IN THE MATTER OF: **Commission of Inquiry into the Circumstances Surrounding the Death of Phoenix Sinclair**

MOTION BRIEF
of
The General Child and Family Services Authority, First Nations of Northern Manitoba Child and Family Services Authority, First Nations of Southern Manitoba Child and Family Services Authority and Child and Family All Nation Coordinated Response Network

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I. INTRODUCTION

1. The Authorities and ANCR support the Inquiry and will continue to provide full cooperation as contemplated in paragraph 8 of the Order in Council. The Inquiry is in the best interests of children and families in Manitoba. There are numerous productive facets to this Inquiry, and we believe that the end result of the Inquiry will be helpful recommendations that will result in a number of improvements to the child welfare system in Manitoba.

2. However, along with these positive facets, there are certain unintended collateral consequences that have been identified by those in the field of social work which may have a detrimental impact on the child welfare system as discussed below.

3. As the bodies that are ultimately responsible for child welfare in Manitoba, the Authorities and ANCR have presented affidavit evidence intended to inform the Commission of these potential negative consequences. While it is likely that some of these consequences are going to be necessary and unavoidable, the Authorities and ANCR submit that whatever can be done to mitigate the negative consequences ought to be done.

4. The Authorities and ANCR submit that one method that is sure to mitigate the potential harmful aspects of the Inquiry is a publication ban on the terms set out in their Notice of Motion.

II. DUTIES OF THE AUTHORITIES AND ANCR

5. The Authorities are the bodies that are ultimately responsible for administering and providing for the delivery of child and family services in Manitoba. They have a number of specific duties which are set out in the legislation. These duties are specifically set out in section 19 of *The Child and Family Services Authorities Act*:

> DUTIES AND POWERS OF AUTHORITIES
>
> **Duties of an authority**
>
> 19 Subject to the regulations, an authority must, in respect of the persons for whom it is responsible to provide services under section 17,

(a) promote the safety, security and well-being of children and families, and protect children in need of protection;
(b) develop objectives and priorities for providing child and family services consistent with provincial objectives and priorities;

(c) ensure that culturally appropriate standards for services, practices and procedures are developed;
(d) ensure that the standards developed under clause (c) are consistent with provincial standards, objectives and priorities;
(e) ensure that the agencies it has mandated under Part I of *The Child and Family Services Act* provide services and follow the practices and procedures in accordance with the standards referred to in clause (c);
(f) establish hiring criteria for persons to be hired to provide child and family services, and ensure that those criteria are implemented by agencies it has mandated;
(g) ensure that child and family services prescribed by regulation are provided or made available, and ensure that there is reasonable access to services generally;
(h) ensure that child and family services are provided
(i) in a manner that is responsive to the needs of the children and families receiving the services, and
(ii) where practicable, in the language in which those children and families ordinarily communicate with each other;
(i) determine how funding is to be allocated among the agencies it has mandated in order to meet
(i) the objectives and priorities developed by the authority, and
(ii) provincial objectives and priorities;
(j) cooperate with other authorities, the director and others to ensure that the delivery of child and family services in the province is properly coordinated;
(k) advise the agencies it has mandated;
(l) ensure the development of appropriate placement resources for children;
(m) advise the minister about child and family services matters;
(n) supervise or direct the supervision of children in care, and receive and disburse money payable for their care;
(o) make recommendations to the director about the licensing of child care facilities other than foster homes, that are not owned and operated by an agency;
(p) hear and decide appeals respecting the licensing of foster homes;
(q) comply with any written directions given by the minister, and with any requirements specified in the regulations.

6. Broadly stated, these provisions impose a duty upon the Authorities to ensure that the child welfare system functions in the best interest of children and families in Manitoba.

III. CONCERNS ABOUT THE IMPACT OF MEDIA COVERAGE ON THE DELIVERY OF CHILD WELFARE SERVICE

7. Based on the information contained in the affidavits of Cheryl Regehr and Bruce Rivers, the Authorities and ANCR have serious concerns about the impact of sensational media coverage of the Inquiry on the child welfare system. These concerns warrant a limited publication ban as one means of mitigating the potential negative consequences that may follow if the media is allowed to cover the Inquiry without restriction.

A. Nature of media coverage

8. There is an abundance of research that has been conducted on the nature of media coverage in relation to child welfare. This work has been reviewed by Cheryl Regehr and summarized in her affidavit.

9. Media coverage of child death reviews often involves sensationalistic stories and reporting aimed at castigating agency personnel for allowing grievous events to unfold.

Affidavit of Cheryl Regehr, paragraph 24

10. Media sources are usually very critical of the agencies that are responsible for protecting children, often implying that they are not accountable. This creates a vicious circle in which the work environment becomes more restrictive, employees become angry and frustrated at what they cannot do to serve clients, and ultimately results in more media sensationalization.

Affidavit of Cheryl Regehr, paragraph 32

11. Media reports are not intended to record events but rather are focused on selling news. There are examples from British and Welsh media coverage that depict child welfare workers as “child stealers”, “abusers of authority, hysterical and malignant” and “motivated by zealotry rather than facts”.

Affidavit of Cheryl Regehr, paragraph 28

12. One article describes a high profile child protection case in Ireland in which media sought to mobilize “our army of outraged readers to join our crusade to have these workers kicked out of their jobs”. The same newspaper also provided contact information for social workers and threats were subsequently made.

