

Citation: The Southern First Nations Network of  
Care et al. v. The Honourable Edward Hughes,  
2012 MBCA 83

Date: 20120907  
Docket: AI 12-30-07838

**IN THE COURT OF APPEAL OF MANITOBA**

**BETWEEN:**

<b>THE SOUTHERN FIRST NATIONS</b>	)	
<b>NETWORK OF CARE, THE GENERAL</b>	)	
<b>CHILD AND FAMILY SERVICES</b>	)	
<b>AUTHORITY, THE FIRST NATIONS OF</b>	)	
<b>NORTHERN MANITOBA CHILD AND</b>	)	
<b>FAMILY SERVICES AUTHORITY and</b>	)	<b>K. M. Saxberg and</b>
<b>CHILD AND FAMILY SERVICES ALL</b>	)	<b>S. C. Scarcello</b>
<b>NATIONS COORDINATED RESPONSE</b>	)	<i>for the Applicants</i>
<b>NETWORK</b>	)	
<b>(THE "AUTHORITIES AND ANCR")</b>	)	<b>S. M. Walsh and</b>
	)	<b>D. M. Olson</b>
<i>Applicants</i>	)	<i>for the Respondent</i>
	)	
<i>- and -</i>	)	
	)	<i>Chambers motion heard:</i>

**THE HONOURABLE EDWARD HUGHES,** ) **August 28, 2012**  
*in his capacity as Commissioner under* )  
**The Manitoba Evidence Act and as appointed** ) *Decision pronounced:*  
*pursuant to Order in Council No. 89-2011,* ) **September 7, 2012**  
**dated the 23<sup>rd</sup> day of March, 2011** )  
) )  
*Respondent* )

**MARC M. MONNIN J.A.**

1 This is an application under s. 95(2) of *The Manitoba Evidence Act*, C.C.S.M., c. E150 (the *Act*), for an order directing the Commissioner in the Commission of Inquiry into the circumstances surrounding the death of Phoenix Sinclair (the Inquiry) to state a case to be heard by a panel of this court. The respondent, The Honourable Edward Hughes, is the Commissioner (the Commissioner) appointed to conduct the Inquiry.

2 The applicants, 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 (the Authorities) and the Child and Family Services All Nations Coordinated Response Network (the ANCR), are agencies involved in child protection and care throughout Manitoba and have standing before the Inquiry as parties. The issue to which the stated case relates is the Commissioner’s decision not to order disclosure of transcripts of interviews that the Inquiry’s counsel have conducted with witnesses in preparation for public hearings which commenced September 5th.

3 I have concluded that the applicants have satisfied the requirement to show that the matter which they seek to appeal by stated case is of sufficient importance to warrant a review by a panel of this court and has a reasonable chance of success. Given that decision, I must be circumspect in discussing the strength and validity of the arguments advanced by the applicants. Within that restriction, I will attempt to outline briefly the reasons for my concluding that a case should be stated.

### **Background**

4 Order in Council No. 89/2011 dated March 23, 2011, appointed the respondent as a Commissioner to inquire into:

... [T]he 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.

5 The Commissioner is tasked to report his findings on these matters and to make such recommendations as are considered appropriate to better protect children in Manitoba.

6 Paragraph 4 of the Order in Council allows the Commissioner to “consider any court transcripts and similar documents, which are not subject to a legal claim of privilege, and may give them any weight” as he wishes to, “including accepting them as conclusive.” The Commissioner must not express any conclusion or recommendation about the civil or criminal liability of any person.

7 Paragraph 9 of the Order in Council gives the Commissioner the ability to interview any persons connected with the matter:

Before public hearings take place, the commissioner may interview any person connected with the matters referred to in paragraph 1. On the commissioner's behalf, interviews may be conducted by counsel for the commissioner, either alone or in the commissioner's presence. If conducted alone, counsel must give the commissioner a transcript or a report of each interview. The commissioner may, in his discretion, rely on the evidence gathered in this manner.

8 Commission counsel was appointed on April 15, 2011. Applications for standing at the inquiry were heard and ruled upon by June 29, 2011.

