

COMMISSIONER'S STATEMENT ON NOVEMBER 12, 2007

1. Good morning.
2. Today we begin hearing evidence at the public hearings of this Commission. It provides a useful opportunity to reiterate what the Commission is about and to outline the various activities that I, and Commission Counsel and staff, have been undertaking in the last few months.
3. As I said in my opening statement last June, a commission of inquiry is an investigation into a matter of substantial public interest to a community. It has the power to summons witnesses, to compel the production of documents, and to accept evidence. However, it is not a civil or criminal trial.
4. Public inquiries are an important component of our Canadian democracy. They play an important role in fact finding, and in educating and informing concerned members of the public. They also play a role in restoring public confidence in governmental institutions. In the end, they make recommendations designed to ensure, as best we can, that the concerns that gave rise to the Commission are addressed and avoided in the future.
5. This Commission was established by the Province of Ontario on April 25, 2007. The Order in Council requires the Commission to conduct a systemic review of the

practice of pediatric forensic pathology and its oversight mechanisms in Ontario from 1981 to today, as they relate to the criminal justice system.

6. As Commissioner, I am to identify systemic failings that may have occurred, and make recommendations to restore and enhance public confidence in pediatric forensic pathology in Ontario and its future use in investigation and criminal proceedings.

7. The Order in Council makes clear that the Commission is fundamentally systemic in nature. I cannot report on any individual cases that have been the subject of criminal proceedings. Nor can I express any conclusion about the professional discipline of any person or the criminal or civil liability of any person or organization.

8. While I will not be reporting on individual cases, it is necessary that the Commission review individual cases for the purpose of determining what systemic issues they raise. Central to this are the cases that were the subject of the Chief Coroner's Review, the results of which were important in the establishment of the Commission. From this review, I am required to identify those failings of the system that occurred that must be addressed if public confidence in pediatric forensic pathology is to be restored. In other words, we need to learn enough about the facts of what happened, and why, to make practical and effective recommendations.

9. The Order in Council also sets a time limit for the Commission that has required us to act with great expedition from the very beginning. It will also require me to run the public hearings with great efficiency.

10. I will turn to the hearing process in a moment. But first let me outline all that the Commission has done since it began. Commission Counsel will speak to the work she, her colleagues and staff have been engaged in. Let me simply publicly express my enormous appreciation for the skill and energy they have brought to the task, and for how much has been accomplished.

11. For my part, let me briefly describe my own activities. As I said in my opening statement on June 18, one of my first acts was to assemble the team of lawyers, scholars and administrators to assist me. I am being ably served. Ms. Rothstein is Commission Counsel, Mr. Sandler is Special Counsel, Criminal Law. Mr. Centa and Ms. McAleer are Assistant Commission Counsel. Professor Roach is the Commission's Research Director, and Senator Larry Campbell advises on scientific and medical issues.

12. Commission Counsel has put together an enormously talented group to assist her. Space was quickly located. Technology services were put in place. The hearing room was constructed. A significant independent research program was set up. And the work that she will describe was immediately started.

13. On June 18, I convened the first public session of the Commission, and made an opening statement. The same day, the Commission published its Rules of Standing and Funding and invited those interested in seeking standing and funding to apply in writing by July 16.

14. Later that week, I began my private meetings with individuals and families affected by practices in Ontario's pediatric forensic pathology system. I conducted meetings with some in June, and with others in August.

15. All who met with me did so voluntarily. As I have said before, this was not part of the Commission's fact finding process. Nonetheless, the insights I was given in those meetings will do much to anchor my work in real human experiences. I am very grateful to those who attended, and for the openness and candor they brought to our conversations about very painful personal subjects.

16. Section 16 of the Order in Council authorizes me to provide for counseling services to these individuals and their families, and a number of them have asked that I do so. Through the professional assistance of Mrs. Celia Denov, we have determined the type of counseling that would best meet their needs and have put them together with qualified professionals in their communities. I am very hopeful that this will help these individuals and families to move forward with their lives in a positive way.

17. On August 8, I heard motions for standing and funding. On August 17, I delivered my ruling. I granted standing to three institutions: the Office of the Chief Coroner of Ontario, Her Majesty the Queen in Right of Ontario, and the Hospital for Sick Children. I granted standing to two groups of individuals (the Affected Families Group and the Mullens-Johnson group) who were involved in the cases examined by the Chief Coroner's Review. I also granted standing to five organizations involved in various ways in the criminal justice system: the Ontario Crown Attorney's Association, the Association in Defence of the Wrongly Convicted, the Aboriginal Legal Services of Toronto - Nishnawabe Aski Nation Coalition, and Defence for Children - Canada.

