



ORDER IN COUNCIL

ORDER

1. The Honourable Patrick LeSage, Q.C. (the "commissioner") is appointed to do the following:

- (a) To inquire into the conduct of Crown Counsel who conducted and managed the trial of James Driskell and the subsequent appeal and departmental reviews of his conviction, and consider whether that conduct fell below the professional and ethical standards expected of lawyers and agents of the Attorney General conducting prosecutions at the time.
- (b) To inquire into whether the Winnipeg Police Service failed to disclose material information to the Crown before, during or after James Driskell's trial and, if so, consider whether the non-disclosure contributed to a likely miscarriage of justice in the prosecution against him.
- (c) To give advice about whether the conduct of Crown Counsel or members of the Winnipeg Police Service should be referred to the Law Society of Manitoba, or to the Law Enforcement Review Agency or an appropriate independent police service, for review and possible investigation by those bodies.
- (d) To consider the role of the RCMP Laboratory in the prosecution of James Driskell, and to review any systemic issues that may arise out of its role.
- (e) To give advice about whether any aspect of this case should be further studied, reviewed or investigated and by whom, and to make systemic recommendations arising out of the facts of the case which the commissioner considers appropriate.
- (f) To consider whether and in what way a determination or declaration of wrongful conviction can be made in cases like this, where
 - the Minister of Justice for Canada directs a new trial under section 696.3(3)(a)(i) of the *Criminal Code* (Canada), and
 - after a review of the evidence, Crown Counsel directs a stay of proceedings under section 579 of the *Criminal Code* (Canada).

2. The commissioner must perform his duties without expressing any conclusion or recommendation about the civil or criminal liability of any person or organization, and without interfering in any ongoing police investigation or criminal proceedings relating to the murder of Perry Harder.

3. The commissioner must complete his inquiry and deliver a final report containing his findings, conclusions and recommendations to the Attorney General by December 31, 2006. He may also give the Attorney General any interim reports that he considers appropriate to address urgent matters. All reports must be in a form appropriate for public release, but release is subject to *The Freedom of Information and Protection of Privacy Act* and other relevant laws.

4. In conducting his inquiry, the commissioner may do the following:

- (a) To avoid duplication of effort, the commissioner may review the full judicial record, all files maintained by Manitoba Justice and the Winnipeg Police Service, the reports of the Honourable John Enns to the Attorney General, and any other reports or analyses about the case.
- (b) The commissioner may interview any person connected with the case, including current and former employees of both Manitoba Justice and the Winnipeg Police Service. On the commissioner's behalf, interviews may be conducted by the special counsel referred to in clause (c), either alone or in the commissioner's presence. If conducted alone, the special counsel must give the commissioner a transcript or a report of each interview.

JUSTICE

Initiating Department/Agency

Authorized Officer

APPROVED BY:

Civil Service Commission

Finance

APPROVED AS TO FORM BY:

Name

Civil Legal Services or
Legislative Counsel Office

Initials

RECOMMENDED:

Minister

APPROVED BY EXECUTIVE COUNCIL:

Presiding Member

ORDERED:

Lieutenant Governor

December 07, 2005

Date



If it appears necessary to ensure cooperation and public accountability, or to assess important issues of credibility, the commissioner may accept and record information and evidence publicly and under oath under *The Manitoba Evidence Act*.

- (c) The commissioner may employ special counsel, who is wholly unconnected to persons involved in the prosecution and defence of James Driskell, to review relevant documentation, interview witnesses and examine specific persons publicly and under oath.
 - (d) Upon delivering his final report, the commissioner must provide the Deputy Attorney General with all original statements, transcripts and other documents prepared during the course of the Inquiry which, upon payment of an appropriate fee in accordance with *The Freedom of Information and Protection of Privacy Act*, may upon request be made available to members of the public.
5. Government departments and agencies, and any other bodies established under the authority of the Manitoba Legislature, including the Winnipeg Police Service, must assist the commissioner to the fullest extent permitted by law.
6. The Minister of Finance may pay the following amounts from the Consolidated Fund, at the request of the Attorney General:
- (a) travelling and other incidental expenses that the commissioner incurs conducting his inquiry;
 - (b) fees and salaries of any advisors and assistants employed or retained for the purpose of the inquiry;
 - (c) reasonable legal fees incurred from time to time to assist James Driskell during the inquiry, if standing at the inquiry is granted to him;
 - (d) reasonable legal fees incurred from time to time to assist the Department of Justice and its former employees, if standing at the inquiry is granted to them;
 - (e) any other operational expenditures required to support the inquiry.

Legal fees referred to in paragraphs (c) and (d) are to be in amounts and subject to terms set by the Deputy Attorney General in accordance with the policies and practices of the Government of Manitoba.

Accounts of legal fees referred to in clause (c) are subject to taxation by a taxation or judicial officer appointed for the purpose by the commissioner. Accounts of legal fees referred to in paragraph (d) are subject to taxation by the Director of Civil Legal Services of the Department of Justice.

7. This Order comes into effect the day it is made.

AUTHORITY

Subsection 83(1) and section 96 of *The Manitoba Evidence Act*, C.C.S.M. c. E150, state in part:

Appointment of commission

83(1) Where the Lieutenant Governor in Council deems it expedient to cause Inquiry to be made into and concerning any matter within the jurisdiction of the Legislature and connected with or affecting

...

(c) the administration of justice within the province:

...

(f) any matter which, in his opinion, is of sufficient public importance to justify an inquiry;

he may, if the Inquiry is not otherwise regulated, appoint one or more commissions to make the Inquiry and to report thereon.

**Power to make rules**

96 The Lieutenant Governor in Council may make provision, either generally in regard to all commissions issued and inquiries held under this part, or specifically in regard to any such commission and Inquiry, for

- (a) the remuneration of commissioners and persons employed or engaged to assist in the inquiry, including witnesses;
- (b) the payment of incidental and necessary expenses; and
- (c) all such acts, matters, and things, as are necessary to enable complete effect to be given to every provision of this Part.

BACKGROUND

1. Perry Harder disappeared from the Winnipeg area on June 16th, 1990. His body was discovered 3 ½ months later. In October, 1990 James Driskell was charged with the first degree murder of Perry Harder. The trial lasted nine days before Mr. Justice Morse sitting with a jury. On June 14, 1991 the jury returned with a verdict of guilty of first degree murder. Mr. Driskell was sentenced to life imprisonment without eligibility for parole for 25 years.
2. On June 3, 2003, through counsel, Mr. Driskell asked the Minister of Justice for Canada to review his conviction for murder. The application was completed on October 22, 2003.
3. On March 3, 2005 the Minister of Justice for Canada directed a new trial for James Driskell. Later that day, Crown Counsel directed a stay of proceedings on the charge on the basis of a review of the evidence in the case.