9 The Inquiry's rules of procedure and practice were issued on June 29, 2011, and amended on August 23, 2011.

10 For the purpose of this application, the relevant provisions of the rules are as follows:

3. In these Rules:

- (i) "Commission counsel" refers to counsel appointed by the Commissioner and retained by the Government of Manitoba to act as Commission counsel, and includes any associate counsel or junior counsel appointed by "Commission counsel" with the approval of the Commissioner and under the authority of Commission counsel's retainer;
- (ii) the term "documents" is intended to have a broad meaning, and includes the following forms: written, electronic, audiotape, videotape, digital reproductions, photographs, maps, graphs, microfiche and any data and information recorded or stored by means of any device;
- (iii) "intervenor" refers to a person granted status as an intervenor by the Commissioner pursuant to paragraph 9;

- (iv) “party” refers to a person granted full or partial standing as a party by the Commissioner pursuant to paragraph 8; and

....

- 21. Commission counsel may interview persons believed to have information or documents bearing on the subject-matter of the Inquiry. The Commissioner may choose whether or not to attend an interview.
- 23. If Commission counsel determines that a person who has been interviewed should be called as a witness in the public hearings referred to in paragraph 2, Commission counsel will prepare a summary of the witness’ expected testimony, based on the interview (“Summary”). Commission counsel will provide a copy of the Summary to the witness before he or she testifies in the hearing. After the Summary has been provided to the witness, copies shall be disclosed to the parties and intervenors having an interest in the subject matter of the witness’ evidence, on their undertaking to use it only for the purposes of the Inquiry, and on the terms described in paragraphs 27 and 28 below.
- 24. The Summary of a witness’ expected testimony cannot be used for the purpose of cross-examination on a prior inconsistent statement.
- 25. Pursuant to section 9 of Order in Council 89/2011, if Commission counsel determines that it is not necessary for a person who has been interviewed to be called as a witness, or if the person interviewed is not otherwise able to be called to testify at the public hearings referred to in paragraph 2, Commission Counsel may tender the Summary to the Commissioner at the hearing, and the Commissioner may consider the information in the Summary when making his final findings, conclusions and recommendations.
- 26. Unless the Commission orders otherwise, all relevant non-privileged documents in the possession of the Commission shall be disclosed to the parties and intervenors at a time reasonably in advance of the witness interviews and/or public hearings or within a reasonable time of the documents becoming available to the Commission.

11 As noted by the Commissioner in his reasons for decision, the rules were  
adopted after review and acceptance of them by all counsel, including counsel for  
the applicants in this motion.

12 Under the provisions of *The Child and Family Services Act*, C.C.S.M., c.  
C80, child welfare records are protected from disclosure and may not be disclosed  
without a court order. Such a court order was obtained on October 21, 2011. In  
November 2011, the Commissioner announced that Commission counsel would, in  
light of the availability of child welfare records, review such documentation and  
interview the witnesses who had provided child welfare services to or had contact  
with Phoenix Sinclair and her family.

13 Commission counsel and her colleagues proceeded to interview witnesses.  
The method that was followed at the outset, which had been discussed with  
counsel for the parties, was that notes would be taken by interviewing counsel of  
what the witnesses said. From the notes would be prepared summaries of  
witnesses' testimony. Copies of the summaries, after review by the witness, would  
be disclosed to the parties having an interest in the subject-matter as well.

14 It soon became apparent to Commission counsel that note-taking would not  
be sufficient to achieve the timelines set by the Inquiry. Secretarial staff were  
freed up to take notes instead of Commission counsel. However, given that they  
were not familiar with the subject matter of the evidence, it was difficult for them  
to keep up their note-taking. They had to resort to recording the interviews and  
transcribing the recordings afterwards. Eventually, that led to recording all  
interviews and transcripts being prepared for all witnesses thereafter. As explained  
by Commission counsel, these were not transcripts in the legal sense as there was  
no court reporter present, nor were the interviews conducted with the witnesses

under oath.

15 Whether the interviews took place with associate counsel taking notes or by an audio-recording being made, all witnesses were advised that the interviews were for the purpose of informing Commission counsel of the evidence they required in order to prepare for the hearing. Witnesses were told that the notes or recording, or transcripts made of them, would not be made available to other parties, although a summary of their evidence would be prepared, shown to them and then circulated to other parties to the Inquiry.

