

Court File No.:

IN THE MATTER OF an Inquest into the Death of Diane Anderson, Tayjah Simpson and Jahziah Whittaker, held pursuant to the *Coroners Act*, R.S.O. 1997 c.37

AND IN THE MATTER OF an Application pursuant to section 4 the *Judicial Review Procedures Act*, R.S.O. 1990. c. J.1 to stay the inquest herein

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

BETWEEN:

SOPHIA ANDERSON, IESHA SIMPSON et al

Applicants

- and -

DR. DAVID EVANS, CORONER

Respondent

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicants appear on the following page.

THIS APPLICATION FOR JUDICIAL REVIEW will come on for a hearing on before the Divisional Court on a date to be fixed by the Registrar at the place of hearing requested by the applicants. The applicants requests that this application be heard at the Osgoode Hall Law Courts before the Superior Court of Justice (Divisional Court) at 130 Queen Street West, Toronto, Ontario M5H 2N5.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant

does not have a lawyer, serve it on the applicants, and file it, with proof of service, in the office of the Ontario Superior Court of Justice (Divisional Court), and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: May, 2011

Issued by

Address of court office	Local Registrar Superior Court of Justice (Divisional Court) Osgoode Hall 130 Queen Street West Toronto, Ontario M5H 2N5
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Counsel for Toronto Victim Services

APPLICATION

1. THE APPLICANTS, SOPHIA ANDERSON AND IESHA SIMPSON MAKE APPLICATION FOR:

(i) An Order in the nature of *certiorari* quashing the Ruling dated May 17, 2011 of Dr. David Evans, Presiding Coroner (the Coroner), in which the Honourable Coroner denied the Applicant's motion to call three witnesses to give evidence and for the Coroner to expand the scope of the inquest into the Deaths of Diane Anderson, Tayjah Simpson and Jahziah Whittaker;

(ii) An Order staying the Coroner's Inquest into the Death of Diane Anderson, Tayjah Simpson and Jahziah Whittaker (the inquest), scheduled to continue on Wednesday, May 25, 2011 in Toronto, Ontario, pending a decision from this Honourable Court on the main Application for Judicial Review;

(iii) An Order allowing service of documents forming the basis for the Application for Judicial Review to be effected by electronic service to counsel for the parties with counsel's consent;

(iv) An Order abridging the time for service and filing of the herein application, if necessary; and

(v) Such further and other relief as counsel may request and this Honourable Court deems just.

2. THE GROUNDS FOR THE APPLICATION ARE:

(i) On May 17, 2011, the Applicants, a party with standing at the inquest, brought a motion before the Honourable Coroner, requesting:

1. Leave to revisit the Coroner’s earlier ruling regarding motion to expand the scope of the inquest.

2. Leave to call as additional witnesses:

- Andrea Anderson – the sister of Diane Anderson
- Joanne Smith – Employment and Social Services Division of the City of Toronto (ESSD) Case Worker

3. Leave to recall the following witnesses:

- Sophia Anderson
- Stephen Flores

4. Such further and other relief as counsel may advise and this court deem just.

(ii) On May 17, 2011, Dr. Evans denied the Applicants’ motion, with written reasons released in the evening of May 18, 2011;

(iii) The Inquest into the Death of Diane Anderson, Tayjah Simpson and Jahziah Whittaker commenced on April 6, 2011 and continued through to April 29, 2011. It adjourned for two weeks and resumed on May 16, 2011 for a full week;

(iv) The inquest has heard from 36 witnesses and over 40 exhibits have been received into evidence;

(v) The Presiding Coroner's Ruling not to permit the Applicants' proposed witnesses to testify amounts to a jurisdictional error and that the parties with standing have a right to call evidence at the inquest relevant to the purposes of the inquest;

(vi) The Presiding Coroner's Ruling not to expand the scope of the inquest precludes the Applicants from having a fair hearing and from being duly heard at this inquest, precludes the jury from receiving relevant information to make effective recommendations so that the tragedy do not recur, precludes the fulfilment of the public interest mandate under the Coroner's Act.

(vii) The Honourable Coroner erred in fact, law and/or mixed fact and law, and lost jurisdiction by finding that the Applicant had not demonstrated adequate grounds that the witnesses proposed by the Applicant will give evidence relevant to the purposes of the inquest;

(viii) The Honourable Coroner breached the principles of natural justice and transparency by dismissing the Applicants' motion expand the scope of the inquest and to call witnesses at the inquest;

(ix) Sections 31, 41, 44 and 50 of the *Coroners Act*, R.S.O. 1990, Chapter C.37;

(x) Section 4 and 6 of the *Judicial Review Procedure Act*, R.S.O. 1990, Chapter J.1; and

(xi) Such further and other grounds as counsel may advise and this Honourable Court may permit.

3. THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION:

(i) The Affidavit of Sophia Anderson sworn May 19, 2011, with exhibits attached thereto;

(ii) The materials filed upon the motions before the Honourable Coroner;

(iii) The Application Record herein;

(iv) Transcripts of portions of the evidence at the inquest;

(v) Such further and other materials as counsel may advise and this Honourable Court permits.

(Where the notice of application is to be served outside Ontario without a court order, state the facts and the specific provisions of Rule 17 relied on in support of such service.)

May 19, 2011

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LSUC # 29654H

Court File No.:

IN THE MATTER OF an Inquest into the Death of Diane Anderson, Tayjah Simpson and Jahziah Whittaker, held pursuant to the *Coroners Act*, R.S.O. 1997 c.37

AND IN THE MATTER OF an Application pursuant to section 4 the *Judicial Review Procedures Act*, R.S.O. 1990. c. J-1 to stay the inquest herein

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

BETWEEN:

SOPHIA ANDERSON, IESHA SIMPSON et al

Applicant

- and -

DR. DAVID EVANS, CORONER

Respondent

**NOTICE OF MOTION
FOR STAY OF PROCEEDING**

The Applicants, Sophia Anderson and Iesha Simpson et al, will make a Motion to a Judge on Wednesday, the 25th day of May, 2011 at 10:00 a.m. or as soon after that time as the motion can be heard at Osgoode Hall, 130 Queen Street West, Toronto, Ontario M5H 2M5.

