

MANITOBA WILL BE MAKING CHANGES TO *THE PROVINCIAL POLICE ACT* IN 2009.
THE PROVINCE INVITES MANITOBANS TO PROVIDE THEIR COMMENTS TO HELP
SHAPE THE NEW LAW. CONSULTATION PAPERS HAVE BEEN PREPARED TO HELP
OBTAIN THE VIEWS OF MANITOBANS ON THE MAJOR ELEMENTS OF THE NEW ACT.

Consultation Paper: Independent Investigation Unit

Introduction

The Manitoba government will include an independent unit in the new police act to investigate:

- incidents involving police use of fatal force
- incidents resulting in serious injury to members of the public as a result of contact with police
- other incidents or allegations against police where there is a public interest in independent investigations

There are many incidents that police can be involved in that may need some form of investigation. The most severe are incidents resulting in a death or a serious injury to a member of the public. There are criminal allegations that are comparatively less serious, such as general assaults. There are also non-criminal allegations, such as allegations that a police officer has been rude or disrespectful.

A separate background document has been prepared on how these incidents are handled now. Another background document has been prepared on how these types of incidents are investigated in other provinces. These papers can be found at: www.gov.mb.ca/justice/policeact/index.html

This document outlines a possible model for responding to the range of incidents involving on and off-duty police officers. Your answers to the questions posed here can help the province prepare the new police act.

A possible model for Manitoba

DEALING WITH THE RANGE OF INCIDENTS

Serious incidents

The model presented in this paper would make it mandatory for a new unit to investigate the most serious incidents and allegations against police officers. It is based on the principle that these incidents should be investigated by an independent agency with the expertise and procedures to ensure independent results that can be trusted by the public and police officers. Where charges are pursued, the work of the new unit must be able to meet the tests applied by judges and juries.

Other criminal allegations

For less serious criminal allegations:

- police services would be required to inform the new unit of a complaint immediately
- the new unit would monitor investigations done by professional standards units that are internal to police services
- the new unit would have the authority to take over any investigation
- police services would be required to report the results of investigations to the director of the new unit
- police professional standards units would have to do any follow-up investigations directed by the new unit

Non criminal allegations

Non-criminal complaints would be dealt with by police services or The Law Enforcement Review Agency. Complaints about police policy would be the responsibility of the proposed local police boards and chiefs of police.

The new unit and all police services would be required to report publicly on all investigations of incidents and complaints against police officers.

Suggested principles for the new investigation unit

The new independent investigation unit would be:

- established in the new police act with the mandate to investigate on-duty and off-duty incidents involving police officers
- under the direction of an experienced civilian director who is independent of all police services
- mandatory for fatal force and serious injury cases and have the authority to take over other investigations involving less serious allegations of criminal conduct by police
- composed largely of experienced, current investigators who are selected, supervised by and report to the civilian director. Investigators selected for the unit would have to meet investigative and ethical standards established by the new police act and steps would be taken to ensure their skills are maintained at a high level
- supported by civilian monitors and independent legal counsel during and after investigations
- accountable through regular reporting to the public

Core elements of the proposed model

The core elements of the proposed new model are:

Specific statutory authority in the new police act: The new act will specify the mandate, authority, and powers of the independent unit to investigate on-duty and off-duty incidents involving police officers.

Civilian director: The act will create a civilian director to lead the new unit. The duties and powers of this position will be included in the act. The director will report to Manitoba Justice and operate independent of all police services.

Investigators: Highly skilled investigators will be selected by the unit's civilian director from police services in Manitoba and assigned to the unit. The director could also employ civilian investigators who meet the standards under the act.

Mandatory investigations: The act would make it mandatory for the new unit to investigate all incidents where the use of force leads to a death and all serious injury cases. Police services and officers would have to notify the new unit immediately when an incident occurs. They would be required to co-operate with unit investigators, be present for interviews and provide unit investigators with any evidence they have collected. Like in other provinces, local police will be required to follow the directions of the director to secure any evidence and protect the scene until unit investigators arrive.

Officers' rights: Nothing in the new act will limit or interfere with the *Charter* rights of police officers who are the subject of an investigation. This includes the right to legal counsel and other rights enjoyed by all citizens. Officers who are not the subject of the investigation, sometimes called witness officers, would be required to co-operate with the new unit. The civilian director will be required to assess each incident and allegations before deciding how best to direct the investigation. For example, the director will have to assess such factors as whether an incident occurred on or off duty and whether medical trauma is present in order to determine how best to investigate the incident.

Notice of internal investigations: The act would require police services to inform the civilian director immediately when their police professional standards unit gets a complaint or starts an investigation into one of its officers. The director would have the option of monitoring the investigation or taking it over if it is in the public interest. The director could also have a civilian monitor the investigation and take other oversight steps. The police would have to provide the director with information about the outcome of internal investigations that the new unit doesn't take over. The director can review each case, and require the police service to conduct further investigation.

Civilian monitors: The act will create the mandate, duties and responsibilities of civilian monitors to observe

investigations of police officers. A roster of independent civilian monitors will be established and maintained by the proposed Manitoba Police Commission. Depending on the nature of a complaint or incident, the director will contact the commission to assign a monitor to a case.

Independent office and communications: The unit will operate from its own office in Winnipeg. When an incident occurs in another community, the unit will establish temporary field offices, which will be separate from police detachments whenever possible. All public communication about unit investigations will be done directly by the unit and not the involved police service.

Embedded legal counsel: Investigators will be helped by legal counsel working directly with the unit to provide advice as investigations unfold. This could encompass advice and assistance to obtain judicial authorization for wiretaps, search warrants and other tools that may be necessary in major investigations. This counsel will be assigned or arranged by the assistant deputy attorney general or their delegate.

Independent prosecutors: The assistant deputy attorney general will be requested to assign an independent prosecutor to determine whether charges should be laid and, where sufficient evidence exists, to prosecute the case. Independent prosecutors could include prosecutors from another province.

To whom would the model apply?

The model will apply to all police officers employed by the 12 municipal, local or First Nation police services in Manitoba.

Police services such as the RCMP and the military police are governed by federal laws. These agencies would have to agree to Manitoba's independent investigation unit handling incidents involving officers from their agencies. In Alberta, for example, the RCMP is part of that province's independent investigation process.

Questions:

You can respond to the questions below by completing the online questionnaire at:

www.gov.mb.ca/justice/policeact/questionnaire.html

You can also download the questionnaire at:

www.gov.mb.ca/justice/policeact/pdf/questionnaire.pdf and send it by mail, e-mail or fax.

Do you agree with how the proposed model deals with fatal force and other serious incidents? Would you suggest any changes or recommend a different approach?

Do you agree with how the proposed model deals with less serious incidents? Would you suggest any changes or recommend a different approach?