



COMMISSION OF INQUIRY INTO THE CIRCUMSTANCES
SURROUNDING THE DEATH OF PHOENIX SINCLAIR

The Honourable Edward (Ted) Hughes, Q.C.,
Commissioner

Transcript of Proceedings
Public Inquiry Hearing,
held at the Winnipeg Convention Centre,
375 York Avenue, Winnipeg, Manitoba

WEDNESDAY, MARCH 13, 2013

APPEARANCES

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MR. T. RAY, for Manitoba Government and General Employees Union

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MR. H. KHAN and **MR. J. BENSON**, for Intertribal Child and Family Services

MR. G. DERWIN and **MR. D. IRELAND**, for Mr. Nelson Draper Steve Sinclair, and Ms. Kimberly-Ann Edwards

MR. J. FUNKE and **MS. J. SAUNDERS**, for Assembly of Manitoba Chiefs and Southern Chiefs Organization Inc.

MR. A. LADYKA, for Ms. J. Christianson-Wood

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3

4 THE COMMISSIONER: All right. I'm going to have
5 Commission staff pass out a package of material from which
6 I'm going to read extensively. And the reason I'm reading
7 it is that when I'm through I'm going to read to you and
8 pass out a series of questions that I'm going to ask Mr.
9 Saxberg to answer, not today, but based on this material.
10 And the reason I'm reading parts of it to you is so that
11 those questions will be understood as to what the relevancy
12 of these documents in fact are. So I've directed a copy of
13 that, what staff has put together, be in the hands of all
14 counsel. And I hope there are sufficient copies for the
15 media who have a responsibility of what goes on here and
16 have done so on a very apt and informative way up till now.
17 So I would like them to be involved with a copy so they can
18 follow, if that be the choice.

19 Mr. Saxberg, I wonder if you and your associates
20 would like to come up to the front table here. Maybe not,
21 but I'm not expecting a specific response from you today
22 but I think it's reasonable that you would have that
23 opportunity of having occupancy of this counsel desk.

24 All right. On the document that has been
25 distributed, there is an index and from tab 1 you will see

1 "Excerpts from submissions on Application for Standing by
2 the Authorities and ANCR Transcript of Proceedings from
3 June 28, 2011" and the numbered pages. I'm going to read
4 some passages from those pages and will indicate from where
5 I'm reading, and I'm going to start on page 29 at line 11
6 with Mr. Cochrane speaking, who was there representing
7 ANCR:

8

9 "Right now. So there are two
10 separate parties, with respect to
11 ANCR we are seeking full standing,
12 with respect to all three phases
13 of the inquiry. And we don't
14 believe that shared standing with
15 respect to ANCR would be
16 appropriate and I will talk to the
17 reasons for that.

18 The letter that I have
19 submitted, June 6th, which is at
20 tab two, I don't propose to review
21 that this morning, however, if you
22 do have any questions in that
23 respect I would be pleased to
24 answer. I will supplement,
25 however, my letter in light of the

1 comments made with respect to the
2 three phases that were talked
3 about this morning.

4 So with respect to the, the
5 first phase, Mr. Commissioner, and
6 that is the factual aspects of
7 what happened, inquiring as to
8 what happened, inquiring as to the
9 child welfare services that were
10 provided or not provided to
11 Phoenix Sinclair and her family,
12 it's my submission that ANCR has a
13 direct and substantial interest in
14 this area.

15 As you may be aware, it's
16 certainly mentioned in my, in my
17 letter, a number of ANCR's current
18 employees, which was up to 13
19 employees, were directly involved
20 in the child welfare services
21 provided to Phoenix Sinclair and
22 her family.

23 Now, these workers at the
24 time were workers of Winnipeg
25 Child and Family Services. They

1 are now seconded workers at ANCR
2 and my understanding is that they
3 will be called to provide evidence
4 to, to give -- to shed some light
5 on the factual aspects, that first
6 phase of this inquiry.

7 So the evidence of these
8 employees, which are now current
9 ANCR employees, although they are
10 seconded from Winnipeg CFS, in my
11 opinion is crucial to this inquiry
12 and in particular to the first
13 phase that Ms. Walsh has talked
14 about.

15 The conduct of these current
16 ANCR employees could be directly
17 at issue in this inquiry.

18 THE COMMISSIONER: And they
19 are seconded from whom?

20 MR. COCHRANE: They are
21 seconded from Winnipeg Child and
22 Family Services.

23 THE COMMISSIONER: And who --
24 Winnipeg Child and Family
25 Services, today, is under the

1 direction or responsible to whom?

