

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

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**AFFIDAVIT OF JANET KEHLER  
AFFIRMED JUNE 27, 2011**

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**AFFIDAVIT OF JANET KEHLER**

I, JANET KEHLER, of the City of Winnipeg, in the Province of Manitoba,

MAKE OATH AND SAY AS FOLLOWS:

1. I am a Staff Representative with the Manitoba Government and General Employees' Union (the "MGEU") and have held this position since September, 2006. Prior to that, I was employed for 16 years by the Department of Child and Family Services, Winnipeg Child and Family Services, and Child and Family Services Southwest, in a variety of family service worker and supervisory positions. My most recent position was as a supervisor for the After Hours Unit ("AHU") with the Department and I held that position for approximately 7 years.
2. Accordingly, I have personal knowledge of the facts and matters set out herein, except where I indicate that such facts and/or matters are based on information and belief, in which case I believe them to be true.
3. The MGEU represents approximately 33,000 government and public service employees in the Province of Manitoba including approximately 400 members who are employed as front-line social workers within the child welfare system.
4. The MGEU is an active member-driven organization dedicated to meeting the unique needs and interests of its members including those employed by the Department of Child and Family Services (the "Department"). One of MGEU's important functions is to voice membership concerns on issues that affect their profession. Primary roles of the MGEU include:
  - (a) the protection and support of members through advocating for both members and the clients they serve in their profession; and

- (b) engaging in public and governmental relations to protect and improve services to Manitobans in a variety of governmental departments and other areas in which MGEU members are employed.
5. In the context of child welfare, the MGEU has historically advocated for improvements to the child welfare system. In the MGEU's view, these changes would benefit its members as well as the clients (children and families) serviced by MGEU members as employees of the Department.
  6. The MGEU supports the need for ongoing reform and improvements to our child welfare system. The MGEU believes that those employed within the system as front-line social workers and supervisors are critical to this process, and must have meaningful input in order for any changes to be effective.
  7. In addition, the MGEU supports that there are standards of practice, created by the Department, which employees are expected to follow in their provision of care to children and families.
  8. In addition, social workers adhere to a Code of Ethics created by the Canadian Association of Social Workers, which provides, in part:  
  
*-Social workers advocate for equal treatment and protection under the law and challenge injustices that affect the vulnerable and disadvantaged.*
  9. Social workers are the primary individuals who deliver services and child protection in the child welfare system within Manitoba. They possess significant and invaluable experience, knowledge and training, and play an integral role in the provision of child welfare services 24 hours a day, 7 days a week. MGEU relies heavily upon the input and knowledge of its members in advocating for change and improvements to child protection and the child welfare system.
  10. In or about March, 2011, the MGEU became aware that the Minister of Justice had recommended that an Inquiry be held into the circumstances surrounding the death

of Phoenix Sinclair. The MGEU learned that the scope of the Inquiry included a number of phases including:

- (a) an Inquiry into the circumstances surrounding the death of Phoenix Sinclair including the child welfare services provided or not provided to Phoenix Sinclair and her family;
  - (b) any other circumstances, apart from the delivery of child welfare services, directly related to the death of Phoenix Sinclair;
  - (c) why the death of Phoenix Sinclair remained undiscovered for several months;
  - (d) recommendations to better protect Manitoba children having regard to the recommendations, as subsequently implemented, made in reports done after the death of Phoenix Sinclair (as set out in paragraph 3 of the Order-in-Council); and
  - (e) to ensure recommendations relevant to the current state of child welfare services in Manitoba, the Commissioner is to consider findings made in multiple reviews as set forth in paragraph 3 of the Order-in-Council.
11. Shortly after learning that an Inquiry had been ordered, the MGEU retained legal counsel and a series of meetings were held, which I attended, with approximately 20 MGEU members who are or were employed in various positions by the Department or Winnipeg Child and Family Services to provide front-line services to children and families. It is anticipated that many, if not most of these individuals will be called as witnesses in the Inquiry.
12. Many of the members we have met with were directly involved in providing services to Phoenix Sinclair and her family since her birth in approximately 2000 and ending in approximately 2005. As such, these individuals will have direct evidence to offer to the Inquiry concerning that time period.

