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May 30, 2008

The Honourable Raymond E. Wyant
Chief Judge
Provincial Court of Manitoba
5th floor – 408 York Avenue
Winnipeg MB R3C 0P9

Dear Chief Judge Wyant:

Re: Inquest into the death of Leon Herman Bighetty

I am writing to advise of the results of the inquiries made by my office concerning the inquest report recommendations dated August 2, 2005, issued by the Honourable Judge Marva J. Smith into the death of Leon Herman Bighetty.

Mr. Bighetty came to his death at the Health Sciences Centre on November 27, 2002 from subdural hematomas, six days after being found completely unresponsive in his cell at the Main Street Project, 75 Martha Street, Winnipeg, where he was detained after being apprehended by members of the Winnipeg Police Service under *The Intoxicated Persons Detention Act*.

The Chief Medical Examiner called an inquest pursuant to subsection 19(3) of *The Fatality Inquiries Act*. The inquest report was released on August 5, 2005.

As you are aware, it is the practice of my office to follow up on inquest recommendations if they involve a provincial department, agency or municipality. In this case my office made inquiries with Manitoba Justice, Manitoba Health, Intergovernmental Affairs and Trade, the Winnipeg Regional Health Authority and the City of Winnipeg and confirmed information with Main Street Project. The following are the recommendations within my purview and the departments' responses.

RECOMMENDATION 1

At least five of the twenty cells should have video monitors for those clients at risk of self harm or who otherwise need closer supervision due to questionable consciousness or otherwise. This was previously recommended by Judge Howell, and should be a priority. Given that the administration of IPDA is assigned to the Minister of Justice, the Provincial Department of Justice should provide the one-time funding for this expenditure.

JUSTICE RESPONSE

Although Judge Smith concludes that the administration of the IPDA falls to the Minister of Justice, this department does not oversee or direct Main Street Project on operational issues. We have no funding relationship with that organization as they obtain their revenue on a contractual basis with the City of Winnipeg Police Service, Family Services and Housing and Winnipeg Regional Health Authority (WRHA). This issue has been referred by Manitoba Justice to the Department of Intergovernmental Affairs and Trade as they have ongoing relationships with the community in that area and directly with the City of Winnipeg.

INTERGOVERNMENTAL AFFAIRS AND TRADE RESPONSE

I can advise that my department has no jurisdiction or mandated role with respect to any of the inquest recommendations, including the two specifically identified in your letter. I would note, however, that IAT's Neighbourhoods Alive! program recently received a funding proposal from Main Street Project (MSP) Inc. that would respond to Recommendation #1 of the inquest report. MSP has requested \$19,950 from Neighbourhoods Alive! to support security upgrades to its facilities at 71 and 75 Martha Street. The project would involve the purchase of closed circuit security cameras and their installation in five Intoxicated Persons Detention Area (IPDA) cells and in the entrance and hallways of the IPDA facilities.

On March 14, 2006 Intergovernmental Affairs and Trade advised my office that the Neighbourhoods Alive! program approved funding in the amount of \$19,950 for MSP for security upgrades to its facilities at 71 and 75 Martha Street. The funding was designated for the purchase of closed circuit security cameras and their installation in five cells and in the entrance and hallways of the IPDA facilities. It is our understanding that the cameras have been installed and are operational.

RECOMMENDATION 19

The WPS should remain at the Project after admitting an individual for a brief time if requested to act as backup to the Project staff who are attempting to rouse other clients previously admitted for the level of consciousness checks, in case of violence. If after a trial period this does not prove workable, some other means of assuring staff safety during rousing should be developed. A lone staff member should never attempt to rouse a client unless the client has a history with the Project of consistent non-violence.

CITY OF WINNIPEG RESPONSE

The City respectfully disagrees with this recommendation; the relevant legislation, The Intoxicated Persons Detention Act, Section 2(2), provides that "Where a peace officer takes a person into custody under subsection (1), if there is a detoxication centre in the community, the peace officer may take the person to the detoxication

centre and deliver him into the custody of the person in charge of the detoxification center.” In the City’s view, this proposed policy would extend the function of the Winnipeg Police Service to work which is most appropriately that of Main Street Project staff, and would put a strain on the resources of the WPS.