PROPOSED METHOD OF HEARING:

The motion is to be heard:

orally.

THE MOTION IS FOR:

1. An Order staying the Coroner's Inquest into the Death of Diane Anderson, Tayjah Simpson and Jahziah Whittaker, scheduled to continue on Thursday, May 19, 2011 in Toronto, Ontario, pending a decision from this Honourable Court on the main Application for Judicial Review;
2. Leave to abridge the time for service and filing of this motion, if necessary;
3. The Applicant's costs of this application; and
4. Such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

1. On May 17, 2011, the Applicants, a party with standing at the inquest, brought a motion before Dr. David Evans, Presiding Coroner, requesting:
 - a) Leave to revisit the Coroner's ruling regarding motion to expand the scope of the inquest.
 - b) Leave to call as additional witnesses:
 - Andrea Anderson – the sister of Diane Anderson
 - Joanne Smith – Employment and Social Services Division of the City of Toronto (ESSD) Case Worker
 - c) Leave to recall the following witnesses:

- Sophia Anderson
- Stephen Flores

- d) Such further and other relief as counsel may advise and this court deem just.
2. On May 17, 2011, in the evening, Dr. Evans denied the motion with written reasons released in the evening of May 18, 2011;
 3. On May 19, 2011, the Applicant made a motion to the Presiding Coroner advising of his intention to commence an Application for Judicial Review and requesting an adjournment of the inquest pending the determination of a serious issue raised by the Applicant's Application for Judicial Review;
 4. On May 19, 2011, the Applicant's motion to adjourn the inquest was denied;
 5. On May 20, 2011, the Applicant commenced the within Application for Judicial Review;
 6. The Inquest into the Death of Diane Anderson, Tayjah Simpson and Jahziah Whittaker commenced on April 6, 2011 and continued through to April 29, 2011. It adjourned for two weeks and resumed on May 16, 2011 for a full week;
 7. The inquest has heard from 36 witnesses and over 40 exhibits have been received into evidence;

8. There are nine parties with standing, all represented by counsel, and the Presiding Coroner has counsel;

9. The Applicants allege in their Judicial Review Application that:
 - a. the Presiding Coroner's Ruling not to permit the Applicants' proposed witnesses to testify amounts to a jurisdictional error and that the parties with standing have a right to call evidence at the inquest relevant to the purposes of the inquest;

 - b. The Presiding Coroner's Ruling not to expand the scope of the inquest precludes the Applicants from having a fair hearing and from being duly heard at this inquest, precludes the jury from receiving relevant information to make effective recommendations so that the tragedy does not recur, precludes the fulfilment of the public interest mandate under the Coroner's Act.

 - c. The Honourable Coroner erred in fact, law and/or mixed fact and law, and lost jurisdiction by finding that the Applicants had not demonstrated adequate grounds that the witnesses proposed by the Applicants will give evidence relevant to the purposes of the inquest;

- d. The Honourable Coroner breached the principles of natural justice and transparency by dismissing the Applicants' motion to expand the scope of the inquest and to call witnesses at the inquest;

10. The Applicant will suffer irreparable harm if the stay is not granted as:

- a. the inquest will proceed to its conclusion and the jury will make recommendations and therefore be *functus officio*; and
- b. the application for judicial review may be rendered moot.

11. The balance of convenience favors the Applicants as:

- a. the parties will suffer no prejudice from a stay of the proceeding;
- b. if the stay is not granted, the inquest will conclude without the jury having an opportunity to hear from the witnesses proposed by the Applicants;
- c. if the Applicants are successful upon the application for judicial review, yet in the meantime the inquest is allowed to conclude, the only remedy would be for a new inquest to be called. There are nine parties with standing including the Coroner's counsel, most of which are public bodies, and this would be a significant waste of time and financial resources for witnesses,

parties and for the jurors selected who have already committed a time of five weeks into this inquest; and

- d. the balance of convenience favors a stay to permit a determination of the serious issues raised in the Application for Judicial Review.

12. Sections 4 and 6 of the *Judicial Review Procedure Act*, R.S.O. 1990, chapter J.1;
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 Sophia Anderson sworn May 19, 2011, with exhibits attached thereto;
2. Such other materials as counsel may advise and this Honourable Court may permit.

May 19, 2011

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(Entitled to notice pursuant to s. 9(4) of the *Judicial Review Procedure Act*)

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Counsel for Toronto Victim Services

Affidavit of Sophia Anderson Sworn May 19, 2011

I Sophia Anderson, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. On December 22, 2007, my sister Diane Anderson and two of her children, Tayjah Simpson and Jahziah Whittaker died tragically in a house fire in a Toronto Community Housing Project. At the time of her death a number of agencies were involved in her life, including the Children's Aid Society of Toronto (CAS), Toronto District School Board (TDSB), Toronto Fire Services (TFS), Toronto Community Housing Corporation (TCHC), Victims Services and the Social Services Division of the City of Toronto (ESSD).

2. An inquest into their deaths was scheduled for October 18, 2010. Initially, I believed the inquest would be a positive process that would help the public understand how this incident occurred and which would result in jury recommendations that could assist in avoiding this kind of tragedy in the future.

3. On or about July 29, 2010, I attended the pre-inquest meeting with my mother Hazel Anderson and my cousin, Tasha Whittaker. This meeting was held at the Coroner's Office in Toronto, Ontario. My family was not represented by a lawyer at this meeting.