13. In addition, given their experience within the child welfare system, these members and others who may not have been directly involved in providing services to Phoenix Sinclair and her family may have information and evidence to offer to the Inquiry respecting the other phases which are not directly related to the circumstances involving Phoenix Sinclair.
14. As the Inquiry process has been explained to me by our legal counsel, the purpose is not only to determine the circumstances of Phoenix Sinclair's death, but also to receive evidence and make recommendations for changes to better protect Manitoba children in the future. It is, to my knowledge, the task of the Commissioner to perform his duties without expressing any conclusion or recommendation about civil or criminal liability of any person. In short, I understand this process is designed to educate and inform the Commissioner so that recommendations can be made to improve the system, rather than to lay blame.
15. On approximately June 20, 2011, I attended a meeting with our legal counsel which was held with Commission counsel Sherri Walsh and a number of representatives for other parties seeking standing at the Inquiry. One of the topics for discussion at the meeting was the level of media access that would be permitted at the Inquiry. It is my understanding that, at this time, the Commissioner is considering allowing one television camera in the hearing to visually and audibly record proceedings and the testimony of witnesses, including front-line social workers. As such, it is my understanding that the involvement of witnesses, including social workers, supervisors, and managers, would be widely publicized in the media including their names, likeness, occupations and details concerning their involvement with Phoenix Sinclair.
16. I have met with or spoken to nearly all of our members who may potentially be involved in the Inquiry and I last met with several of our members on June 21, 2011 together with our legal counsel. At our most recent meeting (and in previous meetings) members were advised that we expected the media would seek to have television cameras in the hearing during their testimony. The reaction of our

members was immediate, and they strongly oppose any television cameras being used to broadcast their identity and testimony.

17. Since members first became aware of the Inquiry and the potential for media access, many concerns have been raised regarding:
  - (a) privacy both in the workplace and in their daily lives;
  - (b) safety in the workplace (while operating in the field) for social workers and clients including children and their families;
  - (c) stress;
  - (d) morale; and
  - (e) how televised identification of individuals would deter other front-line social workers from coming forward to provide evidence respecting ways to better protect Manitoba children.
18. Of more particular significance, almost all front-line social workers I have met with have expressed concerns that televising their testimony and otherwise identifying them as a witness in these proceedings could seriously and negatively impact their ability to provide protection and services to children and their families. As a former social worker, it is my opinion that the concerns expressed by these social workers are legitimate and that publicly televising their testimony could jeopardize services and the safety of children.
19. The front-line service of the child welfare system is composed of a number of necessary positions, most of which are occupied by MGEU members. All of the positions are intended to operate within a system but each position also operates independently as a distinct and vital part of the child welfare system. Those components are generally described as follows:
  - (a) Crisis Response Unit ("CRU"): CRU workers are typically the first point of contact for third parties (Source of Referrals) who wish to raise a concern

about a child. CRU workers perform two basic functions. First, they are responsible for receiving concerns from a Source of Referral, either by telephone call, walk-in, fax or other method. If issues raised by the Source of Referral raise immediate concerns then the CRU worker who receives the call may immediately refer the information to a fellow CRU worker who goes out into the community (the "field") to investigate the concern. In some situations, the CRU worker who takes the call may also conduct the field investigation.

- (b) After Hours Unit Worker ("AHU"): AHU workers perform virtually the same tasks as CRU workers but do so "after hours". They essentially perform CRU functions during the night shift from Monday to Friday, and on weekends and holidays. Like CRU workers, they perform both "phones" and "fields", however do so for the Department as well as 17 other aboriginal agencies in Winnipeg. However, typically AHU workers will only conduct fields in the most serious cases where immediate attention is required.
- (c) Intake Workers: Intake Workers are responsible for investigating and following up on files opened by CRU or AHU workers. Generally, Intake Workers investigate the concerns raised by a Source of Referral and assess the level of support or child care required in the circumstances. Intake Workers may keep a file if they assess that only short-term services will be required. If long-term service is required then Intake Workers will recommend the file be passed to a Family Service Worker (case worker) for long-term service.
- (d) Family Services Worker (Social Worker/Case Worker): Family Service Workers provide long-term service and support for children and their families. This may range from apprehending children in high risk situations or simply providing resources and on-going support to children and families in low risk situations.

