

Third Session - Fortieth Legislature
of the
Legislative Assembly of Manitoba
Standing Committee
on
Legislative Affairs

Chairperson
Mr. Bidhu Jha
Constituency of Radisson

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MANITOBA LEGISLATIVE ASSEMBLY
Fortieth Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LEGISLATIVE AFFAIRS

Tuesday, April 8, 2014

TIME – 6 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Bidhu Jha (Radisson)

VICE-CHAIRPERSON – Mr. Ted Marcelino (Tyndall Park)

ATTENDANCE – 11 QUORUM – 6

Members of the Committee present:

Hon. Mses. Blady, Marcelino, Hon. Mr. Swan

Messrs. Briese, Dewar, Goertzen, Jha, Marcelino, Nevakshonoff, Mrs. Rowat, Mr. Wishart

APPEARING:

Hon. Jon Gerrard, MLA for River Heights

MATTERS UNDER CONSIDERATION:

To consider the appointment of the Children's Advocate

* * *

Clerk Assistant (Mr. Andrea Signorelli): Good evening. Will the Standing Committee on Legislative Affairs please come to order.

Before the committee can proceed with the business before it, we must elect a new Chairperson. Are there any nominations for this position?

Mr. Gregory Dewar (Selkirk): I nominate Mr. Jha.

Clerk Assistant: Mr. Jha has been nominated.

Are there any other nominations? Hearing no other nominations, Mr. Jha, will you please take the Chair.

Mr. Chairperson: Thank you. Our next item of business is the election of a Vice-Chairperson. Are there any nominations?

Mr. Dewar: I nominate Mr. Marcelino, Tyndall Park.

Mr. Chairperson: Mr. Marcelino has been nominated.

Are there any other nominations? Seeing none, Mr. Marcelino is elected as Vice-Chairperson.

Order, please. This meeting has been called to consider the appointment of the Children's Advocate. Copies of the applicable legislation for this position were circulated at the commencement of this meeting. For the information of the committee, section 8.1(2)(b) of The Child and Family Services Act specifies that where the term of the Children's Advocate in office expires within 12 months, the Standing Committee on Legislative Affairs shall consider persons suitable to be appointed for that position and shall make a recommendation respecting the appointment to the president of the Executive Council. The term of the current incumbent, Ms. Darlene MacDonald, will expire on April 10, 2014.

How does the committee wish to proceed with the matter before us? And how long does the committee wish to sit this evening?

Mr. Kelvin Goertzen (Steinbach): Mr. Chairperson, I'd suggest that the committee sit until the work of this committee is done and until we dispense of the issue of the reappointment of Ms. MacDonald, and I suspect that my counterpart on the government's side has a motion for you to consider.

Hon. Andrew Swan (Minister of Justice and Attorney General): I agree with what Mr. Goertzen is suggesting. I do indeed have a motion to move this evening.

Mr. Chairperson: Is that the desire of the committee to adopt this? *[Agreed]*

Mr. Swan: I move that the Standing Committee on Legislative Affairs recommends to the Lieutenant Governor-in-Council that Ms. Darlene MacDonald be reappointed as the Children's Advocate.

Motion presented.

Mr. Chairperson: This motion is in order.

The floor is open for questions.

Hon. Jon Gerrard (River Heights): I think as most people around the table know there were some pretty serious concerns raised by all three of Manitoba's grand chiefs, grand chief of Assembly of Manitoba Chiefs, grand chief of SCO, and the grand chief of MKO about the conduct of Darlene MacDonald in relationship to the Phoenix Sinclair inquiry and some comments that were made at the time by Darlene MacDonald. So I would ask the Minister of Justice, whether in fact the grand chiefs have been contacted and whether the concerns that they raised have been addressed.

