WHEREAS

A. The Ombudsperson’s report invites:

- an appreciation by government and all individuals who were involved in the Ministry of Health investigations and their aftermath of the full effects of those events on all persons involved, including in relation to personal feelings, peace of mind and sense of self-worth, professional or employment prospects, adverse effects on relationships within and outside government, and interruption of data access;

- acknowledgement by government of its responsibility for those events and the effect on those persons, and to apologize to them;

- consideration by government of the appropriateness of reparation and also the possibility of further litigation claims against government, and for processes for addressing those matters in a constructive and healing way.

B. The government is already working on how best to implement all of the Ombudsperson’s recommendations;

C. In order to achieve a measure of reparation for persons adversely affected during or as a result of the Ministry of Health investigations and aftermath, but who may not have legal claims, the government considers it appropriate to authorize a reparation fund from which ex gratia payments may be made in appropriate amounts, to persons or classes of persons (the “reparation fund”), including but not limited to those persons referred to in the Ombudsperson’s recommendations R1-R5 and R14;

D. As tangible recognition of the pain suffered by the family of Rod MacIsaac, and in honour of his memory, the government considers it appropriate to give effect to Ombudsperson’s recommendation R15, using money from the reparation fund;

E. As an adjunct to the administration of the reparation fund, and in order to allow prompt justice and closure for those persons who may have prima facie legal claims based on the findings in the Ombudsperson’s report, but who would prefer to avoid litigation if possible, the government considers it appropriate to establish a proactive and expeditious process to facilitate settlement of such claims, in amounts that meet the requirements of s. 14 of the Crown Proceeding Act.

NOW THEREFORE, in order to give effect to those initiatives, the government:

1. Appoints the Honourable Thomas Cromwell to serve

   (a) as monitor of the government’s progress in implementing or giving effect to the recommendations in the Ombudsperson’s report referred to in recitals A and B, for a term of one year, with quarterly reports to the government;
(b) as administrator of the reparation fund referred to in recital C, and directs him, based on the Ombudsperson’s report,

i. to take such steps as may be necessary for the government to give effect to payment from the reparation fund to the persons referred to in the Ombudsperson’s recommendations R1-R5 and R14;

ii. to identify such other individuals or classes of individuals, who were adversely affected during or as a result of the Ministry of Health investigations and aftermath and who do not have individual legal claims, but whom government could appropriately offer ex gratia payments from the reparation fund and/or other non-monetary relief, and to make recommendations to the government in that regard;

iii. if the recommendation in subparagraph (ii) is accepted, to offer payment to the individuals without the requirement of a release;

iv. if those offers are accepted, to provide the information necessary for government to process those payments; and

v. to take such steps as are necessary for the government to give effect to the payment from the reparation fund contemplated in recital D;

and

(c) as facilitator with respect to the settlement process referred to in recital E, to make recommendations to government as to the design and implementation of that process, and within that process:

(i) to identify persons who may have legal claims, based on the findings in the Ombudsperson’s report and on any additional information he may reasonably require;

(ii) to assess, based on information in the Ombudsperson’s report, any information provided by that person and any additional information he may reasonably require, a range of damages to which the identified person may be entitled;

(iii) to provide a written opinion on each identified person’s eligibility for payment of a particular amount, under and in accordance with s. 14 of the Crown Proceeding Act;

(iv) the amount referred to in subparagraph (iii) will take into consideration what, if any, set off should be made for any payment the person has already received, whether as a result of prior settlement or ex gratia payment or both;

(v) to make a recommendation to the Deputy Attorney General in that regard;
(vi) if the recommendation is accepted, to offer payment by government of that amount in comprehensive settlement of all their claims in any way related to the Ministry of Health investigations and their aftermath, the IU report, or otherwise; and

(vii) if offers are accepted, to provide the information necessary for government to process those payments.

2. Requests Mr. Cromwell to consider and recommend any modifications or additions to these terms of reference as from time to time he may consider necessary and appropriate.

3. Commits, in addition to monies paid out under the Crown Proceeding Act to give effect to facilitated settlements, to recommend that Treasury Board authorize payment from the contingencies vote to provide for

   (a) the monitoring function referred to in section 1(a),

   (b) the ex gratia payments referred to in 1(b), and

   (c) the costs of administration, including payments in relation to Mr. Cromwell’s appointment and performance of his duties as monitor, administrator and facilitator.

4. Invites Mr. Cromwell to make recommendations concerning coverage of the cost of legal advice to persons who may wish to avail themselves of the process described in subparagraph 1(c), about the operation and how to avail themselves of that process.

5. Directs Mr. Cromwell in his capacity as administrator and facilitator to do such things and execute such documents, including certificates of eligibility, as are necessary to give effect to the various types of payments referred to in his final terms of reference.

6. Directs Mr. Cromwell to keep an account of the amounts paid out of the reparation fund, by individuals or by class as he considers appropriate, and to provide a report to government in that regard, together with his final account for the costs referred to in section 3(c).

Media Contact:
Government Communications and Public Engagement
Ph. 250 356.2821