



File No. 35049-003 JBH
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June 6, 2011

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Via Courier

Attention: Sherri Walsh, Commission Counsel

Dear Madam:

**RE: Commission of Inquiry into the Circumstances Surrounding the Death of
Phoenix Sinclair - Application for Standing**

On behalf of the First Nations of Northern Manitoba Child and Family Services Authority,
please find enclosed herewith the Application for Standing.

Trusting this is satisfactory.

Yours Truly,

MYERS WEINBERG LLP
Per:

John B. Harvie
JBH/slh
Enclosure.

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

In the Matter of: An Application for Standing pursuant to Sections 8 and 9 of the
Rules of Procedure and Practice;

**FIRST NATIONS OF NORTHERN MANITOBA
CHILD AND FAMILY SERVICES AUTHORITY,**

(Applicant).

APPLICATION FOR STANDING

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**JOHN B. HARVIE/
ANTHONY LAFONTAINE GUERRA**
File No. 35049-003 JBH

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

In the Matter of: An Application for Standing pursuant to sections 8 and 9 of the
Rules of Procedure and Practice;

**FIRST NATIONS OF NORTHERN MANITOBA
CHILD AND FAMILY SERVICES AUTHORITY,**

(Applicant).

APPLICATION FOR STANDING

A. ORDERS SOUGHT:

1. First Nations of Northern Manitoba Child and Family Services Authority (hereinafter the "Northern Authority") makes application pursuant to Section 12 of the *Rules of Procedure and Practice* of the Commission of Inquiry herein, (the "Rules") for standing as a participant in the Inquiry into the Circumstances Surrounding the Death of Phoenix Sinclair (the "Inquiry").

2. Specifically, the Northern Authority makes application to the Honourable Commissioner for:
 - (1). an Order pursuant to Section 8 of the Rules, granting the Northern Authority full or partial standing as a Party to the Inquiry on the basis that the Northern Authority has a direct and substantial interest in the subject matter of the Inquiry; or

 - (2). in the alternative, an Order pursuant to Section 9 of the Rules, granting the Northern Authority standing as an Intervenor to the Inquiry on the basis that it has a genuine and demonstrated concern about the issues raised by the Inquiry and has a particular perspective or expertise that may assist the Honourable Commissioner.

3. In the event that the Northern Authority is granted standing as either a Party or an Intervenor to the Inquiry, the Northern Authority makes application to the Honourable Commissioner for an Order pursuant to Section 10 of the Rules, granting the Northern Authority the right to participate in the Inquiry on all or any of the following terms:
 - (1). the Northern Authority will be permitted to appear on their own or through counsel;
 - (2). the Northern Authority will be permitted to have a seat at counsel table;
 - (3). the Northern Authority will be permitted to make an opening statement and closing arguments;
 - (4). the Northern Authority will be permitted to present evidence and call witnesses and will be permitted to disclosure of all evidence presented during the Inquiry and all anticipated evidence in accordance with Section 26 of the Rules;
 - (5). the Northern Authority will be permitted to examine or cross-examine any witness called during the Inquiry;
 - (6). the Northern Authority will be permitted to present arguments and submissions; and
 - (7). any other right which the Northern Authority requests and the Honourable Commissioner deems reasonable and necessary in the circumstances of the Inquiry and the Northern Authority's role as a participant therein.

B. GROUNDS FOR STANDING AS PARTY:

4. The Northern Authority submits that pursuant to Section 8 of the Rules, it may be granted full or partial standing as a party by the Honourable Commissioner if it has a "direct and substantial interest" in all or part of the subject matter of the Inquiry.
5. The Ontario Supreme Court in *(Re) Ontario (Royal Commission on the Northern Environment)* determined that a "direct and substantial interest" requires that a participant have more than a general or academic interest in the subject matter of the inquiry and must not be interested merely as a member of the public".