2 MR. COCHRANE: They are
3 responsible -- they are under the
4 direction of the General
5 Authority. Maybe I should -- if
6 you -- if it's okay, I'll take a
7 moment --

8 THE COMMISSIONER: Yes.

9 MR. COCHRANE: -- just to
10 back up.

11 THE COMMISSIONER: Yes.

12 MR. COCHRANE: In, in, in
13 2005, when this incident occurred,
14 the services provided were
15 provided by Winnipeg Child and
16 Family Services, that agency.
17 ANCR, my client, at that point,
18 did not exist. ANCR came into
19 existence after and assumed the
20 role of Winnipeg CFS with respect
21 to intake services and that's
22 explained a little bit in my
23 letter, June 6th, letter.

24 THE COMMISSIONER: Yes.

25 MR. COCHRANE: So my point is

1 that the, the workers that were
2 involved with Winnipeg CFS, back
3 at the time in 2005, are now
4 seconded employees at ANCR. Okay?
5 They will be called and they will
6 be able to provide the factual
7 background in, in many ways, that
8 will be of interest to this
9 inquiry.

10 Any findings by this inquiry
11 which may comment on the standard
12 of services provided by these
13 employees, which are now ANCR
14 employees, will, in my opinion,
15 have a direct and substantial
16 impact on ANCR.

17 THE COMMISSIONER: Right.

18 MR. COCHRANE: And for that
19 reason we feel, with respect to
20 the first phase, we have a direct
21 and substantial impact."

22

23 I now move to page 51 and will read from mid-page
24 words of Mr. Saxberg, and I will be reading at some length
25 on his remarks.

1 " MR. SAXBERG: Firstly, with
2 respect to the factual aspect of
3 the hearing, that is the inquiry
4 involving Phoenix's birth to the
5 discovery of her death, and what
6 services were provided or not
7 provided, the Southern Authority
8 has, and I think to be bold it's
9 self-apparent, a direct and
10 substantial interest in this
11 aspect of the hearing because the
12 abuse and the death of Phoenix
13 Sinclair occurred in Fisher River.
14 The agency with the mandated
15 jurisdiction in Fisher River is
16 Intertribal CFS, the Southern
17 Authority oversees Intertribal
18 and, in particular, it's the
19 Southern Authority that was
20 responsible for the policies,
21 practise standards and procedures
22 that were in place in that
23 jurisdiction, at the time that
24 Phoenix Sinclair was murdered and
25 following, during the period that

1 the murder was undiscovered.

2 So in that regard the
3 Southern Authority has crucial
4 information to provide to the
5 Commission in terms of those
6 policies and whether they were
7 being implemented and applied
8 correctly and what the Southern
9 Authority did to ensure that those
10 policies were, in fact, firmly in
11 place and again, implemented by
12 the frontline social workers.

13 Given the importance of this
14 aspect of the inquiry, I believe
15 that that -- the value of that
16 evidence will be very important.
17 It would be the Southern
18 Authority's intention to call
19 witnesses in that regard and
20 subject to further elaboration on
21 the process, to -- with the
22 Commissioner's approval and, and
23 would be to act -- do the direct
24 evidence of those witnesses with
25 respect to that phase and the

1 other phases.

2 THE COMMISSIONER: Did any
3 agencies have a responsibility or
4 contracted with the Southern
5 Authority, either prior to or
6 subsequent to devolution, I guess
7 I would have to put it that way,
8 have any direct contact with
9 Phoenix and her family, anyone
10 that you're, you're representing
11 today, have any direct contact
12 with the little girl?

13 MR. SAXBERG: Well, that's an
14 issue, I suppose, with respect to
15 whether there was -- whether there
16 ought to have been contact.

17 THE COMMISSIONER: I see.

18 MR. SAXBERG: Because, as I
19 said, the Southern Authority is
20 the authority that was in charge
21 of intertribal CFS which was the
22 agency with the jurisdiction in
23 Fisher River.

24 THE COMMISSIONER: And --

25 MR. SAXBERG; There's also an

1 issue that comes into play with
2 respect to whether there were any
3 -- there was information that was
4 provided, or phone call in
5 particular that was made at a
6 given time which I won't get into
7 but there's that issue.

8 THE COMMISSIONER: I
9 understand you.

10 MR. SAXBERG: So that's with
11 respect to phase one. I should
12 also, parenthetically, add that
13 the Southern Authority is the
14 authority at this time that is --
15 that has the responsibility for
16 ANCR.

17 With respect to the other two
18 phases of the hearing, I don't
19 want to be repetitive of Mr.
20 Harvey's comments but -- so I'll
21 just adopt them, as it were, and
22 reiterate that there is a reason
23 where they are separate
24 authorities in -- that have been
25 created and that it's very

1 important for the Commissioner to
2 recognize that those authorities
3 have the ability to adopt
4 different policies and to
5 implement them differently. And
6 so although at first one might
7 consider that they have a very
8 connected participation in this
9 hearing, in fact, that isn't the
10 case, in my submission.

