

Manitoba Ombudsman

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August 31, 2017

The Honourable Margaret Wiebe
Chief Judge
Provincial Court of Manitoba
5th Floor – 408 York Avenue
Winnipeg, MB R3C 0P9

Inquest into the death of Calvin Waylon McDougall Our file: 2015-0216

Dear Chief Judge Wiebe:

As you are aware, it is the practice of my office to follow up on inquest recommendations when they relate to a Manitoba government department, agency or municipality.

I am writing to advise you of the results of the inquiries made by my office concerning the recommendations made in the inquest report into the death of Mr. Calvin Waylon McDougall. The inquest report, dated July 20, 2015, was released by Provincial Court Judge Tracey Lord on July 23, 2015.

Mr. Calvin Waylon McDougall, age 19, died on May 7, 2009, while in custody at Garden Hill First Nation where he was lodged in a holding facility for intoxication and causing a disturbance. Mr. McDougall was found unresponsive, hanging from the door knob of his cell. His death was determined to be due to hanging by suicide.

The Honourable Judge Lord made a number of recommendations, four of which were directed to the Province of Manitoba. My office made inquiries with Manitoba Justice and the recommendations and the department's responses follow:

Recommendation

[111] It is recommended that the Province of Manitoba in partnership with the Garden Hill First Nation establish a public safety program in the community of Garden Hill, Manitoba to respond to the immediate needs of individuals who are suffering from intoxication by drug or intoxicants and/or suffering from mental health difficulties, who pose a danger to themselves or others.

Manitoba Justice Response October 11, 2016: Manitoba amended The Police Services Act to create First Nation Safety Officers (FNSOs) in response to the federal

government's termination of the Band Constable Program (BCP) effective March 31, 2015. Following consultations with First Nations and the police on regulations, the FNSO amendments came into force on January 1, 2016, along with the First Nation Safety Officer Regulation.¹

The FNSO Program contains significant improvements on the federal BCP through a focus on qualifications; training; and a clear legislative foundation, program parameters, authority and restrictions of the FNSOs.

Unlike the BCP, in order to be appointed an FNSO, a person must have received mandatory training on public safety and crime prevention; victims' services and social services; enforcement of provincial enactments; arrests, searches and seizures; use of force and officer safety; and note-taking, report writing, interview basics and court preparation. The FNSO Program provides uniforms and equipment to all FNSOs who graduate from the training program.

The Community Safety Division of Manitoba Justice has met with the leadership of Garden Hill to discuss the FNSO Program. While funding for the FNSO Program has been directed to those First Nations who were receiving federal funding at the time the BCP was terminated, Manitoba Justice offered to train and equip seven Garden Hill band constables, which would give the band constables the opportunity to meet the mandatory training requirements to be eligible for appointment as an FNSO and permit the First Nation to establish a legislated FNSO Program as set out in The Police Services Act. As of September 23, 2016, five individuals from Garden Hill First Nation have successfully completed the mandatory training program. Funding for its safety officers remains the responsibility of the First Nation until the FNPP is renewed and a new approach to Indigenous policing implemented.

On July 31, 2017, Manitoba Justice provided our office with further information regarding the the First Nation Safety Officers Program as follows.

Manitoba Justice Response July 31, 2017: *The First Nation Safety Officers Regulation establishes the minimum qualifications for appointment as a First Nation Safety Officer (FNSO). A person is eligible for appointment as an FNSO if he or she is 18 years of age or older, is a Canadian citizen or a permanent resident, and holds a valid class 5 driver's licence. In addition, a First Nation can establish further qualifications (e.g. completion of a criminal record check) for a person to be considered eligible for appointment. As previously advised, in order to be appointed as an FNSO, a person must have received mandatory training on public safety and crime prevention; victims' services and social services; enforcement of provincial enactments; arrests, searches and seizures; use of force and officer safety; and note taking, report writing, interview basics and court preparation.*

¹ Manitoba Ombudsman Note: The Bill Explanatory Note states: "This Bill amends The Police Services Act. It enables a First Nation safety officer program be established by a First Nation or an entity that represents a group of First Nations." Please see the Police Services Amendment Act (First Nation Safety Officers) and the First Nation Safety Officers Regulation for more information.

Manitoba Justice worked with Assiniboine Community College (ACC) to develop the training content of the FNSOP. The training program provides candidates with the basic knowledge and skills to perform the role of an FNSO. At the conclusion of the three-week program, a successful candidate will have demonstrated his or her ability to:

- *explain the role of an FNSO;*
- *construct crime prevention strategies and initiatives;*
- *identify community support resources;*
- *use non-violent crisis intervention approaches;*
- *describe the Canadian criminal justice system;*
- *demonstrate safe arrest and search and seizure techniques;*
- *employ proper interviewing, note taking, report writing and testifying practices;*
- *summarize crime scene management imperatives;*
- *demonstrate proper self-defence manoeuvres, use of OC spray and use of baton; and*
- *perform CPR and basic first aid techniques.*

To date, ACC has delivered six training sessions to 140 FNSO candidates from 37 First Nation communities. With the transition of former band constables to FNSOs nearing completion, Manitoba Justice is exploring options to provide further training to the FNSOs to ensure they are recertified in use of force and informed of new and ongoing developments in the mandatory training areas.

Recommendation

[113] It is recommended that the Province of Manitoba in partnership with the Garden Hill First Nation establish a community safety facility in the community of Garden Hill to lodge or detain individuals suffering from intoxication by drug or intoxicant and/or mental health difficulties while they pose a danger to themselves or others.

Manitoba Justice Response October 11, 2016: Garden Hill First Nation was offered the opportunity to use RCMP cells which would be brought to the community by the RCMP. This offer was declined.

The use of RCMP cells by fully trained and appointed FNSOs will be offered through the use of a Memorandum of Understanding between First Nations and the RCMP. The issue of standards for detention cells under The Police Services Act will be examined as the FNSO is implemented. In the interim, the option of using RCMP cells will be encouraged, where required.

Recommendation

[118] It is recommended that the Province of Manitoba in partnership with Garden Hill First Nation establish a community referral program to assist individuals who

have been detained due to intoxication and/or mental health difficulties, to connect with required medical assistance and support resources upon their release from detention at the community safety centre.

Manitoba Justice Response October 11, 2016: FNSOs are trained in the application of The Intoxicated Persons Detention Act and The Mental Health Act. The involvement of the federal government in medical programming will be mandatory given its constitutional responsibilities for on-reserve medical services, including addictions and mental health services.

Recommendation

[119] It is recommended that a method for regular evaluation of the community safety program, community safety centre and the community referral program be included in the First Nation Safety Officer Program Agreement to ensure that the needs of the community continue to be met.

Manitoba Justice Response October 11, 2016: The operating agreements for each FNSO Program include provisions for the review of the FNSO Program. Further, Manitoba Justice has created the position of Director of First Nations Policing – a new position to the Department – who is responsible for liaising with and monitoring the FNSO Programs across the province.

Given that the department has provided its full response to the judge's recommendations that fall under the Manitoba government's jurisdiction, we will be concluding our monitoring of the implementation of the Calvin Waylon McDougall inquest recommendations.

Please note, an electronic copy of this report will be posted on the Manitoba Ombudsman website: www.ombudsman.mb.ca.

Yours truly,



Charlene Paquin
Manitoba Ombudsman

cc: Julie Frederickson, Deputy Minister of Justice and Deputy Attorney General
Dr. John Younes, A/Chief Medical Examiner, Manitoba Justice