Release Date: May 14, 2003

IN THE PROVINCIAL COURT OF MANITOBA
Winnipeg Centre

IN THE MATTER OF:

The Fatality Inquiry Act, S.M. 1989 -90, c. 30 - Cap. F52

AND IN THE MATTER OF :

CORY MOAR, Deceased
[Date of Death: December 11th, 1998]

Report on Inquest and Recommendations of
The Honourable Judge Robert L. Kopstein
Issued this 9th day of May, 2003

Appearances:

Ms. Lisa Carson with Ms. Betty Owen	- Counsel to the Inquest
Mr. Issy Frost	- for the Government of Manitoba
Ms. Jayne Kapac	- for the Office of the Vulnerable Persons' Commissioner
Ms. Catherine Tolton	- for the Winnipeg Regional Health Authority
Mr. David Wright and Ms. Yvonne Peters	- for a Coalition of Advocacy Groups which advocate in the cause of disabled persons, namely: The Council of Canadians with Disabilities, The Manitoba League of Persons with Disabilities, People First of Canada, Canadian Association for Community Living, Associations of Community Living-Canada, Manitoba, Winnipeg
Mr. Mark Wasyliw	- for Eli Pruden

Contents of Report on Inquest

Direction to Conduct Inquest

1. Pursuant to the direction of the Chief Medical Examiner, under Section 19(2) of ***The Fatalities Inquiries Act***[1], dated March 1, 2001, I conducted an Inquest into the death of Cory Clifford Moar, who died at Winnipeg on December 11, 1998 at the age of 29. I heard the sworn testimony of thirteen witnesses over the course of nine days from November 12, to November 28, 2002. On November 29, 2002, I heard submissions from Crown counsel, as counsel to the Inquest, and counsel for other parties having standing thereat.

2. In accordance with section 33(1) of that Act, I now submit the following Report.

Evidence

3. **Dr. Charles Litman**, MB, a medical doctor, and a specialist in pathology, is employed at the Health Science Centre in Winnipeg. In that capacity, on December 14, 1998, at the direction of Chief Medical Examiner for the Province of Manitoba, Dr. A. Thambirajah Balachandra, MBBS, FRCPC, FCAP, Dr. Litman performed an autopsy on the remains of Cory Clifford Moar.[2]

4. In the opinion of Dr. Litman, the immediate cause of death was pulmonary thrombo-emboli, blood clots found in small blood vessels of the lungs.

5. Cory Moar's body's height and weight, respectively, were 5'8" and 132 lbs. He was not a big man, and he was not well nourished. On external examination Dr. Litman found multiple abrasions, lacerations, bruises and scars, over 160 in all, with some 50 to the head and ears alone. His ears were disfigured. The evidence of trauma appeared on virtually every part of the body except for the abdomen. Many of the marks were of recent origin, reflecting trauma within hours or days of the death. Others were scars that could have resulted from trauma months or years prior to

[1] Section 19(2) of *The Fatality Inquiries Act*, L.M. 1989-90, c. 30 – Chap F52 empowers the Chief Medical Examiner to direct a Provincial Judge to hold an inquest. In this case the direction of the Chief Medical Examiner was addressed to the Acting Director of Prosecutions. While accepting the direction as valid for the purpose of this inquest a proper direction under the *Act* should, I think, be addressed to the Chief Judge of the Provincial Court of Manitoba.

[2] Exhibit 2 - Report of Medical Examiner

death. Some of them could have been ten years old or more. More precise information about the date of trauma that is healed is not possible. Examination of the mouth revealed multiple lacerations on the inside upper lip and on the insides of both cheeks. There was muscle necrosis on both thighs, and X-rays revealed evidence of old and recently healed fractures on Cory Moar's hands, arms, legs and ribs. From the cumulative injuries he sustained, he probably suffered significant blood loss. That would account for some anemia.

6. Dr. Litman received information from external sources about Mr. Moar's subjection to physical abuse through the use of blunt instruments, such as a car jack, and a steering wheel club, a stick and a 2 X 4 piece of lumber. He was of the view that, by their pattern, some of the marks found on the body were not inconsistent with having been struck by those instruments. Those instruments were, in fact used upon Mr. Moar, as evidence later revealed. Some marks on the body were of less specific apparent origin, but would not be inconsistent with being kicked. Based upon information given to him, as well, Dr. Litman understood that Cory Moar was a mentally challenged individual.

7. None of the injuries alone would have caused death. None of them alone would have been life threatening. In Dr. Litman's opinion, death was the result of an accumulation of beatings sustained by Mr. Moar over a period of at least a year. I understand his opinion to be that from the injuries he sustained from the beatings, blood clots - thrombo-emboli - would form at the sites of those injuries, and that in this case, as a result of the final trauma, one or more of the clots were released into the blood steam of the lungs. It was that event that precipitated death.

8. In the course of his testimony, Dr. Litman said:

> …. there's obviously evidence that Mr. Moar had undergone numerous beatings with a blunt instrument over many periods of time in the past and immediately prior to his death.

and later:

> …. In other words, the final beating, in and of itself, would not be sufficient to cause Mr. Moar's death but in the context of multiple beatings having taken place over many, many days, many months,

> many years, the cumulative effect was enough to cause Mr. Moar's death.

9. Many of the injuries to the head were on the scalp beneath Mr. Moar's hair, and would not be readily observable, except on close examination. For the purpose of the autopsy, the scalp was shaved. Being shaved the injuries were clearly visible.

10. Dr. Litman was referred to exhibit 5, a chart showing 21 of Mr. Moar's attendances at the Health Sciences Centre in the four-year period preceding his death. The chart discloses that 15 of those related to new incidents of trauma. The records disclose that Mr. Moar did not present at the emergency room at the Health Sciences Centre at any time during the 5-year period preceding 1995. The contents of the chart are as follows:

1995

October 16 - foot injury: Dropped something on right foot,
October 23 - headache: Fell in bathtub, sore right foot,
October 27 - headache: Fell off bike, hit head (Nurse noted frequent falls – denies abuse) swollen eye,
November 10 - Pounding headache: *no trauma noted in the record,*
November 20 - knees: fell down stairs,
December 11 - back pain: struck by car. (Admitted (Not ER) right side of face - Hematoma. Admitted query: dental infection or car accident,
December 27 - left hand: fell in shower several days ago. Massive frontal forehead + bitemporal swelling, skull x-ray CT scan.

1996

January 11 - Wrist and knees: fall on wrist, also hurt knee,
June 16 - Scratch on buttocks: dog bite,
July 24 - 2 cm. Laceration to left eyebrow: no cause, or explanation noted,
October 27 - Left hand/wrist: Fell delivering flyers,
November 8 - L knee laceration and laceration to nose, small goosebump on forehead: Slipped on ice,
December 2 - *No injury noted:* Says fell again, Cellulitis (denies any

abuse), "says need to leave, can't wait for further assessment"

December 10 - Cellulitis, pain: (denies recurrent trauma) refused admission.

1997

February 13 - Left leg, L arm, head abrasions: slipped
June 13 - Ext abrasion and bruising R knee and L elbow: fell off bike,
October 26 - Cut to nose: hockey stick, assaulted delivering flyers.

1998

May 28 - R ring finger/L index finger: assaulted and robbed. Noted old laceration R forehead abrasion L face. Admitted for surgery (Not ER),
August 21 -L ear: Hit by baseball,
October 2 - L ear: (reports hit with baseball 3 weeks ago)
December 11 - DOA

[The notes following the descriptions of reasons for emergency room attendances indicate the causes to which the injuries were attributed by Mr. Moar or other persons who attended with him.]

11. In response to questions arising out of that chart, Dr. Litman acknowledged that a patient's chart reflects his or her history of attendance at the hospital. He admitted surprise that no alarm bells had been sounded during the life of Cory Moar, given the condition of his body at death. He conceded, however, that clothed, and with a full head of hair, at the time of an examination in the emergency room, the extent of the abrasions, lacerations, bruises and scars would not be visible. As well, he said, that the emergency room physicians would likely focus their examinations on the area of the body about which a complaint was made on the occasion of each visit. A post mortem examination is much more extensive than that which would occur in the emergency room. The vast majority of the over 50 injuries to Cory Moar's head would not have been noticeable before his head was shaved.

12. **Dr. Wesley B. Palatnick**, MD, FRCPC, DABEM, DABMT, is a physician with expertise in emergency medicine, having practiced in that branch of medicine for twenty-two years. In 1997-98 he served as Acting Director, Department of Emergency Medicine at the Health Science Centre in Winnipeg. In 1998 he was appointed Director of that department. In addition, he serves and has served in numerous other medical capacities.

13. There are two binders of hospital and emergency room policies. Dr. Palatinick was not required to read them when he started to work in the emergency room. He is unaware if staff members were required to read the policy manuals, but he testified that important policies would be brought to the attention of staff.

14. A patient arriving in emergency will be seen first by a triage nurse who will make a triage category assessment; meaning that each patient will be cued according to illness, when they will be seen, how often and the area in which they will be seen. Next, the patient would see a nurse who conducts a nursing assessment, followed by a physician who would read the assessments provided by the triage and the nurse.

15. The emergency ward is staffed as follows:

Physicians:	From 8:00 A.M.	-	3:00 P.M.	- 2
	3:00 P.M.	-	5:00 P.M.	- 3
	5:00 P.M.	-	2:00 A.M.	- 2
	2:00 A.M.	-	8:00 A.M.	- 1

In addition, there may be medical residents present.

Nurses: Approximately 11 or 12 - the number varies.

16. Workload: There are 31,000 to 41,000 emergency visits each year. Simple arithmetic – without considering peak periods and other variations – suggests that if there were 35,000 visits in a year, there would be, on average, 96 patients to be seen in emergency each day. With a total of nine physicians on duty over the course of 24 hours, each physician would, in theory, be responsible for 10.66 patients per day. No evidence was led as to whether the staffing is adequate. Nor was there

any issue in that regard raised by any of the parties who had standing at the hearing. There was no evidence as to the adequacy of nursing staff.

17. In the emergency room, the examination of patients will focus upon the particular problem reported as being the reason for the visit. A head injury would not likely call for examination of feet, torso or arms. A bruised foot would not normally result in a physical examination of arms, torso or head.

18. A patient's privacy is paramount. Clear statutory restrictions prohibit the reporting of suspected abuse without the consent of the person suspected of being abused.[3] As a matter of practice, if there is no self disclosure of abuse but abuse is suspected, staff make inquiries of patients and will advise patients of agencies such as a social worker on staff at the Health Sciences Centre, and the police to whom the patient can turn. As noted, however, hospital staff is not, except in limited circumstances, permitted to initiate intervention without patient consent. As noted in the chart above, Mr. Moar was asked about abuse twice, and denied abuse on both occasions.

19. Mr. Moar attended to the hospital on some occasions, at least, on his own. Dr. Platnick assumes that the attending physician on each occasion would assess Mr. Moar's capacity to consent to treatment. He noted that Mr. Moar refused treatment on one occasion.

20. Nurses are afforded ongoing training, including sessions on spousal abuse. They had not received training, however, on the provisions of ***The Vulnerable Persons Living with a Mental Disability Act***[4] (hereinafter called *The Act* or ***The Vulnerable Persons Act***.)

21. Questioned about whether the frequent attendance of a patient at the Health Sciences Centre emergency room for traumatic injuries does not automatically raise concern about abuse, Dr. Litman indicated that frequency is not, by itself, an indicator. He testified that because of life style and other factors, some people attend tens and hundreds of times in a given period in the absence of any indication of family, spousal or other abuse.

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[3] See: *Personal Health Information Act*, L.M. 1997, c. 51 – Chap P33.5

[4] L.M. 1993, c. 29 - Chap V90.

22. When a patient presents at the emergency room, her or his history made available to the attending physician, is limited to the patient's last four visits. For a more complete record, the attending physician would have to make a specific request. There is presently no system of summarizing the whole of a patient's history at the hospital. Thus, on December 11, 1998, the date Mr. Moar died and was brought to the hospital, the emergency room physician would have seen only the record of his last four visits. The last date, according to the records of the Health Sciences Centre, that Cory Moar attended at the emergency room for treatment prior to December 11, 1998, was October 2, 1998. The record regarding that visit, as noted above, is: L ear (reports hit with baseball 3 weeks ago.) The record an emergency room physician would have seen for Mr. Moar on that date would have been as follows:

1997

June 13 - Ext abrasion and bruising R knee and L elbow: fell off bike
October 26 - Cut to nose: hockey stick, assaulted delivering flyers.

1998

May 28 - R ring finger/L index finger: assaulted and robbed. Noted old laceration R forehead abrasion L face. Admitted for surgery (Not ER),
August 21 - L ear: Hit by baseball,

23. The record viewed by the attending physician would have disclosed, therefore, a total of four new incidents in the fourteen months prior to his last attendance for the treatment of an injury.[5] There is no note of any inquiry regarding abuse arising out of the same reported injury from the same cause on what appears to be two and, perhaps, three occasions between August and October 1998. (Left ear: [1] August 21, 1998; [2] three weeks before October 2, 1998; and [3] October 2, 1998)

24. The Health Sciences Centre employs a social worker, or workers. The emergency room has access to the services of a social worker. As I understood Dr. Litman's testimony, the emergency room is allocated

[5] See: Exhibit 25

60% of the time of one social worker. No issue was raised by any of the parties who had standing at the hearing as to whether this allocation is adequate to the needs of the emergency room, given the needs of emergency room patients.

25. **Lillian Traverse** is Cory Moar's mother. She has five surviving adult children; Eli and Rosalind are the children of earlier relationships. The father of her remaining children – George, Randy, Cory (now deceased), and Henry, born in that order – was Alan Moar.

26. She testified that Cory was not born with a hearing loss. She says the hearing loss occurred as the result of an accident that occurred when he bumped into his father's elbow while the father and the landlord were building a fence. She says they took him to the hospital, and were told there was a hearing loss that might get better. She said that eventually he got a hearing aid, and that there was no other problem. Though he had trouble expressing himself, she could communicate with him. She said that as a child he learned a considerable amount of sign language, and at one point, she described him as the smartest among her children. She said he was able to cook well and could care for his younger sibling. Growing up at her home in Winnipeg, Cory attended Machray School and R.B. Russell School.

27. During the course of the hearing, it became evident that Cory had been labeled as mentally challenged. From the report of Dr. Litman, he had suffered extreme physical abuse for a long period before his death. The question that troubled me was why Mr. Moar neither complained about the abuse, nor left the Pruden residence. In that context, I felt I should have as much information as I could acquire about his mental status to assist me in understanding the level at which he functioned. Therefore, I asked Ms. Carson, counsel to the Inquest, to attempt to locate a teacher from R.B. Russell School who recalled Cory. Counsel later advised that she had made inquiries, but that no one at the school had any recollection of him.

