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Attention: Sherri M. Walsh

Dear Sirs/Mesdames:

Re: Phoenix Sinclair Inquiry
 Application for Party Status
Our Matter No. 0104183 GAM

We are legal counsel to the Department of Family Services and Consumer Affairs ("the Department"). The Department seeks an order that it be granted full party status in the upcoming "Inquiry into the Circumstances Surrounding the Death of Phoenix Sinclair" (the "Inquiry") for the reasons set out below.¹ Please find attached to this submission:

1. Manitoba Family Services and Consumer Affairs Organizational Chart dated March 2010 (the "Organizational Chart"); and
2. Chart entitled "Manitoba Child and Family Services Reporting and Governance Relationships" (the "Governance Chart").

The Role of the Department at the Inquiry

The Department would play two separate but important roles in the Inquiry.

First, the Department is the legal successor to the Winnipeg Child and Family Services Agency ("Winnipeg CFS"). Phoenix Sinclair was a child in care of Winnipeg CFS on

¹ We understand from the Call for Applications for Standing posted on the Inquiry's website that the standing hearings are set for June 28 and 29, 2011. We further understand that, at that time, the applicants for standing will be asked to comment on the Draft Rules of Procedure and Practice. Accordingly, we shall reserve our comments on the Draft Rules until that time unless you wish our comments in writing in advance of the hearing.



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two occasions during her life. Phoenix was apprehended by Winnipeg CFS shortly after her birth on April 23, 2000, and placed in a foster home until she was returned to her parents on September 5, 2000. Winnipeg CFS also apprehended Phoenix Sinclair on June 22, 2003 and placed in a foster home until October 2, 2003 when she was returned to her father. Winnipeg CFS also provided other services to Phoenix Sinclair and her family at various times throughout her life until approximately March of 2005, when all case files were closed to Winnipeg CFS.

Winnipeg CFS, which is now a part of the Department, has important evidence to provide to the Inquiry about their employees dealings with Phoenix Sinclair and her family.

Second, the Department has overall responsibility for the regulation of child welfare services in Manitoba.² Under the *Child and Family Services Act* as it existed prior to November 2003, the Department (then known as the "Department of Family Services and Housing") was responsible for almost all aspects of child welfare in Manitoba, including mandating all child welfare agencies in the Province of Manitoba, developing standards of service and practice and ensuring that child welfare agencies were providing services in accordance with expected standards. After November 2003, the Department continued to play a key role in the regulation of child welfare services in Manitoba, although some of its responsibilities devolved to four new Child Welfare Authorities which came into existence in on November 1, 2003.

The Department believes it can play an important role in the Inquiry in background information changes made in the delivery of child welfare in Manitoba in the last decade.

Discussion

The mandate of the Inquiry is to inquire into the circumstances surrounding the death of Phoenix Sinclair and in particular to inquire into:

- the child welfare services provided or not provided to Phoenix Sinclair and her family under *The Child and Family Services Act*;
- any other circumstances, apart from the delivery of child welfare services, directly related to the death of Phoenix Sinclair; and
- why the death of Phoenix Sinclair remained undiscovered for several months.

Phoenix Sinclair was born on April 23, 2000 and is believed to have died in June of 2005. On about March 9, 2006 employees of Winnipeg CFS became aware of the death of Phoenix Sinclair.

² The Minister's executive powers are exercised through and assisted by the civil servants who make up the Department; see generally Hogg & Monahan, *Liability of the Crown*, 3rd ed (Toronto: Carswell, 2000) at p. 10.



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Immediately after her birth, and again in June of 2003, Phoenix Sinclair was placed under apprehension by Winnipeg CFS. Between April 23, 2000 and March of 2005, Winnipeg CFS provided various services to Phoenix Sinclair and her family.

In April of 2000, when Phoenix Sinclair was born, Winnipeg CFS was a child and family services agency incorporated under section 6(2) of the former *Child and Family Services Act* and was mandated by the Department to provide child protection and other services in Winnipeg and surrounding areas. At that time, Winnipeg CFS was an independent agency with a board of directors elected by the community and appointed by the Lieutenant Governor in Council.

On March 31, 2003 the Lieutenant Governor in Council, by Order, dissolved Winnipeg CFS. The assets and liabilities of Winnipeg CFS were assumed by the government and the Department became the direct employer of the employees of Winnipeg CFS. The agency continued to operate under the name "Winnipeg Child and Family Services" but as a branch of the Community Service Delivery Division of the Department. The Organizational Chart, attached to this submission, shows the present structure of the Department. Winnipeg CFS is a branch of Community Service Delivery.

To the extent that Winnipeg CFS provided services to Phoenix Sinclair and her family between April 23, 2000 and March 31, 2003, the Department is now responsible for those actions as the successor to the formerly independent Winnipeg CFS. To the extent that Winnipeg CFS provided services to Phoenix Sinclair and her family between March 31, 2003 and March 2005, the Department is directly responsible as those services were provided by a branch of the Department.