18. I have also granted funding on certain terms to the two groups of individuals and to the five organizations.

19. On August 31, the Commission posted its Rules of Procedure.

20. On October 4, I heard a motion for directions brought by the College of Physicians and Surgeons of Ontario. On October 10, I issued my ruling and directed that the CPSO comply with the summons issued by the Commission.

21. On October 12, the CPSO applied for standing and on October 17 I issued my ruling granting this application.

22. On October 24, Dr. David Ranson, the Deputy Director of the Victorian Institute of Forensic Medicine in Melbourne, Australia conducted a one day education session for me and counsel for the parties, on the basics of forensic pathology. The purpose of the session was to provide us with a common understanding of some of the medical terminology and forensic pathology concepts that will underlie some of the evidence we will hear during the public hearings. His presentation was of great assistance to me and I am sure to others. I am confident it will allow counsel to ask more informed and focused questions of the witnesses.

23. On October 29 and 30, at the invitation of the ALST-NAN Coalition, I visited two aboriginal communities in northern Ontario, Mishkeegogamang and Muskrat Dam. I am very grateful to both communities for the warm hospitality they extended to me, Mr. Sandler and Ms. Denov. In both communities, I had the opportunity to meet with the leaders, and with individuals and families who have suffered the tragedy of unexpected infant deaths.

24. As with the meetings I have held in Toronto, these meetings were not part of the Commission's fact finding process, but were very useful in providing me with background. Among other things, it brought home to me the enormous challenges in Ontario of making available services like pediatric forensic pathology to remote northern communities in general, and in particular, to aboriginal communities.

25. On October 19, I heard two motions for publication bans, one by Commission Counsel and one by Mr. Lockyer on behalf of certain individuals in the Mullens-Johnson group. On November 1, I issued my ruling. It sets out in detail a procedure applicable to all parties and the media that will allow the Commission to do its work in a way that observes the principle of openness applicable to public inquiries, and at the same time protects the identities of individuals where that is required. As we commence this phase of our work, I would ask that all those bound by my ruling familiarize themselves with the ruling if they have not done so already.

26. On November 5, I and counsel for all parties visited two institutional sites that will undoubtedly be referred to in evidence. First, we were given a tour of the Pathology Department at the Hospital for Sick Children, including its autopsy facilities. Then, we were given a tour of the Office of the Chief Coroner of Ontario, with particular attention to the Toronto Forensic Pathology Unit and its autopsy facilities. I am very grateful to the leadership of both institutions for permitting us to do this. It provides a common understanding of a very important backdrop against which we will be hearing evidence.

27. Lastly, let me turn to the hearings we are commencing today. I emphasize again that this is a systemic inquiry. The examination of individual cases is important only as it helps identify systemic failings that must be addressed if public confidence in pediatric forensic pathology is to be restored and enhanced. This is reflected in the fact that the Commission is called the Inquiry into Pediatric Forensic Pathology in Ontario.

28. From the beginning, I have asked Commission Counsel to look for techniques that will allow us to streamline the hearing process. I have a responsibility to the public to be thorough and fair, while at the same time being mindful of time and cost. It is important that we move at a consistent and efficient pace. Since this is a publicly funded process, the public has the right to expect that we conduct our work with economy and efficiency. Proceeding expeditiously is equally important because recommendations to restore public confidence in pediatric forensic pathology should be brought forward as soon as possible, given the important role it plays in our criminal justice system.

29. I will be looking to all counsel to make every effort to ensure that their examinations and interventions add value to the Commission's mandate. I urge counsel to consult among themselves to avoid duplication.

30. To assist in ensuring that the Commission's hearings are efficient and helpful, I will provide in advance time allocations for examination and cross-examination. This will assist counsel in focusing on what really matters. I will use the same practice used by my colleague, Associate Chief Justice O'Connor, in his two public inquiries, namely that the norm will be to allocate no more than the same amount of time to all cross-examinations as is allocated to Commission Counsel for evidence in chief. After taking requests for cross-examination time, I will subdivide the time among requesting counsel

according to the interests of their clients in the evidence. I am confident this process will assist the efficiency of the hearing process without compromising its fairness.

31. Let me conclude by saying that with hard work, and the continued cooperation of counsel, I know this important phase of our work can be accomplished in both a complete and a timely way.