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ARTICLING STUDENT-AT-LAW

File No.

"VIA FAX (204) 948-2669"

May 19, 2005

Family Services and Housing
218- 114 Garry Street
Winnipeg, Manitoba
R3C 4V4

Attention: Sid Rogers

Dear Sir:

Re: Implementation Committee Decision on Case Transfers

Please be advised that I am retained by Opaskwayak Cree Nation Child and Family Services Agency (OCN), Cree Nation Child and Family Caring Agency (CNC-FCA), Nisichawaysihk Cree Nation Family and Community Services (NCN) and Kinisao Sipi Minisowin Agency (KSMA). Your letter to Ms. Kematch, the CEO of Northern Authority dated May 17, 2005 regarding the Implementation Committee decision on case transfers has been reviewed by the Directors of the aforesaid agencies and they have expressly instructed me to provide you with this letter which details the position of the four agencies on case transfers.

1. Cases without case transfer summaries: the four agencies agree that no cases are to be transferred without case transfer summaries and without mutual agreement between the sending and receiving agencies.
2. Cases under apprehension: the four agencies generally agree with the decision set out in your letter, however, practical problems have arisen. Specifically, the agencies have advised me that they are not in possession of a comprehensive listing of cases where Winnipeg Child and Family Services has filed an apprehension. It is extremely difficult for the agencies to accept the transfer of cases without knowing which cases those are or what Court dates are pending. The agencies expect the following procedure to be followed:
 - a) Winnipeg CFS will notify the appropriate agency of all cases under apprehension that are pending in Court. Appropriate information will be provided that will enable the receiving agency to determine whether they wish to accept responsibility of the case.

- b) The receiving Agency will review the information and instruct their legal counsel as to their position. Legal counsel will communicate the position of the receiving Agency to legal counsel for Winnipeg CFS.
- c) If the receiving Agency is prepared to accept the case under section 28(2) then the appropriate written consent will be provided and filed in Court. It would be the responsibility of legal counsel of Winnipeg CFS to file the appropriate motion and supporting affidavit requesting the transfer and to serve the receiving agency and the respondents in the case. If the order is granted by the Court to transfer under section 28(2) to the receiving Agency, then the legal counsel for the receiving Agency will assume conduct of the matter.
- d) If the receiving Agency determines that it cannot accept the case, this information will be communicated by Agency legal counsel to legal counsel for Winnipeg CFS. It would be expected that Winnipeg CFS counsel would then continue with conduct of the case on behalf of Winnipeg CFS.
- e) The receiving Agency may determine that it cannot accept the case under section 28(2) but would be prepared to accept an order being made in their name pursuant to section 42. This decision would be communicated to Winnipeg CFS legal counsel. It would then be the responsibility of Winnipeg CFS to continue with conduct of the case through to hearing and that any order granted by the Court would be made in the name of the receiving Agency. It would be the responsibility of the receiving Agency to work with CFS staff to prepare an appropriate case plan acceptable to the Court. It would be the responsibility of legal counsel of the receiving Agency to provide the written consent under section 42 to the Court. Once the order is granted in the name of the receiving Agency, the case would then be transferred to the receiving Agency.
- f) Each request will be considered on a case by case basis. Thus, it is imperative that the four agencies be provided with accurate up to date lists of all pending Court cases and the upcoming court dates and the status of each case (trial dates, pre-trial dates).

3. All other Child-in-Care cases: this portion of the Implementation Committee's decision is perhaps the most problematic for my clients. I have spoken to Ms. Debra Poskar, counsel for Winnipeg CFS and I have discussed your letter with her to determine the meaning of "child-in-care". I am assuming that you mean permanent wards, temporary wards, children under supervision orders, children under voluntary placement agreements and children who were under temporary orders that had expired and an application to extend the order has been made by Winnipeg CFS. You have advised that all such cases have been transferred pursuant to section 49 but my clients report to me that they have not been given any indication of which cases these are and what the status of

the cases are.

It is imperative that their Agencies be notified of all temporary orders and supervision orders and their expiry dates so that the Agencies can take the appropriate steps to ensure that, firstly, they have received the file and secondly, that they act in a timely fashion to extend orders where required. If Winnipeg CFS has purported to transfer responsibility of children in care under section 49 to the receiving Agencies then the receiving Agencies must receive notification and a transfer of the case file. As well, it would be good practice to also notify the child (over 12), the parents and the caregivers (foster parents) of the transfer.

I am specifically instructed to advise you that the receiving Agencies will not accept any section 49 transfers of closed cases.

With respect to VPA's, transfer of VPA's is not permitted under the Act. The Directors of the Agencies discussed this issue in Thompson on May 10, 2005 and agreed that the current VPA's signed with Winnipeg CFS on children over which the Northern Agencies had jurisdiction should be continued and allowed to run to their expiry dates. Winnipeg CFS should immediately provide a comprehensive list of all such children under VPA's and the pending expiry dates so that the Agencies can be informed of the existence of the child, the family information and whether the VPA should be renewed at the end of its term. Again, it is imperative that all affected children, parents and caregivers be notified if it is expected that a receiving Agency would be the new agency which would be dealing with them at the end of the VPA term.

With respect to temporary orders that have expired where Winnipeg CFS has applied in Court to extend the order, my clients take the position that section 49 transfers are not appropriate nor acceptable. I am advised that Winnipeg CFS is simply changing the name of the petitioner in these cases without notifying the receiving Agency, or the child (over 12) or the parents. I am concerned that Winnipeg CFS legal counsel is now presenting cases on behalf of the receiving Agencies without any instruction from the receiving Agencies. As well, the receiving Agency has not been informed nor provided with a comprehensive list of these cases so that they can instruct their own legal counsel to appear. It is my view that it is a breach of the Court of Queen's Bench Rules to simply change the style of cause of a case without properly filing a Requisition and Consent to do so from the affected parties including the receiving Agencies. Ms. Poskar has informed me that she believes that such transfers are proper but I do not agree with her position. It is my view all pending Court applications are to be continued in the name of Winnipeg CFS until Winnipeg CFS applies for and obtains an order under section 28(2) to transfer the case prior to the hearing of the application to extend the order.

Therefore, please be advised that my clients have instructed me that they will not consent to section 49 transfers of cases pending before the Court. Rather, they expect to be properly notified of any Court case that is expected to be transferred to them so that they can decide whether to accept the case and so

that they can have an opportunity to instruct their legal counsel.

It is unfortunate that the Implementation Committee has made this decision without wider input from the receiving Agencies. It is also unfortunate that this decision has been communicated to my clients the day after the purported Ministerial transfer of cases. Of course, it would have been workable had this process been communicated to my clients in the early part of this year so that my clients would have had an opportunity to have staff and legal counsel in place to deal with these transfers.

My clients are committed to working with you and Winnipeg CFS to ensure that children and families continue to receive quality care and services and that they suffer the least disruption in the transfer of their cases.

I trust that the foregoing clearly communicates the intentions of OCN, CNC-FCA, NCN and KSMA. If you have any questions or concerns you can reach me at 623-7845. Please be advised that I will be in the City of Winnipeg on May 20, 2005 and I can be reached on my cell phone at 623-0500.

Yours truly,

MIRWALDT & GRAY

LORE M. MIRWALDT, Q.C.

LMM/tb

xc: Northern Authority(K. Dunlop, Q.C.)

OCN, Diane Deschambeault

CNCFCA, Linda Constant

NCN, Felix Walker

KSMA

Grand Chief S. Garrioch, MKO

Awasis Agency, David Monias

Winnipeg CFS, D. Poskar

Joy Cramer