

**DUBOFF EDWARDS HAIGHT & SCHACHTER  
LAW CORPORATION**

BARRISTERS & SOLICITORS

Murdoch MacKay, Q.C. • Michael F.C. Radcliffe, Q.C. • Israel A. Ludwig\*  
Harold J. Arkin\* • Harley I. Schachter\* • Neil J. Duboff • Paul D. Edwards • William G. Haight  
Kimberley Gilson\* • Jurgen W. Feldschmid • Juring Wang • William R. Gardner • Daniel Gilson • Kara L. Bjornson  
Mendle M. Meltzer (1921-2008) • Earl I. Essers (1921-2008)

Please Reply to Mr. P. Edwards  
(phone ext. 213)  
E-mail: [pedwards@dehslaw.com](mailto:pedwards@dehslaw.com)

Our Matter No. 100719-1102

June 6, 2011

\*\*\* DELIVERED \*\*\*

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

Please be advised that we are counsel for the Assembly of Manitoba Chiefs operating as Assembly of Manitoba Chiefs Secretariat Inc. ("AMC") in respect of the above noted matter.

AMC hereby applies for standing as a party at the Inquiry.

**I. OVERVIEW**

The Inquiry provides all interested individuals and organizations the opportunity to contribute to a process which will result in recommendations to better protect children in Manitoba. The tragic death of Phoenix Sinclair and the harrowing circumstances in which she lived has commanded the attention of the Manitoba public. Through the Inquiry, we will all bear witness to this tragedy and the crisis occurring in child welfare in Manitoba.

One in ten First Nation children compared to one in two hundred non-First Nation children are in the care of child welfare agencies. The First Nations Child and Family Caring Society of Canada informs that there are more children in care in Canada today than there were in residential schools during the height of their operation in 1949. First Nation children, families, and communities have been greatly impacted by the

1900 - 155 Carlton Street, Winnipeg, Manitoba, Canada R3C 3H9  
Telephone (204) 942-3361 • Fax (204) 942-3362

◊ Also a member of the Saskatchewan Bar

\* Also a member of the Ontario Bar

\* Also a member of the British Columbia Bar and practicing through Harley Schachter Law Corporation

\* Also a member of the Nunavut Bar

\* Practising through Israel A. Ludwig Law Corporation

apprehension and placement of First Nation children in residential schools and the child welfare system. The challenges that faced Phoenix Sinclair's family and the tragic circumstances surrounding her death are a painful example of the impact that these systems have had on First Nations people.

There is an apparent interrelation between the child welfare system and the criminal justice system. The Child Welfare section of the 1988 Aboriginal Justice Inquiry brought to life the Child Welfare Initiative and began the important work of devolving child welfare services to First Nations and Métis. The work of First Nation and Métis leadership and others in advocating for First Nations and Métis to have direct control over the services affecting their respective communities led to the enactment of *The Child and Family Services Authorities Act* (the "Act") in 2003. The Act and the creation of the Southern and Northern Authorities provided First Nations the ability to ensure that First Nations children and families received culturally appropriate child and family services both on and off-reserve.

AMC has been a leading advocate for First Nations in Manitoba prior to and during the devolution process. Through the mandate provided by the Chiefs-in-Assembly, AMC continues to advocate for change in federal and provincial policies, legislation and funding of child and family services to First Nations in Manitoba. AMC's work in research, policy review and analysis of child welfare issues, encompasses a wide range of issues that will be relevant throughout the Inquiry. Further, AMC's expertise in the examination of the history and impacts of the imposition of outside policies in the apprehension and placement of children in residential schools and the child welfare system, as well as the successes and challenges facing first Nations in the delivery of child and family services, will be important information in the formulation of recommendations by the Inquiry.

## **II. INTRODUCTION TO AMC**

AMC was formed in 1988 to act on behalf of the First Nations of Manitoba. Article 1 of the Constitution of AMC recognizes that First Nations in Manitoba possess common interests and aspirations and exercise their political will in collective approaches and strategies through consensus. As set out in the Constitution, AMC derives its mandate and responsibility from the Chiefs-in-Assembly. The Chiefs-in-Assembly is comprised of all the Chiefs of those First Nations in Manitoba who exercise their right to be members of AMC. All First Nations in Manitoba have the right to seek membership in AMC and currently, 59 of the 63 First Nations are members.

Phoenix Sinclair's home community Fisher River Cree Nation is a member of AMC. Pine Creek First Nation, the reserve of Phoenix's biological father, is also a member of AMC.

The Chiefs-in-Assembly is the political forum and source of all authority for collective action and functions as a coordinating and cooperative body for common strategies and initiatives. The Chiefs-in-Assembly elect the principal spokesperson, the Grand Chief of



AMC. The Grand Chief has a lead role in advocating the rights and interests of First Nations in Manitoba. The Grand Chief is also a member and the chair of the AMC Executive Council of Chiefs (the "Executive Council"). The Executive Council sets priorities on common issues and may make representations on behalf of the First Nations of Manitoba consistent with properly delegated mandates. The mandate of the Executive Council is derived exclusively from the AMC Constitution and from resolutions passed by the Chiefs-in-Assembly.

