



MANITOBA

ORDER IN COUNCIL

DATE: **March 23, 2011**

ORDER IN COUNCIL No.: **89/2011**

RECOMMENDED BY: **Minister of Justice**

ORDER

1. The Honourable Edward (Ted) N. Hughes, OC, QC, LL.D (Hon) is appointed as commissioner to inquire into the circumstances surrounding the death of Phoenix Sinclair and, in particular, to inquire into:
 - (a) the child welfare services provided or not provided to Phoenix Sinclair and her family under *The Child and Family Services Act*;
 - (b) any other circumstances, apart from the delivery of child welfare services, directly related to the death of Phoenix Sinclair; and
 - (c) why the death of Phoenix Sinclair remained undiscovered for several months.
2. The commissioner must report his findings on these matters and make such recommendations as he considers appropriate to better protect Manitoba children, having regard to the recommendations, as subsequently implemented, made in the reports done after the death of Phoenix Sinclair, set out in paragraph 3.
3. To avoid duplication in the conduct of the inquiry and to ensure recommendations relevant to the current state of child welfare services in Manitoba, the commissioner must consider the findings made in the following reviews and the manner in which their recommendations have been implemented. He may give the reviews any weight, including accepting them as conclusive:
 - (a) A Special Case Review In Regard To The Death Of Phoenix Sinclair, Andrew J. Koster and Billie Schibler (September, 2006)
 - (b) Investigation into the Services Provided to Phoenix Victoria Hope Sinclair, Department of Justice, Office of the Chief Medical Examiner (September 18, 2006)
 - (c) Strengthen The Commitment An External Review of the Child Welfare System, Michael Hardy, Billie Schibler and Irene Hamilton (September 29, 2006)
 - (d) "Honouring Their Spirit", The Child Death Review: A Report to the Minister of Family Services and Housing, Province of Manitoba, Billie Schibler and James H. Newton (September, 2006)
 - (e) Strengthening our Youth: Their Journey to Competence and Independence, A Report on Youth Leaving Manitoba's Child Welfare System, Billie Schibler, Children's Advocate, and Alice McEwan-Morris (November, 2006)
 - (f) Audit of the Child and Family Services Division, Pre-devolution Child in Care Processes and Practices, Carol Bellringer, Auditor General (December, 2006)
4. The commissioner may also consider any court transcripts and similar documents, which are not subject to a legal claim of privilege, and may give them any weight, including accepting them as conclusive.
5. The commissioner must perform his duties without expressing any conclusion or recommendation about civil or criminal liability of any person.
6. The commissioner must complete his inquiry and deliver a final report containing his findings, conclusions and recommendations to the Minister of Justice and Attorney

General by March 30, 2012. He may also give the Minister of Justice and Attorney General any interim reports that he considers appropriate to address urgent matters. All reports must be in a form appropriate for public release, but release is subject to *The Freedom of Information and Protection of Privacy Act* and other relevant laws.

7. Nothing in paragraph 1 limits the commissioner's right to request the Lieutenant Governor in Council to expand the terms of reference to cover any matter that he considers necessary as a result of information that comes to his attention during the course of the inquiry.
8. Government departments and agencies and other bodies established under the authority of the Manitoba Legislature must assist the commissioner to the fullest extent permitted by law.
9. Before public hearings take place, the commissioner may interview any person connected with the matters referred to in paragraph 1. On the commissioner's behalf, interviews may be conducted by counsel for the commissioner, either alone or in the commissioner's presence. If conducted alone, counsel must give the commissioner a transcript or a report of each interview. The commissioner may, in his discretion, rely on the evidence gathered in this manner.
10. The Minister of Finance may pay the following amounts from the Consolidated Fund, at the request of the Minister of Justice and Attorney General:
 - (a) travelling and other incidental expenses that the commissioner incurs conducting his inquiry;
 - (b) fees and salaries of any advisors and assistants employed or retained for the purpose of the inquiry;
 - (c) any other operational expenditures required to support the inquiry.
11. This Order is effective immediately.

AUTHORITY

Subsection 83(1) and section 96 of *The Manitoba Evidence Act*, C.C.S.M. c. E150, state in part:

Appointment of commission

83(1) Where the Lieutenant Governor in Council deems it expedient to cause inquiry to be made into and concerning any matter within the jurisdiction of the Legislature and connected with or affecting

...

(c) the administration of justice within the province;

...

(f) any matter which, in his opinion, is of sufficient public importance to justify an inquiry;

he may, if the inquiry is not otherwise regulated, appoint one or more commissioners to make the inquiry and to report thereon.

Power to make rules

96 The Lieutenant Governor in Council may make provision, either generally in regard to all commissions issued and inquiries held under this Part, or specially in regard to any such commission and inquiry, for

(a) the remuneration of commissioners and persons employed or engaged to assist in the inquiry, including witnesses;

(b) the payment of incidental and necessary expenses; and

(c) all such acts, matters, and things, as are necessary to enable complete effect to be given to every provision of this Part.