Affidavit of Cheryl Regehr, paragraph 29

13. Even though phase one of the Inquiry is still months away and not a single witness has taken the stand, there have already been a number of examples of this type of sensationalistic journalism in the coverage of this Inquiry. The public"s reaction to these stories is evidenced in the reader comments to these articles.

Supplementary Affidavit of Janet Kehler, paragraphs 15-23

B. The impact of media coverage on the delivery of child welfare service

14. There is ample evidence to illustrate the devastating consequences the actual social workers who testify at the Inquiry will suffer as a result of the media coverage of their testimony.

15. The inquiry process in itself is highly stressful, resulting in repeated exposure to highly distressing memories, criticism of their professional integrity, and a sense of isolation. The media attention is viewed by the workers involved in the Inquiry as intensifying this distress.

Affidavit of Cheryl Regehr, paragraphs 12-13

16. It has been observed that media reports weaken public support for child welfare services, have far reaching impacts on the personal lives of workers, and lead to workers choosing to leave the field – thereby undermining the delivery of child welfare services in general.

Affidavit of Cheryl Regehr, paragraphs 13

17. Public reviews into child deaths take their toll on child welfare staff. Following a number of public inquests involving the Toronto Children"s Aid Society, a pattern developed whereby staff that were involved in the inquests either left the field altogether, moved out of the province, or moved into positions with less perceived risk.

Affidavit of Bruce Rivers, paragraph 18

18. However, the impact is not just on the social workers who have been called to testify at the inquiry. There is a clear impact on other social workers in the province, both within the agencies of the social workers testifying, as well as elsewhere. Observing what their colleagues are going through and how they are treated in the media coverage will no doubt send a chill through child protection agencies and change the decision making and risk assessment of social workers. Observing fellow workers" faces being published with disparaging headlines will cause fear that they could be next. Social workers will err on the side of caution and as a result children may be brought into care in circumstances that do not warrant apprehension.

Affidavit of Bruce Rivers, paragraph 20

19. This could have a ripple effect in the system and cause an imbalance. Social workers growing aversion to taking risks and erring on the side of safety could result in a dramatic spike in the number of children admitted into care, like it did in Ontario.

Affidavit of Bruce Rivers, paragraph 16

20. Along with the increase in the number of children being brought into care in Ontario came a huge influx of child protection court cases and a corresponding backlog of same. This resulted in more pressure on the social workers to investigate and record every aspect of the work they were doing. This created higher workloads and consequently, less time was available for the direct provision of services to families and children.

Affidavit of Bruce Rivers, paragraphs 21-22

21. The increase in children in care also led to a shortfall in foster parents and caregivers, and difficulties in the recruitment of volunteers.

Affidavit of Bruce Rivers, paragraphs 17 and 23

22. As a result of the negative media attention, less people are choosing to enter the field of child protection.

Affidavit of Bruce Rivers, paragraph 25

Affidavit of Gwendolyn M. Gosek, paragraph 10(x)

23. As a result of negative media attention, it has become increasingly difficult to retain existing child welfare staff.

Affidavit of Bruce Rivers, paragraph 19

Affidavit of Gwendolyn M. Gosek, paragraph 10(h)

24. High turnover rates for social workers in the field of child welfare has been an ongoing concern with grave implications for children and families involved with the system, as well as child welfare agencies and government. High turnover results in frequent changes to social workers involved in individual cases, making it difficult to establish stable relationships. High turnover also impacts remaining agency workers as their caseloads get bigger to pick up the slack. It also forces inexperienced workers to be placed in situations that are beyond their level of capability.

Affidavit of Gwendolyn M. Gosek, paragraph 10(i)-10(o)

IV. WHY A PUBLICATION BAN WILL HELP MITIGATE THE NEGATIVE CONSEQUENCES

25. It is submitted that a publication ban on the identities of social workers will reduce the risk of the aforementioned negative consequences of the media coverage of this Inquiry. Prohibiting the publication of the names and faces of social workers testifying will reduce the sensationalistic aspect of media coverage, which is in large part a cause of the problem.

Balancing the deleterious effect of restricting media coverage against the risk of negative impacts on the delivery of child welfare services

26. A plethora of evidence as to the possible negative impact of extensive and sensational media coverage of this Inquiry has been adduced. The evidence reveals a risk to the child welfare system, and therefore a risk to the children of Manitoba. This risk must be minimized with reasonable restrictions being imposed on media coverage.

27. Balancing the deleterious effect of media coverage on child protection work against the deleterious effect of restricting media coverage, it is clear that the restriction of the media coverage is the „lesser of the two evils".

28. No evidence has been adduced to show that reporting the names and images of CFS workers is necessary or even important in order to effectively communicate the news of what is occurring at the Inquiry. There is no purpose whatsoever that is advanced by revealing the identities of the social workers other than to sensationalize the story and sell news.

29. Moreover, no evidence has yet been adduced to suggest that the child welfare system would be improved by reporting the names and images of CFS workers who provided services to Phoenix Sinclair and her family. Quality assurance and accountability processes are in place in the child protection system. If there is a deficiency in this regard, the Inquiry will identify it and recommend ways to fix the problem.

30. It is important to remember that no social worker will escape scrutiny where it is warranted after the Commission has received and considered all of the facts of this case. Furthermore, each worker that testifies will be in the hearing room for all present to see and hear. The witness"s involvement in the matter will be the subject of intense examination by numerous lawyers. The media will be free to report on what was said at the hearing in terms of the questions and answers without any restriction whatsoever.

31. The restrictions requested herein will not negatively impact media coverage; but they will reduce t