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File 2011-0325

Phoenix Sinclair Inquiry

July 4, 2012

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Hill Sokalski Walsh Trippier LLP
Barristers & Solicitors
2670 – 360 Main Street
Winnipeg, Manitoba
R3C 3Z3

Attention: Ms. Sherri Walsh

Dear Madam:

**Re: Commission of Inquiry Into the Circumstances Surrounding
the Death of Phoenix Sinclair ("Inquiry")
Application for Standing as a Party in Phases II and III**

As you are aware, we are counsel for the Assembly of Manitoba Chiefs operating as Assembly of Manitoba Chiefs Secretariat Inc. ("AMC") and the Southern Chiefs Organization Inc. ("SCO") in respect of the above noted matter. Currently, the AMC and SCO have separate grants of standing as intervenors in the Inquiry.

As a result of recent amendments to the Phases of the Inquiry ("Phases"), we have been instructed to make an application for a single grant of shared party standing for AMC and SCO for Phases II and III. We intend to make oral submissions in this regard before the Commissioner on July 9, 2012 or such time thereafter as the Commissioner advises.

AMC and SCO are not seeking to expand their grant for Phase I of the hearings, but respectfully submit that as a result of the announced changes to the scope of Phases II and III, that AMC and SCO be awarded a shared grant as parties for the balance of the Inquiry.

I. Phase II and Phase III

At the June 4, 2012 meeting of counsel to the parties and intervenors in the Inquiry, Commission Counsel announced that amendments had been made to Phases II and III. It is our understanding that Phase I dealing with the factual matters involved in Phoenix's death as set out in section 1 of the Order in Council remains unchanged and that Phase II and III can be summarized as follows:

*Practicing through Jay L. Funke Law Corporation

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Phase II: Report Writers and Responses – the Commission will hear testimony from many of the writers of the six reports listed in subsections (a) to (f) in section 3 of the Order in Council dated March 23, 2011. The Commission will also hear evidence regarding the extent to which the 295 recommendations contained within those reports have been implemented from witnesses representing the Department of Family Services and Consumer Affairs (the “Department”), the First Nations of Northern Manitoba Child and Family Services Authority, the First Nations of Southern Manitoba Child and Family Services Authority, the General Child and Family Services Authority (the “Authorities”), the Metis Child and Family Services Authority (“Metis Authority”), the Manitoba Government and General Employees’ Union (“MGEU”) and the AMC and SCO;

Phase III: “The Community its Needs and Responsibilities: Protecting and Promoting Children and Families”. We are advised by Commission Counsel that Phase III will speak to the systemic issues and the underlying social context surrounding Phoenix Sinclair’s death. Commission Counsel has indicated that the Inquiry will consider the protection of children not only from a child welfare perspective, but from a broader community perspective. Further, Commission Counsel explained that a number of panels of witnesses are being considered, and while the precise content of this Phase remains subject to change, the Commission has contemplated calling a panel of Elders, young women and/or other community members.

As will be set out in more detail below, AMC and SCO have a direct and substantial interest in the subject matter of Phases II and III of the Inquiry.

II. AMC and SCO and Their Collaborative Efforts in the Inquiry

As set out in the previous applications for standing submitted to Commission Counsel on June 6, 2011, AMC and SCO serve as the leading political advocacy entities for and on behalf of their respective First Nations members.

As you will recall, AMC was formed in 1988 and derives its mandate from the Chiefs-in-Assembly, comprised of all of the Chiefs of those First Nations in Manitoba who are members of AMC. AMC currently represents 59 of the 63 First Nations in Manitoba. AMC brings a wealth of experience in child welfare, particularly as it relates to First Nations as a result of the Chief’s Committee on Child Welfare, the Framework Agreement Initiative Child and Family Matters Table, the Aboriginal Justice Inquiry-Child Welfare Initiative Working Group and the AMC Child Welfare Portfolio.