Ontario (Royal Commission on the Northern Environment)(Re),
[1983] O.J. No. 994 at para. 7; Tab "A" hereto.

6. A number of factors may be considered by a commissioner in determining whether participant status should be granted based on a substantial and direct interest. These factors include:
 - (1). the subject-matter of the inquiry (whether the subject of the inquiry is general and abstract or specific, practical and concrete);
 - (2). the potential importance of the findings and the recommendations to the potential participant;
 - (3). whether the legal or property interests of the potential participant would be greatly affected by a recommendation or finding and the value of the legal or property interests potentially affected; and
 - (4). whether the potential participant has vital information to provide the inquiry.

Ibid Paragraph 8; Tab "A" hereto.

7. The above factors should be considered together and in the context of the inquiry.

Ibid Paragraph 8; Tab "A" hereto.

8. The Inquiry was established pursuant to an Order-in-Council of the Government of Manitoba on March 23, 2011. The Terms of Reference require the Honourable Commissioner to inquire into the circumstances surrounding the death of Phoenix Sinclair with particular focus on:
 - (1). the child welfare services provided or not provided to Phoenix Sinclair and her family under *The Child and Family Services Act*;
 - (2). any other circumstances, apart from the delivery of child welfare services, directly related to the death of Phoenix Sinclair; and
 - (3). why the death of Phoenix Sinclair remained undiscovered for several months.
9. Paragraph 7 of the Terms of Reference provides the Honourable Commissioner with the authority to expand the terms of reference to cover any matter that is considered necessary as a result of information which comes to the attention of the Honourable Commissioner during the course of the Inquiry.
10. Paragraph 8 of the Terms of Reference requires all Manitoba Government departments, agencies and other bodies established under the authority of the Manitoba Legislature (such as the Northern Authority) to assist the Honourable Commissioner to the fullest extent permitted by law.
11. The above Terms of Reference are specific and practical, however, these Terms of Reference will ultimately necessitate a review by the Honourable Commissioner of the entire child protection system in Manitoba both at the time

of the death of Phoenix Sinclair and presently to make appropriate recommendations to prevent, if possible, a similar tragic outcome.

12. The Terms of Reference at paragraph 3 require the Honourable Commissioner to examine the following reviews and to determine if their recommendations have been implemented. The Reviews are:
- (1). A Special Case Review In Regard To The Death Of Phoenix Sinclair, Andrew J. Koster and Billie Schibler (September, 2006);
 - (2). Strengthen The Commitment An External Review of the Child Welfare System, Michael Hardy, Billie Schibler and Irene Hamilton (September 29, 2006);
 - (3). "Honouring Their Spirit", The Child Death Review: A Report to the Minister of Family Services and Housing, Province of Manitoba, Billie Schibler and James H. Newton (September, 2006);
 - (4). Strengthening our Youth: Their Journey to Competence and Independence, A Report on Youth Leaving Manitoba's Child Welfare System, Billie Schibler, Children's Advocate, and Alice McEwan-Morris (November, 2006); and
 - (5). Audit of the Child and Family Services Division, Pre-devolution Child in Care Processes and Practices, Carol Bellringer, Auditor General (December, 2006).

Attached as Tab "B" are the available recommendations of each of the above reviews as set out above.

13. Given the obligations and duties of the Northern Authority as set out hereinafter and the scope of the recommendations contained in the above reviews, it is submitted that the Northern Authority has a direct and substantial interest in this Inquiry.
14. The Northern Authority derives its jurisdiction from *The Child and Family Services Authorities Act*, C.C.S.M c.C90, *The Child and Family Services Act* C.C.S.M. c.C80 and the regulations related thereto. The powers and duties and jurisdiction of the Northern Authority from the above cited legislation may be summarized as follows:

-oversight of the delivery of services to families by Agencies;

- training for Agencies under its jurisdiction;
- ensuring Agencies under its jurisdiction follow standards, practices and procedures;
- supervision of children in care;
- issuing directives to Agencies;
- the power to require Agencies to carry out their duties in accordance with standards established by the Authority or the Director.