4. The pre-inquest meeting left my family and I with the impression that all of the parties to the inquest were on the same page regarding the issues to be addressed at the inquest and the purpose of the inquest.

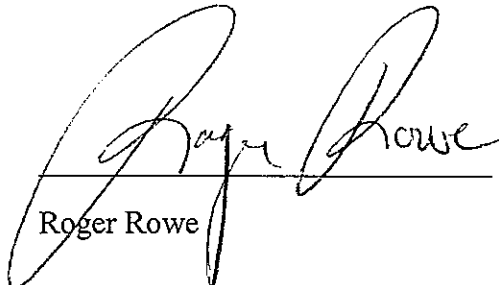
14. To address my family's concerns, Mr. Rowe brought a Motion which was heard by the Coroner on May 16, 2011. Attached hereto as "**Exhibit 1**" is a copy of the Notice of Motion.
15. Mr. Rowe informs me that the Coroner, Dr. Evans denied the motion on May 17, 2011 and that his written reasons were released in the evening of May 18, 2011. Attached hereto as "**Exhibit 2**" is a copy of the Coroner's ruling on the motion and as "**Exhibit 3**" a copy of the Coroner's reasons for ruling.
16. Given the ruling by the Coroner, my family and I do not believe that we can have a fair hearing and be heard. We are concerned that as a result of the ruling, important relevant information will be kept from the jury and they won't be able to make effective recommendations. We are concerned that the inquest is turning into a cover up.
17. On May 19th, 2011, Mr. Rowe asked the Coroner for an adjournment of the inquest pending a judicial review application and in the alternative an adjournment until May 27, 2011 to allow a stay application to be argued in Divisional Court on May 25, 2011. The Coroner reserved his decision.
18. The inquest into the death of Diane and two of her children has not been easy for my family and I. We are a close family and it has brought us a lot of pain to have Diane's life discussed and examined in detail following her passing. However, my family strongly believes that any discomfort and pain we have had to endure during this process is worth

it and we have been in favour of this inquest for the sole reason that it would help to avoid further tragedies similar to the one Diane and her children faced.

19. In order to accomplish this goal however, my family believes the jury needs to make useful recommendations and to do that, they must be provided with full and complete facts. Unfortunately, after having attended the inquest every day, and given the Coroner's most recent ruling, I do not believe that the jury has all of the relevant information it needs. Further, I do not believe my family has been fully and fairly heard, nor will they be without the denied relief that we sought in our motion. Therefore, at this point, I do not believe the jury has been given what they need to make effective recommendations that will help prevent similar deaths in the future.


20. I make this affidavit for no improper purpose.

SWORN BEFORE ME at the City of }
Toronto, in the Province of }
Ontario this 19th day of May, 2011 }



Roger Rowe

A commissioner



Sophia Anderson

This is Exhibit.....¹.....referred to in the
 Affidavit of.....Sophia Anderson.....
 Sworn before me, this.....19th.....
 day of.....May.....20.....11.....
*Roger Howe*.....
A COMMISSIONER FOR TAKING AFFIDAVITS

In the matter of the Coroners Act, R.S.O 1990, c. C.37

And in the matter of the

INQUEST TOUCHING UPON THE DEATH OF DIANE ANDERSON, TAYJAH SIMPSON, JAHZIAH WHITTAKER

NOTICE OF APPLICATION TO SEEK LEAVE TO CALL ANDREA ANDERSON AND JOANNE SMITH AND TO RECALL SOPHIA ANDERSON AND STEPHAN FLORES

The Anderson family will make a motion to the Coroner, Dr. David Evans on the 16th, day of May, 2011 at 9:30 am, or as soon after that time as the motion can be heard, at 15 Grosvenor Street, Toronto, Ontario.

The motion is to be heard orally.

THE MOTION IS FOR:

1. Leave to revisit the Coroner's ruling regarding motion to expand the scope of the inquest.
2. Leave to call as additional witnesses:
 - Andrea Anderson – the sister of Diane Anderson
 - Joanne Smith – Employment and Social Services Division of the City of Toronto (ESSD) Case Worker
3. Leave to recall the following witnesses:
 - Sophia Anderson
 - Stephen Flores
4. Such further and other relief as counsel may advise and this court deem just.

THE GROUNDS FOR THE MOTION ARE:

5. This inquest involves the tragic death of Diane Anderson and two of her children, Tayjah Simpson and Jahziah Whittaker, from a fire which occurred in their home while they were residing in Toronto Community Housing (TCHC).
6. The purpose of this inquest is to examine the circumstances of the death, to answer the five questions outlined in section 31 of the Coroner's Act and for the jury to make any recommendations it may deem fit to prevent similar deaths in future.
7. Section 41(2) of the *Coroner's Act* (the Act) states a person designated as a person with standing at an inquest may call and examine witnesses and present arguments and submissions; conduct cross-examinations of witnesses at the inquest relevant to the interest of the person with standing and admissible.
8. Section 44(1) of the Act provides that a coroner may admit as evidence at an inquest, whether or not admissible as evidence in a court, any oral testimony; and any document or other thing, relevant to the purposes of the inquest and may act on such evidence, but the coroner may exclude anything unduly repetitious or anything that the coroner considers does not meet such standards of proof as are commonly relied on by reasonably prudent persons in the conduct of their own affairs and the coroner may comment on the weight that ought to be given to any particular evidence.
9. Section 6.9 of the *Chief Coroner's Rules of Procedure for Inquests* (the Coroner's Rules) states that the following considerations are taken into account when the Coroner is making an evidentiary ruling pursuant to Section 44 of the Act: proposed evidence must be demonstrated to be relevant, material and admissible.