28. Ms. Traverse testified that in the year 1987, when Cory would have been 18, she asked her son, Eli, to look after Cory. It is unclear from her whether the principal reason that she asked Eli to do so was because, at 18 years of age, social assistance would no longer provide her with support for Cory, or because Eli could help him to find him a place closer

to his school. Other evidence referred to later in this report suggests, as well, that another reason might have been that Ms. Traverse was having a difficult time managing Cory and his younger brother.

29. In any event, Mr. Moar did move from his mother's home to the Eli and Linda Pruden residence, where he continued to reside until the date of his death in December of 1998. A year and a half or two years prior to his death, his sister-in-law Linda had applied for and obtained an apartment for him through Manitoba Housing. According to Lillian Traverse, Cory was not allowed to live there because Linda was receiving rent for the apartment from other people or allowing others to use it, and, as well, because Linda needed Cory to baby sit her youngest child, Dale. Lillian Traverse said that when she saw her son on the street, she would give him money, but, in her opinion, Linda Pruden would take it away from him to spend on herself. (These were, of course, allegations. I did not receive them as proof of their truth, but as evidence relevant to suspicions of ill treatment she had well before the date of her son's death.)

30. Ms. Traverse testified that she was aware, as was everyone in her extended family, that Cory was being abused in the Pruden household. She tried to "get him back" but Eli said no. She claims she called the police on three occasions about the abuse. I requested Ms. Carson to ascertain if the police had a record of calls from Ms. Traverse. She later informed me that police advised they had no record of reports from Ms. Travers. Ms. Travers claimed that Eli had asked her why she reported him. He told her that they were not rough with Cory.

31. Ms. Traverse testified of her awareness that Cory had tried to run away about a year before his death. He left the Pruden residence and traveled to the Little Saskatchewan First Nation, to the home of his half sister, Rosalind. On one occasion, she said that when she met him on the street, she observed a scratch on his arm. She asked him what happened, to which he responded he would not tell her because she had a "big mouth". It might be inferred that he feared she would confront Eli or Linda, and as a result, he would be beaten by them. Once, some three years before he died, she says she saw Eli kicking Cory out of the door of the Pruden home, and two years before that she had concerns because she noted that Cory was losing weight. Ms. Traverse alleged that her son was required to do all the housework at the Pruden household.

32. She said she did not know to whom she could go for help. She said she was told she could not help him, that he would have to help himself. She remembers a worker from the Society of Manitobans with Disabilities (SMD), but she did not, apparently, think of disclosing her suspicions to that worker.

33. **Rosalind Emma Jane Pruden** is Cory Moar's older half-sister. She was six years his senior. She has lived mostly at the Little Saskatchewan First Nation, a location about 265 Kilometres from Winnipeg by car. She has an eighteen-year old son and two adopted children. She dropped out of school in grade 10, but presently works as a home and school coordinator, and has, in the past, worked as a substitute kindergarten teacher.

34. She says that, as a child, Cory seemed normal. Except for a hearing impairment, she does not recall any other impairment. She does not know when he developed a problem. But she had no difficulty communicating with him. She understood him, and he understood her. She does not recall him suffering from any mental disability.

35. While not entirely sure when Cory moved to the Pruden home, she thinks it was in the early 1990's. She visited the home only a few times when Cory was there. It is her impression that Cory was charged with the responsibility of keeping the house clean and was the principal caregiver to the Pruden's younger child, Dale.

36. She recalls an incident when she had received a telephone call from Eli that Cory was missing. The following day, Cory called her from St. Martens, a town about 10 kilometers from the Little Saskatchewan First Nation. He told her that he had hitchhiked to the town. A man had picked him up, fed him, put him on a bus, and gave him twenty-five cents to call her. He said he wanted to see his brothers. Rosalind notified Eli that Cory was at her place. Eli sounded relieved. He asked to speak to Cory. Rosalind heard Linda Pruden, on the other end, say to Cory words to the effect: "So this is the thanks we get for what we have done for you?" Two to three hours later, Eli and Linda appeared at her home. They took Cory and left. There was mention of a hearing aid appointment. As Cory was, in fact, living with the Prudens, she, did not find it strange that they came to get him. On other occasions, he came to

her home at Little Saskatchewan with the Pruden family. On those occasions it was always Cory who was left to care for Dale.

37. In the summer of 1998, some five to six months before his death, Rosalind saw Cory. He had two black eyes. He said he fell in the bathtub. Eli or Linda commented that he was clumsy. On another occasion she observed scratches on his face. He said he was attacked on his way to the corner store.

38. She did not suspect physical abuse, but had been concerned about the burden of responsibility he had for the care of the younger children in the Pruden household. She testified that other members of the extended family were also concerned. She had told Cory, she says, that he was always welcome at her home, and that he could call her if he wished to talk.

39. **Henry Moar**, 28 years of age, is Cory's brother. He is single, lives with his mother, Lillian, and has been employed as a home care worker since April of 2002. Cory was five years older than Henry. As a child, Cory was his best friend. Henry remained home with his Mother when Cory left at age eighteen.

40. At about the age of 17, in or about 1991 or 1992, Henry was ordered by a court to live at the Pruden residence. He lived there for about two years. Cory was there as well. He does not recall gross physical abuse directed at either himself or Cory. Henry says Eli was strict with him and had, on occasion, disciplined him by kicking him or hitting him on the ear. He testified that once when he skipped school, Eli went into a rage, punched him and threw him down, as a result of which he suffered a black eye. While he was living at the Prudens he did not witness assaults against Cory. He says, however, that Cory was afraid.

41. Henry saw Linda kick Cory. He says that Linda would not dare hit him (Henry). He said Linda would threaten Cory by telling him that if he did not do what he was told, she would tell Eli. The Prudens beat their own children with belts or other instruments, but not as often, in this witness' opinion, as they beat Cory. That statement seems inconsistent with his testimony that he did not witness assaults against Cory. Perhaps Cory had made disclosures to him, or, perhaps he had observed the results.

42. On the day Cory "ran away" to go to Rosalind's home, this witness says he was listening on the extension phone when the telephone call came from Rosalind advising that Cory was at her home. When Cory took the line, Henry says he heard Linda say: "How come you ran away you fucken asshole. You're giving us a bad name." That is a different description of the same conversation overheard by Rosalind on the other end.

43. When Henry left the Pruden residence – from the evidence I estimate that he would have left in or about 1994 – he did not see Cory often. When he went to visit, Eli or Linda would tell him that Cory was busy and to come some other time. When he met Cory on the street, he found him to be reticent. He noted that at home, when they were younger, Cory was talkative. He was always telling stories. In the Pruden household he was, in this witness' opinion, afraid of being beaten.

44. **Shauna Neufeld** has been a Constable with the Winnipeg Police Service for over seven years. She is presently working in the child abuse unit. At 8:41 P.M. on May 28, 1998, a call was received from an Oliver Micay with information that Cory Moar, a handicapped person, had been beaten up at the Pruden household because he had charged a call to a sex hot-line on Eli Purden's phone. She and her partner went to the Pruden home. Upon their arrival, Eli told them that Linda and Cory were out doing the laundry, and would be home later. At 11:25 P.M. police received a call that they were home. They re-attended the Pruden residence at 11:29 P.M., and interviewed Cory, in private, in the police cruiser.

45. Though partially deaf, he could hear, was articulate and calm, and answered questions put to him. There was no difficulty communicating with him. Constable Neufeld saw no evidence of mental retardation. He seemed to her to be intelligent, mature and competent.

46. He had bandages on two fingers, which Constable Neufeld understood to be broken, and some bruising on his face. He explained that he had been robbed in the lane and that he had been hit by a fence post or board. Because of the bandages, she believed he had received medical attention. Constable Neufeld reported that Cory claimed to enjoy living with Eli and Linda, and he denied making calls to a sex hot-line. He said he knew nothing about that. He declined to provide a statement regarding the

robbery. He said that neither Linda nor Eli had assaulted him. Following up, Constable Neufeld later called Oliver Micay and left her number, but he did not return her call.

47. She testified that victims of spousal assault often deny those assaults. In those cases, domestic violence cases, the alleged victims are given a pamphlet. It is only in that category of case, that the police provide such pamphlets.

48. There has been a Vulnerable Persons Unit within the Winnipeg Police Service since 1999.

49. **Linda Norma Pruden** was the common law wife of Eli Pruden since 1987, now separated. She and Eli Pruden had one child, Dale. At the time of the hearing, Dale was 12 years of age, born in 1990. He has cerebral palsy, and is, according to Ms. Pruden, mentally challenged, but not severely so. As well as Dale, there were three other children resident in the household. One of those children, referred to herein as "C" was fourteen years of age at the time of Mr. Moar's death.

50. Ms. Pruden's evidence was quite candid, in my opinion. She expressed feelings of responsibility and affection for Cory Moar that can be viewed as incompatible with actions of others that she appears to have condoned, and actions for which she, herself, admits responsibility. Regardless, her evidence was revealing about Cory Moar's life and death.

51. Cory, her husband's half brother, came to live with them in 1987, about six months after she and Eli began living together. She testified that his mother, Lillian Traverse, had asked Eli to keep Cory because she was having "a rough time" maintaining her two boys, Cory and Henry. Cory could walk and run and was well coordinated. He bathed himself. He looked after and fed himself, and was able to baby-sit and feed the three-year old child, Dale. Ms. Pruden said she trusted him to look after Dale, and that he was responsible in doing so.

52. She testified that Cory was fairly smart, had a sense of humour, could make decisions on his own and would laugh a lot. He would tell jokes and was able to converse with her and Eli. He was partially deaf when he came to live with them, but he could hear when he was wearing his hearing aid. When he was not wearing it, they wrote notes to him, and he was able to read the notes. She said that she cared for him, and that she

considered him a member of the family. She said she does not know if he suffered any mental disability.

53. She admitted, however, that on at least two occasions she had told others that he was mentally retarded. She admits having told a doctor who Cory was seeing at the Health Action Centre in Winnipeg, that Cory was mildly retarded. She admits, also, that she told a worker that Cory was mentally retarded and that he communicated at an age level of twelve or thirteen. She had attended to the Health Sciences Centre with him on one or more occasions for injuries he had sustained. She does not recall questions relating to abuse by hospital staff. She took him to the hospital, she testified, for injuries sustained when she and Eli and C all hit him because he had touched her, inappropriately. On one occasion, a few months before he died, she says the police came to her house and spoke to Cory about injuries on his body. She says that her brother Oliver Micay "ratted out" on the family. Cory told the police he had been beaten up on Langside Street.

54. She had applied, on Cory's behalf, to a government department, to secure for him an apartment of his own. The application was successful. She wanted him to have his own place. She commented that it was a problem to have him at her house. He would get himself into trouble and he sometimes broke things in the house. Eli, however, did not think he was capable of living on his own. She said he would sometimes live at his own apartment and sometimes at her house. Though it is not clear to me exactly when the apartment became available to him, Ms. Purden testified that for a year and a half prior to his death, he lived at the Pruden home, even though he had his own apartment.

55. She says Cory was receiving provincial social assistance from May of 1997. For the first six months he cashed the cheques himself she said, but, he lost the cheques or the money, and it was therefore agreed that she would manage his social assistance for him. She was able to use his ATM bankcard to deposit cheques and withdraw monies. He was engaged in some short periods of employment. He, along with other members of the family, delivered flyers. She said he and they delivered flyers the Wednesday before his death. December 11, 1998 was a Friday. Wednesday of that week was December 9th.

56. It is clear from the evidence of Linda Pruden that Cory Moar was subjected to terrible violence in the Pruden home. She describes only a few incidents, but it is evident that she hit him with a steering wheel club, that "C", with little restraint from her, beat Cory with a variety of weapons, and that her husband Eli beat Cory as well. She said that she had interceded at times when Eli was beating him. She says that five or six days before Cory died Eli put him downstairs. At first she said she did not know why Eli had done so. She later conceded he did so to hide Cory because of injuries that were visible. She said she cared for Cory more than anyone else. She said that she communicated well with him and considered him a friend.

57. On the day of Cory's death, he had defecated on the basement floor. Linda Pruden instructed "C" to tell Cory to clean it up. "C" told Cory to do it. When Cory did not do so – from the evidence he may have been physically unable to do so – "C" began hitting him with a stick and a car jack. She went to the foot of the stairs, she said, and told "C" not to hit Cory in the head. She later went downstairs and saw Cory on the floor with a car door on top of him, and a lot of blood.

58. Linda Pruden considered it acceptable for "C" to "discipline" Cory. Once, when Cory pulled her hair, "C" executed punishment.

59. **Cameron Crawford**, Graduate, Professional Development Program, 1982, B.A., 1991, is President of the Roeher Institute. He has held that position since the year 2000. He served as Acting President in 1999, and Vice-President in 1998. He served as its Assistant Director from 1987 to 1997. Based in Toronto, Ontario, that Institute promotes "the equality, participation and self-determination of people with intellectual and other disabilities, by examining the causes of maginalization and social development opportunities." Mr. Crawford holds two university degrees and has several scholarships to his credit. In the years 1974 to 1987 he served in a variety of teaching, counseling and community living positions.

60. From Mr. Crawford's curriculum vitae, it is evident that since at least 1982, his work has focused upon, and he is committed to advocacy for, and on behalf of persons with disabilities. He has published some sixty-three reports, books and articles related to persons with disabilities, and has made actual presentations as a speaker, witness or expert witness

before various groups, commissions and tribunals. Finally, from 1982 to 1999 he served as a member of several community organizations, all of which relate directly or indirectly to his main focus.

61. Notably, I was provided with the book entitled *Harm's Way: the many faces of violence and abuse against persons with disabilities*,[6]. Mr. Crawford is noted as the principal researcher for the book. He was also, I understand, the writer. A comprehensive study of abuse encountered by persons with disabilities and the responses to it by society and its institutions, the book examines the phenomenon of abuse from the perspective of persons with disabilities.

62. Both a literature review and personal interviews with persons among the disabled population, make a strong case for the conclusion that the disabled in Canadian society are inadequately, if not poorly protected from abuse, both physical and psychological. From the perception of the victims of violence among the disabled, they are devalued, and discounted. The societal response to abuse against persons with disabilities does not meet the prescription of section 15 of the ***Canadian Charter of Rights and Freedoms***[7] which provides that *every person has the right to equal protection and equal benefit of the law..... without discrimination based on.....mental or physical disability*.

63. The general thrust of Mr. Crawford's testimony was that those with disabilities rendering them dependent upon others for help are particularly vulnerable to abuse, both from perpetrators who, for reasons, including power and the ease of the target, victimize them. As well, they are victimized by what I would describe as passive abuse from the social institutions which should protect them, including the courts. It occurs within the criminal justice system on the issue of credibility when intellectual impairment of an abused person is raised. It is noted by the author, however, that some courts have viewed, as an aggravating factor, the fact that the victim is a disabled person. But abuse, in the perception of disabled persons, occurs, as well, from an inability of the system and workers within it to recognize the signs of abuse.

