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“Privileged and Confidential”

To: Thunderchild First Nation
From: Maurice Law
File: Treaty 6 Benefits Claim
Date: January 29, 2024
Subject: **January 24, 2024, Letter from Osler, Hoskin & Harcourt LLP**

BRIEFING NOTE

Introduction

On Thursday January 25, 2024, you advised us of a letter from Sander Duncanson of Osler, Hoskin & Harcourt LLP’s Calgary office (“Osler”).

In this letter, Osler advises that it has been retained by a group called Band Member Advocacy and Alliance Association of Canada (“BMAAAC”) to “commence a court action.”

This letter is a bizarre and misleading letter for a number of reasons: it is based on inaccurate information; it doesn’t identify any party with the independent legal standing to commence an action against Thunderchild; it does not identify any specific litigable allegations; and it does not cite any legal authorities or principles in support of its (unclear) position.

In this context, you have asked us to review the letter and provide our preliminary thoughts. These are set out below.

Who Is BMAAAC

According to its website, BMAAAC is a federally incorporated non-profit society. It alleges that it has a mandate to “help band members get access to justice” by demanding “transparency and accountability in all aspects of First Nation governance” and states that “for many band (sic) members across Canada the battle is not with the Crown, it is also, or even primarily with their own leadership.”

BMAAAC makes no mention of how its alleged mandate arose or where it comes from. In this way, it appears, that BMAAAC exists basically as an organization *seeking* a cause when it can find a plaintiff to volunteer.

Although it is unclear what services BMAAAC is purporting to provide, its website is clear that it will attend in-person consultation meetings in exchange for money. Its website also asks for donations to “keep the lights on” and sells a lifetime membership that allows subscribers to vote at its 2024 annual general meeting.

What Services Does BMAAAC Actually Provide?

This is not all that clear based on the information that we have been provided and reviewed. In this sense, it is likely easier to assess what BMAAAC *cannot* do.

BMAAAC has no independent legal standing to sue a First Nation or its Chief and Council.¹ Instead, it seems that BMAAAC offers to arrange meetings with members of First Nations (for a fee) to see if a member (or group of members) is willing to attach their name to a lawsuit against a particular Nation or its leaders.

BMAAAC is not a law firm and cannot practice law. Instead, under a tab on its website titled “get lawyered up” BMAAAC states: “[I]f we agree to assist you, we make the arrangements and do the preparation work with the law firm that will represent you. All of these services are free of charge!” This page then lists a number of lawyers that BMAAAC allegedly works with, but it should be noted that that list contains information we have been advised is not accurate.

BMAAAC’s founder and president Robert Louie was once a practicing lawyer, however, Mr. Louie has not been allowed to practice law since 2017 when he signed a Consent Order that permanently prohibited and enjoined him from, among other things, “appearing as counsel or advocate,” or “making any representation that he is qualified or entitled to” practice law or give legal advice. It should be noted that under this Consent Order, Mr. Louie is also prohibited and enjoined from “agreeing to place at the disposal of another person the services of a lawyer,” and was also required to pay restitution.

We have attached a copy of the Consent Order to this memorandum for your reference.

There Are Presently No Legal Proceedings Against Thunderchild

Although Osler has stated it has been retained to “commence a court action,” no such action presently exists. Further, Osler’s letter does not refer to anyone with the independent legal standing to commence such a lawsuit against Thunderchild or its Chief and Council, nor does it state what evidence or law(s) this potential lawsuit might be based in.

¹ The law of standing is complex, has exceptions, and can be case specific, but none of the relevant exceptions presently appear to apply in this instance.

Instead, the letter contains a vague and general threat to “commence a court action” in relation to *something* that will be decided at some point later. This is highly unusual, particularly coming from a law firm that has experience in litigation. It should be noted lawyers in Alberta have ethical obligations to refrain from advancing frivolous lawsuits and discourage their clients from engaging in frivolous conduct during lawsuits.

We are presently preparing a separate formal response to this letter and a memorandum from Chief and Council to consider with respect to next steps that can be taken.

The Information in the Letter from Osler is Not Factually Accurate

It is also important to note that the letter from Osler is rife with statements that are factually untrue. Some key examples are:

- The letter states that certain settlement funds have been “misappropriated.” This is impossible because no settlement funds ever been paid in relation to this claim.
- The letter states that the members of Thunderchild have not been “consulted” about the use of settlement funds or settlement payments. This is factually untrue. This settlement and all related financial plans and arrangements were overwhelmingly approved by the members of Thunderchild in a ratification vote on January 8, 2024. This vote was not appealed. This vote was preceded by a series of information meetings open to all members of Thunderchild. These meetings included presentations from leadership, legal advisors, and financial advisors, and the opportunity for all members to ask questions. Further, in advance of these meetings, detailed information packages and copies of all the relevant agreements were made available to each Thunderchild member who wanted to review.