11 Subject to any questions,
12 those are my comments.

13 THE COMMISSIONER: No, I have
14 to tell you, I, I am concerned
15 that -- about the, the, the public
16 interest being well served by a
17 multitude of, of grants of full
18 standing as distinct from some
19 joining in separate grants --
20 joining in, in joint grants
21 because of both the, I guess,
22 particularly because of the, of
23 the time factor that would -- that
24 could possibly be involved, so I
25 hear you, I understand your issue

1 but I have to say that I am -- I
2 am going to look at, at whether
3 there is a basis for, for making
4 some grants here that are, are
5 joint between parties whose
6 similar -- whose interests are not
7 identical but have substantial
8 similarities.

9 MR. SAXBERG: And I --

10 THE COMMISSIONER: And if you
11 want to respond to that, why fair
12 enough.

13 MR. SAXBERG: If I may?

14 THE COMMISSIONER: Yes.

15 MR. SAXBERG: I would just
16 submit that with respect to the
17 Southern Authority, it's going to
18 have a unique involvement with
19 respect to the first phase, as I
20 have described it, because of its
21 direct responsibility for the
22 community in which Phoenix
23 Sinclair was murdered. And those
24 -- that -- it does not hold true
25 with respect to the other

1 authorities. So in combination
2 with respect to the intervention
3 at that phase, I don't think can
4 work."

5

6 And then I move to page 56 where Mr. Gutkin is
7 speaking, who represented on that morning the general
8 authority. And in line 5, where I commence, he says this:

9

10 "In terms of the phases of this
11 inquiry, Mr. Commissioner, I do
12 not anticipate that during phase
13 one, and my client will have a
14 tremendous amount of factual
15 evidence to give as to its
16 involvement in a supervisory
17 capacity. As explained in the
18 written material, the Authorities
19 Act was proclaimed in force in
20 November of 2003, that's when the
21 four authorities, including the
22 General Authority, was created.

23 There was a transition
24 period, over a number of years,
25 dealing with the various protocols

1 in the Authorities Act and the
2 transfer of cases to, to
3 responsible agencies. During the
4 time period leading up to the --
5 to at least March of 2005 and, in
6 fact, until May of 2005, insofar
7 as the Winnipeg Child and Family
8 Services Agency is concerned, you
9 will hear evidence that it was the
10 director of Child and Family
11 Services who had direct
12 responsibility, up until that
13 point in time on a de facto basis,
14 although legally the General
15 Authority was already in existence
16 and had been in existence from
17 November of 2003 onwards.

18 So what is the, the interest
19 of the General Authority in the
20 first phase? Well, to begin with,
21 once the tragic death of Phoenix
22 Sinclair came to light, the -- you
23 will hear evidence that the
24 General Authority conducted its
25 own review. It, at that point in

1 time, posed a number of
2 substantial questions to its
3 mandated agency, the Winnipeg
4 Child and Family Services Agency
5 and detailed responses were
6 obtained from its agency. So in
7 terms of the investigative stage,
8 although most of its fact finding,
9 in fact almost all of its fact
10 finding, was after the death came
11 to light, that is relevant, I
12 would respectfully submit, to the
13 investigative stage.

14 You will hear from the
15 General Authority, and it's more
16 germane to the second and third
17 phases of this inquiry, the
18 various initiatives, policy
19 directives, et cetera, that went
20 into place after the death of
21 Phoenix Sinclair and certainly in
22 light of the various reports that
23 are already before this
24 Commission, as well as, I believe,
25 other reports that will be

1 forthcoming.

2 To deal with those
3 recommendations and the implement
4 of -- implementation of those
5 recommendations, it's my
6 submission that you have to do
7 this on a contextual -- in a
8 contextual basis, you have to look
9 at the facts giving to those -- to
10 that -- to those recommendations
11 in order to properly deal with the
12 recommendations, themselves, and
13 their implementation. And so
14 that's another reason, Mr.
15 Commissioner, why the General
16 Authority is applying for full
17 standing with respect to all three
18 phases."

19

20 Now, I turn to tab 2, which is my ruling on
21 standing that was made on June the 29th, 2011, and I read
22 firstly from page 13, in the middle of the page:

23

24 "Because they pour, four parties
25 whose applications I am now

1 addressing had neither
2 responsibility for nor other
3 involvement in the life of
4 Phoenix, I limit their involvement
5 to that aspect of the foregoing
6 aspect of the inquiry's work. I
7 say that with the expectation that
8 her life and death and the
9 involvement of Phoenix and her
10 family with the delivery of family
11 welfare services will be, will be
12 fully explored by the Commission
13 counsel and by those who had
14 responsibility for her care and
15 welfare. If circumstances should
16 arise indicating that there is a
17 need for the relaxing of that
18 limitation, that can be dealt with
19 by application to me at the
20 appropriate time."

21

22 And then I move over to the bottom of page 14 and
23 read further from my ruling:

24

25 "I see no reason why these four

1 applicants should have separate
2 standing. It is a clear instance
3 where there should be a sharing of
4 a single grant. The interests of
5 the parties are not divergent in
6 any substantial way. They will
7 make a significant contribution to
8 the work of the Commission as
9 consideration is given to the
10 protection and welfare of children
11 who are and who become the
12 responsibility of the authorities
13 and of ANCR."