64. It is noted, too, that abuse of the disabled continues because it is often denied by victims, and even if admitted, cannot be reported without the

[6] The Roehr Institute, 1995 (Exhibit 21)
[7] Part 1 of the Constitution Act, 1982

consent of the victim. Disinclination to disclose by a victim can occur for different reasons. These include sympathy for the perpetrator, lack of trust in the interviewer, and, significantly, because of the fear of retaliation by the abuser against the victim: "In all probability actual retaliation and the fear of retaliation create mutually reinforcing disincentives for survivors to tell their stories." It is not possible here to do more than touch the surface of the book's contents. Both the book, however, and Mr. Crawford in his testimony at this Inquest, urge the need for research to discover a means by which the problem of abuse against the disabled can be addressed effectively by society. It is noted that research in this area is presently difficult because police statistics are not kept in a way that can identify, in terms of volume, the incidents of crime against disabled persons. The need for such research and action from it is pressing because the disabled are, it is estimated, one and half times more likely to encounter violence against themselves than the population at large.

65. It is of concern to Mr. Crawford that certain terms in statutes are not defined, leaving uncertainty as to what is meant or how they will be interpreted. He points, for instance, to the term "necessaries of life" in section 215 of the ***Criminal Code of Canada***[8]. The section, *inter-alia*, requires a person in charge of another who "is unable by reason of detention, age, illness, mental disorder or other cause" to look after himself, must provide the person in his charge with the necessaries of life. Failure to do so constitutes an offence. The ***Code*****,** however contains no definition of the phrase "necessaries of life". He expressed concern, as well, that while government policies and legislation have moved to better insure protection for abused spouses, children, and the elderly who are residents of institutions, the potential for abuse of the disabled remains inadequately addressed. On this subject, *Harm's Way* argues that, for the purpose of research and education, a broad definition of "violence" and "abuse" would be useful. "It may increase awareness of how certain actions that escape public notice or are considered trivial or benign by others, are considered by persons with disabilities to cause harm and anguish." The model recommended is that adopted by a United Nations declaration regarding violence against women: "*Any act of…violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering, including threats of such acts, coercion*

[8] R.S.C. 1985, Chap C-46

or arbitrary deprivation of liberty whether occurring in public or private life" [9].

66. A further concern is raised in *Harm's Way* about the inherent discrimination against some disabled persons, by virtue of section 16(4) of the ***Canada Evidence Act,***[10] under which a person "who neither understands the nature of an oath or solemn affirmation, nor is able to communicate the evidence, shall not testify." Quoting from a 1986 survey conducted by Statistics Canada, there were 19,000 Canadians living in private households who were completely unable to make themselves understood by people other than immediate family and friends. According to the survey, another 63,000 were able to make themselves understood, only partially, to people other than family and friends. Those people, it is argued, are denied equal benefit of the law [11](pp.124-5) by reason of section 16(4).

67. Mr. Crawford acknowledges that since the publication of the book in 1995, Manitoba has enacted the ***Vulnerable Persons Act***. He did not consider or review Manitoba's Vocational Rehabilitation Program, or its Supportive Living Program. *Harm's Way* does not attempt to make inter-provincial comparisons of programs or initiatives for disabled persons. Since the publication of the book, he has not done any updated study of residential care licencing in Manitoba. He did not consider ***The Freedom of Information and Protection of Privacy Act*** *(FIPPA)*[12], or ***The Personal Health Information Act*** *(PHIA)*[13], both of which were enacted following the publication of *Harm's Way*. Mr. Crawford recognizes, however, the serious dilemma that arises out of the principle of privacy and confidentiality in respect of disclosures of abuse, and the need for intervention. As an advocate for the disabled, he does not advocate the proposition that an official should report suspected abuse of a disabled person without consent. Such disclosure would work against the abused person's own autonomy. It might also worsen the abuse.

68. The concluding paragraphs of the work, *Harm's Way*, noting the disproportionate incidents of violence against people with disabilities, urges public commitment and a holistic approach to reforms that will

[9] Harm's Way (supra) p. 69
[10] R.S.C. 1985, Chap C-5
[11] Harm's Way (supra) pp. 124-25
[12] The Freedom of Information and Protection of Privacy Act, S.M. 1997, c. 50 Cap. F175
[13] The Personal Health Information Act, S.M. 1998. C 36 - Cap M110

assure the rights of disabled persons to protection against violence; not by chance, or charity, but through a recognition of their full right of equality, along with other citizens, to the protection of the law.

69. With that commitment, it is urged, must come a systemic initiative undertaken, collaboratively, among all levels of government and the public service that have a stake in the wellbeing of the disabled. That collaboration must include the disabled themselves in order to identify and to address the factors giving rise to the abuse of disabled persons. It must address the gamut of issues ranging through economic deprivation that can make escape from abusive situations impossible, to public awareness and detection. It will require changes both in legislation and in programs, changes that are necessary for the ultimate purpose of meeting the needs of the disabled to protection against abuse. The book details specific recommended reforms.

70. **Jim Derksen**, B.A., is a Senior Policy Analyst, Policy and Planning Branch of the Manitoba Department of Family Services. He appeared as a witness at this Inquest; however, not in his official capacity, but rather in his personal capacity as a person with experience in issues related to disabled persons. Since 1971 he has served in several capacities as a consultant or coordinator of projects relating, in whole or in part, to the issues of disabled persons. His experience includes work at the provincial, national and international levels. In 1980, he was a seconded advisor to the Special Parliamentary Committee on the disabled. The first of that committee's reports recommended that the equality section of the ***Canadian Charter of Rights and Freedoms***[14] specifically include disabled persons. He has worked with persons with disabilities and assisted in organizational efforts to empower them to exert influence affecting their status within society.

71. In his evidence before this Inquest, Mr. Derksen brought an historical perspective of attitude and public policy evolution concerning disabled persons. He explained that up to approximately the 1960's, society dealt with disabled persons by "warehousing" them; in other words, by keeping them in institutions. There is a suggestion that they were warehoused under the guise of caring for them and protecting them. They were labeled as permanently incompetent. Society protected them based upon assumptions about them made by others, without input from

[14] Supra

them. In the late 1960's up to the end of the next decade, public policy regarding disabled persons moved from "warehousing" to "greenhousing". The new philosophy emphasized rehabilitation and support with emphasis on assisting disabled persons to adapt to society; presumably, so as to enable them to become participants in it. In the decades and years following 1980, the evolution progressed again to another level described as the "openhouse" concept.

72. Under the openhouse concept, disabled persons are not asked to adapt themselves to society. Decisions regarding society's treatment of persons with disabilities is no longer based upon what the non-disabled assume is good for them. Instead, the aim, as I understand it, is to alter the social and physical environment to accommodate the disabled so as to empower them to participate on an equal level with the non-disabled in the shaping their destinies. Under this concept, decisions are not made that may affect the disabled in the absence of their opportunity to voice their views and participate in the process.

73. With depth of experience in issues related to the disabled, Mr. Derksen confirms that the incidents of violence against the disabled are disproportionate to that among the non-disabled population. In his opinion, the progress in society's perception and treatment of the disabled, while considerable, given human rights legislation across the country, and the ***Charter of Rights*** itself, the changes in approach are still very new; no more than ten or twenty years old. The legacy of past approaches remains a part of an entrenched societal view. It is a legacy that continues to foster power imbalances in relationships to the disadvantage of disabled persons. He says that statistics about Canadians and those of other nations have not, until quite recently, identified the disabled as a vulnerable group against which violence is perpetrated.

74. In his evidence Mr. Derksen says, in effect, that we must change the paradigm within which we think of the disabled. We must abandon the mindset from which we have, in the past, ignored the rights and sensibilities of the disabled. We must not think or presume that in the decision-making process concerning the disabled, they can be discounted. We must not think of them as objects of charity. It is neither charitable sentiment nor good will that should guide our consciousness or government policy regarding the disabled. Rather, our consciousness and the policy decisions that are made regarding the disabled must emerge

from public recognition of their absolute entitlement to the same opportunities in the pursuit of their self-fulfillment; the same protections, and the same right to be heard in the decision making process upon issues that concern them as are accorded to others.

75. Acting upon that recognition requires adjusting the environment that provides access to services for the non-disabled to a level that makes them accessible, as well, to the disabled. Society must put itself out to accommodate and include the disabled in the body politic. Disability alone must not demean them, or exclude them from the pursuit of self-fulfillment. It must not render them easy prey to abusers. Proactive steps must be taken to ensure the realization of those objectives.

76. **Janet Wickstrom**, B.A., M.S.W., is presently the Coordinator of the Vulnerable Persons and Protection of Abuse Program, pursuant to the provisions of ***The Vulnerable Persons Living with a Mental Disability Act***[15] (hereinafter called "***The Vulnerable Persons' Act***", or "***the Act***"). She has occupied that position since January of 2000 (almost two years after the death of Cory Moar). Her duties include liaison with community workers who report allegations of abuse against, or neglect of vulnerable persons. It is regional staff across the province that investigates reports of neglect or abuse. She consults with regional staff. She compiles statistics, and is involved in development and training. She may also assist to set investigations in motion. Reports of abuse or neglect of vulnerable persons may come to her from the abused person himself or herself, and sometimes from family or friends. It is possible that reports may come from a hospital, though she doesn't remember any report coming from a hospital. Most often, they originate from service providers in the community who have contact with the vulnerable person.

77. Prior to the year 2000, Janet Wickstrom was employed in the field of child abuse within the Department of Family Services and Housing. In 2001, the Executive Director of Regional Operations assigned to her the task of reviewing Cory Moar's contacts during his life, as an adult, with social service agencies, and to prepare a report in that regard. She was directed to undertake this task, it appears, by reason that in a criminal trial arising out of his death, there had been media coverage that

[15] L.M. 1993, c. 29 - Chap V90

questioned how it was that the awful abuse of Cory Moar, a mentally challenged person, could have gone unnoticed.

78. Remarks were made, reportedly, by Oliphant, A.C.J.Q.B. at the conclusion of a trial of an adult charged in relation to the injuries sustained by Cory Moar. Evidence at the criminal trial left troubling questions as to why there had been no intervention to assist Cory Moar. It was reported by local media that Associate Chief Justice Oliphant urged a public inquiry "into the shocking death of a mentally disabled man who was kept a prisoner in his own home." He is quoted, in part, as follows:

> I don't understand why warning flags didn't go off, and why someone didn't do something. Perhaps had someone cared to pay attention to Cory Moar and his plight, he wouldn't be dead.
>
> This is a man who has slipped through the cracks. For sure, this should not have happened. Society in general should feel ashamed.

79. In conducting this Inquest, I have admitted hearsay testimony relating to the treatment of Cory Moar in the months and years preceding his death. That testimony was admitted not for the truth of the facts and circumstances alleged or referred to. It was admitted, rather, to provide me with some insight into what was known by his extended family, and others, so that I might have a basis upon which to consider recommendations to avoid similar tragedies.

80. The full name of ***the Act*** suggests that mentally challenged people who are subjected to abuse may look to Ms. Wickstrom's department for protection. It is probable that Ms. Wickstrom, therefore, was assigned to review the history of the Cory Moar case with a view to ascertaining whether her department had a responsibility to protect Cory Moar, and failed to do so. Some of the evidence, therefore, focuses upon the services provided by ***the Act*** and the policy underlying it, as well as upon the services provided by other agencies.

81. "Mental disability" under the interpretation section of ***the Act***, supra, is defined:

> "**mental disability"** means significantly impaired intellectual functioning existing concurrently with impaired adaptive behaviour and manifested prior to the age of 18 years, but excludes a mental disability due exclusively to a mental disorder as defined in section 1 of *The Mental Heath Act*; [16]

82. Vulnerable Person is defined under said ***Act*** as follows:

> **"Vulnerable person"** means an adult living with a mental disability who is in need of assistance to meet his or her basic needs with regard to personal care or management of his or her property.

83. The phrase "impaired intellectual functioning" is interpreted by the administrators of ***the Act*** according to what was described as an internationally accepted standard, that being an Intelligence Quotient score below 70. "Impaired adaptive behavior" means an inability to manage the ordinary tasks of living, such as the inability to attend to personal hygiene, and the inability to budget, and the inability to manage money.

84. A requirement to report abuse or neglect of a vulnerable person is contained in section 21(1) of ***the Act***. The portion of that subsection relevant to this Inquest is:

> 21(1) A service provider.....who believes on reasonable grounds that the vulnerable person in respect of whom he or she is a service provider..... is or is likely to be abused or neglected shall immediately report the belief and the information upon which it is based to the executive director.

85. When based either on a report, or otherwise, the Executive Director, appointed under ***the Act***, has reasonable grounds to believe that a vulnerable person is, or is likely to be abused or neglected, he or she is required to investigate.[17] For that purpose he or she is vested with broad powers, including the power to remove a vulnerable person to a place of safety.[18]

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[16] Sec. 1 of the Mental Health Act, CCSM 110, defines "Mental Disorder" as: "a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognize reality, or ability to meet the ordinary demands of life, but does not include a disorder due exclusively to a mental disability as defined in *The Vulnerable Persons Living With Mental Disability Act."*
[17] See section 21
[18] See section 26

86. Ms. Wickstrom's review of Cory Moar's history revealed that he had been psychologically tested at the age of 13, in 1982, by the Child Guidance Clinic. He scored 69 in the verbal component of the test and 93 in the performance component. His overall score was 79. In testimony, Ms. Wickstrom assessed that reading as "borderline" in terms of intellectual capacity. There was a further test in 1988. From the evidence, it is not entirely clear to what extent the results differed from the earlier tests – the witness did not have that record in Court – but her recollection was that the later results may have been marginally higher than that attained earlier. A medical employment assessment prepared on February 25, 1997, states: "congenital hearing loss and mild mental retardation…"

87. As well, Ms. Wickstom reviewed the records of the government departments and the various community service agencies with which Mr. Moar had contact over the years, since he was 18. These included the Society for Manitobans' with Disabilities (SMD), Employment and Income Assistance (E&IA), the Employment Preparation Centre (EPC), the Human Resources Opportunity Program (HRO), Reaching Equality Employment Services (REES), Mama Whi Chi Itata Centre Inc.(Mama Wi). He had contact also with the Kiwanis Centre for the Deaf (KCD). He attended and completed various training programs to prepare him for employment and independent living. Under these programs, he was employed in several job placements. In all but one of those he received satisfactory evaluations.

