

IN THE COURT OF APPEAL

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

BETWEEN:

**THE SOUTHERN FIRST NATIONS NETWORK OF CARE, THE  
GENERAL CHILD AND FAMILY SERVICES AUTHORITY, THE FIRST  
NATIONS OF NORTHERN MANITOBA CHILD AND FAMILY SERVICES  
AUTHORITY and CHILD AND FAMILY SERVICES ALL NATIONS  
COORDINATED RESPONSE NETWORK  
(THE "AUTHORITIES AND ANCR"),**

Applicant,

- and -

**THE HONOURABLE EDWARD HUGHES, in his capacity as  
Commissioner under The Manitoba Evidence Act and as appointed  
pursuant to Order in Council No. 89-2011, dated the 23<sup>rd</sup> day of March,  
2011,**

Respondent.

APPLICATION UNDER Section 95(2) of *The Manitoba Evidence Act*,  
C.C.S.M. c. C225 and Rule 43.1 of *The Court of Appeal Rules*, Man. Reg.  
555/88

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**FIRST AFFIDAVIT OF SANDIE STOKER  
SWORN: AUGUST 15, 2012**

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1. I am the Executive Director of the Child and Family Services All Nations Coordinated Response Network and have personal knowledge of the matters and facts hereinafter deposed to by me except where the non-

contentious facts deposed are stated to be based upon information and belief in which case I have stated the source of my information and do verily believe same to be true.

2. On or about March 23, 2011, the Lieutenant Governor in Council for the Province of Manitoba issued Order in Council No. 89/2011 which appointed the Respondent, the Honourable Edward (Ted) N. Hughes, OC, QC, LL.D (Hon) as Commissioner to inquire into the circumstances surrounding the death of Phoenix Sinclair. Attached to my Affidavit and marked as **Exhibit "A"** is a copy of the Order in Council dated March 23, 2011 which forms the source of my information and belief.

3. On April 15, 2011, the Respondent held a press conference with the media. A Transcript of the April 15, 2011 Press Conference is available on the Commission of Inquiry's webpage at <http://www.phoenixsinclairinquiry.ca/media.html> and is also attached to my Affidavit and marked as **Exhibit "B"** which forms the source of my information and belief. Without limiting the information contained in the Transcript at Exhibit "B", as can be seen, the Respondent has publicly stated as follows:

- a. Sherri Walsh accepted the Respondent's invitation to become Commission Counsel;
  - b. Sherri Walsh (hereinafter referred to as "Commission Counsel") acts on behalf of and under the instructions of the Respondent;
  - c. Commission Counsel is in effect an extension of the Respondent; and
  - d. Commission Counsel's role is not to advance any particular point of view.
4. Applications for standing at the Inquiry were heard by the Respondent on June 28 - 29, 2011. Each of the four separate entities that make up the Applicant, namely the Southern First Nations Network of Care, the General Child and Family Services Authority, the First Nations of Northern Manitoba Child and Family Services Authority and Child and Family Services All Nations Coordinated Response Network, all initially applied for separate standing as parties to the Inquiry. Each separate entity was represented by individual legal counsel from three different law firms.

5. At the June 28, 2011 public hearing, Commission Counsel made certain comments with respect to the Commission of Inquiry and her role therein. These public comments included an acknowledgment that she acts according to the instructions given by the Respondent and that she is to have no interest in the outcome. Attached to my Affidavit and marked as **Exhibit "C"** is a transcript of these public comments made on June 28, 2011 which forms the source of my information and belief.

6. Also at the June 29, 2011 public hearing, the Respondent himself made certain comments with respect to the Commission of Inquiry. These public comments included an acknowledgment that Commission Counsel was to be impartial. Attached to my Affidavit and marked as **Exhibit "D"** is a transcript of these public comments made on June 29, 2011 which forms the source of my information and belief.

7. The Applicant received a single joint grant of standing as a party to the Inquiry from the Respondent on June 29, 2011.

8. On the same afternoon as receiving its joint grant of standing, the Respondent issued an order approving the Commission's Rules of Procedure and Practice. Attached to my Affidavit and marked as **Exhibit "E"** is a copy of the June 29, 2011 Transcript whereby the Respondent

made the aforementioned order at p. 31 which forms the source of my information and belief. Also attached to my Affidavit and marked as **Exhibit "F"** is a copy of the Commission's Rules of Procedure and Practice as ordered on June 29, 2011.

9. Prior to enacting the Commission's Rules of Procedure and Practice on June 29, 2011, Commission Counsel assured the Parties and Intervenors, including the Applicant, that the Rules can be amended by the Commissioner at any time. Furthermore, during the same conversation, the Respondent himself provided the assurance that he would allow flexibility and that the rules are amendable. Pages 29 – 31 of Exhibit "E" forms the source of my information and belief with respect to this matter.