The Accord of the Southern Chiefs of Manitoba (the “Accord”) signed April 30, 1998 was an agreement to establish a political forum specifically for the southern First Nations of Manitoba. SCO was the entity established to give effect to the Accord and derives its mandate from the Chiefs-in-Summit, comprised of the Chiefs of those southern First Nations entitled to membership in SCO. Currently, SCO represents 33 of the 36 southern First Nations.

Despite its more recent origin, the SCO has become increasingly involved in child welfare since its inception in 1998. Although the AMC is currently the body which, pursuant to the *Child and Family Services Authorities Act* ("CFSA"), appoints the board of directors of the Southern First Nations Child and Family Services Authority ("Southern Authority"), the AMC acknowledged by resolution, dated January 28, 2009, that this responsibility is to be transferred to the SCO.

In recognition of this transfer of authority, the Province has, by regulation, recently named the Grand Chief of the SCO to replace the AMC Grand Chief on the Leadership Council established pursuant to the CFSA, with the AMC Grand Chief remaining as an ex-officio member.

While SCO originally sought and obtained separate standing from AMC in the Inquiry, they have since agreed to work collaboratively toward ensuring the full representation and participation of their respective First Nations members throughout the Inquiry. There have been two notable developments since the previous applications for standing on June 6, 2011.

On November 23, 2011, AMC, SCO, and Manitoba Keewatinowi Okimakanak, Inc. ("MKO") entered into a Political Unity Accord (PUA) providing for political unity and collaborative action on matters of common interest toward the protection and promotion of the rights and interests of First Nations and First Nations people in Manitoba. The PUA forms the foundation of relations between the AMC, SCO and MKO. As a result, the preparation of AMC and SCO's submissions before the Inquiry has been a collaborative effort of AMC, SCO and MKO.

On May 24, 2012, the Grand Chiefs of AMC, SCO and MKO established the AMC, SCO and MKO Child Welfare Technical Working Group ("Technical Working Group"). The Technical Working Group is comprised of representatives of AMC, SCO and MKO and is mandated to provide collaborative policy review, strategic analysis, technical support and recommendations to work together on First Nations child welfare issues that are of common interest to AMC, SCO and MKO.

The Technical Working Group has been tasked to provide advice to the AMC and SCO on their submissions before the Inquiry. As a result, the Technical Working Group has been meeting regularly with our office to collaborate on the preparation of AMC and SCO's submissions before the Inquiry and the collection of documents and evidence in support of these submissions. Representatives from AMC, SCO and MKO have undertaken to complete extensive reviews of their respective files in order to ensure that the AMC and SCO are in a position to fully assist the Commissioner in providing evidence relevant to his mandate in Phases II and III of the Inquiry.

The work of the Technical Working Group, in drawing upon the wealth of knowledge and experience of AMC and SCO in child welfare, has been of great assistance to AMC and SCO in gathering potential evidence for the Commissioner's consideration in Phases II and III. AMC and SCO submit that no other party or intervenor will be equipped to provide the perspective and evidence offered by the members of the Technical Working Group.

III. AMC and SCO's Direct and Substantial Interest in Phase II and Phase III

Introduction

The subject matter in Phases II and III involve a consideration of recommendations of various reports following Phoenix's death and consideration of the community's role in the promotion and protection of children and families. As the political entities that represent First Nations in the child welfare system, AMC and SCO have a direct and substantial interest in the subject matter of the Inquiry. The recommendations of the Commissioner in this Inquiry will be of significant importance to First Nations. Accordingly, the AMC and SCO will be directly involved in ensuring that the Commissioner's recommendations are implemented for the benefit of First Nations.

As a result of AMC and SCO's extensive involvement in child welfare in Manitoba, the AMC and SCO will be of great assistance to the Commissioner in suggesting expert witnesses and ensuring the involvement of Elders and community members.

The Role of the First Nations' Community

There is no question that First Nation children and families are currently over-represented in Manitoba's child welfare system. Manitoba has had a tumultuous history in its dealings with First Nations children and families as a result of colonization; including the forced placement of First Nations children in residential schools and the apprehension and placement of children in non-First Nation homes throughout Canada and the United States, during the period now known colloquially as the Sixties Scoop. This history has impacted upon the First Nations people of Manitoba and has engaged their leaders from the community to the national level. The Manitoba Indian Brotherhood and the Four Nations Confederacy, the respective predecessors to the AMC and SCO, were involved in advocating for reforms to the child welfare system as early as the 1970's.