88. Ms. Wickstrom's findings, based upon of her interviews and agency file reviews, are:

> As an adult Cory was involved with social services mainly focussing on vocational assessment, training and placement. In the case of SMD, this involvement was extensive - over an eight year period. Cory demonstrated success and managed to secure job placements in the areas where he had skills.
>
> In Mr. Moar's interaction with each of the reviewed agencies [SMD, E&IA, Ma Mawa Wi Chi Itata Centre and REES] there was no record of any suspected abuse or neglect. At the time of their involvement, interviews with agency representatives reported having no concern about the wellbeing or safety of Mr. Moar.

89. I do not intend, for the purpose of my report, to reproduce in detail, Ms. Wickstrom's extensive review of Cory Moar's contacts with the several agencies mentioned. Some specific comments, both from the testimony of Ms. Wickstom and from the notes of others reproduced by Ms. Wickstom, are pertinent to the issue of Cory Moar's situation and the responses relevant thereto by various agencies:

> February, 1981, Cory was seen at the Ear, Nose and Throat Clinic at the Health Sciences Centre. Regarding auditory and Perceptual skills, it is noted that he had "significant difficulty in processing interpreting and recalling spoken messages….marked deficits in receptive and expressive language skills…..significant deficits in auditory processing skills."
>
> May, 1982 - At Hugh John MacDonald School, mild hearing loss in right ear, and moderate loss in left ear noted.
>
> June, 1982 - Report of psychological test result by Child Guidance Clinic (CGC) indicates a 23 point spread between performance and verbal abilities, the latter being the deficit area. Hearing loss is noted. Described as "shy, retiring adolescent who has more potential than is sometimes demonstrated." At the same time, "[W]hen questions posed took 'an inordinate length of time to formulate his responses.' "
>
> August, 1988 - Cory was referred by his mother to SMD because of "significant hearing loss." SMD contacted the Child Guidance Clinic (CGC) for its involvement. CGC provided history of its supports to Cory since 1982, when he was 13 years of age, and in grade 7, including adaptive educational programming, counseling and speech language therapy. CGC notes contain the following: He was "well-motivated, and hard working…..but his poor attendance at school makes progress difficult to maintain." On receipt of CGC history, SMD wrote to Mr. Moar advising that worker wished to meet with him.
>
> November, 1988 - a letter from SMD addressed to Cory Moar advising that a worker has been assigned to him.
>
> January, 1989 - CGC advised Lillian Moar, Cory's mother, of arrangements for a hearing test.
>
> February, 1989 – April, 1989 (Cory would have been 20 years old) Letter from SMD to the Kiwanis Centre for the Deaf (KCD)

> applying for the acceptance of Cory Moar as a resident at that facility. It is noted that Cory had toured KCD and was "excited at the prospect of becoming a tenant". In the same month he was accepted as a resident at KCD subject to a support worker for Cory being assigned and available to KCD staff for an evaluation period of some months. He moved into KCD, as a tenant on April 1st. As well, in February, an application was made, in Cory's behalf, for his acceptance, as a student at the Industrial Training Centre. He was accepted into that program in April, 1989. Required funding for technical supports were also approved in April.

90. Up to October of 1989, there are numerous entries for assessments and funding for items required by Cory. In May of 1989, he left KCD and returned to live with his sister-in- law and brother. The notes record, "He had trouble with independent living." In October, it is noted that Cory attended the Industrial Training Centre, that completion of his training was expected by November, and that he had developed excellent work required skills (attendance, punctuality, etc.).

91. From October 1989 to February 1996, the record prepared by Ms. Wickstrom contains many entries of various agency contacts with Cory Moar. It is evident that during that eight year period, Cory was the recipient of many initiatives in work training programs, work experience programs, skills upgrade programs, and in remedial arithmetic. As well, he received financial support, for instance, in being provided with bus passes, and with lunch money, to having the cost of repair or replacement of his frequently broken or lost hearing aids covered. In the same period, personnel worked with him, or arranged for programs to help him develop the skills for independent living. Some of the assessments of his skills or progress, particularly in work situations, were quite positive. Others were less so.

92. One item in the report notes that in the period September 1992 to January of 1993, Cory's availability to attend to work placements was limited because he was required to baby-sit with his young nephew. The workers found it necessary to speak to his sister-in-law, Linda. That problem was apparently resolved.

93. In August of 1993, he was discharged from a job placement because of inappropriate verbal conduct toward a female employee, and because he followed her. After being fired he was willing to attend a program, and

was referred to a family-counseling program. It is said that he admitted knowing that his abusive conduct was wrong and he said he was sorry.

94. From July of 1994 to November of 1995, it appears that there was little, if any, contact with Cory by the agencies mentioned in the report. In December of 1995, however, there are notes of bi-weekly meetings with an employment counselor. On December 14, 1995, the worker received a call from Cory from the hospital. Her notes record “He seemed confused as he said he was in a car accident, and then said something about his wisdom teeth.” That was the last contact of this worker (REES) with Cory Moar.

95. On January 15, 1996, Cory Moar attended an appointment with a worker at another agency. “He appeared disheveled and his personal hygiene was in need of some attention.” He advised that in December he had fallen in his apartment and injured his left wrist. On January 26, 1996, he returned and produced a letter from a doctor advising that Cory was under no physical limitation.

96. He was then referred to a three-month attendance program, after which there was no contact with him. The worker noted that she attended his address (the address at which she believed him to be residing). Not finding him there, she left him a note to contact her, but he did not do so.

97. Cory Moar had hearing aids for both ears. The report notes that he was constantly breaking these devices. They required repair or replacement on several occasions. They broke, according to Cory, due to fights in which he had been engaged. Finally, after having repaired or replaced them several times, at considerable cost, S.M.D. funded the replacement of only one.

98. The record notes that he suffered a "permanent moderate-severe" conductive hearing loss in his left ear, and deteriorating hearing in his right ear. They record that his sister-in-law, Linda Pruden sometimes accompanied him to meetings and appointments with agency personnel, to interpret for him, and that she was seen by the SMD worker as supportive. The 1997 medical assessment contains the comment, in relation to Cory Moar: "Under the watchful eye of his brother and sister-in-law." Nothing in Janet Wickstrom's report, and nothing she said in her testimony before me discloses that any of the various agency personnel

she interviewed or whose records she reviewed, indicated or expressed cause for concern regarding abuse.

99. The records indicate that Cory Moar attended school and attained a grade 12 standing at R.B. Russell School. In the context of this inquiry and its purpose, I considered it important to explore his school record to acquire insight into the level at which he functioned, beyond that information obtained from the Wickstrom report. The impression, sometimes expressed, that he was mentally challenged seemed inconsistent with his level of academic achievement. The information contained in Ms. Wickstrom's report indicated that on assessment at Hugh John MacDonald School in 1982 (at 16 years of age), he functioned, in different skills, respectively, at grade levels from 1.5 to 5.5. At my request, therefore, Inquiry Counsel, Ms. Carson, obtained, and provided to me Cory Moar's academic records. I have filed that record as Exhibit 26.

100. The record goes back in time to Cory Moar's attendance at various elementary schools, commencing in the school year 1972-73 through to the school year 1979-80. The first two years were spent in nursery school and kindergarten. The record shows that he was promoted each year, thereafter, up to grade 4 at the end of the school year 1978-79. At the end of his year in grade 4 - the school year1979-80 - however, he was not promoted to grade 5. Rather, he was "placed" in grade 5. A note in the record for the year 1980-81 says, "Special needs grade 7". There is also a note on the record for that year indicating that he needed much assistance in all subject areas. The record shows, as well, that in the school years 1979-80 and 1980-81, he attended four different elementary schools.

101. It appears that in the school year 1981-82, Cory Moar finished grade 7 at Aberdeen School with passing grades in all seven subjects studied: one B, three Cs and three Ds. For the school year 1982-83, in grade 8, he attended Hugh John MacDonald School. In his seven courses of study in grade VIII, he earned one B, four C's and two Ds., a slight improvement over the previous year. His strongest marks were in art.

102. He was promoted to grade 9. In grade 9, however, in the school year 1983-84, he floundered and was not promoted. Four of his seven marks were below 50% (the method of recording subject standings had

apparently changed). He was directed instead, to report to R.B. Russell School.

103. He was placed in grade 10 at R.B. Russell School for the school year 1984-85. In that year he passed only one of seven courses. He repeated grade 10 in the 1985-86 school year and did marginally better with pass marks in three of seven subjects. In the school year 1986-87, he repeated grade 10 for a third time and achieved pass marks in all but two of his seven subjects. It appears that he was promoted to grade 11 where, in the school year 1987-88, he earned pass marks in all but two of his seven subjects. Promoted to grade 12, in the school year 1988-89 he failed all subjects but one. The record that I received stops there.

104. Ms. Wickstrom's report refers to I.Q. tests administered in 1982 and 1989. To place the scores in context, I understand that a score of 100 would indicate normal or average intelligence. Filed as exhibit 12 in these proceedings is an extract referred to as "Domestic criteria for mental retardation", from a document entitled *Diagnostic and Statistical Manual of Mental Disorder*, published in the ***World Health Report 2001***, under copyright of the World Health Organization. The manual sets out and defines degrees of mental retardation as follows:

> Mild Mental Retardation: IQ level 50-55 to approximately 70
> Moderate Mental Retardation: IQ level 35-40 to 50-55
> Severe Mental Retardation: IQ level 20-25 to 35-40
> Profound Mental Retardation: IQ level blow 20 or 25
> Mental Retardation , Severity Unspecified: when there is strong presumption of mental retardation but the person's intelligence is unstable by standard tests.

105. In 1982, at age 13, as noted, he scored 79 for overall performance, (from sub-scores of 69 for verbal ability and 92 for performance) – the overall result being above the mild mental retardation range. In 1989, when he was about 20 years of age, SMD assessed him again. The test for performance resulted in a sub-score in the mentally retarded range, his verbal abilities, as well, in the mentally retarded range, his visual memory, “good”, his ability to attend and concentrate, in the average range. On comparative review of the tests in 1982 and 1989, the report notes that the later test re-affirmed the 1982 scores in verbal ability, but

the earlier test results were better for performance than the later test. I was not provided with the sub-scores for either verbal ability or performance on the later test. I am unable to determine, therefore, whether the overall score on that test was above or below 70.

106. Ms. Wickstrom concluded, on retrospective assessment, that Cory Moar was not a "vulnerable person" within the meaning of ***the Act***. Whether the score on the later test was above or below 70 has little import on the question of whether he could have been classed as a vulnerable person under ***the Act***, since the only test he had before arriving at the age of 18 showed his I.Q. to be above 70. That fact, by virtue of the definition of "mental disability" under ***the Act*** excludes Cory Moar.

107. Ms. Wickstrom was questioned, as well, on the subject of staff training in respect of abuse and neglect of vulnerable persons. That training involves educational programs for the staff in her office and to the staff of community service providers, and to The Public Trustee relating to ***the Act*** and its reporting requirements. There are no specific pamphlets about the abuse program, but they have overheads for use in workshops they deliver, and handouts to assist participants to understand the program. She believes that the Winnipeg Region has had contacts with the emergency staff at the Health Sciences Centre about the reporting requirements. She has also provided training to psychiatric staff, and has spoken to psychiatric residents at the Health Sciences Centre. Her office has not engaged in public awareness campaigns, but they do sometimes, when conducting a workshop on the requirements of ***the Act*** in smaller centres, like The Pas or Flin Flon, to service providers at those locations, invite families and Boards of Directors. Her office investigates reports of abuse every year. In the previous fiscal year, she said, her office investigated 188 cases of alleged abuse.

108. If her office had received a report during Cory Moar's life that he was abused and was a vulnerable person, there would have been an investigation. If on investigation he did not come within the definition of vulnerable person under ***the Act***, her office would have attempted to connect him with support services, including the police for assistance. That, indeed, occurs on occasion. Whether the person seeks out those resources, however, would be his or her own decision. In the workshops, information is provided about the various indicators of abuse, such as physical evidence and behavioral changes. In the event that the person

comes within the definition of vulnerable person under ***the Act***, but if it appears that his or her basic needs were being met, no action would be taken under ***the Act***.

109. **Dr. Allan Hansen**, B.A., M.S.W. (psychology), Ph.D. (social policy and analysis – his thesis being upon the adjustment of mentally disabled persons in the community), is the Vulnerable Persons' Commissioner, appointed to that position in 1996 under the provisions ***the Act***; the year in which ***the Act*** itself was implemented. ***The Act*** added to the existing law (formerly Part II of the Mental Health Act[19]), the component of protection of persons who fall within the definition of "vulnerable person" under ***the Act***.

110. Dr. Hansen laid out the criteria for the inclusion of a person entitled to services under ***the Act,*** pursuant to the definition of "vulnerable person", as that term is defined in ***the Act***. The definition is tied to the definition of mental disability under ***the Act***. That definition has four components.

1) Impaired intellectual functioning: That criterion is measured by a standard intelligence test. A person who scores below 70 meets the first criterion.

2) The second criterion is referred to as impaired adaptive behavior. This criterion is measured by the ability of a person to perform daily tasks such as getting dressed and looking after money. A person who is unable to do so meets this criterion. Dr. Hansen said that this criterion is less focused than the first. By that, I understood him to mean that its determination depends on more than a paper test.

3) The third criterion requires that the first two criteria be manifested before the age of 18 years.

4) The fourth criterion requires that the person is an adult at the time of an application made on his or her behalf under ***the Act***. He indicated that an assessment might take into consideration such other compounding factors as deafness and being a member of a cultural minority.

[19] Supra

111. Part 2 of ***the Act*** authorizes the Minister to provide, or arrange for, the provision of services for vulnerable persons. It requires that individual plans be developed for every vulnerable person who receives support services, and provides for resolution of disputes relating to whether the person who is the subject of an application for support services under ***the Act***, is a vulnerable person within the meaning of ***the Act.*** Persons may be classed as vulnerable persons, entitled to the services offered by ***the Act*** pursuant to an application to the Executive-Director. A panel appointed under ***the Act***, with input from the person on whose behalf the application is made, and his or her family or other interested persons, considers the application.

112. The philosophy underlying ***the Act*** is, in part, the notion that to the limit of a disabled person's capacity, it is that person's right to make his or her own decisions respecting his or her life, with the support of family or other persons close to him or her. The provisions of ***the Act*** are enabling, that is, to facilitate the rights of disabled persons to make decisions affecting themselves.

113. Dr. Hansen said that it is estimated that 2.5% to 3% of the population would be considered mentally disabled as defined by an intelligence test. But many of those people "...do fine; they have jobs, they get married. They make choices. Sometimes they are not good choices, but they have the same right to make bad choices that you and I do . . . they go out and they're law abiding human beings and …… productive citizens. The whole thrust of the legislation is to empower people to make those decisions."