14

15 Then I move to tab 3, which is, references with
16 respect to the authorities' and ANCR's application for
17 reconsideration of standing. And this is a letter from Mr.
18 Saxberg dated the 28th day of February, 2012, and I will
19 read extensively from this letter, beginning on the third
20 paragraph on the first page. And as I say, this is the, an
21 application for reconsideration when the full standing was
22 given to phases two and three but a restricted standing as
23 an intervenor presumably or, as it was called, in phase
24 one. So this is the reapplication to please could we,
25 could the clients represented by those parties receive full

1 standing for phase one. And in his request for that, Mr.
2 Saxberg says:

3

4 "Specifically, the Authorities and
5 ANCR request that they be provided
6 with full party standing with
7 respect to all three Phases of the
8 Inquiry.

9 The Honourable Commissioner
10 granted standing as a party to the
11 Authorities and ANCR on June 29,
12 2011. However, the Honourable
13 Commissioner limited the
14 involvement of the Authorities and
15 ANCR with respect to the foregoing
16 aspects of the Inquiry:

- 17 • The factual circumstances
18 surrounding the death of
19 Phoenix Sinclair;
- 20 • The child welfare services
21 provided or not provided to
22 Phoenix Sinclair and her
23 family;
- 24 • Any other circumstances
25 relating to Phoenix

1 Sinclair's death and how her
2 death remained undiscovered
3 for nine months.

4 ('Phase 1' of the Inquiry).

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

11 The Authorities and ANCR have now
12 identified eight (8) individuals
13 that were directly involved in
14 important matters related to Phase
15 1 of the Inquiry. Commission
16 Counsel is aware of these
17 individuals and has indicated that
18 they will be interviewed and
19 perhaps summoned to testify during
20 Phase 1 of the Inquiry.

21 These individuals fall under the
22 auspice of the Authorities and
23 ANCR due to the fact that they
24 were either employees of the
25 Authorities or ANCR during the

1 time period in which they were
2 involved in Phase 1 matters, or
3 they were employees of Agencies
4 for which the Authorities are
5 ultimately responsible, or they
6 are now currently employees of the
7 Authorities or ANCR.

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

- 12 • The child welfare services
13 provided or not provided to
14 Phoenix Sinclair and her
15 family; and
- 16 • Circumstances related to
17 Phoenix Sinclair's death and
18 how it remained undiscovered
19 for nine months.

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

- 1 • The legal interests of these
2 individuals and thereby the
3 Authorities and ANCR may be
4 affected as a result of their
5 involvement in Phase 1 of the
6 Inquiry;
- 7 • These individuals and thereby
8 the Authorities and ANCR may
9 be subject to adverse
10 findings during Phase 1 of
11 the Inquiry which would have
12 adverse affects on their
13 reputations;
- 14 • These individuals and the
15 Authorities and ANCR may be
16 seriously affected by their
17 involvement in Phase 1 of the
18 inquiry."

19
20 The letter then goes on to provide:

21
22 "As the Honourable Commissioner
23 stated in his June 29, 2011 ruling
24 with respect to the various
25 applications for standing, these

1 above factors are relevant in
2 establishing a direct and
3 substantial interest necessitating
4 full party status (see:
5 Transcript of Proceedings before
6 the Commission, Volume 2, June 29,
7 2011, pages 2-3 and 8-10).

8 Further, and apart from the above,
9 the findings of fact with respect
10 to Phase 1 of the Inquiry will
11 necessarily affect the validity
12 and perceived effectiveness of the
13 recommendations and the
14 implementation of those
15 recommendations by the Authorities
16 and ANCR since the death of
17 Phoenix Sinclair. These matters
18 will be dealt with in Phases 2 and
19 3 of the Inquiry, which the
20 Authorities and ANCR already have
21 standing in.

22 It is therefore crucial that the
23 Authorities and ANCR have standing
24 with respect to Phase 1, so that
25 they may ensure that the factual

1 underpinnings that relate directly
2 to the recommendations are
3 properly before the Commission.

4 An important role that the
5 Authorities and ANCR will play in
6 Phase 3 is providing details of
7 the implementation of the
8 recommendations. We understand
9 that the Commission will be
10 inquiring as to whether the
11 'changes to the child welfare
12 system after Phoenix Sinclair's
13 death would have influenced the
14 services delivered to Phoenix and
15 her family'.

