

Manitoba Ombudsman

750 – 500 Portage Avenue
Winnipeg, MB R3C 3X1
Telephone: 204-982-9130
Toll Free in Manitoba: 1-800-665-0531
Fax: 204-942-7803
E-mail: ombudsma@ombudsman.mb.ca
www.ombudsman.mb.ca

August 8, 2018

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

500 av. Portage, Pièce 750
Winnipeg, MB R3C 3X1
Téléphone : 204-982-9130
Sans frais au Manitoba : 1-800-665-0531
Télécopieur : 204-942-7803
Courriel : ombudsma@ombudsman.mb.ca
www.ombudsman.mb.ca

RE: Inquest into the Death of Craig Vincent McDougall

Dear Chief Judge Wiebe:

As you are aware, it is the practice of our 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 our office concerning the recommendations made by Associate Chief Judge Anne Krahn in her report regarding the Inquest into the Death of Craig Vincent McDougall, issued May 9, 2017.

BACKGROUND

Craig Vincent McDougall died at 26 years of age on August 2, 2008, when he was shot by Winnipeg Police in the front yard of 788 Simcoe Street in Winnipeg, Manitoba.

RESPONSE TO INQUEST RECOMMENDATIONS

In the inquest report, the judge made 16 recommendations. Eleven recommendations were directed at the Winnipeg Police Service (WPS), while five recommendations were directed at Manitoba Justice.

We inquired with Manitoba Justice on June 12, 2017 and February 8, 2018, regarding what steps had been taken to implement the recommendations in this matter. We received an interim response from Manitoba Justice on July 25, 2017, and the department's final response was received on March 1, 2018.

We also made inquiries with the WPS on June 12, 2017 and February 8, 2018 to determine what steps it had taken to implement the recommendations in this matter. The WPS's response was received by our office on July 17, 2018.

The responses received are set out under each recommendation below.

Recommendation #1

That the Winnipeg Police Service study and consider setting service standards which would set recommended guidelines for how long witnesses must wait in the police station before their statements are taken.

In its response to our office, the WPS stated that it is currently benchmarking the practices of other Canadian law enforcement agencies. It advised that once that process is complete, the WPS Executive will be briefed and will be able to respond to the recommendation. The WPS expects that this process will be completed by the middle of October 2018.

Recommendation #2

That the Province of Manitoba and its policing agencies should study and consider the feasibility and use of body cameras for police officers engaged in their duties.

Manitoba Justice has advised that in 2016, the Manitoba Police Commission (MPC) undertook a study of body-worn cameras, including an analysis of several pilot studies and reviews from Canadian jurisdictions, to assess the viability of the use of body-worn cameras by police agencies in Manitoba. This review by the MPC encompassed cross-jurisdictional research and consultations with stakeholders, including law enforcement.

The MPC concluded that the use of body-worn cameras should not be implemented. The MPC recommended, however, that the issue be monitored for future consideration by Manitoba Justice. Manitoba Justice therefore has advised our office that while the MPC will continue to monitor the issue, this recommendation to study and consider the use of body cameras for police officers has been completed.

Recommendation #3

That the Winnipeg Police Service continue to communicate to its membership both at the Recruit Training stage and once officers graduate, the jurisdiction and authority of the Independent Investigation Unit as defined in the Police Services Act and its regulations.

In its response to our office, the WPS advised that it has invited the Independent Investigation Unit (IIU) to address all police recruits since the IIU's inception. The WPS further advised that in 2018, the WPS addressed all operational units on the jurisdiction and authority of the IIU in the Annual Forums.

The WPS stated that this topic will also be added to the Ethics Training and senior-in-service training courses including Criminal Investigators, Uniform Operations Investigative Techniques, Newly Promoted Sergeants and Patrol Sergeants Course and Field Training Officers Course to reach a broad scope of officers.

Recommendation #4

That when the Independent Investigation Unit is conducting an investigation into the death of an Indigenous person at the hands of a police officer, consideration should be given to whether there is an appropriate member of the Indigenous community who could be appointed as the civilian monitor.

Under the Police Services Act, the role of a civilian monitor is to monitor the progress of an IIU investigation into the death of a person that may have resulted from the actions of a police officer, or any other case where the civilian director of the IIU considers it in the public interest to involve a civilian monitor. Manitoba Justice advised that civilian monitors must carry out this significant responsibility in accordance with prescribed policies and procedures, and are mandated to complete training before they can be assigned to monitor an investigation.

Manitoba Justice explained that these factors give rise to a Civilian Monitor Program that is unique to Manitoba and distinct from the "independent observer" used in investigations that predated the launch of the IIU. However, these factors also restrict the Manitoba Police Commission's ability to appoint members of the community on an ad hoc basis to fulfill the civilian monitor role.