114. Applications to the Office of the Commissioner come most often in the form of a reference from community service workers who have had contact with the disabled person. There are some references, also, from other sources, such as family and health care providers. Applications are made to the Community Living Branch. A person who may be a vulnerable person comes in contact with the Executive Director appointed under ***the Act*** through an application. The Commissioner's office is in contact with Community Living organizations across the Province. In the administration of ***the Act***, there is outreach to inform community service agencies, health care agencies and the public of the services available under ***the Act***. There are videotape presentations that can be obtained. Personnel from the Office of the Commissioner

addressed over 1050 people at workshops about ***the Act*** in the year 2001, including police officers, agency personnel and professional groups. Smaller numbers were addressed in previous years. Apart from those outreach initiatives, there are thousands of packages sent out each year as a result of telephone inquiries made to the Commissioner's office on their toll free lines. As well, staff and regional community services workers and agencies across the province engage in educational presentations concerning ***the Act***.

115. Given that there are some 27,000 people employed in the health care sector alone, many of whom would not have been reached by the workshops to date, Dr. Hansen said the need for such workshops is constant. Concerning information provided to persons recognized as vulnerable persons under ***the Act***, information including their rights in the event of abuse, is provided to them. However, Dr. Hansen's office has not initiated any public awareness campaigns regarding the abuse of vulnerable persons. Generally, his office reacts to requests. There is no brochure or fact sheet that focuses specifically upon the signs of abuse that a person with a disability may demonstrate if he or she is being abused. In their workshops with community services agencies such as the Employment and Income Assistance Branch and Family Services and Housing, they talk about abuse and neglect and indicate the duty to report the suspected abuse of vulnerable persons.

116. Under its scheme, ***the Act*** empowers the Commissioner to appoint a substitute decision-maker for a vulnerable person. Before doing so, the Commissioner must investigate to determine, firstly, that the person on whose behalf an application is made, is: 1) a vulnerable person; 2) incapable of caring for himself or herself, alone, or with the involvement of a support network; 3) needs someone to make decisions for him or her respecting his or her personal care; and, 4) the appointment of a substitute decision-maker is reasonable in the circumstances [Section 49]. Given all of these criteria, but absent the active involvement of the support network, and absent efforts to involve a support network, the Commissioner must dismiss the application [Sections 50(1) and (2)]. He/she may, however, direct the Executive Director to involve the support network, or to develop a plan under Part 2 of ***the Act***. Where the criteria are all fully met, the Commissioner convenes a hearing panel for investigation and recommendation to him, relative to the appointment of a substitute decision-maker. Should the

applicant, or someone in his or her behalf, be dissatisfied with the Commissioner's decision on the question of whether the person who is the subject of the application is a vulnerable person, an appeal lies to the Court of Queen's Bench.

117. Based upon a report from the hearing panel, the Commissioner makes a decision regarding the appointment of a substitute decision-maker. The person appointed may be any adult who consents to act in that capacity and who, in the Commission's opinion, is apparently capable and suitable and would not have personal interests in conflict with those of the vulnerable person. The Commissioner, or the panel, checks for criminal records of those considered to be eligible for appointment as substitute-decision makers. The Commissioner does assess those apparently eligible individuals carefully, as to suitability, before an appointment is made. In the absence of any person meeting the requirements noted, the Commissioner may appoint the Public Trustee. It is administration of this part of ***the Act*** for which Dr. Hansen has primary responsibility.

118. Dr. Hansen testified that the appointment of a substitute decision-maker is an action of last resort. If a mentally disabled person has a support network, and that support network has not been challenged, and no serious problems are evident, an application for a substitute decision-maker would be discouraged. That is so because the philosophy of ***the Act*** is to empower vulnerable persons to make their own decisions. The preamble to ***the Act*** sets out the policy upon which it is founded. Where there is a support network in place, no criminal record checks relating to the person or persons constituting the support network are undertaken.

119. Short of the appointment of a substitute decision-maker under ***the Act***, there are other services available to vulnerable persons, including a range of residential services from adult foster homes, to group homes and apartment buildings. There is a spectrum of services in vocational programs that have the object of fostering employment in the competitive job market. There are specialized services for those with mental disabilities whose behavior is deviant.

120. Dr. Hansen was questioned, hypothetically, about what his response would be if he determined that an individual on whose behalf an application was made did not meet the definition of a "vulnerable

person", but was being abused. Dr. Hansen's initial reaction was that he would refer the individual to the police. He said, also, that he would try to involve that person with agency personnel. Later in his testimony he was questioned about the reference to the police. In response he said that if he had a substantial indication that the person was in peril, he would refer the matter to the police. Asked if he had referred matters to the police, without consulting firstly with the person he suspected was being abused, he said, "Very seldom…..". Asked if he was aware of the provisions of ***The Personal Health Information Act***[20] (PHIA), he said he was aware of its thrust. I understand that the issue raised by these questions relates to the appropriate application of the privacy provisions of PHIA, specifically, questions relating to a person's right to privacy and, also, the related question of whether disclosure of information about abuse to the police, for instance, might not further endanger the person suspected of being abused, at the hands of his or her abuser.

121. Under the provisions of PHIA, the meaning of the word "trustee" includes a public body that maintains or collects personal health information. The term "information manager" refers, in part, to a person or body that stores personal health information. Section 22 of PHIA sets out that personal health information in the hands of a trustee cannot, without the consent of the person to whom it relates, be disclosed except, *inter alia*, if the trustee has a reasonable belief that it is necessary to do so in order to prevent or lessen a serious and immediate threat to the health or safety of that person, or another person.

122. Section 62 of PHIA protects the government, trustees and those acting under the direction of either of them, from a suit brought against it or them for damages resulting from the use or disclosure of personal health information, if there is reasonable belief that the use or disclosure under PHIA is authorized. Under Section 63(3), however, a trustee or manager commits an offence and is subject to harsh penalty if personal information is improperly disclosed. Similarly, an employee of a trustee or manager is guilty of an offence and is subject to harsh penalty if he or she willfully discloses personal health information that the trustee or manager would not, under the provisions of PHIA be permitted to disclose.

[20] C.C.S.M. c. P33.5

123. The protection against abuse provided by ***the Act*** to vulnerable persons, in Part 3 thereof – the part of ***the Act*** for which Ms. Wickstrom is the Coordinator – requires, *inter-alia*, that a service provider, who provides service to a vulnerable person, and who believes on reasonable grounds that the vulnerable person is or is likely to be abused or neglected, shall immediately report the belief and the information upon which it is based to the Executive Director [Section 21(1)]. The Executive-Director is required to investigate upon the receipt of a report, or regardless of his or her receipt of a report, if he or she believes, on reasonable grounds that a person is or is likely to be abused or neglected [Section 22 (1)].

124. For the purpose of an investigation, the Executive-Director is empowered to communicate with and visit the vulnerable person, and to enter any place for that purpose. The Executive-Director may require any person to provide information relevant to the investigation. As well, he or she may solicit and review reports and information relevant to the investigation. For the purpose of facilitating access to the vulnerable person in the course of an investigation, ***the Act*** provides that a justice may, by order, authorize the use of force to gain entry to a place, if satisfied that a vulnerable person is or is likely to be abused or neglected, and if the Executive Director has not otherwise been able to gain access [Section 23(1)].

125. Sections 25 and 26 prescribe the protective steps the Executive Director may take if, following the investigation, he or she believes that the vulnerable person is or is likely to be abused or neglected. Such steps include the power to take such emergency action as removing the vulnerable person to a place of safety.

126. Questioned about the adequacy of the definition of vulnerable person in terms of societal needs, Dr. Hansen acknowledged that ***the Act***, and other provincial legislation, serves only those who fit the definition of vulnerable persons and those who live in certain facilities.[21] It does not serve people who fall outside those categories. In that regard, he testified that in other jurisdictions, such as New Brunswick and Nova Scotia, there is legislation that applies to adults in need of protection, without a definition that ties that need to mental disability. The legislation in those provinces provides a means of intervention, regardless of mental

[21] See The Protection of Persons in Care Act, S.M. 2000, c 12 - Cap P144

disability, in the event of concern about abuse or neglect. Respecting Cory Moar, Dr. Hansen said (confirming the advice Lillian Traverse said she received) that Mr. Moar would have had to take action himself to escape abuse.

127. Dr. Hansen was pressed by counsel for the Province on the issue disclosed in his evidence about people in need of protection who fall outside the defined categories, and who are not, therefore, eligible for protection under Manitoba legislation. Counsel suggested to the witness that it was unfair and inaccurate to suggest that people like Cory Moar are ignored by legislation. While Dr. Hansen said, "…You're right." his follow-up comments reiterated the substance of his first answer.

128. Regarding the mandatory reporting of suspected abuse [Section 21(1)], Dr. Hansen was questioned about how a health care provider, for instance, an emergency room doctor, could determine that a person is a vulnerable person as defined by ***the Act***, given that the doctor would have to have knowledge, beyond the person's age, that the person's I.Q. is below 70, and that his or her adaptive behavior is below the level at which he or she can make decisions on his own or with a support network. Dr. Hansen admitted, in effect, that it would be difficult unless the health care professional had some prior depth of background knowledge about the person.

129. Abuse services are not directly within Dr. Hansen's responsibility. Janet Wickstom, a previous witness, is the consultant or coordinator for abuse services. Community Service workers across the province are required, as part of their employment, in the event of an abuse complaint, to investigate to determine if abuse or neglect has occurred against a vulnerable person, as that term is defined by ***the Act***. But, respecting Cory Moar, because he was not a disabled person or a vulnerable person within the meaning of ***the Act***, the only assistance the Executive Director could have offered would have been to refer him to the police or another agency. Regardless, there is no note of Cory Moar's name in the records of his office prior to Mr. Moar's death.

130. **Linda Catherine Craig**, BSW, is a vocational rehabilitation worker employed by the Society of Manitobans with Disabilities (SMD). SMD is an agency governed by a Board of Directors, and is funded, both for core funding and on the basis of fees for services by the Government of

Manitoba. It provides services to children and adults. Ms. Craig's job is to assist her adult clients to access vocational counseling, education and job training; the ultimate object of her efforts being the full time employment of her clients.

131. She is aware that disabled persons are vulnerable to abuse. She has professional knowledge of that fact and has had training regarding that phenomenon, including a one-day session given by the Commissioner of Vulnerable Persons. Upon entry of a client to her agency, there is no threshold decision as to whether the client is a vulnerable person as defined by the ***Vulnerable Persons' Act***. When someone walks through the door and presents as mentally deficient, she would look firstly at a possible hearing loss.

132. She had professional contact with Cory Moar from September of 1992 to January of 1996, on approximately twenty occasions. At the outset, she observed him to be a man in his early 20s, casually dressed. He presented as disheveled and scruffy. He had a hearing impairment, but with a hearing aid, communicated orally. He could express himself and was verbal. When he wore his hearing aid, communication with him was easy. He came to one meeting without his hearing aid. At that meeting Ms. Craig found it necessary to repeat herself several times. She was still not satisfied that he understood, so she terminated the meeting and told him to return with his hearing aid. He did so.

133. Cory Moar did not, in her observation, present as mentally challenged. Ms. Craig noted that persons with hearing loss may be perceived to be mentally challenged because, due to hearing impairment, their responses to others may not appear normal. Because of her experience in working with those who suffer hearing loss, she attributed his demeanor to his hearing loss, not to mental disability. He was able to follow directions. He responded appropriately in the interactions she had with him. He expressed a preference to work in a hospital, a school or in cleaning private residences.

134. Initial assessment of a client would include factors such as life skills, the ability of the client to get around successfully and the ability to dress appropriately. In her assessment, there was no cause for concern in these regards.

135. In the initial period, until she arranged contact for him with an employment counselor, they met weekly or bi-weekly, but she maintained some contact with him even after she arranged contact with an employment counselor. At first, she saw him by appointment, but later he would, at times, attend at her office, unannounced. She met with him about twenty times over the period of their contact. In addition, he had contact with Linda Owen, the employment counselor. She understood he lived at 477 Ross Avenue (the address provided for him by the Department of Family Services and Housing). She was never advised that he was not living at that address, or that he was living instead with the Pruden family at their address.

136. Her contact with him was intermittent. On one occasion, he told her he was not coming back as he intended to pursue services through another agency.

137. During their several contacts, Linda Pruden attended with him on two occasions, once at Pruden's request as a support to him. On the other occasion, Ms. Pruden attended at Ms. Craig's request when Cory Moar had told Ms. Craig that he could not attend a scheduled meeting because he was required to baby sit for Ms. Pruden's youngest child. She did not detect that Cory Moar was fearful of Purden. He was more passive when she was present. Ms. Craig thought it was easier for him to rely on her.

138. He was on time for his appointments, and was respectful. He was generally sluggish in the mornings, and more alert in the afternoons.

139. In 1993, he was enrolled in an eight-week work experience program at Polo Park Inn, in the laundry. He was fired from that program for inappropriate verbal remarks to a female staff member. His file with SMD was, therefore, closed. Remorseful concerning that conduct, he was referred to counseling at the Mama Whi Chi Itata Agency, and in January of 1994 he was told that if he participated in Mama Whi program and was successful, SMD would re-open his file

140. In May of 1994, he was again referred to Employment Services. At that time he had changed his employment goals. Finally, in October of 1994, he advised that he was discontinuing his contact with SMD to pursue employment opportunities with an agency described as Quality Improvement Services.

141. In January of 1996, he came in to Ms. Craig's office with a swollen wrist and without his hearing aid. He wished to re-enroll with her agency. She told him he would have to be "checked out" for employment, by which I take it she meant re-assessed. She inquired about his wrist. He said he had fallen in his apartment. He did not tell her that he had sought and received medical attention for the injured wrist at the Health Sciences Centre on December 25, 1995, and that he had attended the hospital on two or three later occasions for follow-up. She, therefore, gave him two tasks to attend to before his next appointment: to get his wrist attended to and to wear his hearing aid when he returned. At the end of January, he returned with a medical certificate from the Mall Medical Centre regarding his wrist, that cleared him for work, and he was wearing a hearing aid.

142. She suggested to him that he enroll in a 3-month attendance program through her office. He said he would consider doing that and would contact her in two weeks. He did not do so. As indicated by Janet Wickstrom's notes, Ms. Craig attended at his address. He was not there. She left a note for him, but he did not contact her.

143. There being no further contact, his file was closed.

144. Except for the swollen wrist, she observed no other injuries on his body at the times she met with him. If she had suspected abuse she would have offered advise, spoken with her supervisor, and with Mr. Moar's consent, would have contacted police.

145. Except that abuse would be reported only with the consent of a client, she knows of no agency policy regarding abuse. There is a strict confidentiality policy, except where a client was a danger to him or herself, or others. Other exceptions to the confidentiality policy become operative when the injured person is under 18, by virtue of the ***Child and Family Services Act***[22], and when persons are in hospitals, personal care homes and certain other health facilities, by virtue of ***The Protection for Persons in Care Act***[23]. If a person presented to her, was bleeding, she might, without consent, take that person to the hospital. She did not contact the Vulnerable Persons' Commissioner regarding Cory Moar.