16 Another important role will be to
17 'provide relevant information to
18 the Commissioner and to the public
19 regarding the changes to the child
20 welfare system and how they better
21 protect Manitoba children, in
22 light of the lessons learned from
23 the facts of Phoenix's case.
24 These opinions could change as a
25 result of the Commission's finding

1 of fact in Phase 1. It is thus
2 imperative that the Authorities
3 and ANCR be allowed to participate
4 in Phase 1 to ensure that proper
5 factual context is laid for the
6 opinions and evidence we expect
7 that they will provide in Phase 3.
8 Therefore, Phases 1, 2 and 3 are
9 inextricably intertwined and
10 cannot be hived off into
11 watertight compartments."

12

13 Now, that, then, takes me to tab 4 where there
14 are extensive readings that I wish to put into the record
15 this afternoon, and these are the transcript dealing with
16 the application pursuant to that letter that was made by
17 the authorities and ANCR for the full standing in phase
18 one. And I read initially from page 15, starting at line 3
19 with Mr. Saxberg speaking:

20

21 "So we have two matters before
22 you. The first, which was set out
23 in Exhibit 4, is an application by
24 the authorities and ANCR to remove
25 the restriction on standing that

1 you, Mr. Commissioner, made when
2 you granted standing as a party to
3 the authorities and to ANCR on
4 June 29th, 2011. That limit was
5 with respect to the following
6 aspects of the inquiry; the
7 factual circumstances surrounding
8 the death of Phoenix Sinclair, the
9 child welfare services provided or
10 not provided to Phoenix Sinclair
11 and her family and any other
12 circumstances related to Phoenix
13 Sinclair's death and how her death
14 remained undiscovered for nine
15 months.

16 Mr. Commissioner, it's our
17 submission that your decision was
18 premised on the assumption that
19 neither the authorities nor ANCR
20 had responsibility or involvement,
21 or most importantly, would be
22 acting for witnesses in any aspect
23 of phase 1."

24

25 And then at the bottom of page 16, with Mr.

1 Saxberg still speaking:

2

3 "So what's changed since June of
4 2011? There are two points to
5 make here.

6 First, eight important phase
7 1 witnesses have been identified
8 so far by the authorities and ANCR
9 and the law firm of Darcy and
10 Deacon Will be acting for those
11 eight individuals, whose interests
12 are aligned with the authorities'
13 and ANCR.

14 Number 2 -- so that's the
15 first point, is the witnesses.

16 The second point really
17 relates to the observation that
18 the factual findings as to the
19 services provided or not provided
20 to Phoenix Sinclair are what will
21 inform the appropriateness of the
22 recommendations that were made and
23 the implementation of those
24 recommendations in the past and
25 they, and the, those factual

1 findings will also inform the
2 recommendations that this inquiry
3 makes. So therefore, really, the
4 facts and the recommendations are
5 two sides of the same coin. And
6 as we say in our submission, they
7 are inextricably intertwined and
8 are not separable.

9 So let me expand on the first
10 point, with respect to the
11 witnesses. As I said, there are
12 eight witnesses that have been
13 identified and they are known to
14 Commission counsel. She is aware
15 of the importance of the evidence
16 of those witnesses, so I'm, I'm
17 not going to get into, even in a
18 general way, to describe the
19 evidence that's expected of these
20 witnesses, other than to say that
21 two of them were directly involved
22 with the delivery of services to
23 Phoenix Sinclair and decisions
24 that were made with respect to
25 whether that care would continue

1 or not. They were involved in the
2 intake aspect of the delivery of
3 child welfare services.

4 Other important witnesses
5 relate to the allegation that
6 certain information was provided
7 to other child welfare agencies
8 and that that information, the
9 allegation that that information
10 should have been acted on in some
11 fashion. So there are witnesses
12 that are going to be testifying
13 with respect to those matters.
14 They were employees of an agency
15 that, at the time, was under the
16 authority and regulation of the
17 Southern Authority. Can also
18 indicate that Mr. Jay Rodgers,
19 who's the CEO, or who was the CEO
20 of Winnipeg CFS at the time of,
21 that services were being provided
22 to Phoenix Sinclair and her
23 family, is a witness, one of those
24 eight witnesses and he's also an
25 instructing client, because at, at

1 present, he is the CEO of the
2 General Authority."

3

4 And then picking up further, on page 18 at line
5 26, Mr. Saxberg continued:

6

7 " And I think it's important,
8 in this case, to, to appreciate
9 that there have been significant
10 changes to the system. But from a
11 simplified perspective, if you're
12 looking at the function of intake
13 services, child welfare services
14 provided in Winnipeg, those
15 services are still provided out of
16 the same building, by many of the
17 same people. The name of the
18 organization has changed, but the
19 function and many of the employees
20 haven't. Those employees are
21 testifying, will be testifying
22 about important matters at this
23 inquiry, then they're going to go
24 back to work for ANCR, which is
25 one of the parties that we

1 represent.