10. On August 23, 2011, the Commission's Rules of Procedure and Practice were amended. Attached to my Affidavit and marked as **Exhibit "G"** is a copy of the Commission's August 23, 2011 Amended Rules of Practice and Procedure.

11. At the time either set of Rules were put in place, Commission Counsel had indicated to the Applicant through its legal counsel that transcripts would not be made of any witness interviews conducted by the

Commission. Rather, handwritten notes would be taken which would form the basis of the Witness Summaries prepared by the Commission.

12. At some date in March or April, 2012, the Applicant became aware of the fact that the Commission was tape recording the witness interviews and then having the recordings transcribed (the "Transcripts"). Each witness then certified their Transcript as being accurate.

13. In early May, 2012, the Applicant, through its legal counsel, indicated to Commission Counsel that it believed that the Transcripts should be produced to the Parties and Intervenors to the Inquiry and requested same.

14. Commission Counsel informed the Applicant through legal counsel that it would consider the request.

15. Commission Counsel eventually responded to the Applicant on June 4, 2012 whereby the request for the Transcripts was denied.

16. Also on June 4, 2012, Commission Counsel informed the Applicant, and all other Parties and Intervenors, that it was imposing a July 4, 2012 deadline for the filing of any procedural motions and that any motions filed would be heard by the Respondent on July 12, 2012.

17. On July 4, 2012, the Applicant filed a Notice of Motion and Motion Brief requesting an order from the Respondent compelling the production of the Transcripts in the possession of the Commission (the "Transcript Motion"). Attached to my Affidavit and marked as **Exhibits "H" and "I"** respectfully are the Applicant's Notice of Motion and Brief which form the source of my information and belief.

18. After receiving the filed Transcript Motion, the Respondent changed the hearing date of the Transcript Motion to July 24, 2012.

19. On July 19, 2012, Commission Counsel filed a Brief with the Respondent opposing the relief sought by the Applicant in its Transcript Motion. Attached to my Affidavit and marked as **Exhibit "J"** is the Commission Counsel's Brief which forms the source of my information and belief.

20. No other Party or Intervenor opposed the relief requested in the Applicant' Transcript Motion.

21. Kimberly-Ann Edwards and Nelson Draper Steve Sinclair (who have Party standing) supported the relief requested in the Transcript Motion.



22. On July 24, 2012, the Applicant filed a Reply Brief with the Respondent raising the issue of an apprehension of bias existing with respect to the Respondent hearing and determining the Applicant's motion given that his own counsel was opposing the relief sought and had taken a position on the record. Attached to my Affidavit and marked as **Exhibit "K"** is the Applicant's Reply Brief which forms the source of my information and belief.

23. On July 24, 2012, oral argument was presented to the Respondent by counsel for the Applicant and Commission Counsel with respect to both the Apprehension of Bias issue and the merits of the Transcript Motion. Attached to my Affidavit and marked as **Exhibit "L"** are the relevant portions of the transcript with respect to this proceeding which forms the source of my information and belief.

24. As can be seen at page 66 of Exhibit "L", the Respondent ordered that no apprehension of bias existed with respect to him hearing and determining the Applicant's Transcript Motion and that he would decide the matter on its merits.

25. The Respondent provided a written decision on August 1, 2012 denying the relief requested by the Applicant's with respect to their

Transcript Motion. Attached to my Affidavit and marked as **Exhibit "M"** is the Respondent's decision which forms the source of my information and belief.

26. On August 3, 2012, the Applicant wrote to the Respondent requesting that he state a case to the Manitoba Court of Appeal with respect to three issues, namely:

- a. Did an apprehension of bias exist with respect to the Commissioner hearing and determining the Authorities and ANCR's motion requesting the disclosure of witness interview transcripts when Commission Counsel had taken an oppositional position on the record?
- b. Do the Commission's Amended Rules of Procedure and Practice require the disclosure of witness interview transcripts to the Parties and Intervenors?
- c. Do the principles of natural justice and procedural fairness require the disclosure of witness interview transcripts to the Parties and Intervenors?

27. Attached to my Affidavit and marked as **Exhibit "N"** is a copy of the aforementioned Applicant's August 3, 2012 correspondence to the Commissioner requesting that he state a case to the Court of Appeal which forms the source of my information and belief.

28. On August 8, 2012, the Respondent issued a written response to the Applicant's August 3, 2012 correspondence wherein he refused to state a case to the Court of Appeal on the questions suggested, or at all. Attached to my Affidavit and marked as **Exhibit "O"** is a copy of the Respondent's August 8, 2012 response which forms the source of my information and belief.

29. I make this Affidavit *bona fide* and in support of the herein application.

SWORN/AFFIRMED before me in )  
the City of Winnipeg, in the Province )  
of Manitoba, on the 15<sup>th</sup> day of )  
August, 2012 )  
)

  
SANDIE STOKER

Maurice Parsons  
A Commissioner for Oaths in and for  
the Province of Manitoba  
My Commission expires: August 6, 2014