[22] S.M. 1985-86, c. 8 Cap C80
[23] S.M. 2000, c. 12 - Cap. P144

She is familiar with the ***Vulnerable Persons' Act***. She does not know if her agency provides services to persons defined by ***the Act***.

146. **Barbara Gail Dalman** is a caseload coordinator, employed by the Province of Manitoba in the Employment and Income Assistance Program (E & I.A). She has worked in that office since 1971, and has received on the job training and various training programs. For those who qualify, – that is, for those who are disabled as defined by the regime under which she works, E & IA provides financial assistance. Such persons are considered to be unemployable.

147. Applicants are screened and assessed by a medical panel. Up until 1997 Mr. Moar had received assistance from the City of Winnipeg. The City provides assistance to those who are considered employable. In 1997, however, the City, based upon a medical report prepared in February of 1997, referred Mr. Moar to E & I.A, as I understand the evidence, because he was considered to be unemployable, and therefore to be qualified for a provincial disability allowance. The transfer form from the City notes a hearing loss and mild retardation.

148. An application for assistance to E & IA was made by or on behalf of Mr. Moar on April 14, 1997. Considered by the medical panel, Mr. Moar was approved for financial assistance based upon the medical assessment. A file was open for him on May 1st, 1997. Assigned to Ms. Dalman, she saw him firstly on May 14, 1997. He maintained contact with her until July of 1998.

149. On the first date that she saw him, in May of 1997, he attended, accompanied by Linda Pruden, at Ms. Dalman's office. Ms. Dalman viewed Linda Pruden as a concerned family member. Ms. Pruden told Ms. Dalman that Mr. Moar's brother (her husband) did not take responsibility for Mr. Moar, so she was doing so. The meeting lasted about 1 ½ hours. Linda Pruden answered all questions put to her by Ms. Dalman. Ms. Pruden, spoke to Mr. Moar at close range. He seemed cooperative, and to understand what Ms. Pruden was saying to him. Ms. Dalman spoke to both Ms. Pruden and Mr. Moar. She does not recall direct communication between herself and Cory Moar. She does recall that he responded with gestures. There was no indication that Cory Moar was intimidated by Linda Pruden, or in any way fearful of her. Ms. Pruden seemed genuine in her support of Mr. Moar.

150. During the interview, Ms Dalman's notes record that he had no work history, and that he had no other (community) workers. Ms. Pruden told Ms. Dalman he did not need any other workers at that time because she was looking after him.

151. Ms. Dalman understood that he had his own residence. He also received a monthly cheque, the amount of which I understand to have been the difference between the total support he received and the rent for his apartment, the latter being paid directly. The cheque would have been sent to him at his own address, at 477 Ross Avenue. Ms. Dalman was not made aware of the fact that he was living at the Pruden's residence and not at his own address. She did not make any home visits.

152. She normally does not make more than one home visit in a case, and in some cases she makes no home visits. She might make a home visit if there had been no contact with the client for a long period, if concerns were raised about a client from others in the community, or if other information raised concerns. The focus of a home visit would not relate primarily to the welfare of the client, but rather to the client's continued eligibility to the benefits of the program. Sometimes, people will provide information indicating, for instance, that a person receiving benefits is working. Should concerns be raised, however, relating to the welfare of the client, other than in respect of eligibility, she would address those concerns. She understands her job description to include the requirement to address such concerns. No such concerns were raised regarding Mr. Moar.

153. In Ms. Dalman's opinion, Mr. Moar's conduct was consistent with the information she had received concerning him from the transfer form, the medical assessment, and Linda Pruden.

154. Over the months that followed her initial interview with Mr. Moar, Ms. Dalman saw him once a month or once every two months. He sometimes came in with Linda Pruden, and sometimes he was alone. When he was alone, he usually brought a note from Ms. Pruden. He did not speak to Ms. Dalman, but was responsive when she spoke to him. She does not know whether he was wearing a hearing aid when he came in. Her caseload at the time was at an all time high of 600. Earlier her caseload had been 350. At the time of testifying it was 130, but the

nature of her job has changed. She did not believe the numbers affected her ability to service her clients.

155. She recalls no serious or major bruising at the times she saw Mr. Moar. He had long hair and was disheveled. Had she suspected abuse, she would have advised Mr. Moar to contact the police. She has received no training in the recognition of the signs of abuse. But she has had clients among whom she has observed signs of abuse. In those cases, she has offered appropriate advice, encouraged disclosure, and where disclosure was made, she has made appropriate recommendations to the client.

156. Mr. Moar was constantly losing his hearing aids. According to the information she received from the company that supplied them (The Hearing Aid Centre), Mr. Moar had told them that his hearing aids were damaged or lost in street fights. Neither Ms. Pruden nor Mr. Moar had indicated he had lost or broken them in that way. Nor did she recall questions she had put to either of them about those fights, though Ms. Pruden had mentioned he was in fights on the street. He had had hearing aids for both ears. In February of 1998, after several replacements Ms. Dalman wrote to Mr. Moar saying she had authorized a further replacement for one ear, but that if he broke or lost it in a fight, it would not be replaced.

157. There was an incident in the late spring of 1997, when Mr. Moar reported to Ms. Dalman that he had not received his disability cheque for the month of May. In fact, however, he had apparently received it and cashed it. Ms. Purden later advised Ms. Dalman of that fact. Ms. Pruden told Ms. Dalman that Mr. Moar knew what he had done was wrong and was sorry. It does not appear from the evidence that Ms. Dalman confronted Mr. Moar directly regarding the circumstances surrounding the cashing of the cheque, or enter upon any independent inquiry concerning it.

158. Ms. Dalman has received no training on recognizing the symptoms of abuse, but she was made aware of the provisions of ***The Vulnerable Persons Act***, and of the services available through the Office of the Commissioner appointed under that ***Act***.

Other Evidence

159. From the report of police interviews with members of the Pruden household on December 11, 1998, the day of Cory Moar's death, the following exchange between a police officer and a child resident, records the following (in part):

Child: Cory's always bugging us and he tried knocking over the new TV and he broke our dryer. That's why my Dad beats him up--and he stole my mom's pills and he's teasing her about them and he puts blood in the margarine.

Q. Did Dad ever punch Cory?
Child: He would beat him up.

Q. With what?
Child: The jack and a stick and his steel toed boots. My mom doesn't want us to see it because she doesn't want us to grow up in fear.

Q. What kind of stick?
Child: Like a 2 by 4 kept by the door by the shoes.

Q. Did [C] take the jack downstairs with him?

Child: No the club. You know the club from the car. Sometimes he puts his runners on, he doesn't use the club he just uses it to scare him.

……

Q. Why was [C]. mad at Cory tonight?
Child: He was pissing and shitting on the floor and he was putting blood on the floor so the cats would lick it.

Q. Did that make [C]. mad?
Child: Ya cause that the cats would die, we have a baby cat from my aunt and we have a cat.

Q. Did [C] take the club downstairs with him?
Child: I don't know I was in my room playing Nintendo with my little brother.

Q. What did you hear?
Child: Yelling "**Help me Linda**" My mother said leave him alone to [C].

160. The following is a record of part of a police interview with [C], also on the day of Cory Moar's death.

Q. Then what?
A. Mom told me to go downstairs and clean up, Cory had pissed himself, he kept doing that.

Q. Do you like cleaning up after Cory?
A. No.

…….

Q. What happened when you went downstairs?
A. He threatened me that there would be big guys waiting for me.

Q. Does he always threaten you?
A. No but he broke our dryer and VCR before.

……..

Q. What did you do when Mom sent you down to clean?
A. Mopped up.

Q. What's Cory doing?
A. He's on his bed.

Q. Doing what?
A. He says he's dizzy and he's got stomach pain and his ears are big.

Q. How long has been complaining?
A. A week ago.

…….

Q. Did you lose it when he threatened you?
A. Ya.

Q. Then what did you do?
A. Went up to get that jack.
……

Q. Why did you need the jack if Cory was on his bed?
A. No he walked between the poles and threatened me.

Q. What did you do with the jack?
A. Hit Cory on the leg.

Q. Where?
A. Right here. (points to his right front thigh)

Q. Then what happened?
A. I hit him with a 2 by 4.
……..

Q. Why a 2 by 4?
A. I thought the jack might hurt him real bad, the jack made him bleed. He had a scab there that he kept picking.

…….

Q. What did Cory do when you hit him with the jack?
A. He said stop.

Q. How many times did you hit him with the 2 by 4?
A. Twice here. (points to his right shin)

Q. Did he bleed then?
A. Ya it was dripping.

161. Also interviewed by police was a neighbour, Leane Righter. According to the police summary, she told police that about three weeks before the date of Cory Moar's death she heard a guy moaning from the Pruden residence. After listening, she realized it was the sound of a male in major pain. She said it sounded to her like a guy being tortured, and continued for about an hour. Then about a week before the date of Cory Moar's death, she said she heard the same moaning noises, she was sure, coming from next door.

Submissions of Counsel

162. Counsel made submissions as to recommendations the court should consider in light of the evidence.

163. Ms. Carson, counsel to the Inquest, raised a number of issues to which she suggested my attention might be directed in terms of recommendations:

- Measures that would encourage self reporting of abuse;

- The need for public education and the education of professionals on recognition of the symptoms of abuse;

- The need for effective resources to serve those abused persons who fall outside the existing categories of abused persons for whom resources do exist;

- The need for accessibility to those resources by both abused persons and by the relatives or friends of persons suspected of being victims of abuse persons;

- The advisability of employing the help of a person close to a service provider's client to assist as an intermediary when the client presents with a hearing impairment;

- The adequacy of the information systems at the Heath Sciences Centre in terms of briefing emergency medical staff regarding the histories of emergency patients for the purpose of assessing the indicia of abuse;

- Whether monies paid by government for social service benefits such as rent for housing and an allowance for food and clothing, should not be monitored for the purpose of assuring that the benefit is received by the person for whom it is intended;

- Whether, or to what extent, reporting by service providers of suspected abuse of a client or patient who is a "competent adult", should be mandatory without the consent of the client or patient.

164. Ms. Tolton, counsel for the Winnipeg Regional Health Authority and the Health Sciences Centre, pointed out that the ***Mental Health Act***[24] deems, absent evidence to the contrary, that all persons are competent. The ***Personal Health Information Act*** [25]prohibits disclosure by health care workers of information about a patient without the consent of the patient, except as specifically authorized by that ***Act***. Apart from liability to

[24] Supra
[25] Supra

penalty for doing so, unauthorized disclosure can have the disastrous effect of discouraging people who need medical attention from seeking it out of fear that hospital personnel will report it. A further ***Act***, the ***Protection for Persons in Care Act***[26] requires reporting of suspected abuse against patients or residents in care facilities by family members and others, but the definition of patient excludes patients in an emergency department.

165. Ms. Tolton submitted that consideration should be given to a recommendation that a Legislative Review Committee explore the benefit of expanding the definition of "patient", under the latter ***Act,*** to include patients in emergency departments.

166. She advocated a recommendation for a more sophisticated information technology system, both internally – within the Health Sciences Centre – as well linkages with other health care providers. Those improvements would provide to medical staff in the emergency department, a computerized summary of a patient's entire history, rather than simply a record of the last four visits to the hospital. Linkages with other health care facilities would alert medical staff at one hospital to pertinent information about recent treatment at another hospital.

167. Finally, she referred to the evidence of Dr. Palatnick relating to the limited time allotment given to the emergency department to the services of a hospital social worker. She argued that medical staff in the emergency department may often be busy with a critical case and may not have adequate time to make assessments, such as those required for ***The Vulnerable Persons' Act***. They may not have the time to speak at any length with a patient about the options available if, for instance, abuse is suspected. I inferred from counsel's remarks in this regard, though she did not say so, that she would not oppose a recommendation that more of a social worker's time be allocated to the emergency department to examine in greater depth what may not present as obvious on the surface, and, in appropriate cases, to provide advice as to available alternatives.

168. Ms. Kapac, counsel for the Commissioner appointed under the ***Vulnerable Persons with a Mental Disability Act***, admonished me to

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refrain from the temptation to recommend an expansion of the definition of "vulnerable person" under ***the Act***. Expanding the definition, she said, would have huge legal, philosophical and resource implications. Enlarging the definition would invite state intervention into the lives of people who do not need it, who may not want it, and who might resent or object to being classified as vulnerable persons.

169. She expressed concern, as I understand her submission, that expanding the definition of "vulnerable person" in ***the Act***, could lead to an unmanageable volume of assistance seekers who could claim benefits under ***the Act***. She said:

> The list of people who might be considered to be vulnerable people in our society is endless. We are talking about people with mental health problems, people with mental disabilities, victims of domestic violence, people with head injuries, the elderly, people who are economically marginalized, so on and so forth.

170. In her submission, the best recommendation that could come out of this Inquest, if it were my intention to explore the issue of an expanded definition, would be that I recommend that the issue be referred to a broadly based committee to consider all of its implications.

171. Mr. Wright, co-counsel for the Coalition of Advocacy Groups for the Disabled, in one of his opening remarks, said:

> [However,] the circumstances of Mr. Moar's death and the media reports of those events, have a particular and a very disturbing resonance for people with disabilities. It's not just because Mr. Moar was a person with a disability, it's not just because Mr. Moar was portrayed in the media as a person with intellectual disability, it's because, partly because the circumstances of Mr. Moar's life and his death, and especially the circumstances that made him vulnerable to the abuse, are circumstances with which far too many people with disabilities are familiar.
>
> Mr. Moar suffered serious isolation. He was isolated from his community, he was isolated from other members of his family. Mr. Moar was dis-empowered; he was deprived of his rights and deprived of means of exercising those rights. Mr. Moar was discredited through the use of disability labels.

172. Mr. Wright referred to the evidence of how Mr. Moar was labeled as mentally disabled by some of the service providers who had contact with him. Mr. Wright argues that because of that label he was discounted, isolated and the subject of abuse without any resource to which he could turn for help.

173. Referring to Ms. Carson's submission, Mr. Wright challenged her description of Cory Moar as a "competent adult". His point was that although, under the artificial definition of "vulnerable person" in ***TheVulnerable Persons' Act***[27], Mr. Moar was not a "vulnerable person" because he was not mentally disabled, and because he was able to function above the minimum level set out in ***The Vulnerable Persons' Act***, the term "competent adult" is an inappropriate description. His lack of status under *the* ***Act*** is not necessarily equivalent to competence in the real sense of the word. Mr. Wright did not argue that Mr. Moar was, or was not competent. He contended, rather, that the word "competent", in the context of this Inquest, is misapplied. He contended that ***The Vulnerable Persons' Act*** is irrelevant to the issue in this Inquest, in terms of the support that should have been available to Cory Moar,

174. He submitted that the problem of violence against disabled persons is complex. The problem cannot be resolved by a rush to change this ***Act*** or that; but rather, by a long-term, well-developed approach by government in consultation with disabled persons to understand the problem in the same way as society has come to understand the phenomenon of spousal abuse. There is no easy answer. He urges a committed and sustained effort by government in consultation with disabled persons to understand the systemic causes of the problem and a systematic approach to address issues of violence against persons with disabilities.