10. Section 6.9 (c) of the Coroner’s Rules clarifies that the test for relevance has 3 components:

- (i) Relevance to the purpose of the inquest under Section 31 of the Act;
- (ii) Relevance to the factual scope of the inquest as determined by the Coroner;
- (iii) Relevance to the interest of the person with standing.

Reconsideration of Motion to Expand Scope/ Leave to call ESSD case worker Joanne Smith

11. On March 24, 2011, the Anderson family and the Provincial Advocate for Children and Youth brought a motion to expand the scope of the inquest to include:

An examination of the services/resources provided to or accessed by the family of Diane Anderson, Tayjah Simpson and Jahziah Whittaker including the Children’s Aid Society (CAS), Toronto District School Board (TDSB), Toronto Community Housing Corporation (TCHC), Victim Services and the Employment and Social Services Division of the City of Toronto (ESSD), and the coordination of those services and the sufficiency of those services.

12. In his ruling of March 28, 2011, Dr. Evans stated as follows:

I am not aware of any evidence that establishes a connection between the involvement of The Employment and Social Services Department of the City of Toronto and the circumstances of the deaths. And no such evidence has been presented to me in any of the motion materials provided. While Social Services may have had a large impact on Diane Anderson’s life, there is no evidence that The Employment and Social Services Department of the City of Toronto may be directly connected to these deaths.

The motion to expand the scope and focus is denied. **If however as the evidence flows some connection between The Employment and Social Services Department of the City of Toronto and the deaths is established I will reconsider the motion.** (emphasis added)

13. We submit that the evidence called to date has established a connection between the Employment and Social Services Department and the deaths.

14. The Anderson family submits that the testimony of Mr. Flores has provided this connection. Specifically, one of the central issues that has arisen in the inquest is the

quality of inter agency communication between the agencies substantially involved in the lives of Diane Anderson and her children at the material times, including TCHC, Children's Aid, Victim Services, TDSB and the Toronto police.

15. As the main source of Diane Anderson's income at the time of her death, and the agency with the longest continuous involvement with her in the course of over 10 years, including involvement at all material times, the ESSD is clearly an agency which falls within the purview of those which should be considered in the context of the quality of interagency communication between agencies involved in the life of Diane Anderson.
16. Mr. Steven Flores testified that TCHC had approved Diane Anderson's request for a transfer but that they were unable to make offers at various times when a unit became available, because her rent was in arrears (Exhibit 20(f)).
17. Mr. Flores further testified that TCHC had an arrangement with the welfare office according to which there was a pay direct program that allowed ESSD to pay rent on behalf of a recipient directly to the TCHC landlord.
18. Diane Anderson did not have either tenant insurance or fire insurance. According to Mr. Flores, a reduced cost of tenant fire insurance package (\$155 a year) was worked out with an insurer named Soho, but only 3% of TCHC tenants had availed themselves of this package. According to Mr. Flores, it was possible to negotiate inclusion of tenant insurance as part of the pay direct rent arrangement with the welfare office.
19. Evidence has also been adduced that significant numbers of TCHC tenants and CAS-involved families including Diane Anderson, were on social assistance. Further, the evidence adduced thus far has established that the residents of the Jane and Finch community experience higher levels of domestic violence, child abuse and tragic occurrences compared to other communities and that Jane and Finch is one of the 13 high priority neighbourhoods identified in United Way's "Poverty by Postal Code". The proposed evidence of the Office of the Provincial Advocate for Children and Youth in

respect of the Y-Connect Report, will speak to the social determinants of health for families such as Diane's.

- 20. According to the "Children's Aid Society of Toronto's Anti-Oppression and Anti-Racism Policy" (Exhibit 33) at page 1:

Approximately 63% of the children and youth served by the Society live at or below the poverty line. Some children/youth live with a physical and or developmental disability while others identify as lesbian, gay, bisexual, transsexual, trans-gendered, gender-variant or inter-sexed. A disproportionate number of families served by the Society are single parent, women led - 51% compared to the national average of 25%.

- 21. According to the June 2009 "Report of the Paediatric Death Review Committee and Deaths Under Five Committee" by the Office of the Chief Coroner, Province of Ontario at page 41:

Children from unstable families are at much higher risk of fire deaths, and thus in need of better fire protection and prevention. Children under the protection of the CAS disproportionately come from low income families, and the association between poverty and fire deaths has been validated in many studies in the past. Children from poor neighbourhoods and low socioeconomic families have many risk factors for fire mortality. They are more likely to live in rooms with small or no windows and in houses with unsafe wiring and non-functional smoke alarms (6). They have less supervision, and are more likely to be exposed to smokers in the house and have fire-playing tendencies (5, 11). Caregivers in low income families are more likely to disable working alarms due to annoyance towards false alarms activated by cooking or cigarette smoke in cramped, overcrowded living spaces (15).

- 22. Diane Anderson was part of a demographic, Black single mother led family, unemployed on social assistance living in social housing with a grade nine education, with vulnerabilities that were exacerbated by the fact that she was residing in a social housing complex located in the Jane and Finch community – a community which is recognized as a high needs, high priority neighbourhood with more tragic occurrences, more domestic violence and more child abuse and many risk factors associated with fire mortality. Diane's family circumstances were further destabilized by domestic violence, the murder of Leroy Whittaker, the loss of a baby, and mental health and substance abuse issues.

