

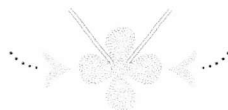


RULING ON THE MAY 18th, 2018 CHILD WELFARE MOTION OF THE ASSEMBLY OF MANITOBA CHIEFS

1. The Assembly of Manitoba Chiefs (the “AMC”) requested that the Commissioners hear a motion in relation to identification of and calling of child welfare experts at the upcoming Institutional Hearing on Government Services as a party with standing in the National Inquiry into Missing and Murdered Indigenous Women and Girls (“the National Inquiry”) within 5 days from the date on which the Notice of Motion was filed, that being May 18th, 2018.
2. The Notice of Motion requested relief be granted by the Commissioners, specifically:
 - i. That the Motion be heard orally within 5 days.
 - ii. That the issue of child welfare/child protection/children in care be included into the Government Services Institutional Hearing.
 - iii. That MMIWG identify experts on the issues outlined in paragraph 1(i) herein and present expert evidence on the issues of child welfare/child protection/children in care.
3. The request to hear the motion orally is denied as the Commissioners do not have the ability to hear such a motion within the existing parts II and III hearing schedule without taking time away from the existing hearing schedule. The Commissioners must balance the need to hear Institutional evidence with the request by the AMC to have their motion heard orally. Hearing the AMC’s motion orally will reduce the time to hear evidence and the time that other parties may have to cross examine witnesses. As such, the motion will be responded to in writing.
4. It is also important to note that in deciding to respond to the motion in writing the Commissioners took into consideration that procedurally the AMC’s motion is not properly before the Commissioners. The AMC’s motion did not seek did not include a request to seek leave to have specific witness(es) called as required and outlined in Rule 40 of *The Legal Path: Rules of Respectful Practice for the National Inquiry into Missing and Murdered Indigenous Women and Girls*.
5. As the AMC has noted in their affidavit materials, Commission Counsel has had several telephone conferences and e-mail exchanges with the parties with standing since March, 2018 to both explain the subject matters of the upcoming part II and III hearings and seek suggestions for the witnesses parties would like Commission Counsel to call. Unfortunately, the AMC has not suggested any witnesses or had any discussions with Commission Counsel as about witnesses they would like to have called at any of the hearings. Rule 25(ii) of *The Legal Path: Rules of Respectful Practice for the National Inquiry into Missing and Murdered Indigenous Women and Girls* grants parties with standing the right to ask Commission Counsel to call a particular witness and unfortunately, the AMC did not exercise this right before filing a motion seeking the addition of a witnesses. The current motion to the Commissioners is also therefore premature.
6. Although the Commissioners all would like to have more time and more hearings, including a dedicated hearing on child welfare representative of all Regional Perspectives, it is simply not possible to do so everything within the current mandate which requires a Final Report be filed on November 1, 2018. As outlined in the extension request provided to the Minister Bennett on March 6, 2018, if an extension is granted, more dedicated work to child welfare is one of the reasons the Commissioners sought an extension to their mandate.



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7. The AMC has suggested in their motion that “the issue of child welfare has not been meaningfully addressed in the Inquiry to date.” This is not accurate. The Commissioners have heard evidence from families, survivors and experts and will hear additional evidence from expert and institutional witnesses about many child welfare issues. In addition, the interim report relies on some of the work already done by the Assembly of Manitoba Chiefs as cited on page 46 of the Interim report. [The First Nations Family Advocate Office, Assembly of Manitoba Chiefs, *Lifting Up Children: Manitoba First Nations Open Forum on Child Welfare: Report.*]
8. Evidence the Commissioners have heard in relation to child welfare in Part 1 Family hearings includes the Youth panel held in Vancouver on April 6th, 2018 on aging out of care and the Youth panel held in Moncton on February 14th, 2018.
9. The Commissioners have also heard evidence from two expert witnesses who directly addressed child welfare issues at the May 14-17, 2018 expert hearing in Quebec City. The AMC attended this hearing and also had the opportunity to cross-examine the witnesses. Professor Naiomi Metallic and Saskatchewan’s Provincial Advocate for Children and Youth, Mr. Corey O’Soup both addressed root causes of violence and discrimination, human rights and the best interests of Indigenous children in their testimony. They also provided evidence specifically about the effects and impacts of child welfare on Indigenous children and youth in Canada, including but not limited to funding barriers, discrimination, Jordan’s Principle and 2016 CHRT 2 decision. Their testimony is publicly available in video on-line and parties can access transcripts of the proceeding in a share platform that is accessible via a link to all parties with standing in Part 3 hearings.
10. The Commissioners will also hear from Dr. Cindy Blackstock as an expert witness at the upcoming Part III expert hearing on Racism. If AMC is seeking further expert evidence on Child Welfare, AMC is encouraged to find the best way to accomplish this by discussing this with Commission Counsel so they can successfully raise their points of view with Dr. Cindy Blackstock.
11. The Commissioners are very sympathetic to the position that more evidence from child welfare knowledge keepers, experts and institutional witnesses needs to be heard in Part II or III hearings. The time frame for the mandate for the National Inquiry is simply far too short to address all issues in the manner the Commissioners, the parties, families and survivors would like. As such, the Commissioners are focusing on calling evidence that will have value to all parties on various child welfare matters during most of the hearings.
12. Expert and Institutional witness testimony is not the only manner in which the AMC can advance their concerns about child welfare. The AMC is encouraged to identify and submit existing reports that the Commissioners can rely upon pursuant to Rule 33 of *The Legal Path: Rules of Respectful Practice for the National Inquiry into Missing and Murdered Indigenous Women and Girls* which is also consistent with section (h.) of the Terms of Reference.
13. The AMC is also further encouraged to make submit written recommendations for changes required to the legislation, policy and funding of child welfare matters in Manitoba as part of their closing submissions. This will assist the Commissioners to make meaningful recommendations for specific changes to the child welfare system in Manitoba the AMC is seeking.
14. Going forward, the AMC is strongly encouraged to engage with Commission counsel first to suggest any witnesses they would like Commission counsel to consider calling as other parties do and in the event this is not successful, they may properly seek leave to bring a motion to the Commissioners to have a particular witness



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called, pursuant to Rule 40 of the Legal Path: Rules of Respectful Practice for the National Inquiry into Missing and Murdered Indigenous Women and Girls.

15. In consideration of the foregoing, the Commissioners are not able to grant leave to consider the Motion filed by the AMC to have an expert witness(es) on child welfare called as leave was not sought by the AMC and they are therefore not able to grant the relief requested in the AMC's Notice of Motion.
16. No further relief has been requested by the AMC. As a result, no further relief is granted by the Commissioners in relation to the motion of the AMC.

Decision released on May 25, 2018.


Chief Commissioner

Based on the decision of Chief Commissioner Buller, Commissioner Eyolfson, and Commissioner Robinson.