175. Regardless of that initiative by government, he agreed with Ms. Carson's submission relating to the importance of initiatives to enhance public awareness of violence against the disabled. If there had been enhanced awareness, perhaps the service provider (Linda Craig), who saw Mr. Moar's swollen wrist might have investigated further. Perhaps, the neighbour who, according to a police report, heard Mr. Moar moaning in pain would have called the police.

[27] Supra

176. Mr. Wright then raised the issue of resources. Given sufficient awareness to have raised concerns, he questioned the resources available to address prevention and response to violence? If there are such resources, are they accessible to people like Mr. Moar?

177. Making reference to Ms. Tolton's submission, he applauded a closer relationship between WRHA and the office of the Vulnerable Person's Commissioner, but urged that in any consultations, vulnerable persons be included in discussions.

178. He submitted that persons with disabilities need to know what their rights are in respect of abuse. They need to know to what resources they may turn to if they are in need. There should be the development of a plan to convey that information to the disabled by vehicles that will reach them: *"The most constructive and difficult question that can be asked about Cory Moar's tragic situation is what information and resources did Mr. Moar need to escape the violence?"*

179. Mr. Wright's clients do not disagree with the proposition that disabled persons should have the right not to disclose abuse. That proposition, however, standing without qualification "camouflages the issues". I understand his argument to be that a right to make the decision not to disclose abuse is meaningless in the absence of awareness by the disabled person of the right. Moreover, even given such awareness, the right itself would be a paper right, unless there exists a secure shelter to which the abused can immediately escape, and unless information about such a facility is known to an abused person, or others concerned for his or her welfare.

180. He compared the law and Government policy relating to spousal abuse and that relating to the abuse of disabled persons, and noted the difference. For abused spouses, there are safe facilities for short-term refuge. There are restraining orders. Nothing similar is available to disabled persons.

181. Whatever is done, he urged, whatever recommendations are made as a result of this process, "should respect the rights and autonomy of persons with disabilities. But to say that Cory Moar was competent and autonomous and exercised his right to privacy, his right to decide not to

disclose, is not a satisfactory response. His decision ought to have been an informed one with real options. We say it was not."

182. Mr. Frost, counsel for the Government, submitted that my task was to wrestle with the issue of whether Cory Moar was mentally retarded. Despite Dr. Balachandra's apparent assumptions that he was mentally challenged and suffered congenital deafness, the evidence, Mr. Frost argued, bears out neither. The evidence, he pointed out, concerning Cory Moar by those who had contact with him, is consistent with the report by Janet Wickstrom that he was not mentally disabled. What is relevant is the preponderance of evidence about the mental status of Cory Moar as observed by the various witnesses who knew him and had contact with him: his mother, his sister, his brother, as well as Linda Craig and Gail Dalman. The evidence that Mr. Moar was mildly mentally retarded was based on paper reviews, he submitted. On that point, however, as Mr. Wright noted, the transfer form received by Gail Dalman noted that a medical panel had assessed him, in part, as mentally retarded and unemployable to the age of 65 years.

183. Remarking upon submissions made by Mr. Wright to the effect that Mr. Moar did not have access to resources, Mr. Frost listed the several government funded departments, agencies and health care facilities that rendered much in the way of services to Mr. Moar, over the course of most of his adult life. As was disclosed by the evidence, Mr. Moar was the beneficiary of considerable support from those agencies and facilities. Mr. Frost pointed out, moreover, that Linda Craig, Shauna Neufeld and hospital staff all questioned Mr. Moar with a view to ascertaining whether injuries they saw were the result of abuse. In regard to these submissions made on behalf of the Government, I think it is appropriate to comment that Mr. Wright's submission contended, not the absence of resources generally. The focus of Mr. Wright's submission was the absence of resources geared specifically to Mr. Moar who, for reasons about which we can only speculate, chose to hide the appalling abuse in his life, and incredibly remained at the place where the abuse continued. It is to that phenomenon, as I understood him, that Mr. Wright addressed his submission regarding access to resources.

184. Mr.Frost noted, however, that since Cory Moar never disclosed that he was being abused, there is an absence of evidence that there was no resource available to assist him if he had disclosed. Gail Dalman said, in

her testimony, as Mr. Frost pointed out, that if, in the course of performing the duties of her office, a client were to disclose abuse to her, she would do whatever was necessary to assist the client. She considers that to be a part of her job. While others were not asked the question, Mr. Frost ventured that Linda Craig, the doctors who treated Cory Moar and the police would have felt the same duty.

185. Acknowledging, however, that Cory Moar suffered "horrendous abuse", Mr. Frost predicted the dilemma in which I would find myself would be in attempting to craft recommendations to address the phenomenon of abuse against the Cory Moars of this Province. Should there be mandatory reporting of suspected abuse and intervention by the state or one of its agencies, regardless of the wishes of the person? A legislative or policy requirement for that option might well be counter-productive in terms of assistance to the abused person. He quoted the following passage from ***Harm's Way***[28] referred to earlier:

> Depending on the legal framework, mandatory reporting can trigger a chain of investigations and other events that survivors may perceive as invasive against their own best interest and preferences. Although mandatory reporting may have merit, it is not clear that by police investigation, social worker or departmental intervention, this is an unqualified benefit. Instead, intervention should be guided by the survivor's express wishes. Survivors should have the option of pursuing administrative, rather than judicial redress.

186. Mr. Frost referred to mandatory reporting legislation in Nova Scotia that, he says, at best, has met with mixed success, according to advice he had received. It was his submission that the Government can bring about improvement in the system by fostering:

> public awareness, better education…….getting the information out there to people such as Cory Moar that there are resources within the system that will assist them. A better system and chain of communication. And I think that can be done, Your Honour, in a very direct way in terms of from an in-house perspective…..

187. Those objectives can be accomplished, he submitted, through protocols and directives to various departments and agencies. He expressed

[28] Supra

concern about recommendations that ignore the financial capacity of Government to meet. He said the Government's pocket was not bottomless. He urged, as well, that I bear in mind that the workloads of employees such as Gail Dalman are already high, as the evidence indicated it was, and that adding greater responsibilities to their already heavy load would be problematic.

188. In concluding, he echoed the submissions of other counsel to the effect that changes should come about through a consultative process. If I consider, for instance, that the definition of "vulnerable person" under the ***Vulnerable Persons' Act***[29] should be expanded, or if I would advocate broader mandatory reporting of suspected abuse, my report should be framed as a recommendation for broad based consultations to assess whether those are appropriate routes to take as methods to reduce incidents of abuse. Consultations should seek input from all interested parties, including disabled persons and organizations representing them.

Observations and Conclusions

A. One of the most basic of instincts among living beings is the avoidance of pain, actual or threatened. That proposition, in my opinion, needs no demonstration or further elucidation. Except for therapeutic purposes associated with medical treatment, and perhaps professional fighters who risk pain for the purpose of earning a livelihood, normal, healthy reaction to pain or the threat of pain is to escape it. Short of those exceptions, one can only imagine the willing endurance of pain as masochism.

B. It can be assumed that Cory Moar suffered excruciating pain from the egregious brutality to which he was subjected. The evidence of Dr Litman, the pathologist who performed the autopsy, leads to certainty that Mr. Moar was subjected to painful trauma at many locations on his body over an extended period prior to his death. That conclusion is further supported by the report of a neighbour that on two occasions she heard the sounds of a man in terrible pain from next door. Mr. Moar did not, however, escape. Nor did he, apparently, at any time attempt to escape from the environment in which the attacks were perpetrated. As well, given the opportunity to do so on more than one occasion, he did not disclose or complain about any abuse to people who might have been

[29] Surpa

in a position to help him: a police officer, a community service worker, a nurse, his sister Rosalind, his mother or his younger brother Henry.

C. Why did he not escape? Why did he not disclose the abuse to those who might have helped him? The evidence is clear that his intellectual deficit was modest. There is no evidence of such profound intellectual impairment as would lead to the conclusion that he lacked the intellectual capacity to want to escape or make disclosure. Fear is one possibility. Absent other factors that would answer those questions, one cannot avoid the speculation that he was so badly treated and oppressed over a long period of time, and so deprecated by the family with whom he lived, that he developed a sense of self-hate resulting in his feeling that he deserved punishment. Or did his treatment so demoralize or dehumanize him as to deprive him of the capacity to extricate himself?

D. In contrast to his uncommunicative demeanour, as observed by his brother, while Cory was living at the Pruden residence, his brother told the Inquest that when Cory was younger, he laughed a lot and liked to tell stories. Would a competent medical witness or psychologist have told the Inquest that such an observed change in his affect – in his disposition – would be consistent with a paralysis of the will to escape? I do not have the professional training to make an assessment in those regards. I am convinced, however, that his failure to escape or disclose the abuse was the involuntary result of a condition of his mind, whether fear or some other mental state, that prevented his initiative to do so. I conclude that to be so, on the assumption that no healthy mind would endure, willingly, the violence that Cory Moar endured.

E. Specific protective measures against abuse outside of the ***Criminal Code*** are present in Manitoba law, in only a few situations:

1. If the victim is a child, he or she may be apprehended and removed under ***The Child and Family Services Act***[30].

2. If the victim is a person resident in a health care facility or in a personal care home, the abuser may be removed, pursuant to ***The Protection For Persons in Care Act***[31].

[30] Supra
[31] Supra

3. If the victim is a vulnerable person as that term is narrowly defined by the definition contained in ***The Vulnerable Persons' Living With a Mental Disability Act***[32], the abused person may be removed to a place of safety.

F. None of those statutes would have offered service to Cory Moar. Nor would the services provided under those statutes have been appropriate to Mr. Moar. On the evidence, it seems clear to me that, while he certainly needed the assistance of support services, his ability to understand was not impaired to the extent that it would have been necessary to deprive him of the right to make ordinary decisions in his life.

G. I was referred to no other legislative provision or administrative program in Manitoba under which Cory Moar could have sought protection from the abuse to which he was subjected. The above Acts effectively excluded Mr. Moar. Their definitions and terms of reference screened him out of the services that they offer. Having said that, I am satisfied that all of the witnesses in the community service sector would have gone out of their way to assist Mr. Moar, if they had been aware of the abuse.

H. Searching the Statutes of Manitoba, I note that ***The Domestic Violence and Stalking Prevention, Protection and Compensation Act***[33], provides for prevention and protection orders on ex-party application to a justice. That ***Act*** specifically defines "domestic violence" as follows:

> 2(1) Domestic violence occurs when a person is subjected by a cohabitant of the person to
> (a) an intentional, reckless or threatened act or omission that causes bodily harm or damage to property;
> (b) an intentional, reckless or threatened act or omission that causes a reasonable fear of bodily harm or damage to property;
> (c) conduct that reasonably, in all the circumstances, constitutes psychological or emotional abuse;
> (d) forced confinement; or
> (e) sexual abuse.

I. Under the heading **Certain Persons Deemed To Have Fear**, that ***Act*** contains the following provision:

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[32] Supra
[33] S.M. 1998, c.41 - Cap D93

> 2(4) Where, but for mental incompetence or minority, a person would reasonably, in all the circumstances, fear for his or her safety owing to conduct referred to in subsection (2), the person is conclusively deemed to have the fear referred to in that subsection.

J. Section 4(2) enables an application to be made on behalf of the applicant by a lawyer or peace officer with the applicant's consent.

K. If there were a secure shelter that might be recommended to a person suspected of being abused, that ***Act*** is a resource to which community service providers, including health care providers, could refer in order to assist such persons. Section 2(4) thereof plainly recognizes as persons to whom that ***Act*** does apply: those who are not classed as mentally incompetent.

L. It was argued by some counsel that Cory Moar was "competent" to make decisions about disclosure of abuse, simply because he was not among the classes of people targeted for protection under the legislation for people about whom suspected abuse must be reported. Thankfully, however, they did not rely on that position to urge that there should be no avenue of relief for people such as Cory Moar. Given the pain that Mr. Moar must have suffered and the tragedy of his death from violent abuse the argument that he was competent, and that, therefore, he was entitled to no legal protection, is legalistic and unresponsive to the need to provide protection to people like Cory Moar. That he was not a "vulnerable person" as that term is narrowly defined by ***The Vulnerable Persons Living with a Mental Disability Act***[34], does not mean that he was not, if fact, vulnerable according to the ordinary meaning of that word. As indicated, counsel who made the submission that Mr. Moar was competent did recognize in their submissions a need to address abuse against people like him.

M. There is nothing in the evidence of any publicized information that might have reached Cory Moar, or others who had an interest in him, that he had a right not to be abused. Indeed, his mother testified that she had been told that Cory would have to extricate himself on his own. That he would have to take action on his own initiative is a fact confirmed by Dr.

[34] Supra

Hansen. Without information that he had a right not to be abused, Cory Moar might not have understood that he had that right. Others interested in his welfare might have had no idea of how to address the abuse they perceived.

N. Moreover, beyond the absence of any information regarding the right not to be abused, there is another dimension that compounds the problem. The fact is that, aside from police intervention, there were no effective resources through which Mr. Moar could have sought protection from his abusers, even if he or those interested in his welfare were aware of the right. A right without a remedy is an empty right.

O. I am not aware of, nor have I been referred to legislation or a program that establishes services or shelters for persons such as Cory Moar. There are, I understand, shelters where women (and children) abused by an intimate partner, may seek secure emergency shelter. Osborne House operates two such shelters in Winnipeg, and eight others throughout the Province. Osborne House, I am informed, is a voluntary agency, the services of which are funded by the Province. Not being an abused woman, or a person abused by an intimate partner, Cory Moar would not have had access to Osborne House.

P. I am not unmindful of the criminal law power to arrest and detain suspected abusers. Nor am I unaware that the release of suspected abusers, pending determination of the issues, can be made subject to a no-contact provision. Because Mr. Moar did not disclose abuse to a police officer when he had the opportunity to do so, no one was arrested, and the abuse continued.

Q. Regarding the criminal justice response, it should be recognized that the object of that response is penal consequences. While that response to abuse may be one of the appropriate courses of action in some cases, it is possible, depending on the particular circumstances of a case, that other or prior or additional interventions would be more suitable and more constructive. In the context of a need for urgent response to suspected abuse, the criminal process has frailties that can delay or negate action. A police officer cannot arrest without reasonable and probable grounds. Having such grounds, it may be many months before a trial or disposition can be expected. The high onus of proof in criminal law makes conviction much less than a certainty. As has already been noted, there

are precedents for alternative approaches in law. ***The Child and Family Services Act***[35] , for instance, creates an entire regime for dealing with the abuse or neglect of children outside the criminal process, in a direct and potentially more constructive way. ***The Protection For Persons in Care Act***,[36] as well, addresses the issue of abuse outside the criminal justice process. More relevant to this Inquest is the alternative process that appears to be available under ***The Domestic Violence and Stalking Prevention, Protection Act***[37].