16 At some time in March or April 2012, the applicants became aware of the fact that Commission counsel were recording the interviews and having the recordings transcribed, with each witness then certifying the transcript as being accurate. In early May 2012, counsel for the applicants indicated to Commission counsel that they believed the transcripts should be produced to parties and intervenors. Commission counsel, after considering the request, eventually responded on June 4, 2012, denying the request to produce. On the same day, the Inquiry set a deadline of July 4, 2012, for the filing of any procedural motions.

17 On July 4, 2012, the applicants brought a motion requesting the production of any transcripts of witness interviews conducted by the Inquiry, or, in the alternative, allowing witnesses who consented to the release of their transcripts to the parties and intervenors to do so.

18 Commission counsel filed a brief opposing the relief sought by the applicants. In her brief, Commission counsel objected to the request as, in her view:

- a) the request was contrary to the Inquiry's rules of procedure and practice;

- b) it was contrary to the principles of fairness and not in the public interest; and
- c) granting the request would cause significant delays and unnecessary costs.

19 No other party or intervenor opposed the relief requested by the applicants. Two individuals, who have standing as parties, supported the request. The matter was argued before the Commissioner, and by a written ruling of August 1, 2012, the Commissioner denied the request.

20 Two days later, on August 3, 2012, the applicants wrote to the Commissioner requesting that a case be stated to the Manitoba Court of Appeal. On August 8, 2012, the Commissioner replied, refusing the stated case, and the applicants brought this motion on August 16, 2012.

### **Preliminary Issue with Respect to Apprehension of Bias**

21 Prior to the hearing of the motion requesting disclosure of the transcripts, counsel for the applicants filed a reply brief raising a preliminary issue, arguing that, since Commission counsel took a position opposing the motion, there was a reasonable apprehension of bias established with respect to the Commissioner. The applicants argued that, given the role of Commission counsel, the function carried out by her and the requirement for her to remain impartial, the fact that she took a position would lead a reasonable person to conclude that there was a real likelihood that the Commissioner could not decide the matter fairly.

22 The relief requested at the hearing, on this issue, was for Commission counsel's material to be withdrawn and not be considered by the Commissioner. The Commissioner rejected that request summarily.

### **The Decision on the Substantive Motion**



23 The Commissioner set out the applicants' request as follows, namely, that he make an order:

...

1. Compelling Commission Counsel to provide the Transcripts of witness interviews (the "Transcripts") conducted by the Commission to the parties and intervenors to this Inquiry upon request;
2. In the alternative, allowing witnesses who consent to the release of their Transcripts to provide them to the parties and intervenors to this Inquiry upon request;
3. That the parties and intervenors who request and receive the Transcripts undertake to use the Transcripts only for the purposes of this Inquiry and to return the Transcripts to the Commission within seven days of the Commissioner releasing his final Report;

....

24 After reviewing the rules of procedure of the Inquiry, the Commissioner set out the explanation by Commission counsel of how the interview procedures had changed from a note-taking exercise to a transcript exercise, stating that, to him, it was apparent that Commission counsel had followed the procedure outlined in rule 26 of the Inquiry's rules of procedure and practice.

25 The Commissioner was of the view that the applicants based their entitlement to disclosure of the transcripts on two grounds, namely:

- a) that the transcripts were required to be disclosed by virtue of the principles of natural justice and procedural fairness; and
- b) that disclosure was required by rule 26 of the Inquiry's rules of procedure

and practice.

26 Dealing with the first ground, he found no breach of the principles of natural justice and procedural fairness by not granting disclosure of transcripts. In his view, once the context within which the transcripts were prepared was understood, including that they were, in fact, prepared in the place of Commission counsel's note-taking function, it was clear that they were created as part of Commission counsel's role in compliance with rule 23. The applicants were therefore not denied anything that they should have expected to receive. Furthermore, and more importantly, since Commission counsel had given all potential witnesses the assurance that the transcripts would be retained in confidence, he concluded that it would be unfair to her for the Inquiry to now order the distribution to all parties and intervenors. In his view, to do so would bring the credibility of the Inquiry into question and potentially result in far less candidness if witnesses took the stand believing that Commission counsel had deceived them.

