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Hon. Deb Matthews
Minister of Children and Youth Services
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Date: Monday, January 21, 2008

Note: This letter has been sent by Fax to (416) 212-7431 and may be used for legal purposes

RE: Notice of Offence committed by a Ministry approved agency

Attn: **Hon. Deb Matthews, as Minister of Children and Youth Services**

Introduction

Recently I have attempted to raise this issue with the Deputy Minister of Children and Youth Services only to be redirected by staff to other individuals in the Eastern Region, who then refer me to others, who then say they can do nothing about this. I have also been informed by a staff member of the Deputy Minister's office that when a letter has been CC'd to their office the Deputy Minister's office cannot respond to it.

Therefore, I am writing this letter directly to you, Deb Matthews, Minister of Children and Youth Services, an "official" as defined in section 118 of the *Criminal Code of Canada*, as a means of putting you, personally and professionally, on notice of the facts listed below which will be followed by a background of the events which took place in an attempt to obtain a response from you regarding this important and legal matter.

This document is in no way an attempt to infer that you are somehow an Officer of the Society referred to in this document, nor that you are somehow involved in the internal matters of the Society.

This document is a means of ensuring that you are made aware of this matter and to ensure that you act appropriately as required by your duties as Minister of Children and Youth Services.

This document also contains (at the end) a request for a written response to this issue from the Minister of Children and Youth Services, Deb Matthews in your position as such.

I can also make available to you any evidence you require in the form of written documents to assist you in this matter.

Related Definitions and Legislation (2 Pages)

For your convenience, this section contains relevant definitions and provisions of the legislation referred to throughout this document. It is suggested that you print this document and keep this section at hand for reference as required while reading the document.

FYI Definitions:

1. **Board Members:**
Members of the Children's Aid Society's Board of Directors
2. **Members:**
Regular citizens who pay an annual fee of ten dollars in support of the objects of the Society who therefore become Regular Members of the Society who can then vote for Board Members at an Annual General Meeting and can requisition the Board Members for a members meeting to conduct business of importance to the membership as required by the membership.

307 (1) Corporations Act

Where list of shareholders to be furnished

307 (1) Any person, upon payment of a reasonable charge therefor and upon filing with the corporation or its agent the affidavit referred to in subsection (2), may require a corporation, other than a private company, or its transfer agent to furnish within ten days from the filing of such affidavit a list setting out the names alphabetically arranged of all persons who are shareholders or members of the corporation, the number of shares owned by each such person and the address of each such person as shown on the books of the corporation made up to a date not more than ten days prior to the date of filing the affidavit.

307 (5) Corporations Act

Offence

307 (5) Every corporation or transfer agent that fails to furnish a list in accordance with subsection (1) when so required is guilty of an offence and on conviction is liable to a fine of not more than \$1,000, and every director or officer of such corporation or transfer agent who authorized, permitted or acquiesced in such offence is also guilty of an offence and on conviction is liable to a like fine.

15 (2) Child and Family Services Act

Designation of children's aid society

15 (2) The Minister may designate an approved agency as a children's aid society for a specified territorial jurisdiction and for any or all of the functions set out in subsection (3), may impose terms and conditions on a designation and may vary, remove or amend the terms and conditions or impose new terms and conditions at any time, and may at any time amend a designation to provide that the society is no longer designated for a particular function set out in subsection (3) or to alter the society's territorial jurisdiction. R.S.O. 1990, c. C.11, s. 15 (2).

15 (3)(g) Child and Family Services Act

Functions of society

15 (3) The functions of a children's aid society are to,

(g) perform any other duties given to it by this or any other Act. R.S.O. 1990, c. C.11, s. 15 (3).

22 (1)(b), 22 (1)(d)(i),(ii), & (iii), and 22 (1)(e), (f)(i) & (ii) Child and Family Services Act

Powers of Minister

22 (1) Where the Minister believes on reasonable grounds that,

(b) a director, officer or employee of an approved agency has contravened or knowingly permitted any person under his or her control and direction to contravene any provision of this Act or the regulations or any term or condition imposed on the approval under subsection 8 (1) or 9 (1) or, in the case of a society, on the designation under subsection 15 (2);

(d) in the case of a society, the society,

(i) is not able to or fails to perform any or all of its functions under section 15,

(ii) fails to perform any or all of its functions in any part of its territorial jurisdiction, or

(iii) fails to follow a directive issued under section 20.1,

the Minister may,

(e) revoke or suspend the approval; or

(f) in the case of a society,

(i) revoke or suspend the designation under subsection 15 (2),

(ii) remove any or all of the members of the board of directors and appoint others in their place, or

(iii) operate and manage the society in the place of the board of directors. R.S.O. 1990, c. C.11, s. 22 (1); 1999, c. 2, s. 7.

