



MANITOBA

ORDER IN COUNCIL

DATE: **December 5, 2007**

ORDER IN COUNCIL No.: **403/2007**

RECOMMENDED BY: **Minister of Justice**

ORDER

1. The Honourable Roger Salhany, Q.C. is appointed as commissioner to do the following:
 - (a) To inquire into the conduct of the police investigations surrounding the death of Crystal Taman on February 25, 2005, including, but not limited to,
 - (i) the correctness and adequacy of the procedures and practices that were followed, and
 - (ii) the good faith, objectiveness and professional standards with which the procedures and practices were applied and decisions made.
 - (b) To inquire into whether all aspects of the prosecution of Derek Harvey-Zenk, including the Crown's position on sentence, were conducted in accordance with the professional and ethical standards expected of lawyers and agents of the Attorney General.
 - (c) To inquire into whether the services provided to the family of Crystal Taman were sufficient having regard to the requirements of *The Victims' Bill of Rights*.
 - (d) To give advice on whether findings on any of the above matters gives rise to a need for further study, review or investigation and, if so, by whom.
2. The commissioner must report his findings on these matters — including any findings respecting practices or systemic issues that may have contributed to or influenced the course of the investigations or resulting prosecution in this matter — and make such recommendations as he considers appropriate to help restore public confidence in the justice system in Manitoba.
3. In keeping with the principles summarized by the Supreme Court of Canada in *Canada (Attorney General) v. Canada (Commissioner of the Inquiry on the Blood System)*, the commissioner must perform his duties without expressing any conclusion or recommendation about the civil or criminal liability of any person or organization.
4. The commissioner must complete his inquiry and deliver a final report containing his findings, conclusions and recommendations to the Attorney General by September 30, 2008. 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.
5. Nothing in paragraph 1 limits the commissioner's right to request the Lieutenant Governor in Council to expand the terms of reference to cover any matter that he considers necessary as a result of information that comes to his attention during the course of the inquiry.
6. To the extent the commissioner considers it advisable, he may rely on a transcript or record of proceedings before any court relating to the prosecution against Derek Harvey-Zenk or relating to any other matter the commissioner considers relevant.
7. Government departments and agencies and other bodies established under the authority of the Manitoba Legislature, and the various police services involved in the investigations referred to in paragraph 1(a), must assist the commissioner to the fullest extent permitted by law. The commissioner may review all records maintained by Manitoba Justice and the various police services, and any reports or analyses about the matters referred to in paragraph 1 whether prepared by Manitoba Justice or others.

8. Before public hearings take place, the commissioner may interview any person connected with the matters referred to in paragraph 1, including employees of Manitoba Justice and of any police services involved. 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.
9. 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) any other operational expenditures required to support the inquiry.
10. This Order is effective immediately.

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 commissioners 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 specially 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. Crystal Taman was killed in an automobile collision on February 25, 2005, and Derek Harvey-Zenk was subsequently charged with criminal negligence causing death, impaired driving causing death, dangerous driving causing death and refusing a breathalyzer test.
2. The charges of impaired driving causing death, criminal negligence causing death and refusing a breathalyzer test were subsequently stayed by independent counsel acting for the Attorney General. Following a joint sentencing recommendation, Derek Harvey-Zenk received a conditional sentence of two years less a day for a single charge of dangerous driving causing death.