- (e) Abuse Workers: Abuse Workers perform many of the functions performed by regular Intake Workers and Family Service Workers albeit exclusively in cases involving allegations or confirmed instances of child abuse.
  - (f) Supervisors: Each of the components listed above operates in individual teams of approximately 6-8 staff. Each team has a supervisor who has responsibility to provide case supervision both in a clinical manner as well as in relation to the established provincial standards. The supervisor also provides support and undertakes administrative and human resource functions.
  - (g) Provincial Managers: The responsibility of these managers is typically more complex and provincially wide in scope. They have administrative responsibilities and undertake policy related functions.
  - (h) Child Advocate Officers: These social workers review and investigate the work of front line social workers throughout the Child Welfare system. Referrals are received from a wide variety of sources. The Child Advocates Office provides recommendations both on individual cases as well as systemic issues.
20. Although each of the above positions performs somewhat different functions in different situations, social workers in each of the above positions may be required to (and very often do) perform emergency apprehensions of children in high risk situations. Also, persons in all of the above positions may be the first point of contact for a child or the child's family.
21. Social workers in the above positions regularly deal with high risk and potentially violent situations. Regrettably, given the nature of child welfare and those in need of protection, the families (and sometimes children) face issues of addiction, poverty, mental instability or illness and may have criminal records or be involved in criminal activity or criminal gang activity.



22. Social workers in all positions often receive threats of violence or death threats while performing their duties and often require police assistance to perform some of their most basic and important functions.
23. I am advised by a number of social workers and do verily believe that since the death of Phoenix Sinclair was discovered in approximately 2006 and became public and was widely publicized in the media, stress in the workplace has been extremely high and morale has been low. Social workers generally suffered public scrutiny and criticism and were openly criticized by the media notwithstanding the fact that very little was known about their involvement at that time or whether their actions even remotely contributed to the death of Phoenix Sinclair. Some social workers have reported to me that they have been criticized by clients who have referenced the Phoenix Sinclair tragedy.
24. The public and media criticism to date as well as anticipated future criticism has created very high stress levels and low morale for social workers. On average, approximately 1,200 to 1,400 child care concerns will be raised with CRU and AHU workers in any given month. CRU and AHU Workers and Intake Workers are responsible for investigating these calls and hundreds of those files each month are opened to Intake and/or Family Service Workers for short or long-term care. Anything that increases stress and reduces morale has the potential to negatively affect the ability of social workers to do their jobs which is fundamentally first and foremost to protect children in need of care.
25. Social workers have reported to me that they are extremely concerned about their names and faces being widely broadcast as a result of their participation in the Inquiry.
26. First, this will have personal privacy implications for them outside of work and in the community where, like other citizens, they have the right to expect that they will not be recognized and approached by strangers in the day to day events of their private lives. Social workers make every attempt to keep the nature of their work as private as possible. Typically they are instructed by supervisors to refrain from being listed

in the phone book and avoid disclosing the nature of their employment to others in their community. They do so out of concern for their own safety and the safety of their families and as well due to the confidential nature of child protection work.

27. Based on my own knowledge and experience as a front-line social worker, I also have serious concerns about the safety of social workers. As stated, front-line social workers place themselves in extremely volatile situations which are unpredictable given the nature of the people with whom they are dealing and the obligation of the social worker to challenge a person's ability to properly care for their own children or children in their care.
28. As can be expected, parents or other adults (and sometimes children) react very strongly to allegations of child neglect and child abuse. Child apprehensions in particular have the potential to quickly develop into dangerous situations for social workers, children and their families. At a minimum, it is very common for anger and emotion to be expressed by families in these situations. Some social workers go out in teams of two, but others routinely do their field work alone.
29. Further, given the nature of child care and the potential for child apprehension, families are often reluctant, particularly at the outset, to be open with social workers and the system in general is plagued with general avoidance of front-line social workers by families of children in need of care.
30. Nearly all calls received are from third party Sources of Referral. That is, families of children in need of care typically do not call Child and Family Services and request assistance. Those concerns come from others who are concerned about child abuse or child neglect and who anonymously request that a social worker attend to assist the child.
31. As an integral part of assisting a child/children, the front-line social worker very often will ask the parent(s) or guardian of the child to voluntarily allow the worker to remove the child/children from the residence. This is often done within a very short time (even within minutes) after initially attending a residence, usually unannounced,

and meeting the parent(s) or guardian. Critical to the success of this process is the ability of the front-line social worker to communicate that the child being voluntarily allowed to leave with the worker will be safe in his/her care.