- 23. Diane Anderson's ESSD case worker at all material times was Joanne Smith. (Affidavit of Iesha Simpson sworn March 11, 2011 (paragraphs 5-6))

24. Had Diane Anderson been on a pay direct plan, her rent would not have fallen into arrears, the TCHC landlord would thus have been able to action the transfer sooner to a unit that was better suited to the size and needs of her family, and Diane Anderson and her children would be alive today.
25. Instead, for reasons that we are not currently aware of, the ESSD welfare office determined that the TCHC housing complex at 303 Grandravine was a waived address in which home visits could not be conducted due to safety concerns – and yet, CAS and TDSB made several home visits to Diane Anderson’s home in their efforts to assist her.
26. Alternatively, we submit that like Diane, there are a significant number of TCHC tenants and CAS involved families that are single mother headed families on social assistance. **In accordance with the current scope of the inquest as defined**, to truly understand how this tragedy happened and how a similar tragedy might be averted in the future, it is critical to examine factors such as:
- Diane’s urgent need for a transfer to a larger unit given the size of her family, her wish to get out of housing to make a better life and the role of ESSD to enable this; her mental health and substance abuse issues;
 - the significant role the ESSD welfare office played as Diane’s main source of income;
 - the ESSD’s mandate as an agency required to assist Diane with income, upgrading and employment;
 - the quality of the relationship and the communication at material times between the ESSD and Diane;
 - the quality of the relationship and the communication at material times between the ESSD and TCHC and the ESSD and other helping agencies such as CAS, TDSB and Victims Services.
27. On or about March 10, 2011, Mr. Rowe received an email from Ms. Rebecca Edward with an attachment of a one page summary (hereinafter “the welfare summary” of the involvement of the welfare office with Diane. The welfare summary confirms that in March 2006 Diane’s case was terminated as she failed to attend Family Court

appointments and pursue support. According to evidence given at the inquest, it was in March of 2006 that Diane called 911 saying that she couldn't cope anymore in caring for all of her children and needed help.

28. The Anderson family respectfully submits that given the degree of involvement of ESSD in Diane Anderson's life at the material time, and their capacity to strengthen her resilience to the vulnerabilities and risk factors faced by a single mother of her demographic, a fair hearing at this inquest requires a representative from the ESSD, preferably her ESSD case worker Joanne Smith, to speak to a number of significant issues including:

- a) The mandate of ESSD;
- b) Diane's relationship and interaction with ESSD from the time of Leroy Whitaker's death;
- c) The ESSD's pay direct policy and other proactive strategies between TCHC and ESSD;
- d) The relationship and inter-agency communication between ESSD and TCHC in particular;
- e) The relationship and inter-agency communication between ESSD and the other helping agencies including TDSB, CAS, Victim Services;
- f) ESSD's home policy regarding waiver of addresses and that policy's impact on ongoing service delivery to a family and the duty to report children in need of protection under the CFSA.

Leave to call Andrea Anderson as a witness; Leave to recall Sophia Anderson

29. Diane Anderson's housing situation and the role and services TCHC provided are significant issues in this inquest. The scope of the inquest, as currently defined, includes examining TCHC and its involvement with this family and in the fire safety of the unit.

30. Diane Anderson lived in TCHC housing for several years. The jury has heard evidence that the unit TCHC provided to Diane and her children was not adequate for the size of

her family and had numerous, ongoing disrepair issues - including the effectiveness of the smoke alarms located in the unit.

- 31. The testimony of Mr. Stephan Flores for TCHC revealed to the jury that Diane Anderson had applied for a housing transfer and that her request had eventually been approved and offers made to her once her rent ceased to be in arrears. According to Mr. Flores, the TCHC offers were refused. Mr. Flores was unable to articulate any reason for the refusal.
- 32. The actual TCHC offers of transfer (Exhibit 20 (f)), contrary to the Coroner's Rules, were not disclosed to the Anderson family until after Sophia Anderson and Iesha Simpson had testified, and after Mr. Flores commenced his testimony.
- 33. The Anderson family submits that this late disclosure by TCHC of offers of transfer prejudiced the family's participation in the inquest, in the preparation and calling of witnesses, and in the preparation of cross-examination of TCHC witnesses. It is critical to a fair hearing that the Anderson family be given the opportunity to respond to the testimony of Mr. Flores and call evidence as to Diane Anderson's reasons for refusal of TCHC offers of transfer.
- 34. The sisters of Diane Anderson, namely, Sophia Anderson and Andrea Anderson have information which relates directly to these TCHC transfer offers. If they are allowed to provide their testimony, it will add necessary context of the TCHC transfer offers for the jury.
- 35. Sophia Anderson will state that she had conversations with Diane Anderson around May 2007 in respect of two TCHC offers of transfer regarding 20 Eppleworth Road, Scarborough, Ontario and 244 Bay Mills Boulevard, Scarborough, Ontario. The conversations were both by telephone and in person at Diane's residence at 303 Grandravine. In these conversations Diane informed Sophia that she refused the offers because, in respect of one of the addresses the offered premise was too unsanitary and the addresses given were in respect of what Diane described as bad neighborhoods not safe

for her children. One of the offered premises Sophia knew to be a bad neighbourhood and told this to Diane.

36. Andrea Anderson will state that she had a telephone conversation in May 2007 with Diane Anderson in respect of a TCHC offer of transfer to a Scarborough Ontario address. In this conversation, Diane informed Andrea that the previous day, she attended at an offered premise with the father of the child Travarai with the intention of inspecting and cleaning it. She started cleaning then stopped, finding that the premises were in too unsanitary a condition for her and her children, noting that there were a lot of rat droppings present.

37. Sophia Anderson did not have the opportunity to provide this testimony when she originally was called to the stand due to the late disclosure of TCHC of the specific transfer offers.

38. The evidence of Sophia Anderson and Andrea Anderson with regard to the transfer offers that TCHC made to Diane Anderson is relevant, material and admissible. It is indispensable to the discharge of the Coroner's public interest mandate, which the jury needs to hear in order to ensure a fair hearing and enable more effective recommendations from the jury.

Leave to recall Stephan Flores

39. As noted, the involvement of TCHC with Diane Anderson and her children and in the fire safety of the unit is an important issue in this inquest.

