

# Manitoba Ombudsman

September 6, 2017

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

**Inquest into the death of Brian McPherson**  
**Our file: 2016-0121**

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 inquiries made by my office concerning the inquest report recommendations into the death of Mr. Brian McPherson. The inquest report, dated February 9, 2016, was released by the Honourable Judge Malcolm W. McDonald on February 12, 2016.

Mr. Brian McPherson, age 44, died on August 27, 2011, while being held in custody at the Garden Hill band constable holding cells. The immediate cause of death was ischemic heart disease due to coronary atherosclerosis.

The Honourable Judge McDonald's recommendations included an endorsement of Judge Tracey Lord's recommendations in her July 20, 2015, inquest report into the death of Calvin Waylon McDougall, who also died while in a Garden Hill holding cell (para. 130, McPherson inquest report).

My office made inquiries with Manitoba Justice (the department) regarding the recommendations within our jurisdiction including 1, 2, 3, and 6, while recommendations 4, 5, 7, 8, 9, 10, 11 and 12 fall outside our jurisdiction. The department's response to recommendation 6 of this inquest report also includes reference to the recommendations made by Judge Tracey

Lord in her inquest report into the death of Calvin Waylon McDougall, as explained above. The recommendations and the department's responses follow:

### **Recommendation #1**

**[123] That the province initiate talks with Canada to provide funding through the First Nations Policing Program (FNPP) that allows First Nations in Manitoba to participate in the program given that the 2006 funding freeze has disproportionately affected participation in the program by First Nations.**

*Manitoba Justice Response October 11, 2016: Funding for the FNPP expires on March 31, 2018. At this time, no new funding will be made available to permit expansion of the program to more communities. The federal government has commenced consultations across Canada with respect to the FNPP beyond the 2018 deadline and a renewed approach to Indigenous policing. Manitoba has historically taken the position that the FNPP needs to be expanded to reach more communities and stable, long-term funding provided to address public safety needs.*

### **Recommendation #2**

**[124] That pending the implementation of the FNPP in Garden Hill and other affected Manitoba First Nations, the Government of Manitoba consider focused legislation granting appropriately trained and equipped band peace officers powers of arrest as set out in section 495 of the Criminal Code in communities where remoteness requires such a law enforcement presence. In the alternative, that the province redeploy or enhance policing by the RCMP through the Provincial Police Services Agreement (PPSA) to allow for the presence of a fully empowered peace officer, perhaps on a 24/7 inland patrol basis, in each remote First Nation communities working with assistance of a First Nations Safety Officer (FNSO).**

*Manitoba Justice Response October 11, 2016: The federal government terminated the Band Constable Program (BCP) effective March 31, 2015. In response, Manitoba amended The Police Services Act to create First Nation Safety Officers (FNSOs). 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.*

*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.*

*Training was made available to all First Nation communities that had BCPs so that they could transition to a legislated program with clearly defined authorities and powers. As of September 23, 2016, more than 114 individuals from 33 First Nation communities have successfully completed FNSO training delivered by Assiniboine Community College.*

On July 31, 2017, Manitoba Justice provided our office with further information regarding 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.*

*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 #3**

**[125] Until such time as the FNPP program can be implemented, the Province establish in conjunction with First Nations and the Federal Government, proper training for First Nation safety officers, or band peace officers, working in First Nation communities including training concerning powers of arrest and detention as well as search and seizure.**

*Manitoba Justice Response October 11, 2016: As noted above, <sup>1</sup>the FNSO Program mandates training before someone can be appointed as an FNSO and begin his or her duties. At the completion of the training program, FNSOs should be able to [please see the bulleted list of skills on page 3, Recommendation #2].*

### **Recommendation #6**

**[140] That standards be established by the Province in conjunction with First Nations, the Federal Government and the RCMP for the construction, establishment of and maintenance of any detention facilities on First Nations lands along with a system of periodic inspections to ensure facilities are maintained to a proper standard of safety and hygiene.**

*Manitoba Justice Response October 11, 2016: The Police Services Act provides for the establishment of standards for detention facilities. This will be assessed as the FNSO Program is implemented. In the meantime, communities with trained FNSOs will be able to access RCMP holding cells through a Memorandum of Understanding with the RCMP.*

*As noted in his report, Judge McDonald also endorsed the recommendations of Provincial Judge Tracey Lord in her inquest report into the death of Calvin Waylon McDougall. The Department is responding to the following four recommendations directed to the Province:*

***Inquest into the death of Calvin Waylon McDougall 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. (Calvin McDougall inquest report)***

***Manitoba Justice Response October 11, 2016: The Community Safety Division of Manitoba Justice has met with the leadership of Garden Hill to discuss the FNSO***

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<sup>1</sup> See the department's response to Recommendation #2

*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 First Nation Safety Officers Program – please see page 3 for the information provided.

***Inquest into the death of Calvin Waylon McDougall 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.*

***Inquest into the death of Calvin Waylon McDougall 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.

***Inquest into the death of Calvin Waylon McDougall 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.***

According to the department's responses, consultation with First Nations and legislative amendments have resulted in the creation of First Nation Safety Officers (FNSOs), which represent significant improvements to community policing in First Nation communities.

Not all recommendations have been fully implemented; it appears that issues related to federal funding and agreements with individual communities will require ongoing consultation. However, given that the department has implemented the recommendations under its direct control, and reported on its progress towards full implementation of the judge's recommendations that fall under Manitoba's jurisdiction, we will be concluding our monitoring of the Brian McPherson inquest.

If Manitoba Justice provides any additional related information to my office, we will ensure it is sent to your office and appended to this report.

Please note, an electronic copy of this report will be posted on the Manitoba Ombudsman website: [www.ombudsman.mb.ca](http://www.ombudsman.mb.ca).

Yours truly,



Charlene Paquin  
Manitoba Ombudsman

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