2 So in that sense, the fact
3 that, for instance, with ANCR,
4 that ANCR is the entity that's
5 providing these services today and
6 many of the employees that are
7 there were providing the services
8 during the time in question here,
9 I can say, without being overly
10 bold, that ANCR and the
11 authorities are probably the best
12 placed of any party in this
13 inquiry to appreciate the evidence
14 of phase 1, what happened and what
15 didn't happen. And I think that
16 it's, it's been made apparent,
17 through the interview process,
18 and, and just through the, the
19 thought process, I suppose, of all
20 counsel, as they're preparing for
21 this hearing, that questions
22 relating to phase 3 are going to
23 have to be asked of the witnesses
24 in phase 1."

25

1 And then, going over to page 21 with Mr. Saxberg
2 speaking at line, at line 21 on page 21:

3

4 "Yeah. So as you know, Mr.
5 Commissioner, the test is the test
6 of whether there is a direct or
7 substantial interest and I would
8 put out there that the
9 authorities, and ANCR, insofar as
10 the intake function in Winnipeg,
11 are really the primary respondents
12 to this inquiry. It's those
13 organizations that are going to be
14 rolling up their sleeves, when
15 this inquiry's done, and
16 implementing what comes out of
17 this inquiry. They're the party
18 most affected, in terms of the
19 work of this inquiry. And so,
20 with that, there shouldn't be any
21 restrictions on their involvement
22 in any phase of this inquiry and
23 we would ask that you reconsider
24 your earlier decision."

25

1 And then at page 22, I make the ruling and say:

2

3 "Having said that, I've heard you.

4 You've made a good point with

5 respect to the, the clients that

6 you represent, the workers in, at

7 the authorities and, and at ANCR

8 and I'm prepared to grant your

9 request."

10

11 Then the next in the booklet is the transcript of

12 proceedings on February 6, which is the day when I raised

13 the question as to whether we might be in a situation of

14 conflict of interest that had to be addressed, and Mr.

15 Saxberg briefly responded to that. That's very recent and

16 it's in the, in the booklet and I don't intend to read from

17 it, nor do I intend to read from, from the next transcript,

18 which was the following day when further discussion on the

19 conflict matter took place. And everyone, I think, is

20 appreciative of how that day went and so recent, it's

21 recorded there. And that set the stage for us continuing

22 on to where we are today.

23 So that takes us to tab number 7, which is the

24 letter that I directed the Commission counsel to send to

25 the Law Society of Manitoba enquiring as to whether there

1 may be a conflict of interest here, and that was as
2 directed in my remarks on the 7th of February. And I don't
3 intend to read from that letter other than to indicate the
4 list of clients of D'Arcy Deacon that were referred to in
5 that letter. And I go to page 3 of 8 of the letter:

6

7 "The law firm of D'Arcy & Deacon
8 LLP represents a number of parties
9 and individuals as follows:

10 1. The General Child and family
11 Services Authority ('the General
12 Authority'), First Nations of
13 Northern Manitoba Child and Family
14 Services Authority ('the Northern
15 Authority'), First Nations of
16 Southern Manitoba Child and Family
17 Services Authority ('the Southern
18 Authority') and Child and Family
19 All Nations Coordinated Response
20 Network ('ANCR'), have a shared
21 grant of full party standing in
22 the Inquiry and are specifically
23 represented by Kris Saxberg of
24 D'Arcy & Deacon LLP.

25 2. Roberta Dick, who was a child

1 protection worker employed by
2 Winnipeg Child and Family Services
3 during the time that services were
4 provided to Phoenix Sinclair and
5 her family.

6 3. Diva Faria and Diana Verrier,
7 who were supervisors employed by
8 Winnipeg Child and Family Services
9 in the Crisis Response Unit during
10 the time that services were
11 provided to Phoenix Sinclair and
12 her family. Ms. Faria was Ms.
13 Dick's supervisor.

14 4. Della Fines, a social worker
15 employed by Winnipeg Child and
16 Family Services in the Family
17 Service Unit.

18 5. Dan Berg and Rob Wilson, who
19 were employed as Assistant Program
20 Managers with Winnipeg Child and
21 Family Services during the time
22 that services were provided to
23 Phoenix Sinclair and her family.
24 Mr. Berg was Ms. Faria's and Ms.
25 Fines' supervisor.

1 6. Trudy Carpenter, an
2 administrative support worker
3 employed by Winnipeg Child and
4 Family Services during the time
5 that services were provided to
6 Phoenix Sinclair and her family.

7 7. Jan Christianson-Wood,
8 formerly employed by the
9 Department of Justice, Office of
10 the Chief Medical Examiner
11 ('OCME'), is represented by Mr.
12 Saxberg in her capacity as a
13 current employee of the General
14 Authority. As noted above, Ms.
15 Christianson-Wood wrote a report
16 dated September 18th, 2006, which
17 looked into the child welfare
18 services provided to Phoenix
19 Sinclair and her family. Ms.
20 Christianson-Wood is represented
21 by Alan Ladyka of Manitoba
22 Justice, Civil Legal Services, in
23 her former capacity as an employee
24 of the OCME. Ms. Christianson-
25 Wood is expected to testify at the

1 Inquiry in both her former and
2 current capacities.

3 8. Angela Murdoch, Shirley
4 Cochrane, Darlene Garson, Keith
5 Murdock, Cindy Hart, Allison
6 Kakewash, Davin Dumas, Source of
7 Referral #8, Elsie Flette and
8 Elsie Flett. These witnesses are
9 represented by Harold Cochrane and
10 are primarily from the Fisher
11 River First Nation."