40. Stephan Flores, as the Director of Property Management at TCHC has a significant amount of information relating not only to TCHC practices and policy, but also specifics regarding TCHC's involvement with Diane Anderson.

41. From the family's perspective, Mr. Flores is the most important witness at this inquest.

42. On April 14, 2011, Roger Rowe's cross-examination of Mr. Flores on behalf of the Anderson family was amputated without reason.
43. Despite Mr. Rowe's clarification that he had more questions for Mr. Flores, he was not given the opportunity to request more time to continue the cross-examination. The Coroner, Dr. Evans, stated that Mr. Rowe's cross-examination should have been more focused.
44. Section 50(2) of the Act states that a coroner may reasonably limit further cross-examination of a witness where the coroner is satisfied that the cross-examination of the witness has been sufficient to disclose fully and fairly the facts in relation to which the witness has given evidence or where the coroner is of the opinion that the questions being asked are irrelevant, unduly repetitious or abusive.
45. The Anderson family submits that the questions asked by Roger Rowe on cross-examination of Mr. Flores were not irrelevant, unduly repetitious or abusive. Further, the Anderson family submits that Mr. Flores should be recalled as a witness as the cross-examination Mr. Rowe was permitted to conduct was not sufficient to fully and fairly disclose the facts in relation to which Mr. Flores had given evidence.
46. The Anderson family seeks to continue the cross-examination of Mr. Flores so he may address the following issues:
 - a. The more robust screens pertaining to TCHC repair work orders requested by tenants, which are retained by the TCHC manager;
 - b. The fire evacuation procedure for tenants residing at 303 Grandravine Drive;
 - c. The progress to date of the TCHC in addressing the recommendations of the Honourable Patrick J. LeSage in the "Report on the Eviction of Al Gosling and the Eviction Prevention Policy of Toronto Community Housing Corporation";

- d. The measures TCHC has considered to improve fire rescue access to 303 Grandravine Drive and similar housing projects in the Jane Finch community, in view of the alleged cost prohibitions involved in retrofitting the complex with a sprinkler system;
 - e. Other recent fires which have occurred in TCHC buildings and learnings gleaned by TCHC from those fires, eg. The September 24, 2010 fire at 200 Wellesley Street East Toronto . Further, fires which have occurred at 303 Grandravine Drive before and after the fatal fire at Diane Anderson's home and the learnings gleaned by TCHC from those fires;
 - f. How TCHC addresses cultural and language barriers possessed by its multicultural and multiracial tenant population;
 - g. TCHC communication /collaborative efforts in general with ESSD and in particular in respect of the pay direct plan for TCHC tenants in receipt of social assistance, information sharing, and the ESSD policy of waiving addresses as too unsafe to make home visits;
 - h. The reasoning behind TCHC policy to provide tenants with a clothes dryer, but not a washing machine in their suites;
 - i. TCHC' s involvement in the project of the Interclinic Public Housing Workgroup project entitled "No Fixed Address: the sorry state of Public Housing in Toronto, January 2004 and the TCHC's follow up in respect of those recommendations regarding disrepair in TCHC units;
47. The Honourable Stephen T. Goudge in his report entitled "Inquiry into Pediatric Forensic Pathology in Ontario" dated October 1, 2008 (the Report) speaks of imposing firm time limits on counsel for cross-examination during the Inquiry. However, it is important to

note that the Report states that the time for cross-examination was to be divided among the requesting counsel according to the interests of their clients in the evidence (the Report, Volume 4, page 668). Here, the Anderson family has an overwhelming interest in the testimony of Mr. Flores. It was also dependent on commission counsel conducting a very thorough and probing examination in chief.

48. Further, the Report states that the limitation of cross-examination was to assist “the efficiency of the hearing process without compromising its fairness.” (the Report, Volume 4, page 668).

49. Given the numerous above issues of significance and relevance to this inquest sought to be addressed with Mr. Flores, as well as the great significance his answers have in relation to the interests of the Anderson family, and the thousands of women and children similarly situated to Diane Anderson living in TCHC units, the family submits that fairness of the hearing process requires that Mr. Flores be recalled to enable Mr. Rowe to complete his cross-examination of this witness.

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

1. The Motion Record previously filed, of the Anderson family and the Office of the Provincial Advocate for Children and Youth, in respect of original motion to expand the scope of the inquest;
2. The affidavit of Iesha Simpson sworn March 11, 2011 previously filed;
3. The affidavits of Sophia Anderson sworn March 20, 2011 previously filed, and May 5, 2011;
4. The ruling of Dr. Evans dated March 28, 2011 in respect of scope;
5. The Goudge Report, October 1, 2008 at <http://www.attorneygeneral.jus.gov.on.ca/inquiries/goudge/report/index.html>
6. “Report of the Paediatric Death Review Committee and Deaths Under Five Committee” by the Office of the Chief Coroner, Province of Ontario, June 2009

7. Such further and other documents as counsel may advise and the Coroner permit.

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Toronto Ontario
M3J 2G2

Tel (416) 739-0271
Fax (416) 739-0445

This is Exhibit...2.....referred to in the
 Affidavit of...Sophia Anderson.....
 Sworn before me, this...19th.....
 day of...may.....20...11.....
[Signature].....
A COMMISSIONER FOR TAKING AFFIDAVITS

Rulings on the Motions to Add and Motions to Re-Call Witnesses
at the Inquest into the Deaths of Diane ANDERSON, Jahziah
WHITTAKER and Tayjah SIMPSON

Heard in Court at 180 Dundas Street West on May 16th to 17th 2011

Given the lateness in the day, I propose to simply issue the rulings on the motions at this time, so that we can utilize our day tomorrow, and hear evidence. Reasons will follow.