Manitoba Justice stated that it concurs with the inquest judge's view that an investigation must be accountable to the community and the impact this accountability has on building and restoring trust and confidence between the police service and the Indigenous community. Manitoba Justice

has therefore stated that, in appropriate circumstances, a member of the community may be appointed to serve as liaison between the IIU and the affected community. This would be in addition to the mandatory appointment of a civilian monitor.

Recommendation #5

That the Winnipeg Police Service change the “Prisoner Log Sheet” so that the form itself is clear as to a person’s status as a witness as opposed to a suspect who is detained or an arrested person.

The WPS advised our office that this form is currently in development.

Recommendation #6

That the rights of a witness should be clearly explained to the witness throughout their interaction with the police, including that they are free to go or stay, that there will be no consequences to them if they choose to leave and they have no obligation to give a statement.

The WPS has advised that it is currently reviewing its policies and training plans to identify policies, if any, that require change to implement this recommendation.

Recommendation #7

That the Winnipeg Police Service ensure that when witnesses have observed a traumatic event that they have access to a victim services worker or provide the witness with a list of agencies who can provide support.

In its response to our office, the WPS stated that it currently has programs that provide this service with its Victim and Volunteer Services Unit. It advised that there is a social worker position that provides support, information and referral to individuals, families and groups impacted by crime and tragedy within the City of Winnipeg. A Family Services Liaison Worker provides support services for families and victims of crime.

Additionally, the WPS stated that witnesses and victims of crime are contacted by members of the Victim and Volunteer Services Unit and are provided with support or referrals specific to

their circumstances or request. This unit provides informational leaflets as well as brochures and leaflets from partner agencies.

Recommendation #8

That the Winnipeg Police Service emphasize in their training programs that an officer's notes should contain sufficient detail to explain when a person is handcuffed, why they were handcuffed and for how long the handcuffs were used.

The WPS advised that its Training Division currently trains members to document in their notes the time handcuffs are applied, when persons are placed in a police car, and when they arrive at a police station.

The WPS also stated that existing training will be enhanced to teach members to note the reason for handcuffing and how long the handcuffs were applied to the person. This will be included in the Note Taking lesson in Police Recruit training, Cadet training, Central Processing Officer training, Criminal Investigators course, Interview and Interrogation course, Newly Promoted course, and Uniform Operations Investigative Techniques course.

Recommendation #9

That the Winnipeg Police Service explore the feasibility and consider delivery of Implicit Bias Training for its members at regular intervals.

The WPS has advised that it began delivering this training in November 2015, and to date over 80% of all WPS staff have received this training. The WPS further advised that the remaining members of its staff will have completed the training by the end of 2018.

Recommendation #10

That the Winnipeg Police Service engage in continuous evaluation and improvement of its Implicit Bias and Aboriginal Awareness programs to ensure that they are meeting goals of ensuring officers work more effectively when they interact with Indigenous peoples.

In its response to our office, the WPS stated that it regularly reviews all training provided to its members, including the Implicit Bias and Indigenous Awareness programs, to ensure their effectiveness.

Recommendation #11

That the Winnipeg Police Service consider and explore external evaluations of these training programs, including input from Indigenous organizations.

The WPS has advised that the training programs were evaluated by the Indigenous Liaison Officer and the Winnipeg Police Board in 2017. It further stated that much of the training provided is delivered by members of the Indigenous community to ensure optimal effectiveness.

Recommendation #12

That the Winnipeg Police Service continue to work with Indigenous organizations to develop community policing programs.

The WPS's response stated that it prioritizes engagement with Indigenous organizations through its Community Relations Division (Division 51). It further advised that these initiatives are reported on and evaluated not only by the WPS but also the WPS Police Board and Indigenous Council. Current projects and/or partnerships include, but are not limited to:

- Bear Clan Patrol
- Personal safety and partnership with Indigenous students (both rural and urban)
- Indigenous Unity Gathering
- Indigenous and Diversity Career Exhibition
- City of Winnipeg Indigenous Accord
- Support programs and services with partners surrounding Indigenous citizens such as Onashowewin Justice Circle, Ka Ni Kanichihk, Ndinawemaaganag Endaawaad, Ikwe Widdjiitiwin, Eagle's Nest, and Ma Mawi Wi Chi Itata
- Block by Block Community Safety and Wellbeing Initiative / Thunderwing Project
- Morningstar Initiative (RB Russell School)
- Restorative Justice Initiative and Diversion

Recommendation #13

That the Winnipeg Police Service evaluate whether sufficient time is dedicated to tactical communication and whether it is feasible to increase the time dedicated to this subject.

