

4 March 2009

## **Report on Winnipeg Copwatch's Recommendations for the Provincial Police Act Review**

### **1. Introduction**

Winnipeg Copwatch is a grassroots organization that works toward reducing police violence and increasing police accountability. As such we are invested in the current review of the Provincial Police Act, which has the potential to reduce incidents of police misconduct and police impunity by emphasizing civilian oversight and independent investigations. We respectfully submit the recommendations listed below to the people of Manitoba and Manitoba Justice.

### **2. Background**

The Police Act has not been reviewed for nearly 80 years in spite of profound and long-term public mistrust of law enforcement arising from incidents of serious police criminal misconduct leading to the deaths of JJ Harper, Matthew Dumas, Craig McDougall, and Crystal Taman, among many others. Police violence and impunity are symptoms of colonialism and systemic discrimination on the basis of class, gender and race (see the 2007 report on the Racialized Communities and Police Services Project published by the Manitoba Human Rights Commission for more information: <http://www.gov.mb.ca/hrc/english/publications/rcaps.html>). Further to this, Aboriginal communities have been forwarding substantial, thoroughly-researched critiques of the Police Act and specific recommendations for its revision since the Report on the Aboriginal Justice Inquiry of Manitoba was published in 1991. Given that public accountability is inherent in the mandate of public law enforcement, and that the public has the right to hold law enforcement accountable, Winnipeg Copwatch is submitting the recommendations listed below to be considered by the public and the Province in reviewing the Police Act and upholding justice and the rule of law.

#### **2.1 Community Consultations**

Winnipeg Copwatch regrets the extremely limited time frame available to the public to submit opinions on the proposed changes to the Police Act. Although the province has conducted community consultations to receive public input in the review, the deadline for submissions and completed questionnaires is March 13, and the proposed legislation is due to the Province by the end of March. Winnipeg Copwatch therefore requests from the Province a commitment to ongoing, meaningful public consultations on the development and implementation of the legislation even after the revised Act is initially passed.

#### **2.2 Jurisdiction of the Police Act**

The jurisdiction of the Provincial Police Act on (Federal) reserves remains unresolved, therefore Winnipeg Copwatch requests that the Province respects the positions of each stakeholder in this contested matter by allowing sufficient time for a sincere decision-making process before binding legislation is passed.

### **3. Brief Summary of Provincial Police Act Revisions**

The Province is proposing three major areas of revisions to the Police Act – Municipal Police Boards, a Provincial Police Commission, and an Independent Investigations Unit (IIU).

#### **3.1 Municipal Police Boards**

The Province is considering the mandatory creation of boards for municipalities that currently rely on their councils for police oversight and governance. In most provinces, boards are mandatory for municipalities that have their own police service. Manitoba has 12 municipal and First Nations police services. Only the Dakota Ojibway Tribal Council has formed a specific Police Board. In Winnipeg the existing Police Advisory Board advises City Council and functions with much less autonomy and power than Boards in many other provinces, including BC, Alberta, Saskatchewan, New Brunswick and Nova Scotia. The Province is also considering the role the Boards would have, such as hiring the police chief, managing police budgets, and monitoring the complaints process, as well as the qualifications required for membership to the Board.

#### **3.2 Police Commission**

The Province is proposing to re-establish a Police Commission (the last Commission was abolished in 1992) made up of members of the public, which would advise the government on policies, standards and emerging issues, train Police Boards, and maintain a list of civilian monitors to be involved in "certain" legal investigations. The Commission would not include police.

#### **3.3 Independent Investigations Unit**

The following of the Province's proposals for an IIU are supported by Winnipeg Copwatch:

1. The IIU should be led by an experienced, independent civilian director.
2. The IIU's investigative authority should extend from only on-duty police officers to both on-duty and off-duty officers.
3. Investigation should be mandatory for fatal force and serious injury, and the IIU should have the authority to take over other investigations.
4. The IIU should be supported by civilian monitors and independent legal counsel before and after investigations.
5. The IIU should be held accountable through regular reporting to the public.

### **4. Winnipeg Copwatch Recommendations**

#### **4.1 Focus Points**

1. The Provincial Police Commission and Municipal Police Boards should be democratically-elected.
2. The Police Commission should be empowered to engage actively in the complaints process, as more than an advisory body.
3. The public should be engaged in developing more specific standards, regulations, and mechanisms of accountability for the Independent Investigations Unit.
4. The Police Act should be clear in all cases regarding the legal difference between criminal and non-criminal police conduct.
5. The Act should include explicit legislation upholding the rights of complainants.