32. If the identify of front-line social workers and their likeness is disclosed in the print, radio, and television media through this Inquiry, it will make their work significantly more difficult.
33. First, if they are recognized then families may attempt to avoid them as a point of first contact. Second, if families recognize particular social workers as being involved with the Inquiry then they may incorrectly assume those workers were somehow involved in or responsible for Phoenix Sinclair's death. As a consequence, families may be reluctant to cooperate with those case workers in their efforts to provide services to them or their children, thus further adding to the pattern of avoidance.
34. Trust and relationship building is an extremely important tool for social workers. If social workers are unable to build relationships with the families and children that they service then the likelihood that they will be avoided increases and this will inhibit service provision and thereby may increase the level of risk to a child.
35. Social workers in CRU, AHU and Intake positions do not typically have long-term relationships with their clients. As such, the rotation of new clients coming across their case list is ongoing. Children in need of care and their families are typically introduced to CRU workers as their first point of contact over the phone or in person and where first contact is almost always unannounced. If those families make a connection between a particular social worker and Phoenix Sinclair then it is likely that they will be less cooperative.
36. In addition, social workers have advised me that they are fearful that they may face greater aggression or negative attitude from families if they are identified as a worker involved with the Phoenix Sinclair Inquiry due to the misperception that they were somehow responsible for Phoenix Sinclair's death.

37. In addition, I am aware that some social workers have unique or unusual surnames which are limited to themselves, their siblings, parents and children. As such, if their identities are disclosed then it will not be difficult to identify their immediate family, their children in schools or their spouses or siblings in their respective workplaces.
38. In addition to building trust and relationships with the families of children to whom they provide services, it is equally important that social workers build trust with collateral agencies such as other social workers, hospitals, police, public health nurses, teachers and principals. I have been advised by social workers that there has already been a negative impact on their relationships with people in collateral agencies as a result of criticism following Phoenix Sinclair's death. A lack of trust between collateral agencies and social workers may impact the flow of information which is critical to insuring child protection.
39. In addition to an increased risk to social workers, children and their families that could result from media broadcasts and recordings of their identity, there are strong policy reasons for not identifying social workers at the Inquiry.
40. Part VI of the *Child and Family Services Act of Manitoba* (the "Act") relates to confidentiality of child protection proceedings. The relevant provisions of the Act state:

*75(1) All proceedings under Parts II, III and V, other than a proceeding under The Summary Convictions Act, shall be closed to the general public but shall be open to representatives of the press, radio and television unless the Court, on application, is satisfied that the presence of such representatives would be manifestly harmful to any person involved in the proceedings.*

*75(1.1) With respect to a proceeding under The Summary Convictions Act pertaining to an offence under this Act, upon the application of a person who is involved in the proceeding or a portion of the proceeding, a court, where it is satisfied that conducting the proceeding or the portion in public would be harmful or injurious to the personal well-being of a person and that conducting the proceeding or portion in private would not be contrary to the public interest in the administration of justice, may, by order, direct*

- (a) *that the proceeding or the portion be closed to the public and conducted in private; and*
- (b) *that news reporters in attendance at the closed proceeding or portion not publish or broadcast evidence that is produced at or testimony that is given in the closed proceeding or portion.*

**75(2) No press, radio or television report of a proceeding under Part II, III or V shall disclose the name of any person involved in the proceedings as a party or a witness or disclose any information likely to identify any such person.**

75(3) *A person violating subsection (2) commits an offence punishable on summary conviction and is liable, if an individual, to imprisonment for 2 years or to a fine of \$5,000 or both and, if a corporation, to a fine of \$50,000.*

