

18 February 2004

TO THE HONOURABLE

THE LIEUTENANT GOVERNOR IN COUNCIL

The undersigned has the honour to report that:

1. Sections 2 and 5 of *The Public Inquiries Act* provide as follows:

“2 The Lieutenant Governor in Council, when he deems it expedient to cause inquiry to be made into and concerning a matter within the jurisdiction of the Legislature and connected with the good government of Saskatchewan or the conduct of the public business thereof, or that is in his opinion of sufficient public importance, may appoint one or more commissioners to make such inquiry and to report thereon.

5(1)The commissioners, if thereunto authorized by the Lieutenant Governor in Council, may engage the services of such accountants, engineers, technical advisors or other experts, clerks, reporters and assistants as they deem necessary or advisable, and also the services of counsel to aid and assist the commissioners in the inquiry.”

2. It is deemed advisable and in the public interest that an inquiry be made into any and all aspects of the conduct of the investigation into the death of Gail Miller and the subsequent criminal proceedings resulting in the wrongful conviction of David Edgar Milgaard on the charge that he murdered Gail Miller, for the purpose of making findings and recommendations with respect to the administration of criminal justice in the Province of Saskatchewan.

The undersigned has the honour, therefore, to recommend that Your Honour's Order do issue pursuant to sections 2 and 5 of *The Public Inquiries Act*:

- (a) appointing The Honourable Mr. Justice Edward P. MacCallum, Edmonton, as a Commissioner of a Commission of Inquiry into any and all aspects of the conduct of the investigation into the death of Gail Miller and the subsequent criminal proceedings resulting in the wrongful conviction of David Edgar Milgaard on the charge that he murdered Gail Miller;

- (b) establishing the terms of reference of the Commission of Inquiry as set out in Schedule A, attached hereto;
- (c) directing the said Commission to make its report to the Minister of Justice and Attorney General in accordance with those terms of reference;
- (d) authorizing the Commission to engage:
 - (i) the services of such accountants, engineers, technical advisors or other experts, clerks, reporters and assistants as they deem necessary or advisable; and,
 - (i) the services of counsel to aid and assist the Commission; to be paid by the Department of Justice as approved by the Minister of Justice and Attorney General;
- (e) authorizing reimbursement to the commissioner by the Department of Justice for reasonable travelling and sustenance expenses incurred by him in the performance of his duties; and
- (f) Authorizing payment by the Department of Justice of expenses incurred in the administration of the Commission of Inquiry.



RECOMMENDED BY:

Minister of Justice and Attorney General



APPROVED BY:

President of the Executive Council



ORDERED BY:

Lieutenant Governor
Regina, Saskatchewan

SCHEDULE A to OC 84/2004

TERMS OF REFERENCE

1. The Commission of Inquiry appointed pursuant to this Order will have the responsibility to inquire into and report on any and all aspects of the conduct of the investigation into the death of Gail Miller and the subsequent criminal proceedings resulting in the wrongful conviction of David Edgar Milgaard on the charge that he murdered Gail Miller. The Commission of Inquiry will also have the responsibility to seek to determine whether the investigation should have been re-opened based on information subsequently received by the police and the Department of Justice. The Commission shall report its findings and make such recommendations as it considers advisable relating to the administration of criminal justice in the province of Saskatchewan.
2. The Commission shall perform its duties without expressing any conclusion or recommendation regarding the criminal or civil responsibility of any person or organization, and without interfering in any ongoing criminal or civil proceeding.
3. The Commission shall complete its inquiry and deliver its final report containing its comments, findings, conclusions and recommendations to the Attorney General. The report must be in a form appropriate for release to the public, in accordance with *The Freedom of Information and Protection of Privacy Act* and other laws.
4. To the extent the Commission considers it advisable, it may rely on any transcript or record of any proceedings from any court in relation to the proceedings referred to above and on such other related material it considers relevant to its duties.
5. The Commission shall have the power to hold public hearings but may, at the discretion of the Commissioner, hold some proceedings *in camera*.
6. The Commission shall, as an aspect of its duties, determine applications by those parties, if any, or those witnesses, if any, to the public inquiry that apply to the Commission to have their legal counsel paid for by the Commission, and further, determine at what rate such Counsel shall be paid for their services.