End of relevant legislation section.

Notice of Facts

The facts I am making you aware of are as follows.

- 1) That I, John Dunn, have inconclusively attempted to resolve this issue by exhausting each and every alternative measure available to me as a citizen of Ontario which include the following:
 - (a) Filing a complaint with the Ombudsman – (out of their jurisdiction).
 - (b) Filing a complaint with my local MPP, Jim Watson – (referred back to Ministry).
 - (c) Filing a complaint with the Ministry of Government Services, Companies and Personal Property Security Branch – (responded that non-profits are not within their jurisdiction).
 - (d) Filing a complaint with the Law Society of Upper Canada regarding the Lawyer, Robert C. Morrow assisting the corporation (Society) to commit an Offence – (they said they are not able to interpret the law that I need a lawyer to do so).
 - (e) Filed a complaint with Lisa McLeod's Office in her position as Child and Youth Services Critic – (was referred back to the Ministry and to my local MPP who also referred me back to the Ministry).
 - (f) Attempted to contact Society Board Member and Vice President at the time (currently President) Rick O'Connor at his place of work (City of Ottawa) to discuss the matter and afford him a chance to exercise Due Diligence as a Director of the Society since the Society refused to accept deliveries to him at their head office, only to be told by Rick O'Connor in an email to cease and desist from communicating with him regarding this matter).
 - (g) Attempted to contact Kathy Neff of the Eastern Regional Office to get her to look into the matter only be thanked for informing them without her taking any action on it, and CC'd the Deputy Ministers Office only to be told that they do not act on CC'd documents.
- 2) That the Children's Aid Society of Ottawa (the Society), is registered as Ontario Corporation #37637 under the Ministry of Government Services, Companies and Personal Property Security Branch, and as such, is a corporation as defined in section 1 of the *Corporations Act*, R.S.O. 1990, c. C-38.
- 3) That subsection 307 (5) of the *Corporations Act*, R.S.O. 1990, c. C-38, makes it an Offence for a corporation to fail to furnish a list of its regular members within ten days of the date of receiving a request for such in accordance with subsection 307 (1) *Corporations Act* putting the corporation at risk of being court ordered to pay up to a \$1,000.00 fine if convicted of such an Offence.
- 4) That subsection 307 (5) of the *Corporations Act* also makes it an Offence for a Director or Officer of a corporation to authorize, permit, or acquiesce to the Offence of failing to furnish a list of the corporations members in contravention of subsection 307 (5) of the *Corporations Act*, putting Executive Director at risk of being court ordered to pay up to a \$1,000.00 fine if convicted of such an Offence.

- 5) That the Children's Aid Society of Ottawa, a Ministry approved agency in accordance with subsection 15 (2) of the *Child and Family Services Act*, R.S.O. 1990, c. C-11, through its Board of Directors as elected for the 2006 / 2007 period, has failed to furnish a list of the Society's members within ten days of receiving a fully compliant, subsection 307 (1) request for such a list which subsection 307 (5) of the *Corporations Act* makes it an Offence to do.
- 6) That the Children's Aid Society of Ottawa's Executive Director, Barbara MacKinnon, knowingly and willfully authorized, permitted, or acquiesced to the Offence of failing to furnish a list of the Society's members which is also in contravention of subsection 307 (5) of the *Corporations Act*, therefore putting herself at risk of being convicted and court ordered to pay a fine of up to \$1,000.00 as an Officer of the corporation.
- 7) That in doing so, both the Society and Barbara MacKinnon as its Executive Director have intentionally contravened paragraph 15 (3)(g) of the *Child and Family Services Act* which requires a Society to perform any duties given to it by both the *Child and Family Services Act* and “**any other Act**” which in this case refers to the *Corporations Act*, R.S.O. 1990, c. c-38.
- 8) That this document contains enough information to give you “reasonable grounds” to believe, that the situations listed in the following provisions of the *Child and Family Services Act* and bullets have occurred with respect to the Children's Aid Society of Ottawa and its Board of Directors and Executive Director, Barbara MacKinnon:
 - (a) paragraphs 22 (1)(b) (a person contravened or permitted someone to contravene a provision of the *Child and Family Services Act*)
 - (b) 22 (1)(d)(i) – (the Society fails to perform a function under section 15 of the *Child and Family Services Act* – specifically paragraph 15 (3)(g) referring to - “**any other Act**” in this case, section 307 of the *Corporations Act*)
 - (c) 22 (1)(d)(ii) of the *Child and Family Services Act* – (the Society failed to perform all of its functions within its territorial jurisdiction)

therefore empowering you, the Minister to decide whether or not to use the “**Revocation and Take Over Powers**” delegated to you, the Minister through paragraph 22 (1)(e) & (f)(i),(ii), & (iii) of the *Child and Family Services Act*, or at least to issue a Directive to the Society as permitted under 20.1 of the *Child and Family Services Act* requiring corrective action be taken by the Society and its Executive Director regarding the matters brought forward in this document.