The Assembly Secretariat (the "Secretariat") was incorporated in 1988 as a non share capital corporation under *The Corporations Act* of Manitoba to support the activities and initiatives of the AMC. The Secretariat is dedicated exclusively to the social, cultural, educational and economic development of First Nations people on reserve as well as off-reserve through its role in implementing the decisions of the Assembly of Manitoba Chiefs-in-Assembly and the Executive Council. AMC is also guided by Chiefs Committees and Elders.

### **III. THE ROLE OF AMC IN CHILD WELFARE**

First Nations leadership has played a key role in working to improve services to First Nation children and families in Manitoba for many decades. Prior to the inception of AMC the Manitoba Indian Brotherhood worked in partnership with the Indian Child Welfare Sub-Committee in 1977 in calling for reforms to the child welfare system to better serve Aboriginal people. One of the recommendations of the report of the Committee in 1980 was that any child welfare service must include and involve First Nations people.

Child welfare has been a top priority for AMC. In 1989, the AMC Chiefs-in-Assembly determined that four Chiefs Committees were needed to coordinate strategies on and responses to common issues. Child Welfare was the first Committee created. Similarly, the Child and Family Matters Table was one of three negotiating tables in the Framework Agreement Initiative ("FAI") determined by AMC. The FAI established a formal binding process between AMC and Canada towards self-government for First Nations in Manitoba.

AMC made numerous presentations at community consultations of the Aboriginal Justice Inquiry ("AJI") on the importance of culturally appropriate child welfare services for First Nations children and families. The Aboriginal Justice Implementation Commission recommended that the Province of Manitoba meet with AMC, the Manitoba Metis Federation ("MMF"), the Manitoba Keewatinook Inew Okimowin ("MKIO" now the "MKO") to develop a plan for the delivery of child welfare services by these organizations to their respective community members. As a result, the Aboriginal Justice Inquiry - Child Welfare Initiative ("AJI-CWI") became a partnership between AMC, MMF, MKO and the Province of Manitoba. Memorandums of Understanding to give effect to this plan were entered into between all parties.

In the early stages of development of the *Act*, AMC assisted the ministerial staff in creation of the Bill presented to the Legislative Standing Committee. AMC is provided the responsibility and authority to appoint the board of directors of the Southern Authority upon the recommendation of southern First Nations pursuant to the *Act*. Additionally, the Grand Chief of AMC has a seat on the Leadership Council established under s. 29 of the *Act*.

#### IV. THE ROLE OF AMC IN THE INQUIRY

AMC has received direction from the Chiefs-in-Assembly to advocate for changes in the delivery of child welfare services to First Nations people. As set out above, AMC's historical role in achieving such change is evident. With the establishment of the *Act*, First Nations have been able to ensure that their children and families receive services that respect the unique status and cultural and linguistic heritage of First Nations people, while remaining sensitive to the individual needs of children and families. Unfortunately, while advancements have been made in the organizational structure of child and family services, many institutional flaws remain.

Jurisdictional issues between the federal and provincial governments, obstacles in the provision of services and programs to children in care both on and off-reserve, support for First Nation authorities and agencies and recognizing and responding to child abuse are all issues with which AMC has a demonstrated and continuing direct and substantial interest on behalf of First Nations people of Manitoba. These issues relate directly to all three of the mandates of the Inquiry: the child welfare services provided or not provided to Phoenix Sinclair and her family under *The Child and Family Services Act*, the other circumstances apart from the delivery of services directly related to her death and why her death remained undiscovered for several months.

AMC has extensive institutional experience to draw from on child welfare matters as a result of its involvement with the Chief's Committee on Child Welfare, the FAI Child and Family Matters Table, the AJI-CWI Working Group and the AMC Child Welfare Portfolio. AMC also has worked in partnership with experts in many areas relevant to the Inquiry.

We are enclosing herewith hereto a document entitled "Assembly of Manitoba Chiefs Issues Outline" which AMC has developed as an internal guideline for its participation in the Inquiry. This document is being provided at this time to assist the Commission in understanding the issues AMC anticipates referencing through evidence and submissions in the event standing is granted.

#### V. STANDING SOUGHT BY AMC

AMC requests it be provided the opportunity to tender and/or call evidence, cross examine all witnesses called by others and make submissions on all aspects of the mandate of the Inquiry. AMC requests the opportunity to do so with full standing as a party.



**VI. REQUEST FOR FUNDING RECOMMENDATION**

AMC requests that the Commissioner recommend funding be provided to AMC in order to allow for its full contribution and participation in the Inquiry.