#### **4.2 Recommendations – Municipal Police Boards**

1. Boards should be elected democratically according to local standards and processes in a neighbourhood-based process similar to the election of school trustees.
2. Public accountability of Boards should be an intrinsic part of the Board's mandate.
3. Membership on Boards should be limited to a 4-year term with the option of re-election, include positions for First Nations members and be representative of the diversity of communities.
4. The elected Board should be empowered to hire and dismiss the Police Chief.
5. The Board should be empowered to manage the policing budget.

#### **4.3 Recommendations – The Provincial Police Commission**

1. The Commission should be democratically-elected. Public accountability of the Commission should be an intrinsic part of the Commission's mandate.
2. The Commission should be independent and formed of civilians, and should not include police or former police due to conflict of interest.
3. The Commission should be staffed by paid, full-time employees.
4. A substantial proportion of positions on the Commission should be designated for First Nations persons, reflecting the demographics of rural and Northern Manitoba. One position on the Commission should be reserved for a representative from the Manitoba Human Rights Commission.
5. As in other provinces, the Commission should be more than a governmental advisory committee.
6. The Commission should be mandated to receive complaints about police misconduct and direct them as appropriate to the Independent Investigations Unit. These services would replace and improve upon the services currently provided by the Law Enforcement Review Agency (LERA), which has been widely criticized as ineffective.
7. Either the Commission or the IIU should investigate non-criminal complaints.
8. The Commission should oversee the enforcement of appropriate and reasonable punitive measures to police officers found guilty of non-criminal misconduct in accordance with the policies established by the Police Boards and criminal misconduct in accordance with the principles of the Rule of Law.
9. The Commission should conduct meaningful, public hearings with respect to the execution of its own duties and any investigations into police conduct. Civilian monitors should be empowered to investigate major police incidents as outlined in the Province's proposal.
10. The Commission should be delegated to seriously consider, research and implement recommendations published by the 1991 Report on the Aboriginal Justice Inquiry of Manitoba, as well as to show a commitment to understanding and promoting principles of restorative justice and traditional Indigenous concepts of justice.
11. The Commission should provide adequate support related to literacy, language barriers, and the inclusion of necessary narrative details, etc, to anyone in need of assistance in filing a complaint. The Province should extend the time limit to file a complaint from 30 days after an incident to 60 days after an incident. The Commission should guarantee accessible, affordable, and optional legal aid for anyone forwarding a complaint.

#### **4.4 Recommendations - Independent Investigations Unit (IIU)**

1. Non-criminal allegations should be directed to and investigated by either the Police Commission or the IIU, and not a police service.
2. The IIU's investigative authority should extend to members of the BIZ patrol who are given Special Constable Status, and members of the Manitoba branch of the Central Intelligence Service (CISM).
3. The IIU must be adequately funded to fulfill its mandate effectively.
4. The development of legislation defining the standards and regulations of the IIU should be an open, public process resulting in specific, systemic measures of accountability.

IIU standards should account for the following:

5. The Province should extend the definition of "in police custody" in the Fatality Inquiries Act to include deaths occurring up to 48 hours after the victim left police custody. This will prevent police officers from transferring people on the verge of dying to Emergency Medical Services to avoid being investigated.
6. The Province should extend the definition of "serious injury" to include any action causing permanent disability, sexual assault, and actions that form the core cause of post-traumatic stress disorder.
7. The IIU should ensure the enforcement of appropriate and reasonable punitive measures to police officers found guilty of non-criminal misconduct in accordance with the policies established by the Police Boards and criminal misconduct in accordance with the principles of the Rule of Law.
8. Police should be required to notify the IIU of an incident immediately.
9. Full investigations reports should be provided to complainants.
10. The IIU should work in conjunction with the Commission to submit regular and full investigation reports to the media.
11. All complainants should have access to government-funded attorneys.
12. Families' legal costs should be covered at inquest hearings.
13. The public should be able to appeal the merit as well as the legality of Commission/IIU decisions.
14. The IIU should not participate in the prosecution of complainants.
15. Complaints should not be shown to the police until after the police have been questioned. Police should be separated before questioning to prevent collusion.

#### **SPEAK UP!**

To provide feedback on the Police Act review to  
Manitoba Justice visit  
<http://www.gov.mb.ca/justice/policeact/public.html>.  
Printouts of the questionnaire (deadline March 13)  
are also available through Winnipeg Copwatch.

To organize toward the elimination of  
police brutality and police impunity  
contact Winnipeg Copwatch.