Issues of concern:

Children's Aid Society of Ottawa spending Ministry Allocated Transfer Payments (Tax Payers Dollars) on illegal, immoral, and improper activity contrary to the terms of use contained within the Service Contracts between the Society and the Ministry.

Children's Aid Society of Ottawa preventing members of the public who are concerned about the rights and well-being of children and youth under the authority of the Ministry of Children and Youth Services through Ministry approved Societies, from legally communicating with Society members for the purpose of advocating through the existing Society membership for a by-law amendment.

Children's Aid Society of Ottawa blocking Society membership applications without valid explanations, presumably because of legal and non-aggressive advocacy efforts.

Background:

The Request

I applied for a membership with the Society in 2005. They rejected my application without explanation, returned my cheque and redirected all related communication to their externally retained lawyer, Robert C. Morrow of Burke-Robertson Barristers & Solicitors in Ottawa.

On February 05, 2007, I, John Dunn, personally filed with the Children's Aid Society of Ottawa, located at 1602 Telesat Court in Ottawa, a fully compliant section 307 (1) *Corporations Act* request seeking a list of the Society's members for the purpose of advocating through the existing membership for an amendment to the Society's by-laws which pertain to Society memberships.

The Purpose of the Request

If the society were to comply with the request for a list of the members as required by law, I would then write a letter of advocacy to the membership asking them, if at least 1/3rd of them support the idea, to requisition the Board of Directors of the Society for a meeting to be held for the purpose of making a motion to amend the by-laws of the Corporation (Society) pertaining to memberships with the Society.

The motion could propose to the Board of Directors that a new class of member be created which would enable all children and youth, automatically and immediately upon being made a Crown Ward or Society Ward without the need to apply for, or to renew annually until they turn 18 years of age, or until they are emancipated from care, to be made a member of their respective Society so that they can have a direct and procedurally protected voice (*Roberts Rules of Order*) in setting the direction of the Society through the rights which would be available to them as members, such as voting for Board of Directors and other important related matters, regardless of whether they are placed outside of the physical jurisdiction of the Society by their respective Society during their time in care, and that they are informed of their rights as members of the Society and how to exercise those rights during a members meeting or AGM in a language appropriate to their age and understanding. (This special class of member would be exempt from a 307 (1) *Corporations Act* request due to the requirement of confidentiality under section 45 (8) of the *Child and Family Services Act*)

How the Society responded

In response to my fully compliant section 307 (1) *Corporations Act* request, the Society's Board of Directors decided to spend Ministry Allocated Transfer Payment funds on retaining the services of Ottawa lawyer, Robert C. Morrow of Burke-Robertson Barristers & Solicitors to assist them in conducting the unlawful activity of contravening section 307 (5) of the *Corporations Act* which is not permitted either by the Ministry's Service Contracts with the Society or by paragraph 15 (3)(g) of the *Child and Family Services Act* which requires a Society to perform any duties given to it by it or any other Act of the legislature.

The Society, through its Board of Directors, retained Mr. Morrow for the purpose of having him write and mail a letter to myself on their behalf denying my request for a list of the Society's members in contravention of subsection 307 (5) of the *Corporations Act* which is an unlawful act. Therefore Ministry allocated Transfer Payments were spent on unlawful purposes.

The Society is continuing spend Ministry Allocated Transfer Payment funds to retain Mr. Morrows services to defend them in court for their unlawful activity which not only contravened section 307 (5) of the *Corporations Act* but which also contravened section 15 (3)(g) of the *Child and Family Services Act*.

Requested Action

I am asking you, Hon. Deb Matthews, as Minister of Child and Youth Services if you could please

1. respond to me in writing informing me of what action can be taken by the Ministry regarding this matter, such as issuing a directive to the Society or anything else the Ministry is able to do,
2. respond to me in writing informing me of what you intend to do regarding this matter,
3. respond to me in writing informing me of your opinion of whether you believe that the Ombudsman of Ontario should have jurisdiction over Children's Aid Societies as an extra means of ensuring that Children's Aid Societies in Ontario are held accountable for their decisions,
4. send me a copy of the Ministry's "***Governance and Accountability Framework (revised 2003)***" and the "***Governance and Accountability: Framework for Transfer Payment Agencies 2003***" since I can not afford to obtain a copy via another FIPPA request based on the doctrine of financial hardship (I am not employed and have no income).

Sincerely, in the interests of children and youth in care,

John Dunn
Executive Director
The Foster Care Council of Canada
www.afterfostercare.ca