27 As to the argument that this court's decision in *Hudson Bay Mining and Smelting Co. v. Cummings, P.C.J.*, 2006 MBCA 98, 208 Man.R. (2d) 75, required disclosure, he distinguished the case on the following basis:

- a) that the *Hudson Bay* decision was in relation to an inquest and not a public inquiry;
- b) a public inquiry operated under its own rules of procedure and could adopt those necessary to provide a timely and cost effective adjudication of the rights of the parties;
- c) in *Hudson Bay* there was no indication that summaries were ever offered or provided to counsel or parties of standing; and

d) in *Hudson Bay* there was no evidence that the comments of witnesses were made with the expectation that they would be kept confidential, as compared to the manner in which the interviews were conducted by Commission counsel in this case.

28 As to the second ground, namely reliance on rule 26, which provides that all relevant and non-privileged documents in the possession of the Inquiry are to be disclosed unless the Inquiry orders otherwise, he dismissed the argument on the basis that rule 26 was to cover documents received by the Inquiry and not documents created by it or for its own internal purpose.

29 As to the alternative request for relief, being an order to allow witnesses who consented to the disclosure of their transcripts to other parties to do so, the Commissioner declined to make such an order. His view was that such an order would lift the confidentiality ban to which each witness had agreed. He was influenced by the following three factors, which, taken cumulatively, indicated to him that the principles of natural justice and procedural fairness would be best served by following the method of presentation of evidence on the basis understood by all parties:

- a) he was of the view that confusion would arise for unrepresented witnesses, given the assurance of confidentiality communicated to them by Commission counsel;
- b) there would be a lack of consistency in disclosure given that for a number of the interviews, no transcripts existed and there was an indication that some witnesses had expressed concerns about disclosure of their transcripts; and
- c) there would be a time-consuming redaction process for each transcript

depleting resources of the commission counsel's office.

30 He also noted that the two individuals who supported the application and had only received their own transcripts, compared to the substantial number for other parties (35 for the Manitoba Government Employees' Union and 15 for the Department of Family Services and Labour), would not be treated unfairly since no counsel had seen the transcript of anyone else's clients.

### **Request for Stated Case**

31 The applicants requested that the Commissioner state a case addressing the following issues:

- 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?

32 In a decision delivered by letter dated August 8, 2012, the Commissioner declined to do so. The Commissioner articulated his view that he had no difficulty reaching the decisions he did and was unable to conclude that the request to state a case was justifiable.

### **Hearing of this Application**

33 At the hearing of this application before me, Commission counsel appeared,

but advised me that her instructions were not to make a submission or file written material. The Commissioner's position with respect to the matters at issue were indicated to be set out in his reasons for denying the applicants' motion for disclosure and his letter refusing to state a case. Commission counsel offered to answer any questions, but otherwise did not make submissions. She did advise me that some witnesses indicated a concern with their transcripts being made available to others.

### **Role of Judge of Court of Appeal under s. 95**

34

Section 95 of the *Act* provides as follows:

#### **Stated case for Court of Appeal**

**95(1)** Where the validity of a commission issued under this Part or the jurisdiction of a commissioner appointed thereby or the validity of any decision, order, direction, or other act, of a commissioner appointed under this Part, is called into question by any person affected, the commissioners, upon the request of that person, shall state a case in writing to The Court of Appeal setting forth the material facts, and the decision of the court thereon is final and binding.

#### **Order directing stated case**

**95(2)** Where the commissioners refuse to state a case, any person affected may apply to a judge of the court for an order directing the commissioners to do so.

#### **Proceedings stayed until case determined**

**95(3)** Pending the decision of the stated case no further proceedings shall be taken by the commission.

**Action or injunction not to lie against commissioner**

**95(4)** No action shall be brought or other proceeding taken with respect to anything done, or sought to be done, by a commissioner or to restrain or interfere with, or otherwise direct or affect the conduct of any commissioner.

35 This is the second time that an application has been brought under s. 95(2) for an order directing the Commissioner in this particular Inquiry to state a case. The previous decision is that of my colleague Freedman J.A. in *Manitoba Government and General Employees' Union v. Hughes*, 2012 MBCA 16, 275 Man.R. (2d) 256 (*MGGEU*).

36 In that case, the applicant union, which had standing as a party to the Inquiry, questioned the validity of the Inquiry and the jurisdiction of the Commissioner. The Commissioner refused to state a case and the matter came before this court by means of an application under s. 95(2).