12

13 The rest of the letter is in the tab and I will
14 not be making reference to it.

15 Then we go to tab 8, which is the response from
16 the Law Society of Manitoba, which was sent to assist me in
17 reply to the request that Commission counsel had made on my
18 behalf. And from that letter I simply go to page 9 and
19 reference that the Law Society has said to me:

20

21 "... we have concluded that Mr.
22 Saxberg's representation of
23 multiple parties has given rise to
24 conflicting interests and that his
25 duty of loyalty to his clients is

1 compromised, ..."

2

3 And then in tab number 9 is the letter that was
4 received by Commission counsel late last week from Mr.
5 Saxberg's firm in which they respond to the letter from the
6 Law Society and by way of assisting this Commission in its
7 work, and I'll read from -- firstly, from pages -- some
8 paragraphs towards the bottom of page 1 and onto the top of
9 page 2 from this letter dated March the 7th, 2013 addressed
10 to this Commission:

11

12 "By way of background, and as the
13 Commission has acknowledged, The
14 Child and Family Services
15 Authorities Act established the
16 Authorities in November of 2003.
17 Due to delays in transferring
18 files and resources, the
19 Authorities had no direct
20 responsibility or involvement in
21 providing services to Phoenix
22 Sinclair and her family.
23 Similarly, ANCR did not 'go live'
24 until February, 2007. As a
25 result, the Authorities/ANCR are

1 not giving evidence or taking a
2 position in Phase 1 of the
3 Inquiry. These organizations
4 wanted to participate in Phase 1
5 cross examinations to ensure that
6 evidence relating to the current
7 system was accurate.

8 The evidence of the
9 Authorities/ANCR in the Phoenix
10 Sinclair Inquiry is limited to the
11 work done by the Authorities/ANCR
12 to implement recommendations from
13 the Reports and to provide
14 evidence on the current
15 functioning of the Child Welfare
16 System.

17 After D'Arcy & Deacon LLP (the
18 'Firm') was formally retained by
19 the Authorities/ANCR, it was
20 approached by witnesses who did
21 not feel comfortable with the
22 choice of counsel available to
23 them, i.e. counsel for the
24 Department or counsel for the
25 Union.

1 Since the firm was acting for
2 entities that had 'no involvement
3 in delivering services to Phoenix
4 Sinclair', the Firm's view was
5 that we could also represent
6 individual witnesses in Phase 1 of
7 the Inquiry without the risk of a
8 conflict arising."

9
10 And then from pages 4 and 5 in that letter, down
11 towards the bottom of page 4:

12
13 "In order to remedy the appearance
14 of conflict with Mr. Rodgers and
15 Ms. Christianson-Wood vis-à-vis
16 their relationship with the
17 General Authority, the General
18 Authority has instructed us to
19 seek an individual grant of
20 standing so it can retain new
21 counsel. Preliminary discussions
22 with the Department of Justice
23 concerning funding for new counsel
24 received a positive response.
25 Our proposal for separate standing

1 for the General Authority
2 effectively removes any appearance
3 of conflict while maintaining the
4 fairness of the proceeding in that
5 each of the above referenced
6 witnesses and parties will have
7 and maintain full legal
8 representation at the Inquiry to
9 protect and advance their
10 interests. With respect to the
11 individual witnesses, their
12 testimony is complete. The
13 evidence of the General Authority
14 in Phase II has already been
15 developed. Therefore, the role of
16 new counsel would be limited to
17 cross examination and closing
18 argument. For these reasons, we
19 are of the view that the above
20 proposal will result in little if
21 any delay to the Inquiry.
22 To be clear, the Northern
23 Authority, the Southern Authority
24 and ANCR were not involved in the
25 delivery of services to Phoenix

1 Sinclair. As such, they will not
2 be taking a position with respect
3 to the conduct of any of the
4 individual social workers that
5 have testified in Phase 1 of this
6 proceeding. Our clients have
7 asked us to communicate to the
8 Commission their strong desire to
9 have the Firm continue to
10 represent them at this Inquiry."

11

12 Now, those are the passages that I think bear on
13 the matter that I ultimately have to decide as to whether
14 or what the extent is of the conflict that has been
15 referenced by the Law Society and what we shall do about it
16 at this Commission. And to that end I have, and indicated
17 earlier, a series of questions that I'd like you now,
18 Commission counsel, to pass out, firstly to Mr. Saxberg and
19 his associate and to others, and I'm going to read them
20 into the record because they, they arise from the portions
21 of the document that I read from extensively today.

