as an arbitrator between the Office of the Children's Advocate and other systems. Although the role of the Children's Advocate is to make recommendations and/or suggestions, the current legislation clearly outlines penalties for person who "without lawful justification wilfully obstructs, hinders or resists . . ." It is not clear who makes the final decision as to whether or not an agency or person is wilfully resisting the recommendations in the case of disagreements on case planning with the Children's Advocate.

Respectfully submitted by Thompson Child and Family Services

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Presented by:

Kenneth G. Knight, R.S.W.  
Chief Executive Officer  
Child and Family Services of Western Manitoba

Subcommittee of the Standing Committee on Privileges and Elections

Re: Review of the portion of The Child and Services Act pertaining to the Office of the Children's Advocate

On behalf of the staff of Child and Family Services of Western Manitoba, with the support of its board and directors, we appreciate this opportunity to share our thoughts and ideas about the Office of the Children's Advocate.

We would first acknowledge that when the Children's Advocate position was created, we had some apprehension about it. We had always thought of ourselves as advocates for Manitoba's children and working in their best interest. We recognize that, in systems such as child welfare, everything is not perfect, and there is a need for clients to be able to talk to a second person, if they do not feel that they are being heard by their regular worker. We must say that we have found the Advocate's Office to be helpful in the situations from our area in which they have been involved.

We would like to recommend that if the Child Advocate's office is to be continued, and our opinion is that it should, we believe that its role should be expanded to include all children's services that are funded directly or indirectly from provincial funds. We do not believe that child welfare is the only system in which children could benefit from the presence of an advocate.

If the scope of the office was to be expanded, it appears to us that it would make better sense for the Children's Advocate to report to the Legislature rather than to one specific ministry. Even if the scope is not expanded, it would provide a better perception to the community if it was independent of a specific ministry. This would avoid any impression that the Advocate's office could be seen in a conflict of interest.

The Children's Advocate has expressed frustration that his only power is that of persuasion, rather than having any direct authority to require certain things to be done. It is our perception that the challenge is often that the child wants something that is not available, or for which the agencies do not have the resources. Direct authority would not solve these issues.

Further, if that office could direct services, then in reality becomes a direct service agency and not an advocate. This would logically result in someone requesting an advocate re the Children's Advocate's plans. It may be appropriate to change the role to include the functions of an ombudsman, so that if

agency/provincial policies are not being followed, then that redress could be required.

Thank you, again, for this opportunity to share our thoughts on this topic.