R. It appears from some of the evidence that Mr. Moar's behaviour at the Pruden residence was problematic for the family. Linda Pruden testified that he created problems and that she would have preferred that he lived elsewhere. The two children interviewed by the police indicated problems. It was because of Cory's behaviour, according to one of the children that Cory was beaten. Nothing, of course, would justify those beatings. Linda Pruden, who claimed to have cared about Cory, admitted having hit him with a steering wheel club, and to have permitted a 14-year old child to beat him mercilessly. She told the child only, not to hit Cory in the head.

S. Her actions seem to belie her testimony, that she had affection for him. There is evidence, however, that she did care for him and did support him. He called to her and pleaded for her help when "C" was beating him on the date of his death. He must have had some expectation that she might help. She was observed by more than one professional worker to be supportive of him. It may be that neither Linda nor Eli Pruden had the ability to address, in a non-violent way, problems arising out of Cory's behaviour.

T. If that is so, and if there had been an accessible public service of which Linda Pruden was aware, and from which she could seek confidential advice, it is possible that she might have done so, and that there might have been constructive intervention before the abuse became serious. If resorting to the police is the only visible resource, few, if any, will disclose their own misdeeds or seek help to deal with problems through means other than violence. The availability of a non-threatening

[35] S.M. 1985-86, c, 8 - Cap C80
[36] Supra
[37] Supra

resource, however, to assist in the resolution of difficult situations could be helpful in preventing abuse or in arresting its perpetuation.

U. The issue at this Inquest was not whether Cory Moar was "disabled" or "vulnerable" within the meaning of ***the Act***. Given that he was not a member of any of the classes of person in respect of whom reporting a suspicion of abuse is mandatory, the issue is whether beyond the police there are, and whether there should be, measures that do address issues of abuse against people such as Cory Moar.

V. The coalition of advocacy groups for the disabled who had standing at this Inquest, raised concerns about mandatory reporting of suspected abuse of disabled persons, by reason that such reporting may make the disabled person even more vulnerable to abuse. It was also pointed out that equality in terms of equal benefit of the law "without discrimination …based on mental or physical disability",[38] should protect the disabled from intrusions upon their privacy to the same extent as the rights of the non-disabled, if they, for their own reasons, decline to disclose.

W. Health care professionals were concerned that mandatory reporting might deter some who require medical treatment from seeking it.

X. I do not discount the validity of those concerns. Cory Moar's terrible life and tragic death, however, suggest to me that where the right to privacy must prevail in the face of such potentially tragic consequences, as resulted here, the social safety net should build within it a means to offer protection against abuse without seriously impairing the right to privacy.

Y. Some of the evidence at this Inquest focused upon the rights of the disabled, and the discrimination by which they are confronted. Cory Moar was not disabled, and he was not a vulnerable person, according to the statutory definitions. Nor can it be said that he did not receive support through all the resources that the social service system had to offer, given his limited abilities. Cory Moar did not experience systemic discrimination in the sense that he was discounted by the social safety net or that there was a failure to accord him everything the social safety net had to offer. The fact, however, that he did not escape, that he did not make any disclosure, infers, strongly, that he was in fact

[38] Section 15, The Canadian Charter of Rights and Freedoms

vulnerable, though not so by statutory definition. For him there was nothing in the system, no well publicized information program, no safe facility to which he could have escaped. In that sense, the system failed him.

Z. It is possible that the abuse and death may have occurred regardless of better means of detection, of better educational and information programs, and of broader reporting requirements. The violence against him was conducted in secret. If, however, in the public realm information had been widely published that there is help and resources available to provide safety for people living in an atmosphere of abuse, and there were, in fact, such resources, perhaps Cory Moar would have seen it or heard it. Perhaps his mother, his sister, his uncle or his brother would have known of it. They could have urged him to take action. They could have reported it themselves, with or without his consent, because they would not have been constrained by PHIA[39]. They could have advised him that a resource was available.

AA. When government perceives a need to inform the public, it does so effectively. Few, if any, for instance, who can hear or see could escape knowing that drunk driving will not be tolerated. Similarly, few, if any, could escape knowing that smoking is a serious health hazard. Programs are available, and are advertised for alcoholics and smokers. No one should be left to wonder about his or her right not to be abused, and that there are resources for those who are abused For Cory Moar, whatever the right, there were no effective or accessible resources through which to exercise it.

BB. If the Health Sciences Centre Emergency Room had access to an information system that provided medical staff with a skeleton summary of the complete medical history of Cory Moar over the four years prior to his death, the frequency of Cory Moar's visits might have aroused concern about abuse, despite his explanations. If the emergency room had greater access to the services of a social worker with training and expertise in dealing with abused people, perhaps Cory Moar would have been persuaded to disclose. There might have been intervention before it was too late.

[39] Supra

CC. Examining the issue of abuse as the cause of Cory Moar's death, as this Inquest has been required to do, the prevalence of abuse in society that does not result in the death of a victim was not really addressed, but lies in the background as a problem requiring address. There was evidence of an estimate that the disabled suffer greater abuse than those within the general population. It was estimated that the disabled are abused one and a half-times more frequently than others. The evidence, however, was that police departments' statistics and other government statistics do not disclose the proportion of the victims of assaults who are disabled persons. That failure renders research difficult. The object of research in that regard would be to lay the foundation for a statistical basis upon which to allocate resources specifically to address the abuse of the disabled. The results of such research, if statistical records permitted it, might well be useful in planning.

DD. Respecting the submission that terms used in the statutes should be more clearly defined, I am unable to make any suggestion that I consider would be useful. In my opinion, precise definitions can tend to obstruct or limit desirable social objectives rather than foster them. The phrase "necessaries of life", for instance, in section 215 of the ***Criminal Code*** is, admittedly, not precise. That very absence of precision, however, has the distinct advantage of permitting interpretations based upon the peculiar facts of each individual case.

EE. In the criminal proceedings against Eli Pruden, Associate Chief Justice Oliphant commented that Cory Moar had fallen through the cracks. That fact is certainly established. He also said that, perhaps, if someone cared to pay attention to Cory Moar and his plight, he wouldn't be dead. The Associate Chief Justice, of course, in presiding at the criminal proceedings, did not have the benefit of the much more in-depth evidence of the supports through government departments and community service agencies that I have had the benefit of reviewing. Having had that opportunity, I cannot say there was any lack of caring by departmental and agency personnel that would justify critical comment. Twenty-twenty vision is always easier in hindsight.

FF. Based upon information that counsel for the Province said he had received from other jurisdictions about the merit, in those jurisdictions, of a broader definition of the term "disabled person" under the legislation of those jurisdictions, he submitted that the benefit of an expanded

definition in those jurisdictions was, at best, limited. He urged, therefore, that I decline to recommend an expansion of the term "disabled person" in ***The Vulnerable Persons' Act***[2]. While I have no doubt that counsel did receive that advice, his submission was not evidence that could be scrutinized by the Court for the purpose of a more in-depth inquiry as to the advantages and disadvantages of a broader definition.

GG. Given the concerns of health care professionals that the fear of disclosure might deter those who require treatment from seeking it, I would not advocate reporting to the police as a first step. The fact, however, that on at least two occasions, Cory Moar was questioned at the Health Sciences Centre about abuse, suggests to me that there was suspicion of abuse. On the basis of that suspicion, the involvement of a trained abuse worker might have assisted Cory Moar, and, if a safe facility had been available, facilitated some protective action. For the involvement and intervention, only, of a social worker, there should be no confidentiality restriction upon medical staff. A mere suspicion by medical staff, based upon the reason giving rise to a question about abuse in the first place, should be sufficient to enlist the services of a worker trained in dealing with abused people.

HH. There is evidence from a police officer that she spoke to Mr. Moar because of a report from Cory's uncle that Cory had been beaten. Clearly, upon her investigation, the officer did not have reasonable and probable grounds at law upon which to make an arrest. She did, however, have suspicions that he was abused. Despite his explanation that he had been hurt in a fight, he would not give her any details of that supposed fight. She asked him questions, therefore, that led to his response that he enjoyed living with the Prudens and denied abuse at their hands. If, based on her suspicions, she could have involved the services of a worker trained in dealing with abused persons, there could have been further investigation and, perhaps, action to protect Mr. Moar. If there had been a safe facility to which Mr. Moar could have been taken, she might have offered him that ooption, or, at very least, made him aware of the existence of such a facility.

II. There is evidence that section 16(4) of ***The Canada Evidence Act***[1] discriminates against the disabled who cannot understand the nature of an

[2] Supra
[1] Supra

oath or solemn declaration, and who cannot communicate evidence because, by that section, testimony from such persons is disallowed. The evidence was that significant numbers of disabled persons cannot be understood by anyone except those very close to them. By virtue of the section, in the opinion of one of the expert witnesses who works in the field of persons with disabilities, those people are deprived of the right to participate in a court process. Except in a situation, however, in which the only people who can communicate with such a person are adverse in interest to the person, for instance, family members who are the abusers, the laws of evidence, particularly the principled approach to the admission of hearsay evidence, would, in my opinion, permit the evidence of such a person to be adduced before a court through a competent reliable witness who does understand the person. For those suffering mental disability who are suspected of being abused by their closest caregivers, I do not have any constructive suggestion in respect of facilitating their access to the court process. I would say only that if there is evidence of suspected abuse by close caregivers in those cases, an agency with powers similar to those under ***The Child and Family Services Act***[*] to apprehend neglected children be created to remove such persons to safety.

JJ. ***The Protection For Persons In Care Act***[3], by its definition section, excludes from the definition of "patient", a patient who is not an "in-patient". An in-patient, presumably is one who has been admitted as a patient to a ward other than the emergency room. The mandatory reporting requirement of that ***Act***, respecting suspicions of abuse, is obviously intended to apply only to the suspected abuse of patients that occurs within an institution, not to suspected abuse that may have occurred elsewhere. For the latter, the ordinary rules of non-reporting or non-disclosure, except in the event of immediate danger, without consent would apply.

[*] Supra
[3] Supra

Recommendations

The following are my recommendations:

1) There should be recognition that the failure of adults to-disclose abuse may occur by reason of factors such as fear or other psychological trauma that inhibit free will, or compromise competence to seek help. Notwithstanding any presumption of law or fact that, absent evidence to the contrary, persons over 16 years of age are deemed competent; that presumption should not operate as a filter to screen out from protective measures abused persons, whether they be disabled according to definition or not.

2) The Province should establish and maintain an emergency facility similar in nature to Osborne House for abused adults who do not meet the criteria for admission to Osborne House.

3) Social workers knowledgeable in the assessment of suspicions of abuse and knowledgeable in dealing with abused persons should be available to medical staff in the emergency rooms of hospitals, and to police personnel in cases where abuse is suspected.

4) Training should be provided to community service providers, and health care providers to assist in the detection of abuse against persons who are their clients or patients, and to assess the needs and the urgency associated with intervention.

5) Where there is suspicion by a health care provider or abuse worker employed by a health care provider, that a suspected victim's ability to disclose may have been compromised by a factor or factors that diminish the exercise of his or her free will, and there is good reason to suspect abuse, there should be, subject to safeguards for the safety of the suspected victim, no penalty for reporting. Criteria for reporting suspected abuse, however, without the consent of the suspected victim, should be developed and formalized through a consultative process involving, *inter-alia*, experts in the field of human abuse, and persons who have been the victims of abuse, including a victim or victims of abuse from among the disabled as nominated, perhaps, by The Society of Manitobans with Disabilities. The criteria should ensure that before reporting any case, safeguards

are in place to protect the suspected victim from adverse consequences at the hands of the suspected abuser(s).

6) The Province should examine the legislation of New Brunswick and Nova Scotia dealing with persons in need of protection, and consult with the authorities in those provinces to determine the advisability of introducing, in Manitoba, for the benefit of abused persons, similar legislative provisions.

7) Information about the provisions of ***The Domestic Violence and Stalking Prevention, Protection and Compensation Act***[40], should be publicized both generally, and more particularly, among community service providers and heath care providers, and consideration should be given to adding to section 4(2) of that ***Act***, the provision that an application may be submitted by a community service provider or health care provider. If necessary, to its application in the context of adults like Cory Moar, such other modifications as may be appropriate should be considered.

8) A campaign to substantially enhance public awareness of the right not to be abused, should be launched by the Government with contact information as to support services available. Information so published should include assurance that information volunteered by those who seek advice or support will be received in confidence.

9) The Manitoba Government and the Provincial Regional Health Authorities, including the Winnipeg Regional Health Authority, should consider establishing a system-wide electronic information data base in which to house records of patients' histories of attendance at health care institutions for emergency medical treatment. The design of the system should enable emergency medical personnel, at a glance, to be alerted to the possibility of abuse from factors such as frequency of new injuries, the nature of the injuries, and the explanations as to how the injuries were sustained, as given by the patient and those who may accompany him or her.

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10) Should medical staff have reasonable grounds to suspect abuse, the assistance of a social worker trained in dealing with abuse, should be summoned to advise the patient of his or her right not to be abused, and to provide information as to the confidential resources and facilities that are available to the patient to assist him or her if, in fact, he or she has been abused.

11) Similar to the electronic database recommended for health care facilities, the government should consider the establishment of electronic linkages within the network of community service providers. The linkages would include personnel of both government departments and accredited agencies who are service-providers and who have personal contact with clients to whom they render services. The program would be designed to store information about observations relevant to the possibility of abuse and the client's explanation of injuries observed. Whether from a service provider's observation alone, or from the accumulated observations of other providers accessed though a stored information program, a service provider would, where appropriate, advise the client of his or her right not to be abused, and of the confidential services and facilities available to him or her.

12) Resources within a community, other than the police, should be identified and designated to assist people, in confidence, concerning domestic problems that have or may result in the abuse of others. When designated, a public awareness campaign of the existence of the resource should follow.

13) For the purpose of planning for the allocation of resources to address abuse, statistics of assaults dealt with under the ***Criminal Code*** should identify those cases in which the victim or alleged victim is a disabled person. For that purpose it would be necessary to have precise definitions of the characteristics that would class a person as disabled. Not a difficult task if the victim was blind or did not have the use of one leg. More difficult, however, would be the task of classifying those with less than an obvious mental disability. In consultation with the disabled and their advocates, such definitions should be developed.

Respectfully submitted this 9th day of May, 2003.

Original signed by:

Robert L. Kopstein, Provincial Judge

Copies to:

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The Honourable Chief Judge Raymond Wyant
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The Honourable Drew Caldwell
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The Honourable Gord MacKintosh
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