

THE INQUIRY INTO PAEDIATRIC FORENSIC PATHOLOGY IN ONTARIO
The Honourable Stephen T. Goudge, Commissioner

The Goudge Inquiry
180 Dundas Street West, 22nd Floor, Toronto, ON

APPLICATION FOR STANDING and FUNDING of
THE HOSPITAL FOR SICK CHILDREN

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THE APPLICANT, The Hospital for Sick Children (“the Hospital”), makes this application, requesting that the Commissioner, the Honourable Justice Stephen T. Goudge (“the Commissioner”) grant it standing at the Inquiry into Paediatric Forensic Pathology in Ontario (“the Inquiry”). The Hospital also applies for funding and requests that the Commissioner make a recommendation to the Attorney General of Ontario that the Hospital receive funding in order to facilitate its participation in the Inquiry.

THE GROUNDS FOR THE APPLICATION ARE AS FOLLOWS:

A. Introduction and Background

1. The Hospital is a quaternary paediatric academic health sciences centre serving the provincial, national and international community. The Hospital carries on a significant clinical, research and teaching enterprise.
2. The Hospital is a non-profit, publicly funded institution. Its annual operating budget is comprised of public health care dollars, which are to be directed to the support and provision of paediatric health care, teaching and the conduct of scientific research that will benefit paediatric patients.
3. From that platform, and at the request of the Office of the Chief Coroner of Ontario (“the OCCO”), the Hospital has agreed to provide paediatric pathology resources to the OCCO through the establishment of a Paediatric Forensic Pathology Unit (“PFPU”). These resources are financed largely by a grant from the Ministry of Public Safety and Security and include the provision of highly specialized facilities and personnel which support

pathologists who are retained by the Chief Coroner to perform post-mortem examinations in cases of paediatric deaths warranting a Coroner's and/or criminal investigation.

4. Some of the post mortem examinations giving rise to the appointment of the Commission of Inquiry were performed at the PFPU and by pathologists who also maintained privileges on the medical staff for clinical pathology at the Hospital.

B. Standing

5. The Hospital continues to make available the physical and human resources of its paediatric pathology department to the OCCO, through the PFPU, and as such, the Hospital has a substantial and direct interest in ensuring that the performance of paediatric forensic autopsies are informed by best practices, as will be determined and recommended by the Commissioner, as a result of the Inquiry.
6. Due to its lengthy history of working with the OCCO in respect of the PFPU, the Hospital is well positioned to contribute to the Commission's understanding of best practices in paediatric forensic pathology and the formulation of any recommendations for systemic changes to the current organization and delivery of paediatric forensic pathology in Ontario.
7. For example, the Hospital possesses information on the historic organization and development of the PFPU at the Hospital from 1981 to 2001. As the physical home of the PFPU, the Hospital is able to provide its knowledge of the interaction between pathologists and the Coroner's office during investigations into paediatric deaths. The Hospital also possesses information on the evolution of paediatric death reviews over the years of concern to the Inquiry and will be able to comment on changes to the organization and oversight of the PFPU subsequent to the year 2001.
8. Further, due to its clinical expertise in paediatric pathology, the Hospital may assist the Commission with understanding how the science of pathology addresses the question of what caused a child's death.

9. It is the Hospital's respectful submission that the information summarized above will assist the Commissioner in his systemic review of paediatric forensic pathology and in determining what his recommendations will be for the delivery of paediatric forensic pathology in Ontario in the future.
10. It is the Hospital's understanding that parties with standing will be asked to prepare and submit an "overview report". The Hospital is prepared to submit such a report on the history and current state of the PFPU at the Hospital, from the Hospital's perspective, which will assist the Commission in accomplishing a comprehensive, well-informed, fair and expeditious proceeding.

C. Funding

11. The Hospital respectfully requests that the Commissioner recommend to the Attorney General of Ontario that the Hospital receive funding to assist the Hospital in its participation in the Inquiry.
12. As noted at paragraph 2 above, the Hospital is a non-profit, publicly funded paediatric health sciences centre, whose core business is the provision of health care and the conduct of research and teaching that advances the health care interests of the paediatric patient population.
13. The Office of the Chief Coroner's investigation into suspicious or unexpected paediatric deaths advances a public interest that, while related to the interests of the Hospital, is nonetheless separate and apart from the core missions of the Hospital. Similarly, the public's confidence in the administration of justice as it relates to the lawful prosecution of crimes relating to the deaths of children is a matter of public interest that is also distinct from the Hospital's health care, research and teaching missions.
14. The provision of pathology services to the OCCO through the PFPU has been financed largely by grants received annually from the Ministry of Public Safety and Security (and its predecessor Ministries in which the OCCO has operated) to The Hospital for Sick Children. Therefore, the Hospital has not been called upon in the past to expend

significant health care dollars to advance the goals and objectives of the OCCO in the investigation of paediatric deaths in Ontario.

15. By cooperating with the OCCO in the provision of forensic pathology services in the past, the Hospital has for many years supported efforts aimed at advancing the public interest in determining the cause of suspicious or unexpected paediatric deaths. Since the Hospital's past support of the mission of the OCCO through the PFPU has brought about the Hospital's need to participate in the Inquiry, it is the Hospital's respectful submission that the Attorney General of Ontario should provide funds to assist the Hospital to do so.
16. In addition to the reasons set out above, the Hospital submits that the appointment of a Commission of Inquiry into Paediatric Forensic Pathology in Ontario could not have been anticipated in the Hospital's fiscal planning process, as it is not an expense in the nature of clinical care, teaching or research activity. Consequently, without additional financial support, any money expended in the representation of, and participation by, the Hospital before the Commission will be drawn from the Hospital's current operating funds, which might otherwise have been directed to the provision of paediatric health care.
17. In these circumstances, the Hospital owes a duty to its patients and their families, and to the taxpayers of Ontario, to seek designated funding to underwrite its participation in this Inquiry.
18. The Hospital has already devoted a considerable number of legal services hours to the collection and review of documents that may be of assistance to the Commission in understanding the development, establishment and continued operation of the PFPU at the Hospital.
19. To June 30, 2007, this effort has required the expenditure of a total of 250 hours of lawyer, law clerk and articling student time. This work has involved the review of hundreds of documents, contained in 59 bankers boxes of materials, as well as attendance at meetings with Commission counsel and others whose work is relevant to the Inquiry.
20. The resources required to permit continued participation in the Inquiry will include legal services for further document review and production, preparation and drafting of

applications for standing and funding, the preparation and drafting of an overview report, preparation for attendance at the Inquiry, attendance at the public hearings of the Inquiry, preparation of final submissions and any follow up required. In total, the number of hours of legal services required to support the Hospital's further participation in the Inquiry through to its completion has been estimated at approximately 850 hours. We expect these hours to be distributed amongst the Hospital's legal counsel team in the following approximate percentages:

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| (a) | Senior Lawyer, with greater than 20 years experience | 25% |
| (b) | Lawyers with 0 to 10 years experience | 50% |
| (c) | Law clerks and articling students | 25% |

D. Conclusion

21. For the reasons set out above, the Hospital respectfully requests that it be granted standing and funding to underwrite its participation in the Inquiry.
22. In this application for standing and funding, the Hospital relies on such further and other grounds as counsel may advise and as the Honourable Commissioner may require and permit.

All of which is respectfully submitted,

DATED at Toronto, this 16th day of July, 2007.



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TO: THE HON. JUSTICE STEPHEN T. GOUDGE
Commissioner,
The Inquiry into Paediatric Forensic Pathology in Ontario
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Pathology In Ontario**

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