22 The heading here is, Questions to be Answered by
23 Mr. Saxberg.

24 With respect to your representation of the
25 authorities and ANCR:

1 (a) You propose to remedy what you call the
2 appearance of conflict with Mr. Rodgers and Ms.
3 Christianson-Wood vis-à-vis their relationship with the
4 general authority by the general authority seeking an
5 individual grant of standing so that it can retain new
6 counsel.

7 (b) You are also proposing that your firm would
8 continue to act for the northern authority, the southern
9 authority and ANCR on a restricted basis as compared to
10 their participation to date. Specifically, in your letter
11 you say that

12

13 "... the Northern Authority, the
14 Southern Authority and ANCR were
15 not involved in the delivery of
16 services to Phoenix Sinclair. As
17 such, they will not be taking a
18 position with respect to the
19 conduct of any of the individual
20 social workers that have testified
21 in Phase 1 of this proceeding."

22

23 My first question is, do I have your proposals
24 right?

25 Two: Having heard me read out your submissions

1 made on behalf of three authorities and ANCR in February
2 and March 2012 for extended standing to participate fully
3 in phase 1, how do you reconcile the proposals you are now
4 making for limited participation with the application for
5 extended standing that I granted last March and upon which
6 this Commission has proceeded ever since?

7 Three: How will the limited participation you
8 propose protect and further the interests of the two
9 authorities and ANCR and the interests of the inquiry in
10 having all relevant evidence adduced at this inquiry? In
11 particular

12 (a) What do you say are the interests of the
13 northern authority, the southern authority and ANCR with
14 respect to their participation in this inquiry?

15 (b) What do you say is the contribution those
16 two authorities and ANCR bring to the mandate of this
17 inquiry?

18 Four: I made a single grant of standing for the
19 three authorities and ANCR, which your proposal, if
20 accepted, would undo. Were I to accept your proposal, it
21 would result in a duplication of lawyers and costs. Is my
22 understanding correct?

23 Five: With respect to your proposal to continue
24 to act for the northern authority, southern authority and
25 ANCR, I take it you have, consistent with your

1 responsibilities under the Code of Professional Conduct,
2 received informed consent after full disclosure from all
3 your clients you represented of the nature of the
4 conflicting interest, including the relevant circumstances
5 and the reasonably foreseeable way the conflict of interest
6 could adversely affect the clients' interests.

7 Six: If you have obtained those clients'
8 informed consent, do you reasonably believe the clients'
9 representation will not be jeopardized by your continuing
10 to act in the manner you propose?

11 Seven: I note your letter is silent with respect
12 to the continuing representation of the following
13 witnesses: Diana Verrier, Rob Wilson, Trudy Carpenter,
14 Della Fines and the clients from Fisher River represented
15 by Mr. Cochrane. What are you proposing in terms of these
16 witnesses' continued representation?

17 Eight: With respect to Jan Christianson-Wood you
18 indicate that she has her own legal counsel at this
19 inquiry, being Mr. Ladyka, that he has responded to that
20 letter by advising me in his letter of March the 8th that
21 he acts for Ms. Christianson-Wood in this inquiry only in
22 her former capacity as the employee of the Office of the
23 Chief Medical Examiner who wrote the Section 10 report in
24 this matter. What is your proposal with respect to Ms.
25 Christianson-Wood's continued representation?

1 Nine: With respect to your proposal

2 (a) Are you arranging for Ms. Dyck to retain
3 separate counsel? Is that correct?

4 (b) You are also arranging for Ms. Faria and Mr.
5 Berg to retain new counsel? Will that be separate counsel
6 for each of them?

7 I would like your written response to these
8 questions by 4:00 p.m. Friday, March the 15th. I will
9 reconvene on Tuesday, March the 19th, at 9:30 a.m. to
10 provide my decision, which, of course, will be based, to a
11 large part, on the response that Mr. Saxberg makes to these
12 questions.

13 I want to say that there is no doubt that we're
14 delayed somewhat by what has occurred on this conflict
15 issue. I think none of us want that delay to be long, but
16 there certainly has to be time for new counsel to get up to
17 speed and, and be in a position to carry on with the
18 balance of the evidence that's ready to be given in phase
19 one before the other two phases, and I can tell you that my
20 objective is to reconvene hearings on Monday the 15th of
21 April. Believe me, I wish it was a lot sooner but I have
22 to be reasonable and practical and realize that new counsel
23 need time. And in the interim, between now and then, if
24 you want to confer with Commission counsel, she is aware of
25 my choice of that date to get going again, and if you have

1 any discussions you want to contribute to her, that she
2 will bring to the formalization of a timetable with respect
3 to all three phases. So with that, we stand adjourned
4 until 9:30 Tuesday morning of next week.

5

6

(PROCEEDINGS ADJOURNED TO MARCH 19, 2013)