37 The applicant in *MGGEU* sought to have this court conclude that the use of the word “shall” in s. 95(1) should be construed as mandatory and not directory. My colleague Freedman J.A. concluded otherwise and found that the Commissioner had the discretion to evaluate the request for the stated case and to exercise his judgment on its justifiability. A party who is dissatisfied with that decision, namely not to state a case, then has the recourse provided by s. 95(2).

38 Freedman J.A. was of the view, with which I agree, that, under s. 95(2) of the *Act*, just as the Commissioner has a discretion to exercise when a request is made for him to state a case, a judge of the Court of Appeal must also engage in a judicial evaluation of the applicant's position before exercising a discretion. In

that sense, a chambers judge performs a “gatekeeper function” and the law relating to leave applications is applicable by analogy, as is the law relating to the extension of time. He then concluded that (at para. 56):

... [T]he role of the judge on an application such as this is to determine two matters. First, the judge determines if the applicant for the stated case has shown that the matter proposed to be determined is of some importance, warranting the attention of the court. If the work of a commission is to be suspended, that should only occur if the issue raised meets that standard. Second, the judge determines if the applicant has shown that the case it proposes be heard by the full court is an arguable case that has a reasonable prospect of success. Weak cases with little chance of success should not be sent for a hearing with the consequential suspension of the proceedings of a commission.

39 Therefore, my role in this decision is not to evaluate whether or not the Commissioner’s decision will ultimately be upheld, but only whether or not the issue advanced by the applicants raises a matter of some importance and that the arguments present an arguable case that has a reasonable prospect of success.

### **Analysis**

#### *A. Reasonable Apprehension of Bias*

40 I have concluded on this ground that the applicants have not satisfied me that they have a reasonable prospect of success. While I recognize that the issue of the role of Commission counsel is an important one, I am not satisfied that the taking of a position on a motion before the Commissioner would lead a reasonable, well-informed party to reach the conclusion that the Commissioner could not reach a fair decision on the matter.

41 The evidence which the applicants claim support their allegation of a reasonable apprehension of bias relates simply to the fact that Commission counsel

is appointed by the Commissioner, assists him in carrying out his mandate and acts throughout the Inquiry on behalf of and on the instructions of the Commissioner. There is no doubt that Commission counsel has an obligation to maintain public confidence in the impartiality of the Inquiry and can be viewed in some respects as the alter ego of the Commissioner.

42           However, that does not mean that Commission counsel is required to act as an adjudicator, namely, to take a neutral role in all decisions which the Commissioner must make. In fact, the contrary is the case. Commission counsel is to provide the Commissioner with her best advice on what the law provides or what fairness dictates. In my view, she was entitled, in accordance with her role and responsibilities, to advise the Commissioner of the context within which the transcripts were created, the assurances she gave to witnesses, and what the consequences of disclosure of the transcripts would be. For her to conclude that they should not be disclosed is appropriate in regards to the performance of her duties. It is consistent with the role of Commission counsel.

43           It would be no different if, during the course of hearing, she were to take a position on a procedural matter such as, for example, the appropriateness of a question she were to formulate in the examination of the witness. It is not to be expected that the Commissioner would invariably rule in her favour nor would her position and his ruling lead to the conclusion that there was a reasonable apprehension of bias. Such is the situation on this motion.

44           For these reasons I would not direct that the Commissioner state a case with respect to the first matter raised in the notice of motion.

*B. Disclosure of the Witness Interview Transcripts*



45 The next two questions for which the applicants seek an order for the  
Commissioner to state a case require consideration of whether the principles of  
natural justice and procedural fairness or the Inquiry's rules of procedure require  
the disclosure of the witness interview transcripts to the parties and intervenors. I  
will deal with those two matters jointly as they are interrelated.

46 As discussed earlier, I am of the view that a case should be stated with  
respect to the issue of disclosure.

47 At the core of the dispute between Commission counsel and the applicants is  
the creation of the transcripts. Commission counsel's position, accepted by the  
Commissioner, is that the transcripts are nothing more than a substitute for the  
notes of counsel from which all parties were expecting summaries to be prepared.  
Only the summaries were contemplated to be provided and then only for those  
individuals who were interviewed and who were actually to become witnesses at  
the hearing.