1. Motion to Re-Call Sophia Anderson is denied
2. Motion to Re-Call Steve Flores is denied
3. Motion to introduce Steve Flores's Affidavit on the manager's screen for TCHC's easy trac system is allowed
4. Motion to call Andrea Anderson is allowed. Her testimony will be limited to the conversation on the telephone and the direct conversation she had with Ms. Diane Anderson concerning the transfer offer she received from TCHC to move to a larger unit in Scarborough.
5. Motion to call Joanne Smith is denied
6. Motion to expand the Scope & Focus of this Inquest is denied
7. Motion to call a yet to be identified witness from ESSD, is denied
8. Motion to Re-call Dr. Marc Pelletier is allowed. Dr. Pelletier's evidence will be restricted to interpreting the blood alcohol concentration of Diane Anderson into equivalent amounts of standard alcoholic beverages using the various weight estimates that have been identified.
9. Motion to call Mr. Alex Lovell is denied
10. Motion to call Dr. Grace Galabuzi is denied
11. Motion to call Byron Gray is denied

We will begin tomorrow at 9:30 a.m. by hearing from Andrea Anderson and Dr. Pelletier and I would ask that Mr. Lukasiewicz introduce Steve Flores's affidavit to the jury.

This is Exhibit.....3.....referred to in the
 Affidavit of.....Sophia Anderson.....
 Sworn before me, this.....19th.....
 day of.....May.....20..11.....
Regina Rowe.....
A COMMISSIONER FOR TAKING AFFIDAVITS

Ruling on the Motion by the Family to re-visit the march 24, 2011 ruling on the Scope & Focus of the inquest, recall Steve Flores and Sopha Anderson and add Joanne Smith and Andrea Anderson in the Inquest into the Deaths of Diane ANDERSON, Jahziah WHITTAKER and Tayjah SIMPSON
*Note the Provincial Advocates Motion to have Crown Counsel identify and call an appropriate witness from ESSD was heard with this motion

Heard in Court at 180 Dundas Street West on May 16th 2011

Sophia Anderson & Andrea Anderson

Mr. Rowe, counsel for the family presented a motion to recall Ms. Sophia Anderson for further examination, and a motion to call a new witness, Ms. Andrea Anderson.

Mr. Rowe requests that Sophia Anderson be re-called to clarify the reasons why Ms. Diane Anderson did not accept TCHC's offers of larger housing units in different communities. Similarly, he requests that Andrea Anderson be re-called to again speak to the discussion she had with Ms. Diane Anderson about the offer of a larger 4 bedroom townhouse unit in Scarborough.

Mr. Rowe contends that Mr. Lukasiewicz introduced the transfer documents through Mr. Flores, after Sophia Anderson had testified, and this was in clear violation of the Coroners' Rules. Mr. Lukasiewicz indicates these documents were introduced, only in response to issues raised by Ms. Anderson in the course of her evidence in chief.

Ms. Fraser and Ms. Hofbauer supported the motions for the Provincial Advocate for Children and Youth [hereinafter PACY] and for the Children's Aid Society [hereinafter CAS], respectively.

Mr. Lukasiewicz for the Toronto Community Housing Corporation [hereinafter TCHC], Mr. Gourlay for the Toronto Fire Service [hereinafter TFS] and Ms. Edward, Coroners Counsel opposed the

motion on the basis that the transfer evidence introduced was not new evidence as it persisted throughout the brief in Mr. Flores' will state and in the welfare summary. Counsel further contend that this issue is a collateral one that is irrelevant to the scope and focus of this inquest.

The remaining parties, Children's Aid Workers [hereinafter CAW], Victim Services [hereinafter VS], Toronto District School Board [hereinafter TDSB] and the Ontario Fire Marshal [hereinafter OFM] indicated they took no position on the motion.

Analysis & Ruling:

Section 44 of the Coroners Act states

44.(1) Subject to subsections (2) and (3), a coroner may admit into evidence at an inquest whether or not admissible as evidence in a court,

(a) any oral testimony; and

(b) any document or other thing,

relevant to the purposes of the inquest and may act on such evidence, but the coroner may exclude anything duly repetitive or anything the coroner considers does not meet such standards of proof as are commonly relied on by reasonably prudent person in the conduct of their own affairs and the coroner may comment on the weight that ought to be given to any particular evidence.

Upon reviewing the contents of the motion, hearing the submissions from counsel and reviewing Ms. Sophia Anderson's will state and Andrea Anderson's Will states, I find that TCHC did not adhere to the proper rules of production articulated in the Coroners' Rules. Consequently, Mr. Rowe did not have a fair opportunity to review these documents with his client before she testified. I accept however that these documents were only introduced in response to issues raised in Sophia Anderson's evidence in chief. So while, these documents and this issue do not fall within the Scope and Focus of this inquest, I think that in fairness to the family and to

ensure that the jury has all the information around this issue, clarification by the family is necessary.

Allowing both Andrea and Sophia Anderson to testify however would be unduly repetitious and contrary to the Coroners' rules.

Consequently looking at the Will Says of these 2 proposed witnesses and Sophia Anderson's prior evidence, I am not prepared to re-call Sophia Anderson, but will allow Andrea Anderson to be called for the sole purpose of dealing with the transfer issue. Her testimony will be limited to the conversation on the telephone and the direct conversation she had with Ms. Diane Anderson concerning the transfer offer she received from the TCHC to move to a larger unit in Scarborough.

In her initial testimony, Sophia Anderson already provided the court with her understanding of the TCHC transfer process and Diane's involvement with it. Her Will Say does not add anything of further significance and is vague and imprecise with respect to her communications with Diane Anderson on this topic. In contrast, Andrea Anderson appears to recollect a specific incident, and appears to have a better understanding of Ms. Diane Anderson's reasons for not accepting the transfer offer from Toronto Community Housing Corporation.