Child and Family Services Act, C.C.S.M c. C80 Sections 4, 5, 6 Tab "C";

Child and Family Services Authorities Act, C.C.S.M c. C90 Sections 2-23, 31 Tab "D";

Child and Family Services Authorities Regulation, Man Reg 183/2003: Part 1, Part 3 Tab "E".

15. The Northern Authority submits that it has important information to provide the Honourable Commissioner regarding the delivery of child and family services to rural and remote First Nations communities in Northern Manitoba and regarding the needs and challenges associated with the delivery of these services.
16. The Northern Authority also submits that the findings and any recommendations made by the Honourable Commissioner which have application to the entire child protection system in Manitoba are of great importance to it. The Northern Authority is mandated to provide child and family services to residents in Northern Manitoba and its legal and operational interests shall be greatly affected by a recommendation or finding by the Honourable Commissioner which interest would be more than simply a general interest in the subject-matter of the Inquiry.

17. In particular, legal and operational interests of the Northern Authority which could be affected by a finding or recommendation made by the Honourable Commissioner include, but are not necessarily limited to the following:
- (i) how child and family services are delivered to rural and remote communities in Northern Manitoba;
 - (ii) the sufficiency of present standards and procedures for child protection and the carrying out of mandated services;
 - (iii) funding, case load and staffing of Agencies serving remote First Nation communities;
 - (iv) how Manitoba children receiving child and family services are reunified with their biological parents or guardians to ensure that the process is consistent with the safety and best interests of children and also respectful to First Nations cultures;
 - (v) how child and family service staff are trained and educated to ensure a balance between the need for staff who understand the practicalities of the communities which they serve and the need for staff who are well educated; and
 - (vi) implementation of the recommendations set out in Tab "B" hereto.
18. As a result of the above, and in light of the obligation imposed upon government departments, agencies and other bodies to assist the Honourable Commissioner to the fullest extent permitted by law, the Northern Authority respectfully submits that it has a direct and substantial interest in the subject matter of the Inquiry and should be granted full standing to participate as a party.

C. IN THE ALTERNATIVE GROUNDS FOR STANDING AS AN INTERVENOR:

19. Pursuant to Section 9 of the Rules, a person, despite not having a direct and substantial interest in the subject matter of the Inquiry may be granted standing as an intervenor by the Honourable Commissioner if they are satisfied that the person has a "genuine and demonstrated concern" about issues raised in the mandate of the Inquiry and has a particular perspective or expertise that may assist the Honourable Commissioner.
20. The test to be applied in determining whether a person qualifies as an intervenor in an inquiry should be considered with reference to the test for determining whether a person qualifies as a party. Specifically, a person who seeks the granting of intervenor status must not be held to the same standard as a person who seeks the granting of party status. It is submitted that the focus of the Honourable Commissioner should be on whether the Northern Authority has a real concern regarding the questions to be answered in the Inquiry. Additionally, it is submitted that a person may qualify as an intervenor despite not holding more than a general interest in the subject-matter of the Inquiry if they can provide a level of expertise in an area that may assist the Honourable Commissioner in conducting the Inquiry.

D. CONCLUSION:

21. Based on the reasons outlined at paragraphs 14 to 17 above, should the Honourable Commissioner determine that the Northern Authority does not have a direct and substantial interest in the subject-matter of the Inquiry, the Northern Authority nevertheless respectfully submits that it has a genuine and demonstrated concern about issues raised by the mandate of the Inquiry and has a particular perspective or expertise that may assist the Honourable Commissioner, thereby entitling the Northern Authority to the level of participation sought in paragraph 2 above. Further, the Northern Authority seeks the opportunity to make an oral submission at the standing hearing set to commence on June 28, 2011 at 9:30 a.m.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 6TH DAY OF JUNE, 2011.

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