

February 28, 2012

Via E-Mail to: swalsh@hillco.mb.ca

REFERENCE NO.
116822-0001

PLEASE REPLY TO:

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Commission of Inquiry into the
Circumstances Surrounding the Death
of Phoenix Sinclair
1801 - 155 Carlton Street
Winnipeg, MB R3C 3H8

Attention: Commission Counsel, Sherri Walsh

Dear Ms. Walsh:

**Re: Phoenix Sinclair Inquiry – Application for Reconsideration
of Standing**

LEGAL ASSISTANT:

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We are writing in response to the Notice to Counsel that was issued by the Commission on February 21, 2012. The Notice advised that the Commissioner is convening a public session on March 6, 2012 to provide an opportunity for the parties to raise preliminary matters or motions.

Please accept this letter as the Authorities and ANCR's Application for Reconsideration of the Honourable Commissioner's ruling with respect to Standing vis-a-vis the Authorities and ANCR, which was heard and determined on June 28 - 29, 2011.

Specifically, the Authorities and ANCR request that they be provided with full party standing with respect to all three Phases of the Inquiry.

The Honourable Commissioner granted standing as a party to the Authorities and ANCR on June 29, 2011. However, the Honourable Commissioner limited the involvement of the Authorities and ANCR with respect to the foregoing aspects of the Inquiry:

- The factual circumstances surrounding the death of Phoenix Sinclair;
- The child welfare services provided or not provided to Phoenix Sinclair and her family;

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- Any other circumstances relating to Phoenix Sinclair's death and how her death remained undiscovered for nine months.

("Phase 1" of the Inquiry).

The Honourable Commissioner premised his decision in this regard on the assumption that neither the Authorities nor ANCR had responsibility or involvement in any aspect of Phase 1.

The Authorities and ANCR have now identified eight (8) individuals that were directly involved in important matters related to Phase 1 of the Inquiry. Commission Counsel is aware of these individuals and has indicated that they will be interviewed and perhaps summoned to testify during Phase 1 of the Inquiry.

These individuals fall under the auspice of the Authorities and ANCR due to the fact that they were either employees of the Authorities or ANCR during the time period in which they were involved in Phase 1 matters, or they were employees of Agencies for which the Authorities are ultimately responsible, or they are now currently employees of the Authorities or ANCR.

It is expected that these individuals will provide crucial first hand evidence with respect to the following:

- The child welfare services provided or not provided to Phoenix Sinclair and her family; and
- Circumstances related to Phoenix Sinclair's death and how it remained undiscovered for nine months.

These individuals, along with the Authorities and ANCR as their employers and/or regulators, have a direct and substantial interest in Phase 1 of the Inquiry for the following reasons:

- The legal interests of these individuals and thereby the Authorities and ANCR may be affected as a result of their involvement in Phase 1 of the Inquiry;
- These individuals and thereby the Authorities and ANCR may be subject to adverse findings during Phase 1 of the Inquiry which would have adverse affects on their reputations;



- These individuals and the Authorities and ANCR may be seriously affected by their involvement in Phase 1 of the Inquiry.

As the Honourable Commissioner stated in his June 29, 2011 ruling with respect to the various applications for standing, these above factors are relevant in establishing a direct and substantial interest necessitating full party status (see: Transcript of Proceedings before the Commission, Volume 2, June 29, 2011, pages 2-3 and 8-10).

Further, and apart from the above, the findings of fact with respect to Phase 1 of the Inquiry will necessarily affect the validity and perceived effectiveness of the recommendations and the implementation of those recommendations by the Authorities and ANCR since the death of Phoenix Sinclair. These matters will be dealt with in Phases 2 and 3 of the Inquiry, which the Authorities and ANCR already have standing in.

It is therefore crucial that the Authorities and ANCR have standing with respect to Phase 1, so that they may ensure that the factual underpinnings that relate directly to the recommendations are properly before the Commission.

An important role that the Authorities and ANCR will play in Phase 3 is providing details of the implementation of the recommendations. We understand that the Commission will be inquiring as to whether the "changes to the child welfare system after Phoenix Sinclair's death would have influenced the services delivered to Phoenix and her family".

Another important role will be to "provide relevant information to the Commissioner and to the public regarding the changes to the child welfare system and how they better protect Manitoba children, in light of the lessons learned from the facts of Phoenix's case. These opinions could change as a result of the Commission's finding of fact in Phase 1. It is thus imperative that the Authorities and ANCR be allowed to participate in Phase 1 to ensure the proper factual context is laid for the opinions and evidence we expect that they will provide in Phase 3.

Therefore, Phases 1, 2 and 3 are inextricably intertwined and cannot be hived off into watertight compartments.

We note that any decision in this regard will not affect the funding arrangement between the Government of Manitoba and the Authorities and ANCR.

Moreover, we cannot envision any elongation of the proceedings or prejudice to any parties as a result of full party standing being granted to the Authorities and ANCR.

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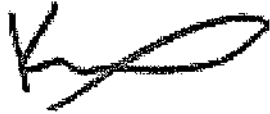
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Based upon the foregoing, the Authorities and ANCR request that the Honourable Commissioner grant full party standing to the Authorities and ANCR with respect to all three Phases of the Inquiry. We look forward to answering any questions you may have at the public session being held on March 6, 2012.

Yours truly,

D'ARCY & DEACON LLP

Per:

A handwritten signature in black ink, appearing to read 'Kris M. Saxberg', written over a horizontal line.

KRIS M. SAXBERG

KMS:scs