48 The applicants' position is that the creation of transcripts for all those  
interviewed is something which was not contemplated by the parties or dealt with  
by the rules. The applicants argue that the existence of transcripts certified by the  
witnesses and interviewees places different dimensions on the use that can be made  
of such documents at the hearing.

49 Counsel for the applicants argue that there is significant difference between  
a transcript and a summary, although they do not challenge the accuracy of the  
summaries provided. They submit that the ability to review the transcripts would  
allow assessment of aspects of the witnesses' evidence which is not fully disclosed  
in the summary and a review of those parts which may have been omitted by the  
summary-making process for different reasons. In their submission, since the

information contained therein is not privileged and is relevant, it is in the interests of procedural fairness that it should be disclosed.

50 Commission counsel confirmed that the transcripts were the basis of the preparation of the summaries and, while the transcripts were not intended to be used by her office (nor for any of other parties for that matter) for purposes of cross-examination, they would be used to frame and “inform” the evidence of the witnesses.

51 This court, in *Hudson Bay*, found that copies of interview transcripts prepared by Crown counsel when they interviewed potential witnesses were required, under the principle of procedural fairness, to be produced as they were relevant, non-privileged documents. The Commissioner seeks to distinguish *Hudson Bay* on the premise that the Inquiry’s own rules of procedure are involved, summaries are available and an assurance of confidentiality was given.

52 The response by the applicants is that, whatever the rules the Inquiry has chosen to follow, they must be subject to the requirements of procedural fairness. The summaries are insufficient when compared to the transcripts in terms of achieving procedural fairness. As to the assurance of confidentiality, they say that it was a limited one which does not meet the tests set out in the jurisprudence to maintain the need for non-disclosure.

53 In my view, the applicants have raised an issue which is one of importance. The transcripts appear to be documents of a similar nature to those this court has found to be subject to disclosure under principles of procedural fairness in a case bearing a strong similarity to what was before the Inquiry. As well, consequences of not dealing with the issue at this time open the Inquiry’s work to potential challenge at a later time (see *Chrétien v. Canada (Ex-Commissioner, Commission*

*of Inquiry into the Sponsorship Program and Advertising Activities*), 2008 FC 802, [2009] 2 F.C.R. 417).

54           Secondly, the argument advanced by the applicants that procedural fairness requires the disclosure, notwithstanding the rules under which they are created, is one that may require an assessment of whether the claim for confidentiality survives under the *Wigmore* test. It is not a frivolous position and, whether it will be successful or not, deserves to be considered by a panel of this court.

55           I would therefore grant the request that the Commissioner be directed to state a case with respect to those two issues.

### **Alternative Relief**

56           The motion before the Commissioner proposed an alternative means of dealing with the request, namely, that those witnesses who consented to share their transcripts with other parties and intervenors, be allowed to do so. The Commissioner denied that alternative relief. It does not form part of the motion before me. The Commissioner gave his reasons why he did not wish to proceed in that fashion. The parties may wish guidance from the panel on whether such a method would achieve procedural fairness. I leave it to the Commissioner to add anything he wishes in that respect in the stated case.

### **Delay**

57           The notice of motion requests that I grant an interim order directing that the Inquiry continue its proceedings while the stated case was being heard and determined. At the hearing of the motion, counsel for the applicants recognized that the wording of s. 95(3) would not permit such an order. This interpretation

was not challenged by Commission counsel, and I am of the view that I am unable to make such an order in light of the clear wording of s. 95(3).

58 I recognize that, by granting the request for a stated case, the public hearings, which have commenced, will have to be adjourned until after a decision. That is regrettable, but, in my view, necessary in order to have an important issue determined in a manner which will not jeopardize the future determinations of the Inquiry.

59 I have not reached this conclusion lightly. I appreciate the necessity to have the important matters before the Inquiry determined with dispatch, but I must reach the conclusion mandated by the legislation, the facts before me and the relevant jurisprudence.

60 After discussions with the Chief Justice, I can assure the parties that immediately upon receipt of the stated case from the Commissioner, this court will move as expeditiously as possible to have the matter heard and determined in the shortest time possible. Dates are available in October for hearing of this matter if the applicants and Commission counsel are able to arrange for the material to be prepared by that time.

61 I make no order as to costs, but leave that for determination by the panel of the court.

\_\_\_\_\_ J.A.