**VII. CONCLUSION**

AMC believes it can bring a unique and highly relevant perspective and expertise to the Inquiry.

Many Manitobans do not fully understand the relationship between First Nations people and the governments of Manitoba and Canada. Many are unaware of the effects the historical treatment of First Nations children and families in residential schools and the child welfare system has had on the children and families of today. AMC's unique ability to contribute to the Inquiry will ensure the resulting recommendations have a meaningful and beneficial impact on First Nation children and families.

AMC supported the recommendations of the AJI and was involved with and dedicated to the implementation of those recommendations. Similarly AMC supports the mandate and purpose of the Inquiry and seeks to be part of it, as well as involved in implementing the important recommendations that will result.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED.**

Yours truly,

**DUBOFF EDWARDS HAIGHT & SCHACHTER LAW CORPORATION**

Per: 

Paul D. Edwards  
PE/km/enc.

cc. ASSEMBLY OF MANITOBA CHIEFS SECRETARIAT INC.

## ASSEMBLY OF MANITOBA CHIEFS

### ISSUES OUTLINE

The following will be used as a guideline for AMC's participation in the Inquiry. AMC has a direct and substantial interest in these issues which form a large part of the subject matter of the Inquiry. As well, AMC has a genuine and demonstrated concern over these issues and has a particular perspective or expertise that may assist the Commissioner in considering these issues.

#### **1. The Treatment of First Nations Children and Families in Indian Residential Schools and the Child Welfare System and the Intergenerational Effects on First Nation Children and Families**

##### *a. Historical Background*

- i. First Nations Sovereignty and the Nation-to-Nation Relationship with the Crown
- ii. Government and First Nation Relations

##### *b. Indian Residential Schools*

- i. Historical Background
- ii. Effect IRS has had on Children and Families

##### *c. Child Welfare System*

- i. Historical Background
  1. The Sixties Scoop
  2. The Development of Child Welfare On and Off-Reserve
- ii. Effect the Child Welfare System has had on Children and Families

#### **2. The Role of First Nations in the Delivery of Child and Family Services**

##### *a. Traditional and Modern Indigenous Perspectives*

- i. On the Role of Women and Children
- ii. On the Role of Extended Family
- iii. On the Role of the Community and Elders
- iv. On the Importance of Indigenous Identity to the Individual and the Collective

##### *b. Early Involvement of First Nation Leaders in the Development of Child Welfare Policy*

##### *c. First Nations Control Over First Nation Child and Family Services – The AJI-CWI*

- i. Recommendations

ii. The AJI-CWI Working Group

d. *The Child and Family Services Authorities Act*

- i. The Operation of First Nation, Métis and General Authorities in the Delivery of Child and Family Services

**3. The Challenges Facing the Child Welfare System**

a. *Jurisdictional Issues*

i. Federal

1. s.91(24)
2. Provision of Services to First Nations On-Reserve
3. Funding

ii. Provincial

1. Provision of Services to First Nations Off-Reserve
2. Funding

iii. Mobility

1. Issues Involved in the Moving of First Nations Children between Jurisdictions (From Urban to Reserve, Vice Versa)

iv. Jordan's Principle

b. *Obstacles in the Provision of Services and Programs to Children in Care On and Off-Reserve*

i. Historic and Modern Policies in the Child Welfare System and the Effect they have had on First Nation Children and Families

1. Apprehension
2. Adoption and Placement in non-First Nation Families and Institutions
3. Re-integration of Child to Family and Community
4. Monitoring of and Continued Support to Families and the Creation of Policies, Standards and Protocols in Areas of Concern
  - a. Child Abuse
  - b. Domestic Abuse
  - c. Substance Abuse
  - d. FASD
  - e. Special Needs Children
  - f. Counseling for Children and Families Effected by the Above Named Areas of Concern and a Reporting and Referral Process
  - g. Early Intervention Measures
  - h. Preventative Measures

ii. Supports to Children and Families On and Off-Reserve

1. The Creation of Programs for Areas of Concern
  - a. Foster Parents

- b. Short-term Placements
  - c. Extended Families
  - d. Early Intervention
  - e. Prevention
- c. *Support for First Nation Authorities and Agencies*
- i. Crisis Facing Child Welfare – Caseload Numbers Disproportionate to Number of Cases Workers can Effectively Serve
  - ii. Improved Benefits to Attract Social Workers and Staff
  - iii. Education and Training Programs for Social Workers and Staff
- d. *Recognizing and Responding to Child Abuse*
- i. History of Violence Facing Children and Families
    - 1. Effects of Indian Residential Schools
  - ii. Improving Relationships between First Nations and Professionals Involved
    - 1. Social Workers
    - 2. Police
  - iii. Child Abuse
    - 1. Overall Changes to System to Recognize and Respond to Child Abuse
      - a. Education and Training in Social Work Curriculum
      - b. Emphasis throughout Agency and Authority Policies for Social Workers and other Front Line Workers