

Funding Requests related to Inquests ordered under *The Fatality Inquiries Act*

From time to time, individuals and organizations ask the Government of Manitoba to provide funding for legal expenses related to inquests. This document sets out the circumstances under which the Government of Manitoba will consider making a contribution to individuals and organizations involved or seeking to be involved in an inquest ordered under *The Fatality Inquiries Act*.

What is an inquest?

Under *The Fatality Inquiries Act*, the chief medical examiner may choose to direct that an inquest into any death be held by a provincial court judge. There are also certain circumstances where the chief medical examiner must direct that an inquest be held. Those circumstances include where there are reasonable grounds to believe that a person died as a result of the actions of, or a lack of action, on the part of a peace officer in the course of duty and where there are reasonable grounds to believe that an involuntary resident of a psychiatric facility died suddenly of an unknown cause.

Regardless of the circumstances, the purpose of an inquest is the same:

... an inquest is designed to be an impartial, non-adversarial and procedurally fair, fact-finding inquiry committed to receiving as much relevant evidence about the facts and issues surrounding the death of a community member as is in the public interest, but without making findings of criminal or civil responsibility.

The setting is similar to criminal court processes in that there is a judge and Crown counsel present but the process and purpose are fundamentally different. An inquest is a fact finding investigative process, not affecting anyone's rights, and not imposing penalties or punishment.

At the end of the inquest, the inquest judge is required to write a report that sets out:

- when, where and by what means the deceased person died,
- the cause of death,
- the name of the deceased person, if known, and
- the material circumstances of the death.

The judge may also recommend changes in the programs, policies or practices of the government or the laws of Manitoba, if the judge believes that those changes would reduce the likelihood of deaths in similar circumstances.

Role of Crown counsel assigned to the inquest

In order for the judge to make the report, he or she must be provided with information from those individuals and organizations (eg. business, government department, government agency) directly involved in the death and may also receive information from other individuals and organizations.

A Crown attorney or other legal counsel is assigned to be Crown counsel for the inquest and for the proper administration of justice and in the public interest, Crown counsel at an inquest is to be impartial and neutral. It is the responsibility of Crown counsel assigned to the inquest to ensure that the judge is presented with all of the available relevant information in a fair, impartial and objective way. In this regard, Crown counsel represents the 'public interest' at the inquest. Individuals are called upon to provide the relevant information to the judge at the inquest hearing. Information about institutional rules, policies and procedures are usually presented as well as evidence about whether the rules, policies and procedures were followed.

For all inquests, the interests of the family and the public interest will overlap to a very significant extent and for most inquests the interests of the family will be the same as the public interest. On request of the family, Crown counsel will meet with the family to explain the inquest process, deal with the family's questions and concerns and canvas areas that the family would like covered at the inquest. Where it is reasonable to do so and the areas are relevant to the purpose of the inquest, Crown counsel will ensure that those areas of interest to the family are raised at the inquest.

A family may decide that it wishes to be represented by its own lawyer. In those circumstances it is the family's responsibility to pay for the lawyer. The Government may agree to make a contribution to legal fees but there is no obligation on the part of the Government to do so. The Government's decision about whether a contribution will be made will be based on the policy set out below.

Reimbursement for Legal Fees

Policy

The Government of Manitoba will only consider a request for a contribution to help pay for legal fees for a lawyer to represent the family of the subject of an inquest in extraordinary cases where the circumstances of the death and the family make it such that it is in the interests of justice for the family to have independent counsel. Requests from other individuals and from organizations, with or without standing, will not be considered.

Decisions regarding whether to provide funding and the amount of funding are final.

The contribution is intended to assist families in offsetting legal expenses, but is not intended to cover all the legal costs of families if represented by independent counsel at the inquest. A contribution will not be made to offset other expenses that the family may incur to attend or participate in the inquest, such as travel and accommodation.

Eligibility to make a Request

To be eligible to request a contribution, a family member must first have been granted standing at the inquest by the inquest judge.

Only one family member may receive a contribution.

Factors Considered

The decision on whether to provide funding will be made in the context of the purpose of the inquest and the factors that may be considered include:

- the length and complexity of the inquest;
- whether the family is in a situation where it can be said that the role of Crown counsel assigned to the inquest as an objective and neutral presenter of all points of view is not adequate to protect the family's interest;
- the extent of the family's direct role (if any) in the events under consideration;
- whether the family is essential to the understanding of the events under consideration; and
- whether the family has sufficient resources to retain counsel.

Eligible Costs and Maximum Contribution

If Manitoba decides to make a contribution, the contribution will not exceed a total of \$90,000.00 including all fees and disbursements, as set out below.

Calculation of Fees:

A contribution to the fees of only one lawyer at a time will be made on the following basis:

For attendance at the inquest hearing:

Number of hours or part hours actually spent at the inquest hearing (up to 9 hours per sitting day) x the legal aid rate in place at the time of the inquest hearing

For any preparation time after the family has been granted standing:

Number of hours actually spent x the legal aid rate in place at the time of the inquest hearing

The maximum contribution towards fees for preparation time will be the lesser of \$10,000.00 and the amount payable for attendance at the hearing.

No contribution will be made towards any other fees such as fees for attending meetings, motions or appeals.

Disbursements:

Reimbursement will be provided for reasonable disbursements actually incurred.

Eligible disbursements include long distance telephone and fax charges, the cost of transcripts and postage or courier charges in relation to the inquest.

The following disbursements are not eligible for reimbursement:

- travel, accommodation and meals;
- costs related to expert witness(es);
- office overhead costs;
- funding related to investigative activities.

Example for a 25 day inquest:

<i>(5 hours x 20 sitting days) x \$80.00</i>	<i>= \$8,000.00</i>
<i>(9 hours x 5 sitting days) x \$80.00</i>	<i>= \$3,600.00</i>
<i>100 hours preparation time x \$80.00</i>	<i>= \$8,000.00</i>
<i>reasonable disbursements actually incurred</i>	<i>= \$5,000.00</i>
<i>Total Fees & Disbursements</i>	<i>\$24,600.00</i>

Request Process

A request can be made in writing to the Director, Civil Legal Services, Room 730-450 Broadway, Winnipeg, Manitoba R3C 3L6.

Requests should be submitted as soon as possible after standing is received but may be submitted up to 6 months after the judge's written inquest report is submitted to the minister.

The family member who has made the request will be advised in writing if a contribution to fees will be made. If approved, the family member will also receive detailed information on how to make a claim.

Payment

If a contribution is approved, a claim for payment may be made after the inquest hearing is complete and must include a detailed statement of account prepared by the lawyer [in support of a claim] and:

- proof that the lawyer has been paid the amount claimed if the recipient wishes to be paid directly; or
- a signed direction to pay, if the recipient wishes the lawyer to be paid directly.

For more information on inquests and the role of Crown counsel please see:

The Fatality Inquiries Act, C.C.S.M. c. F52 (to read the Act please go to <http://web2.gov.mb.ca/laws/statutes/ccsm/f052e.php>)
http://www.manitobacourts.mb.ca/inquest_reports.html
<http://www.gov.mb.ca/justice/about/chief.html#10>

Hudson Bay Mining and Smelting Co. v. Cummings, 2006 MBCA 98 (CanLII)
Black Action Defense Committee v. Huxter, (1992) 11 O.R. (3d) 641