Steve Flores

Mr. Rowe requests that Mr. Flores be re-called so that he can complete certain areas of cross-examination, that he indicates he was prevented from addressing because he had exceeded the time that had been allocated to him for examination. Mr. Rowe has listed the further areas he would like to examine Mr. Flores on in Paragraph 46 sections a) to i) of his motion record. He further indicates that these areas are of significant importance to the family and he did not feel that he was given an opportunity to conduct a sufficient examination.

The application was supported by PACY, and opposed by TCHC, TFS and Coroner's counsel. All other parties took no position on Mr. Flores being re-called.

Ruling:

I find that all the areas that Mr. Rowe indicates he has left to review with Mr. Flores, with the exception of that articulated in a), are collateral to the scope and focus of this inquest and will not help the jury with their task.

The parameters on cross examination were made clear to Mr. Rowe and the other parties at the beginning of the inquest, and none of the other parties appear to have experienced any issues in abiding by these restrictions. Coroners' Counsel's examination in chief lasted approximately 1 hour and 45 minutes and Mr. Rowe's cross examination lasted a little over an hour, leaving the remaining 8 parties with 40 minutes to divide among them. If further time was required to complete cross examination counsel were aware of their option to request further time by specifying the further areas they wished to cover and the relevance of these areas to their clients and the scope and focus of this inquest. This was not done at that time, and the information I currently have with respect to the areas left to cover, suggest that I would not have granted his request for an extension as these areas are collateral to the issues of this inquest and would not assist the jury in any way.

The area articulated in subsection a) of paragraph 46 of the Family's motion record relates to a question that was asked by a juror about more robust screens or screens available to managers so repair work can be documented and followed up on. This is specifically an area that came up in evidence and that the jury requested clarification on. Consequently that information should be provided to the jury.

The question now however is in what form this information should be introduced. Mr. Rowe and Ms. Fraser indicated that they were opposed to the Affidavit of Mr. Flores but could not articulate any reasons for their opposition, other than to indicate they would like him to testify on the other issues. Given that I have found the other

proposed areas of evidence irrelevant, and that I have not received any information about the areas of the affidavit counsel have concerns about, I will permit the evidence to be introduced via Affidavit.

Expansion of Scope & Focus to include ESSD

Mr. Rowe submitted a motion requesting the coroner to reassess his original decision on the scope and focus of the inquest of March 24th 2011 to extend the focus to include the Employment and Social Services Department of the City of Toronto and to bring a new witness Ms. Joanne Smith, Diane Anderson's caseworker from the Employment and Social Services Department of the City of Toronto.

Mr. Rowe on behalf of the family contends that if the Employment and Social Services Department [hereinafter ESSD] of the City of Toronto, made home visits they would have been able to identify Ms. Anderson's substance abuse issues, assess the state of the house and the children and therefore report any concerns to the Children's Aid Society thereby preventing this fire. Consequently the proposed Ms. Smith would be required to speak to the policy of the Employment and Social Services Department of the City of Toronto in relation to home visits, the services provided to Ms. Diane Anderson, the other services Ms. Anderson would have been eligible for that could have helped her improve herself, to gain useful employment and better her status in life. It appears from these submissions that the family believes that if Ms. Anderson had received certain services from ESSD, she would have improved herself to the point that she would no longer be in this situation.

The family further indicates that an ESSD witness or Joanne Smith is required to discuss the direct payment plan available with TCHC for rent payment. Such a plan would have ensured she was not in arrears and therefore would have received larger housing which in turn would have prevented the fire.

Department of the City of Toronto and the deaths is established I will reconsider the motion.

After considering submission of counsel and reviewing the evidence presented at the inquest to this date I find that there is no new, relevant evidence that has arisen through the course of this inquest that establishes a direct connection between the circumstances of Ms. Anderson's death and her long-term involvement with The Employment and Social Services Department of the City of Toronto.

At the March 24th motion, we heard some evidence from Ms. Fraser, Mr. Rowe and Mr. Gorlay concerning the responsibilities of ESSD and the appropriate circumstances in which a home visit is required. Throughout the course of the inquest however, we have heard no evidence that a home visit was required at any time or that ESSD failed to provide a needed service.

Mr. Rowe indicates that he was stopped by the objections of other counsel from delving into these areas, so there could be no new evidence connecting ESSD with these deaths. Ms. Fraser, further supported this view by indicating that counsel would feel "boxed in" in such a scenario. I find this argument perplexing since allowing Mr. Rowe to venture into these areas and ask specific questions in an attempt to connect ESSD to these deaths, would have flown in the face of my original ruling and would have, by definition, not been evidence that arose out of the normal course of the inquest, but evidence that was specifically elicited.

The evidence of a witness from the Employment and Social Services Department of the City of Toronto would again also not provide evidence "relevant to the purposes of the inquest" and directly relating to the circumstances of the events leading up to the deaths of Ms. Anderson and her two children

Similarly counsel's hypothesis that the pay direct plan is crucial evidence that could have prevented these deaths is premised on the position that if Ms. Diane Anderson had been able to transfer to a larger 4 bedroom unit, the fire would not have happened. This is faulty reasoning in my view and this argument fails for a number of reasons:

- 1) There is no evidence that 237-303 Grandravine was insufficient space for this family. The evidence is in fact that a bedroom was unused
- 2) Although the evidence indicates that the pay direct program has been available for many years (including Ms. Anderson's tenancy at TCHC), there is no evidence that she would have entered into the program.
- 3) There is no evidence that if a transfer to a larger unit had occurred, the other issues in Ms. Anderson's life would have disappeared.

Thus I see no reason to readdress my original ruling on the scope and focus of the inquest or to further consider calling Joanne Smith or another witness from ESSD. The motion is denied.