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EMAILED

Sherri Walsh
Commission Counsel
Commission of Inquiry
1801 - 155 Carlton Street
WINNIPEG, Manitoba R3C 3H8

Dear Ms. Walsh:

RE: Inquiry into the Circumstances Surrounding the Death of Phoenix Sinclair

We write to advise that we have received instructions from our client the Manitoba Government and General Employees Union to request that the Commissioner state a case in writing to the Manitoba Court of Appeal concerning the validity of the Inquiry, and the jurisdiction of the commissioner, pursuant to Part V of *The Manitoba Evidence Act*. In particular, our client's request is based on section 95 of the Act.

Section 83(1) of the Act, under which the commissioner has been appointed, allows the Lieutenant Governor in Council to cause inquiry to be made into certain matters, set out therein, but only "if the inquiry is not otherwise regulated".

We submit that all of the scope of what has become known as Phase 1 of the Phoenix Sinclair Inquiry, and perhaps portions of Phase 2, are otherwise regulated by provisions of *The Child and Family services Act* and *The Fatality Inquiries Act*, both statutes enacted by the legislature of the Province of Manitoba. In particular, we reference sections 4 and 8.2.3 of *The Child and Family services Act*, and sections 19(2) and 25 of *The Fatality Inquiries Act*.

In our view, both of the above statutes provide for exactly the same inquiry as is set out in paragraphs 1 and 2 of the Order in Council establishing the Phoenix Sinclair Inquiry, and at least in the case of *The Child and Family Services Act*, such inquiry has already been made. Accordingly, it is our view that the two statutes, either alone or together, otherwise regulate inquiries into the matters contained in those paragraphs.

Both statutes also require that the processes undertaken pursuant to their provisions be done with full regard for the confidentiality required by law for the operation of the child welfare system in Manitoba, and in recognition of the need for that confidentiality in order to maintain and preserve the integrity of the system.

It is not our intention to set out our entire position in this correspondence. We wish, however, to advise that a stated case to the Court of Appeal ought, in our view, to include questions worded along the following lines:

1. Are the matters and obligations particularized in paragraphs 1 and 2 of Order in Council No. 89/2011 dated March 23, 2011 appointing The Honourable Edward (Ted) Hughes as commissioner to inquire into the circumstances surrounding the death of Phoenix Sinclair, an inquiry otherwise regulated by The Child and Family services Act CCSM c C80 and The Fatality Inquiries Act CCSM c F52, as defined in section 83(1) of The Manitoba Evidence Act CCSM c E150?
2. If the answer to question 1 is yes, in whole or in part, is the commission properly appointed and does the commissioner have the jurisdiction to inquire into those particularized matters?

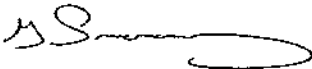
We note that section 95 of *The Evidence Act* provides for a course of action should a commissioner refuse to state a case, and in that regard we ask the commissioner, or you on his behalf, to advise as to whether the commissioner will agree to state a case to the Court of Appeal of Manitoba.

We would be prepared to discuss the issue as well should you wish to contact us in that regard.

Yours truly,

MYERS WEINBERG ^{LLP}

Per:



GARTH H. SMORANG, Q.C.

Cc/MGEU

Cc/ counsel for all parties with standing