The WPS has advised that its Training Division provides mandatory training to all Police Officers, Cadets, and Central Processing Officers on use of force. A major part of this training is tactical communication and de-escalation techniques. The WPS advised that these skills are taught in both the classroom setting and in scenario-based training. Specific de-escalation techniques are presented for crisis communication. Both concepts are also presented in mandatory intermediate weapon training to all members.

The WPS also stated that it has increased its focus on tactical communication and de-escalation techniques over the last number of years and constantly evaluates its programming to ensure its effectiveness.

Recommendation #14

That the Province of Manitoba consider amendments to the Fatality Inquiries Act to set legislative timelines to ensure that inquests are held within a reasonable time period.

Manitoba Justice has advised that on June 2, 2017, the Fatality Inquiries Amendment Act (Bill 16) received Royal Assent. The amendments to the Fatality Inquiries Act address the process for the calling and hearing of inquests.

Manitoba Justice further stated that while the amendments do not establish timelines, actions have been taken to address delays in the process, particularly relating to the calling of an inquest. In the past, inquests would not be called until the Criminal Code charges or review for potential charges had been completed. This could lead to a delay ranging from months to years pending the completion of the criminal investigation and/or trial.

Manitoba Justice explained that under the recent procedural changes, inquests are now called following the determination that one is required or appropriate in the circumstances. As there will be no delay in the calling of an inquest pending the outcome of the trial or review for charges, the Chief Judge of the Provincial Court will receive the notice that one has been called within a short timeframe of the decision being made.

Nonetheless, Manitoba Justice has advised that the inquest itself can only be held once the “criminal charge has been finally determined” pursuant to the new amendment found at

subsection 26.1(2) of the Fatality Inquiries Act. The department explained that this provision mirrors the practice previously in place, which is necessary so as not to impact the criminal trial unfairly.

Recommendation #15

That the Fatality Inquiries Act be amended to require the Chief Medical Examiner to notify the Chief Judge within 60 days of a determination that a mandatory inquest will be held. The Chief Judge will then appoint an Inquest Judge who can monitor the hearing and the timely proceeding of the inquest.

As per Manitoba Justice's response to Recommendation #14, it advised that other actions have been taken to address the timing of the notification to the Chief Judge that an inquest has been called. The department stated that instead of waiting for the trial or criminal matter to be completed, the Chief Medical Examiner will advise the Chief Judge once the determination has been made that an inquest is required. As per these recommendations, the Provincial Court has adopted the process of assigning a judge to conduct the inquest at this early stage and the judge will monitor the criminal case to determine when the inquest can proceed.

Recommendation #16

That Justice Manitoba undertake a review to determine whether an inquest coordinator would help inquests proceed in a more timely manner.

Manitoba Justice has advised that Manitoba Prosecution Service previously had an inquest coordinator who had specialized training that was particularly helpful in inquests involving medical issues. The inquest coordinator was valuable and of assistance to judges and Crown Attorneys in the organization and preparation for inquests. Manitoba Justice explained that this did not necessarily expedite the process of having inquests heard in a more timely manner, but it did point to the assistance that is rendered when people have experience with the process and subject matter knowledge.

The department stated that in recognition of the need for a consistent efficient process, Manitoba Prosecution Service is compiling an Inquest Procedure Manual for reference purposes for the use of both Crown Attorneys and file manager support staff. In addition, Manitoba Prosecution Service is designating certain Crown Attorneys as "experts" who can assist others with less experience on inquests as required.

Manitoba Justice also stated that the process of assigning a Crown Attorney to an inquest has been streamlined in order to provide further efficiency. The nature and complexity of the inquest will be reviewed by a director and appropriate assignment will then be made to a Crown Attorney with the right combination of experience and subject matter.

In its final response, Manitoba Justice advised that Manitoba Prosecution Service had reviewed the issue of whether the creation of an inquest coordinator position would expedite the hearing of matters. It was determined that adding this position would have a negligible impact on the timeliness of inquests. Manitoba Justice advised that the changes that are in process or have already been established will accomplish a more streamlined and efficient process that will address the issues identified by the inquest judge.

CONCLUSION

Given that each of the recommendations in this matter either have been or are in the process of being implemented by Manitoba Justice or the Winnipeg Police Service, our office is concluding our monitoring of this matter at this time.

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

Yours truly,



Marc Cormier
Acting Manitoba Ombudsman

cc: Dave Wright, Deputy Minister, Manitoba Justice
Danny Smyth, Chief of Police, Winnipeg Police Service
Dr. John Younes, A/Chief Medical Examiner, Manitoba Justice