RECOMMENDATION 23

The exercise of preparing the protocols and checklists referred to in paragraphs 6 to 8, 16, 17 and 20 should be appropriately funded by a grant from the WRHA and the City of Winnipeg.

CITY OF WINNIPEG RESPONSE

Main Street Project (MSP) initiated the process of reviewing/developing the protocols and checklists referred to in Recommendation 23. That process is ongoing. Discussions will continue between MSP and WRHA regarding any assistance that MSP requires to complete the work.

WRHA RESPONSE

MSP implemented a program for all IPDA staff to train as Level I Emergency Medical Responders, significantly beyond the level of training required prior to the release of this Inquest Report. This training, together with the completion of the protocols identified in Recommendation 23, will increase MSP’s capacity internally to meet the health needs of individuals detained in IPDA. Once complete, the WRHA will review the training and protocols and offer any additional recommendations to MSP. It is worth of note, however, that MSP will experience a challenge in sustaining this training program at current funding levels so further discussions related to funding will be required.

The Winnipeg Regional Health Authority’s mandate is to address the health needs of all citizens of Winnipeg and in so doing to use its resources as effectively as possible. There is no question that clients and residents of Main Street Project would benefit from enhanced primary care services provided by physicians, nurses, and/or nurse practitioners. The WRHA’s Community Area Director for Downtown and Point Douglas has undertaken a project with MSP and other service providers in the core area to analyze the primary care needs of homeless persons in Winnipeg’s inner city and develop options for access to and delivery of such services.

The City of Winnipeg has also had a continuing interest and involvement in services for intoxicated persons in Winnipeg. The Winnipeg Fire Paramedic Service, the Winnipeg Police Service, Health Sciences Centre, Main Street Project, the Downtown BIZ and the WRHA have been engaged in ongoing discussions about the safe transport of intoxicated persons to MSP and the need for appropriate pre-admission health assessment and emergency response. A number of ideas have been tested, with varying degrees of success. Most recently, a plan has been implemented for an

expansion of the Downtown Patrol operated by the Downtown BIZ to increase capacity to identify and provide services (including transport under IPDA as required) to intoxicated persons in the inner city.

Post admission health crisis in IPDA are infrequent but not unexpected. The Winnipeg Fire Paramedic Service has been excellent in its response to these situations when called. In cases where security is required to safely address a health crisis, the police respond to assist.

I should also note that the WRHA did not have standing at the inquest. The WRHA was not called upon to give evidence at the inquest with respect to the feasibility of some of the recommendations that have been proposed.

RECOMMENDATION 24

A highly skilled nurse practitioner, similar to those employed in northern nursing stations, comfortable with the caring philosophy of the project, should be on staff at the Project and available for admissions and consults on IPDA clients, and to provide nursing care in other areas of the Project at all times. As a start, and at a minimum, such a nurse practitioner should be available daily from 8:00 p.m. to 5:00 a.m. beginning with the next fiscal year (as of April 1, 2006). The costs should be shared by the City of Winnipeg (through increase of per diem rates or otherwise), the WRHA and the Department of Justice, unless otherwise agreed. Depending on the skill and experience of the nurse, some of those who otherwise would immediately be sent to hospital under paragraphs 12 to 16 above or otherwise may perhaps remain under close monitoring by the nurse who can assess on an ongoing basis the need to send them to hospital.

MANITOBA JUSTICE RESPONSE

We believe that issues relating to health care need to be addressed by the City of Winnipeg and the WRHA. The Department of Justice has no role or working relationships with the Main Street Project. Individuals who appear there appear due to their level of intoxication and for no criminal reason. Again, this recommendation may have been made due to the legislative assignment of the Act to the Minister of Justice. That does not translate to operational and fiscal responsibility. I would therefore recommend that this issue be referred to the WRHA and Intergovernmental Affairs and Trade for your follow-up.

CITY OF WINNIPEG RESPONSE

A planning committee comprised of representatives from each of the stakeholder organizations has developed a proposal to create one position (1 EFT) for MSP for an initial period of one year.