As noted in the terms of reference creating the Inquiry, there have already been six reviews into the death of Phoenix Sinclair as follows:

- (a) A Special Case Review In Regard to the Death Of Phoenix Sinclair (September, 2006);
- (b) Investigation into the Services Provided to Phoenix Victoria Hope Sinclair, Office of the Chief Medical Examiner (September 18, 2006);
- (c) Strengthen the Commitment; An External Review of the Child Welfare System; (September 29, 2006);
- (d) "Honouring Their Spirit", The Child Death Review: A Report to the Minister of Family Services and Housing, Province of Manitoba (September, 2006);



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- (e) Strengthening our Youth: Their Journey to Competence and Independence, A Report on Youth Leaving Manitoba's Child Welfare System (November, 2006);
- (f) Audit of the Child and Family Services Division, Pre-devolution Child in Care Processes and Practices, Auditor General (December, 2006).

The Inquiry must consider the findings made in six previous reviews and the manner in which their recommendations have been implemented. The Department, through the Child and Family Service Division, has had primary responsibility for the oversight of the coordination and implementation of the recommendations arising out of those six reviews. As such the Department will have important evidence on this aspect of the Inquiry.

The structure of the child welfare system changed significantly when the *Child and Family Services Authorities Act*³ was proclaimed into force in November 2003 and the following Authorities were established:

- (a) the First Nations of Northern Manitoba Child and Family Services Authority (the "Northern Authority");
- (b) the First Nations of Southern Manitoba Child and Family Services Authority (the "Southern Authority");
- (c) the Metis Child and Family Services Authority (the "Metis Authority");
- (d) the General Child and Family Services Authority (the "General Authority").

The Governance Chart, attached to this submission, shows the present structure of the child welfare system. Child and family service agencies are mandated by and supervised by the Northern Authority, the Southern Authority, the Metis Authority and the General Authority. The Department is responsible for monitoring and assessing how the Authorities carry out their responsibilities.

Thus, to some extent, the Department shares responsibility for the implementation of the recommendations arising out of the six reviews the other Authorities. The Department will have evidence on how it has worked and continues to work in conjunction with the Authorities to implement the recommendations arising out of the six reviews.

³ C.C.S.M. c. 90 ("*Authorities Act*").



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The Direct and Substantial Interest of the Department

It is the submission of the Department that it has a direct and substantial interest in subject matter of this Inquiry and thus should be granted full party status. The discretion to grant full party status is broad.⁴ The facts as a whole suggest that the Department should be granted full party status.

First, since the Department, through Winnipeg CFS, delivered child welfare services to Phoenix Sinclair, the findings or recommendations of the Inquiry on how the services were delivered will have importance for the Department. The heart of the Inquiry, as evidenced in the Order in Council creating the Inquiry, is for the Commissioner to examine the "child welfare services provided or not provided to Phoenix Sinclair and her family under *The Child and Family Services Act*."⁵ This necessarily requires an analysis of Winnipeg CFS.

Second, the Department has responsibility for the oversight of the implementation of the recommendations arising out of six previous reviews and as such is an important participant in the Inquiry.

Third, the Inquiry may have an important impact on how the Department sets standards or policies for the delivery of child welfare services in the future. The Commissioner is required to "make such recommendations as he considers appropriate to better protect Manitoba children."⁶ As such, recommendations on the delivery of child welfare made by the Inquiry will have a significant impact on the day to day functioning of the Department and its setting of standards.

In summary, it is submitted that the Department should be granted full party status to the Inquiry.

Yours truly,
THOMPSON DORFMAN SWEATMAN LLP

Per:


Gordon A. McKinnon*

*Services provided through G.A. McKinnon Law Corporation

⁴ See Simon Ruel, *The Law of Public Inquiries in Canada* (Toronto: Carswell, 2010) at p. 57-9.

⁵ See Order in Council No 89/2011 at para 1(a).

⁶ See Order in Council No 89/2011 at para 2.

Manitoba Child and Family Services Reporting and Governance Relationships



Manitoba Child and Family Services

The four Child and Family Services Authorities are:

- Metro 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
- Central Child and Family Services Authority

Each of the four Authorities is responsible for establishing agencies to deliver protection and other services to children and families. The authorities also monitor the agencies and ensure services meet standards.