Mr. Swan: Well, I don't—I will answer the question, although, I guess this isn't normally a forum where somebody across the table gets to ask questions. We've continued to discuss the benefits of reappointing the Children's Advocate who has had the position for three years. As you're aware, there's a provision to renew the term of the Children's Advocate, and I can say that on our side, we certainly have confidence in the work that Darlene MacDonald has done. We know there are challenges for Aboriginal people in the child and family services system. The member for River Heights and I agree that Aboriginal children are over-represented in the child-welfare system, but, certainly, the answers to that lie beyond the office of the Children's Advocate, although, the advice that she has provided and the advice that we expect she'll continue to provide upon her reappointment will continue to move us toward a better child-welfare system in Manitoba.

Of course, we know that the report of Commissioner Hughes will provide guidance to us as we move forward. There is an implementation committee that will be working to move ahead with what Commissioner Hughes has recommended. I expect that that will be very helpful to us, and, in particular, in dealing with the challenges of Aboriginal people in the child-welfare system.

Mr. Gerrard: Just will remind the minister and others, in November of 2012, grand chief of the Assembly of Manitoba Chiefs, Grand Chief Derek Nepinak, said, I hope all the members of the Legislative Assembly see the removal of Diane MacDonald as the only way to go forward in light of her outrageous comments that clearly appeared to fly—to try to influence public perception on the Phoenix Sinclair inquiry. And, then, MKO grand chief David Harper said, we require immediate changes in order to have the true advocacy that all children require, including Phoenix Sinclair, who

needed advocacy even after her death. Her cries for help were not heard while in the child-welfare system. This inquiry would address and provide answers as to why Phoenix had to endure a painful and tragic life and death. We require an advocate who will speak in support of and in the best interest of all children, especially those who have suffered a fate that they did not deserve. And, then, Southern grand chief, who at that time was Murray Clearsky said, as the number of First Nations children entering the Manitoba child-welfare system alarmingly continues to rise, it's extremely important that the partisan voice for our children remains totally independent and impartial.

*(18:10)

Ms. MacDonald's public statement and position has clearly destroyed any semblance of impartiality and has totally undermined the critical, required public confidence in knowing our children have a truly impartial voice from which their issues, concerns and well-being are of paramount priority.

This breach of fiduciary responsibility owed toward the best interest of the children in care must not be tolerated by anyone, including government and society at large, as it significantly increases the risk of widening the cracks in which so many of our children have plunged down into.

It is in the best interest of all children in care, their families, and society at large that Darlene MacDonald be removed from this position effective immediately.

Now, those are fairly strong words from three people who play pretty important roles in the province, the three grand chiefs, and given the number of Aboriginal children in care, their voices are pretty important in speaking up for Aboriginal children, and I am surprised that the government has not contacted the three grand chiefs to see if they are on board in the reappointment of Darlene MacDonald. And, I mean, it would seem to me that it would be important to have checked this out by the government to make sure that, you know, we in the Legislative Assembly, in our combined wisdom, are not sailing into a situation where we're immediately going to have a lot of flak from the three grand chiefs.

I think that this is, you know, surely an important step. This was a number of months ago and, in my view, that the Minister of Justice (Mr. Swan) should, at the very least, have contacted

the three grand chiefs and, you know, found out their current views and, you know, worked with them. I think this has sometimes been a problem with this government that they haven't worked well with the leadership in the Aboriginal community and maybe it's time that that started to happen.

I mean, I would ask, you know—well, I would have some more follow-up comments, but I will turn it over to the Minister of Justice (Mr. Swan) and others for comments first.

Mr. Swan: Well, obviously, we're in the wake of the Hughes inquiry and we know that there are a large number of recommendations that have come out of that report, some of which have already been acted upon and completed, some of which will require a longer time to put into effect. The comments that the member has read into the record are from some two years ago. I can assure the member for River Heights (Mr. Gerrard) I've had an opportunity to meet with each of the grand chiefs, most of them on several occasions since that time, and there haven't been any follow-up concerns that have been addressed to me.

We believe—and, again, I think the member for River Heights and I agree that Aboriginal children are over-represented in the child-welfare system. I would hope the member would agree that the lengthy inquiry in front of Commissioner Hughes was worthwhile, that it will result in better results and better outcomes for Aboriginal children in care. We certainly have confidence in the Children's Advocate to play an ongoing role in being the advocate for children in the system, and we are, in light of all of that, quite prepared to proceed with her reappointment.