75(4) *Where a corporation is guilty of an offence under this section, any officer, director or agent of the corporation who directed, authorized, participated in, or acquiesced in, the commission of the offence, is party to and is also guilty of the offence and is liable to the penalties set out in subsection (3).*

76(3) *Subject to this section, a record made under this Act is confidential and no person shall disclose or communicate information from the record in any form to any person except*

- (a) *where giving evidence in court; or*
- (b) *by order of a court; or*
- (c) *to the director or an agency; or*
- (d) *to a person employed, retained or consulted by the director or an agency; or*
  - (d.1) *to the children's advocate; or*
  - (d.2) *where the disclosure is by the children's advocate under section 8.10; or*
- (e) *by the director or an agency to another agency including entities out of the province which perform substantially the same functions as an agency where reasonably required by that agency or entity*
  - (i) *to provide service to the person who is the subject of the record, or*
  - (ii) *to protect a child; or*

- (f) *to a student placed with the director or an agency by contract or agreement with an educational institution; or*
- (g) *where a disclosure or communication is required for purposes of this Act; or*
- (h) *by the director or an agency for the purpose of providing to the person who is the subject of the record, services under Part 2 of The Vulnerable Persons Living with a Mental Disability Act, or for the purpose of an application for the appointment of a substitute decision maker under Part 4 of that Act.*

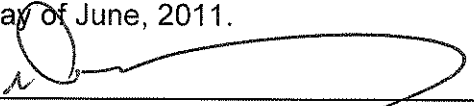
(emphasis added)

41. As a former social worker, it is my experience that the restrictions on disclosure of information and the identity of any person involved in child welfare proceedings are blanket prohibitions which are very strong and have few exceptions. In my experience, the confidentiality provisions are intended to apply to any person involved under a proceeding and not just children or their families. In this regard, they also apply to social workers who testify at proceedings. Even between workers there is to be no discussion of cases unless it is required.
42. Further, while the media may be able to attend and report on proceedings, (under section 75(1) and 75(1.1)) notwithstanding that ability, there is an absolute prohibition on disclosure of the name of any person involved in the proceedings as a party of a witness and an absolute prohibition on disclosure of any information likely to identify any such person.
43. Therefore, in my experience, while media may be permitted, under no circumstances are they to disclose the name or identity of any person or witness including social workers.
44. It is my understanding and belief that the prohibition on identification of witnesses exists given the unique nature of child welfare proceedings as further described in my affidavit. That is, in addition to the obvious need to protect the identity of children, family members and Sources of Referral, it is equally critical to protect the

identity of social workers in order to ensure their ability to perform their fundamental tasks to protect children.

45. In addition to the above concerns regarding the safety of social workers and the children and families they serve, the MGEU and its members are concerned that social workers who may have important testimony to give regarding improvements to the child welfare system will be reluctant to come forward and give evidence at the Inquiry if their names and identities would be published and distributed or broadcast by the media.
46. Further, the MGEU would find it very difficult to support and encourage its members to come forward voluntarily and agree to provide information after their co-workers had their names, likeness and testimony broadcast widely and subject to public scrutiny and criticism. In that respect, it is possible that very valuable expertise and opinion will be lost and the ability of the Commissioner to make useful recommendations regarding improvements to the child welfare system will be reduced without direct input from front-line social workers.
47. I agree that it is important for social workers to testify at a public Inquiry so as to provide the Commissioner with the best possible insight as to the circumstances involving the death of Phoenix Sinclair. Further, as advocates for improvements and changes to the system, social workers feel it is important to testify regarding systemic changes intended to improve child protection services.
48. I, and the MGEU, also fully support that the Inquiry is a public process, where the media is allowed to attend and report on the proceedings. However, in order to protect their privacy, their safety and their ability to perform duties crucial to the protection of children in this province, I and other social workers to whom I have spoken feel it is critical that their testimony be given in a manner that protects against their faces, names and identities from being disclosed or appearing in the print, radio or television media.
49. I make this Affidavit in good faith.

AFFIRMED BEFORE me at the City of )  
Winnipeg, in the Province of Manitoba, this )  
27<sup>th</sup> day of June, 2011. )



\_\_\_\_\_)  
A Notary Public in and for the Province of )  
Manitoba. )

  
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JANET KEHLER