The Boards of Directors of the four Authorities are appointed, respectively, by:

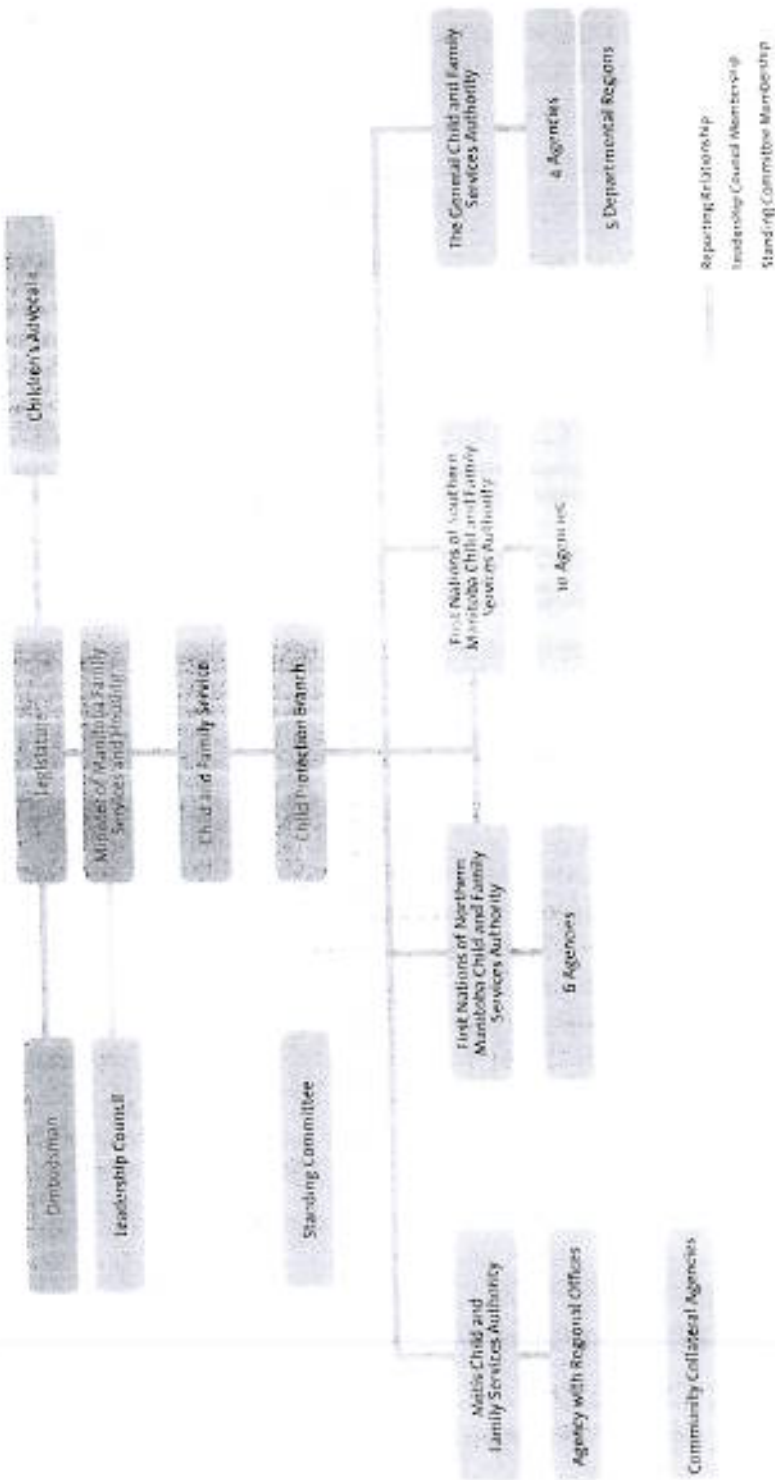
- Manitoba Child Protection Authority of Winnipeg and the Minister of Family Services and Consumer Affairs
- Manitoba Métis Federation, Assembly of Manitoba Chiefs, Manitoba Keweenawoow Okimakanak and the Minister of Family Services and Consumer Affairs

The members of the Boards of Directors of child and family agencies come from the community.

The Chief Executive Officers of the four Authorities and the Executive Director of the Child Protection Branch constitute the Standing Committee. The Standing Committee meets on a regular basis and coordinates the development and implementation of policy initiatives (e.g. Changes for Children, Little of Care) across agencies.

The Leadership Council is a forum for discussing child and family practitioners. Its membership includes the Minister of Family Services and Consumer Affairs, the Minister of Aboriginal and Northern Affairs, the Grand Chief of the Assembly of Manitoba Chiefs Secretariat, The Grand Chief of Manitoba Keweenawoow Inwee Oumowin, the President of the Manitoba Métis Federation and a Métis woman designated by the Manitoba Métis Federation.

Under the Child and Family Services Act, the Children's Advocate reviews the circumstances of cases after the death of a child who was in the care of an income services firm, an agency under the Act within one year before the death, or whose parent or guardian received services from an agency under the Act within one year before the death of the child.



Manitoba Family Services and Consumer Affairs
Organizational Chart
March 2010