Mr. Goertzen: We are in support of the reappointment of Darlene MacDonald as the Children's Advocate. We made that known to the government late last year that our caucus was in support of reappointment.

I'm aware of the comments that Mr. Gerrard is referring to that I believe took place in the summer of 2012, and those have certainly been considered. And I believe that Ms. MacDonald, at that time, did issue a statement that clarified, I think, her position, and I don't believe that she was suggesting that the Phoenix Sinclair inquiry was anything but necessary, and certainly we've seen the recommendations that came out of that inquiry which might impact this position at some point going forward or the model of this position, but that will be

something the government will examine, I'm sure, in the days ahead.

But, in a difficult position like the Child's Advocate, where a lot of things are done publicly, but a lot of things are done privately, we've had the opportunity to see both, and I'm aware that while there was controversy around the comments at the time, and wouldn't want to absolve the controversy of those comments, but to note that I don't think that they've been repeated, but also to put on the record that many of the quiet things that happen with the Child's Advocate, MLAs dealing specifically with concerns that they have that are raised with them with constituents that don't make the public eye, and I would say that's probably the majority of things that the Child Advocate deals with. They've never become public. They should never become public. They're issues that are resolved, hopefully, for the best interests of children, off of the public record, that our experience has been positive in working with the Child Advocate.

So I don't pretend to believe that any Child Advocate that we would hire will ever be perfect in his or her operation of their duties. But we have confidence in this Child Advocate going forward based on our experience in working with their office.

Mr. Gerrard: I mean, I think that we all agree that the Phoenix Sinclair inquiry was very important. And there are some very significant, and, I think, important recommendations with regard to the role of the Child Advocate; indeed, to expand the role of the Child Advocate, and, hopefully, those will move forward. But, I think, that, you know, given the statements of the three grand chiefs, that it sure would be appropriate for this committee to, you know, have a conversation with the three grand chiefs, or correspondence, or what have you, that, you know, we have complaints many, many times that—from, you know, Aboriginal people and Aboriginal leaders, that they aren't adequately consulted. I think we have an opportunity to consult the chiefs before making this final and get their input. And I think that would just make common sense to me.

Mr. Ian Wishart (Portage la Prairie): And I would like to follow up on my colleague's comments that we are in support of the reappointment of Darlene MacDonald as the Children's Advocate. I recognize, during the process of the Phoenix Sinclair inquiry, that the role that the office had taken and the role that she had taken prior to her being in the office was

examined in great detail. I think the conclusions were fairly supportive of her actions and, certainly, very supportive of the office, as the member for River Heights (Mr. Gerrard) has pointed out, that there's a call for an expansion of the office. And I think that that is certainly something that is worth looking at. But having dealt with her on a number of occasions in my role as critic, I find her very conscientious, and I am certainly very pleased to encourage the reappointment.

Mr. Gerrard: You know, what I would say is this: that I and my party have taken very, very strong stands of the importance of consulting Aboriginal people, and, in the not consulting the three chiefs before doing the reappointment, you know, I can't, in all conscience, support this reappointment at this time. But, you know, would much prefer, and believe, that it's vital to have some form of consultation with the chiefs before we proceed with this measure.

Now, I know I'm outvoted on this committee, but I at least wanted to state my position and make it clear where I stand.

An Honourable Member: Question.

Mr. Chairperson: Now, there—is there any other questions?

Seeing no other questions, the question before the committee is now as follows, that the Standing Committee on Legislative Affairs recommends to the Governor—Lieutenant Governor-in-Council that Ms. Darlene MacDonald be reappointed as the Children's Advocate.

Shall the motion pass? [*Agreed*]

What is the will of the committee, the hour being 6:19?

Some Honourable Members: Rise.

Mr. Chairperson: The committee—according to the will of the committee, it will rise.

Now, hour being 6:20, committee rise. Thank you.

COMMITTEE ROSE AT: 6:20 p.m.

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