IN THE MATTER OF: Commission of Inquiry into the Circumstances Surrounding the Death of Phoenix Sinclair

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NOTICE OF MOTION
of
THE MANITOBA GOVERNMENT AND GENERAL EMPLOYEES UNION (MGEU)

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The Manitoba Government and General Employees Union (MGEU) will make a motion before Commissioner Hughes on Monday the 19th day of September, 2011 at 9:30 o'clock in the forenoon, in the Pan Am Room, Winnipeg Convention Centre, 375 York Ave., Winnipeg, Manitoba.

THIS MOTION is for an Order:

(a) That the Commissioner prohibit any form of publishing, broadcasting, or otherwise communicating by television, internet, radio, in print, or by any other means, the name, face or identity of any witness at the Inquiry who is or was a Social Worker, as well as the name of any Social Worker identified in documents produced at the Inquiry;

(b) In the alternative, that the Commissioner exercise his jurisdiction to prohibit the video or audio recording and broadcasting of testimony given by Social Workers at the Inquiry;

(c) Such further and other relief as counsel may advise and the Commissioner may allow.

THE GROUNDS FOR THIS MOTION are:

(a) The Commissioner has the inherent jurisdiction to make the order sought as necessarily incidental to the carrying out of his functions pursuant to Order in Council 89/2011 appointing the Commissioner to conduct the Inquiry;

(b) In particular, paragraph 6 of the Order in Council, which mandates the Commissioner to conduct the inquiry having regard to *The Freedom of Information and Protection of Privacy Act of Manitoba* and other relevant privacy legislation;

(c) Commission of Inquiry Rules of Procedure and Practice, including Rules 6, 42, 43 and 44;

(d) It serves the interest of the Inquiry and is otherwise in the public interest and in the interests of justice to grant the Order sought, which Order does not unduly restrict the principles of open courts and freedom of the press;

(e) Sections 75 and 76 of *The Child and Family Services Act of Manitoba;*

(f) It serves the general intent and legislative goals of *The Child and Family Services Act of Manitoba* to better protect children;

(g) The media has no guaranteed right under section 2(b) of *The Canadian Charter of Rights and Freedoms* to audio and video record and broadcast the testimony of Social Worker witnesses at the Inquiry;

(h) Such further and other grounds as counsel may advise and the Commissioner may allow.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this motion:

1. The Affidavit of Janet Kehler affirmed June 27, 2011.

2. Such further and other evidence as counsel may advise and the Commissioner may allow.

DATED this 18TH day of August, 2011.

Myers Weinberg LLP

Garth H. Smorang Q.C./Trevor Ray
Counsel for the MGEU