

IN THE COURT OF APPEAL

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

BETWEEN:

**THE MANITOBA GOVERNMENT AND
GENERAL EMPLOYEES' UNION,**

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 23th 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

**NOTICE OF MOTION
(COURT OF APPEAL MOTIONS LIST)
HEARING DATE: Thurs DAY, FEBRUARY 9, 2012 at 10:00 a.m./p.m.**

**FILED
COURT OF APPEAL**

FEB 03 2012

**LAW COURTS
WINNIPEG**

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NOTICE OF MOTION

THE applicant will make a motion before a judge of the Court of Appeal on
Thursday, February 9, 2012 at 10:00 a.m./p.m., or as soon after that time as the
motion can be heard, at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba
R3C 0P9.

THE MOTION IS FOR:

- 1) an Order for short leave for the hearing of the herein Motion, if necessary;
- 2) an Order pursuant to s. 95(2) of *The Manitoba Evidence Act*, C.C.S.M. c. C225 directing the respondent to state a case to the Manitoba Court of Appeal pursuant to s. 95(1) of the said Act, to answer, among other things, the following questions:

- a) Are the matters and obligations particularized in paragraphs 1 and 2 of Order in Council No. 89/2011, dated March 23, 2011 appointing the respondent as commissioner to inquire into the circumstances surrounding the death of Phoenix Sinclair, an inquiry otherwise regulated by *The Child and Family services Act*, C.C.S.M. c. C80 and *The Fatality Inquiries Act*, C.C.S.M. c. F52, as set out under s. 83(1) of *The Manitoba Evidence Act*, C.C.S.M. c. E150? and
 - b) If the answer to the above question is “yes”, in whole or in part, is the commission valid and/or properly appointed and does the respondent have the jurisdiction to inquire into those particularized matters?
- 3) an interim and/or interlocutory Order pursuant to s. 95(3) of *The Manitoba Evidence Act*, C.C.S.M. c. E150, directing no further proceedings to be taken by the respondent pending the decision of the stated case before the Manitoba Court of Appeal pursuant to s. 95(1) of the said Act;
 - 4) the costs of this Motion on a solicitor and client basis; and
 - 5) such further and other relief as counsel may advise and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

- 1) Short leave is required if necessary for the hearing of this motion as the public interest requires that this matter be dealt with quickly.
- 2) Pursuant to Manitoba Order in Council No. 89/2011 dated March 23, 2011 (hereinafter referred to as the “Order in Council”), the Lieutenant Governor in Council for the Province of Manitoba appointed the respondent to inquire into, among other things, 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.

(hereinafter referred to as the "Inquiry")

- 3) The Order in Council purports to appoint the respondent as the Commissioner for the Inquiry pursuant to s. 83(1) of *The Manitoba Evidence Act*, C.C.S.M. c. E150 (the "Evidence Act").
- 4) Provisions of *The Child and Family Services Act*, C.C.S.M. c. C80 and *The Fatality Inquires Act*, C.C.S.M. c. F52 otherwise regulate the Inquiry.
- 5) On or about June 29, 2011, the respondent granted standing to the applicant to participate as a party in the Inquiry.
- 6) On January 31, 2012, pursuant to s. 95(1) of the Evidence Act, the applicant, as a party affected by the decisions, orders, directions, or other actions of the respondent, sent a written request to the respondent to state a case to the Manitoba Court of Appeal on the following questions:
 - a) 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*, C.C.S.M. c. C80

and *The Fatality Inquiries Act*, C.C.S.M. c. F52, as defined in section 83(1) of *The Manitoba Evidence Act*, C.C.S.M. c. E150?


b) 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?

- 7) On February 3, 2012, the respondent sent a written reply to the applicant refusing to state a case to the Manitoba Court of Appeal on the questions provided or at all.
- 8) *The Child and Family Services Act*, C.C.S.M. c. C80, including ss. 8.2.3 and 76;
- 9) *The Fatality Inquiries Act*, C.C.S.M. c. F52, including ss. 10, 25 – 44;
- 10) *The Manitoba Evidence Act*, C.C.S.M. c. E150, including: ss. 83 and 95;
- 11) *The Court of Appeal Rules*, Man. Reg. 555/88, including: rules 42, 43.1 and 44;
- 12) *The Court of Appeal Act*, C.C.S.M. c. C240; and
- 13) Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- 1) the Affidavit of the Shannon Hastman, sworn February 3rd, 2012, *to be filed*; and
- 2) such further and other evidence as counsel may advise and this Honourable Court may permit;

Date: Feb 3, 2012


J.B. Harvie

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- TO: THE REGISTRAR OF THE MANITOBA COURT OF APPEAL**
Law Courts Building
100E, 408 York Avenue
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- AND TO: THE HONOURABLE EDWARD HUGHES, COMMISSIONER**
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ATTENTION: SHERRI WALSH
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- AND TO: DEPARTMENT OF FAMILY SERVICES AND CONSUMER AFFAIRS**
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- AND TO: THE GENERAL CHILD AND FAMILY SERVICES AUTHORITY, FIRST
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