Rationale

The purpose of proceeding in this way is to allow for the organized development of a plan for skilled health professionals at MSP. The Judge in her recommendation clearly placed importance on not just the needs of individuals admitted under IPDA, but the broader health needs of the clients of MSP. The role for a Nurse Practitioner (NP) or other health professional remains underdeveloped. Main Street Project has never previously employed trained health staff and no one else involved in the planning yet has a firm grasp on the best way to use new resources of this kind to the best advantage. In addition, with new positions in the system available to graduating and experienced NPs, the planning group was not optimistic that MSP would be successful in attracting a skilled NP to this somewhat vaguely defined role. Although the Judge specifically identified NP as the right resource, other professionals may effectively respond to the concerns she was seeking to address and be easier to recruit and retain for work in this challenging environment.

The planning committee is recommending that the initial one year period be used to directly support the health and safety of the individuals detained under IPDA and explore and develop a broader role for trained medical personnel in meeting the primary health care needs of the individuals who use MSP's other programs and services.

Proposal

The proposal is to recruit from within the Winnipeg Fire Paramedic Service (WFPS) one or more experienced Intermediate Care Paramedics (ICP)/Advanced Care Paramedics (ACP) who are also trained as RN/BN's. (These individuals will be referred to as Nurse Paramedics for the remainder of this letter). There are three individuals in the organization currently who meet this criteria and two have expressed some interest in this assignment.

The role and responsibilities of the Nurse Paramedic will include:

- *Assess individuals admitted to MSP under IPDA at intake and during the period of detention.*
- *Provide treatment and/or make recommendations related to health issues arising in other program and service areas of MSP.*
- *Additional work related to the broader health needs of the clients of MSP.*

All assessments and treatment of individuals in the IPDA will be documented on the electronic patient care reporting system employed by the WFPS. In addition, the Nurse Paramedic would maintain a log of all services provided to the other programs/services of MSP to provide data to support the development of a recommendation for the design and implementation of ongoing medical services for MSP after the initial one year period.

Outcomes of One Year Plan

At the end of the first six (6) months, a planning committee comprised of representatives from WRHA, WFPS and MSP will begin analysis of the data collected

by the Nurse Paramedic. A plan for long-term health services at MSP will be developed on the basis of the work of the Nurse Paramedic, the data collected during this initial project and all other data available from Main Street Project and other sources in relation to the health of MSP clients (calls to ambulance, transportation to emergency rooms/urgent care, first aid and other health services provided on site, referrals of health professionals in community).

Funding for One Year Plan

The cost of implementing the plan detailed above for a one year period is \$160,000, which includes salary and benefits for two individuals and a modest amount for operating costs. MSP has also agreed to provide space for the Nurse Paramedic to work and any supplies not accounted for in this budget. Supervision, medical oversight and clinical support for the Nurse Paramedic will be provided by the WRHA and WFPS as an "in kind" contribution to the project.

An agreement has tentatively been reached regarding funding for the initial one year period. On the understanding that the costs will not exceed \$160,000 per year, they will be shared as follows:

- *Winnipeg Police Service – 25%*
- *Winnipeg Fire Paramedic Service – 25%*
- *Winnipeg Regional Health Authority – 25%*
- *Manitoba Health – 25%*

This commitment is only for the initial one year period; future funding will be determined once a detailed plan for ongoing services has been developed.

At this time we are waiting for input from the WRHA regarding who will provide medical oversight for the primary health role of these Nurse Paramedics. It is our intention to implement this plan as soon as possible as we recognize that another inquest has been called into the death of an individual in custody at MSP.

It is our understanding they hope to have the Nurse Paramedic in place for July 2008 at the latest. We were also advised by the Main Street Project that with respect to Recommendation 23 that while the protocols/checklists have been developed they have not yet been implemented. They are hopeful that with the assistance of the Nurse Paramedic they will have them in place in September 2008.

RECOMMENDATION 28

WPS officers should have specific training on head injuries and the fact that those with substance abuse problems face an increased risk of subdural hematomas and the fact that symptoms of a subdural hematoma can be similar to that of intoxication. When this can be safely done, members should follow procedures similar to those set out in RCMP operational manual "Assessing Prisoner Responsiveness" attached as Appendix IV to this document.