Collective responses to issues of common concern to First Nations have been the result of organized efforts by the AMC and SCO. Whenever such issues are discussed at the provincial and federal level, the AMC and the SCO are immediately engaged. This is particularly true of child welfare issues. First Nations members of the AMC and SCO have been at negotiation tables regarding jurisdictional issues in the delivery of child and family services since the signing of the early tripartite agreements in 1982.

Equally important is the involvement of First Nations leadership at the community level. When grandmothers in First Nations communities need assistance in raising their grandchildren, it is to the First Nation leadership which they go for help. AMC and SCO are connected to First Nations communities in ways which even community agencies are not connected. If recommendations are to involve the role of the community in the protection and promotion of children and families, the AMC and SCO are in the best position to provide evidence which will assist the Commissioner in that regard.

Elder Involvement

Elders are the pillars of First Nations' communities. Elders are involved at almost every stage of the political-decision making processes in AMC and SCO. At meetings of the AMC and SCO Elders are present at all levels: community meetings, Chiefs-in-Assembly/Chiefs-in-Summit meetings, annual general meetings. The AMC Elder's Council meets regularly to discuss issues of concern and to provide guidance to leadership. In the event Elders are required for ceremonial purposes or to provide evidence before the Commissioner, AMC is in regular contact with the Elders of the Elder's Council and other Elders in the community and can assist in organizing the involvement of Elders in the Inquiry. Further, the SCO is in regular contact with a number of Elders from southern First Nations and can assist in organizing the involvement of Elders from these communities as well.

The AMC and SCO seek to assist the Commissioner/Commission Counsel in further defining the scope of Phases II and III if required, and assist in identifying potential experts, submitting documentary and oral evidence, and suggesting and ensuring the involvement of Elders and others from the community. AMC and SCO request the ability to do so as a party in Phases II and III.

The Commissioner's recommendations in Phases II and III will be for the benefit of all children and families in Manitoba. Accordingly, the Government of Manitoba, as well as the community-at-large will be responsible for ensuring the implementation of the Commissioner's recommendations. It is submitted that in so far as these recommendations will impact First Nations children and families, AMC and SCO's involvement as a party in Phases II and III ensures First Nations' involvement in and commitment to the implementation of recommendations which will directly impact First Nations children and families.

IV. Conclusion

The First Nations people of Manitoba have been deeply affected by the tragic death of Phoenix Sinclair. In order to ensure First Nations continue to exercise meaningful control over the development and delivery of child and family services to their children and families, First Nations must have a voice, particularly in Phases II and III of the Inquiry. AMC and SCO speak with one voice, and are the only voice of First Nations people in this Inquiry.

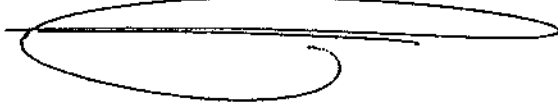
AMC and SCO applaud the Commissioner's amendments to Phases II and III. Examining the circumstances surrounding Phoenix's death necessarily requires a review of the services provided or not provided to Phoenix and her family and the AMC and SCO will participate as an intervenor in that regard. With respect to the implementation of those recommendations made since Phoenix's death, and an examination of the systemic issues involved with particular regard to the role of the community in child welfare, AMC and SCO seek standing as a party.

AMC and SCO remain respectful of the Commissioner's mandate and are committed to supporting the Commissioner's recommendations toward the greater protection of children in Manitoba.

I trust the foregoing is satisfactory. However, if you have any questions or concerns, please do not hesitate to contact our office.

Sincerely,

FUNKE POUDRIER LAW OFFICES

A handwritten signature in black ink, appearing to read "JAY FUNKE", written over a horizontal line.

JAY FUNKE

JLF/jm