In this context, it is difficult to predict what any potential “court action” could ultimately look like, what factual evidence (if any) it might be based on, which legal principles (if any) it would rely on and seek to prove, or who might ultimately volunteer to act as the plaintiff in any such lawsuit.

This is a specific claim. Specific claims involve collective rights and can only be advanced by First Nations as collectives. After years of work, Canada made an offer to Thunderchild First Nation as a collective to settle the claim. As the duly elected representatives of the First Nation, the Chief and Council had the legal authority and a legal obligation to consider the best interests of all members, including future generations, and craft a clear and transparent plan for members to vote for or against. Ultimately, Thunderchild First Nation members voted overwhelmingly to approve the proposed settlement and the associated plan.

Next Steps

As noted above, we are presently preparing a formal response to the letter from Osler and mapping out various procedural options for Thunderchild to consider as a response to this threatened (but presently non-existent) “court action.”

Please don’t hesitate to contact us at any time to discuss this matter further. We expect to have a further update to you in the coming days respecting next steps.

MAURICE LAW

Per:

A handwritten signature in black ink, appearing to read "Steven Carey", is written over a horizontal line.

Steven Carey

/SC/RM



No. 5169309
Vancouver Registry

In the Supreme Court of British Columbia

Between:

THE LAW SOCIETY OF BRITISH COLUMBIA

Petitioner

And:

ROBERT WILLIAM LOUIE

Respondent

CONSENT ORDER

BEFORE)	A JUDGE OF THE COURT)	MARCH 1, 2017
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))	
))	

ON THE APPLICATION of the petitioner, the Law Society of British Columbia (the "Law Society"), without a hearing and by consent:

THIS COURT ORDERS THAT:

1. Until such time as he becomes a member in good standing of the Law Society, Robert William Louie ("Mr. Louie") is permanently prohibited and enjoined from:
 - (a) appearing as counsel or advocate,
 - (b) drawing, revising or settling
 - (i) a petition, memorandum, notice of articles or articles under the *Business Corporations Act*, or an application, statement, affidavit, minute, resolution, bylaw or other document relating to the incorporation, registration, organization, reorganization, dissolution or winding up or a corporate body,
 - (ii) a document for use in a proceeding, judicial or extrajudicial,
 - (iii) a will, deed of settlement, trust deed, power of attorney or a document relating to a probate or a grant of administration or the estate of a deceased person,
 - (iv) a document relating in any way to a proceeding under a statute of Canada or British Columbia, and

- (v) an instrument relating to real or personal estate that is intended, permitted or required to be registered, recorded or filed in a registry or other public office;
- (c) doing an act or negotiating in any way for the settlement of, or settling, a claim or demand for damages;
- (d) agreeing to place at the disposal of another person the services of a lawyer,
- (e) giving legal advice,
- (f) making an offer to do anything referred to in paragraphs (a) to (e),
- (g) making a representation that he is qualified or entitled to do anything referred to in paragraphs (a) to (e)

for or in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts are performed.

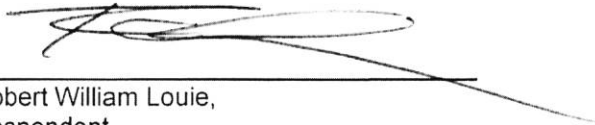
2. Until such time as he becomes a member in good standing of the Law Society, Mr. Louie is permanently prohibited and enjoined from:
 - a. commencing, prosecuting or defending a proceeding in any court, except if representing himself as an individual party to a proceeding, acting without counsel, solely on his own behalf; and
 - b. representing himself as being a lawyer or any other title that connotes that he is entitled or qualified to engage in the practice law.
3. On or before July 31, 2017, Mr. Louie shall pay the Law Society \$1,700 in restitution, by bank draft or money order, to be held in trust for Tom Hale.
4. On or about October 31, 2017, Mr. Louis shall pay the Law Society \$1,700 in restitution, by bank draft or money order, to be held in trust for Tom Hale (\$1,000) and Holly Obee (\$700).

5. On or before January 31, 2018, Mr. Louie shall pay the Law Society \$1,600, by bank draft or money order, representing its costs.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS NOTED ABOVE:



Signature of Michael J. Kleisinger,
Lawyer for the Petitioner



Robert William Louie,
Respondent

By the Court

Digitally signed by
Saunders, J

Digitally signed by
Harjit Dhinjal

Registrar