CITY OF WINNIPEG RESPONSE

The City of Winnipeg agrees with Recommendation 28's statement "WPS officers should have specific training on head injuries..." The WPS's First Aid/CPR Training is comprehensive. The curriculum has been granted "equivalency standard" by Workplace Health and Safety, and meets current accreditation standards. The course's module entitled "Head and Brain Trauma" focuses on recognizing signs and symptoms of brain injury; police officers are not expected to make medical assessments, but rather to enquire about injuries and summon medical assistance, if required.

RECOMMENDATION 30

The Medical Director of the Winnipeg Remand Centre should develop and implement a policy for periodic rousing of apparently intoxicated individuals to assess level of consciousness to ensure that the apparent intoxication is not masking some other health problem. (The same should apply to the Manitoba Youth Centre as well as the Rosaire Centre if such policies do not exist there.)

MANITOBA JUSTICE RESPONSE

Manitoba Corrections already has this practice in place at Brandon Correctional Centre. The Director of Health Care is assessing whether this standard is relevant to the Manitoba Youth Centre given their current facilities and existing methods of supervision. The Division will be making the rousing of intoxicated persons a feature of their supervision standards at the Winnipeg Remand Centre. We note that Corrections staff did not testify at the inquest.

The report also suggests that Remand Centre medical personnel be made available in some fashion to the Main Street Project. As noted, Corrections has no funding or functional relationship with the Main Street Project. Therefore we feel that any additional medical resources should be considered by the funding agencies: WRHA and City of Winnipeg.

RECOMMENDATION 31

That the Minister of Health for the Province should set up an in-province adult facility for the treatment of those addicted to inhalants.

MANITOBA HEALTH RESPONSE

Currently there are a total of 286 adult residential beds within seven addiction agencies across the province that provide services to individuals with alcohol and other drug abuse problems – including inhalants. Upon entry into a treatment program, most addicted persons report using a number of drugs versus one specific

drug of choice. Adults using inhalants and wishing to address their problem can access any one of the seven residential treatment programs in the province.

Addiction treatment programs are not organized around the specific drug used but are designed to assist individuals gain insight into why they use and the harms that their use is creating in their life and the lives of their families. Treatment programs build on the strength of individuals and assist them in reducing the risks/harms associated with their alcohol and other drug use. The treatment process doesn't differ according to drug – it differs according to individual need.

Some individuals using inhalants on a regular basis and over a long period of time may require a treatment program that can accommodate them for an extended period of time. The Behavioural Health Foundation Inc. is a long term treatment facility where individuals can stay for up to one year. Others may only require a short term program with on-going community supports. The Addictions Foundation of Manitoba, The Salvation Army, Tamarack Rehab Inc., and Rosaire House in The Pas provide addictions services to this population. Peguis Al-Care Centre on the Peguis First Nations Reserve and the Native Addictions Council of Manitoba in Winnipeg are available to first Nations People who desire a culturally based program.

Manitoba Health, through Healthy Living's Mental Health & Addictions Branch, chairs the Addictions Agencies Network that includes representation from the majority of addiction programs in the province. Manitoba Health has, over the past 6 months begun to collect information on the specific drugs used by clients accessing treatment services and will continue to monitor what drugs are currently being used. The Addictions Agencies Network may also be helpful in identifying any gaps in service to this population.

Based on our review of this matter, it would appear that Manitoba Justice, Manitoba Health, the Winnipeg Regional Health Authority, Intergovernmental Affairs and Trade and the City of Winnipeg have given reasonable consideration to the above noted recommendations. As such, our files concerning Leon Herman Bighetty have been closed.

Yours truly,

Original Signed By

Irene A. Hamilton
Manitoba Ombudsman

cc Dr. Brian Postl, President and CEO of WRHA
Mr. Ron Perrozo, Deputy Minister of Justice
Ms Linda McFadyen, Deputy Minister of Intergovernmental Affairs
Ms Arlene Wilgosh, Deputy Minister of Health and Healthy Living
Mr. Glen Laubenstein, CAO City of Winnipeg
Dr. A. Thambirajah Balachandra, Chief Medical Examiner