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.

Background: Profile of Police Services in Manitoba

There are 17 police services in Manitoba. They are:

Municipal Police Services
- Altona Police Service
- Brandon Police Service
- R.M. of Cornwallis Police Service
- Morden Police Service
- Rivers Police Department
- Springfield Police Service
- Ste. Anne Police Department
- Victoria Beach Police Service
- R.M. of Whitehead Police Service
- Winkler Police Service
- Winnipeg Police Service

Aboriginal Police Service
- Dakota Ojibway Police Service

Federal Police Services
- Royal Canadian Mounted Police (RCMP)
  - "D" Division
- CN Police
- CP Police
- Military Police Shilo Detachment
- Military Police 17 Wing Winnipeg

Municipal Police Service Legislation

The City of Winnipeg
In the City of Winnipeg, municipal police service is governed by The *City of Winnipeg Charter.* Under this statute the city is responsible for maintaining the Winnipeg Police Service.

Other municipalities
Outside of Winnipeg, municipal police services are governed by *The Municipal Act*. Under subsection 271(1) of *The Municipal Act*, urban municipalities with a population of 750 or more must maintain a police service. They can do so by establishing their own police service or by contracting with the Government of Manitoba, the Government of Canada or other municipalities to provide police services.

Qualifications and training to be a police officer in Manitoba

The qualifications and training required to be a police officer in Manitoba, except for the RCMP, are outlined in the regulations of *The Provincial Police Act*. An officer must:

- be 18 years of age or over
- be a Canadian citizen or a permanent resident
- have a high school diploma or academic training the police chief considers to be equivalent to that required to obtain a high school diploma
- provide a current criminal record check from a law enforcement agency that confirms no criminal record
- have successfully completed a training course for police officers with a recognized police service, including the RCMP, the Brandon Police Service, the Winnipeg Police Service, or any other service approved by the minister of Manitoba Justice.

The Royal Canadian Mounted Police

The RCMP is the provincial police service for Manitoba. It performs specific duties as part of an agreement with the provincial government to provide policing in smaller municipalities and rural areas of the province. Some municipalities have also contracted the RCMP to provide municipal police services in their communities instead of setting up their own service, such as Selkirk and Thompson.

The RCMP operates under the federal *Royal Canadian Mounted Police Ac*t.

The Supreme Court of Canada has ruled that provinces cannot control or direct the RCMP. The contract between Canada and Manitoba for RCMP service in this province specifies the framework for how:

- policing services will be provided
- provincial public safety priorities will be met
- emergencies will be managed
- payments are to be made for policing services

Aboriginal Police Services

The Dakota Ojibway Police Service (DOPS) provides policing services to five First Nations in Manitoba: Roseau River, Sioux Valley, Birdtail Sioux, Sandy Bay and Oak Lake (Canupawakpa).

DOPS is overseen by a police commission with representatives from each of the First Nations they serve. DOPS was formed in 1977 and revised under the federal First Nations Policing Policy (FNPP) in 1994. The FNPP recognizes the unique legal status of First Nations, the responsibility of the federal government under the *Constitution Act* for specific First Nations issues and the responsibilities of the provincial government for the administration of justice.

The FNPP creates two policing services options that can be applied in First Nations:

1) a First Nations-administered police service, such as DOPS
2) a special contingent of First Nations officers within an existing police service, such as the RCMP

First Nations RCMP officers provide police service in a number of First Nations communities.

Oversight of Police Services

Under *The Provincial Police Ac*t, the minister of justice is responsible for ensuring effective and efficient policing in the province. When a municipality that is responsible for providing police services does not provide adequate and effective police services, or does not comply with *The Provincial Police Act* or its regulations, the minister may intervene. The minister may take those steps needed to create an adequate and effective police service within the municipality.

*The Provincial Police Ac*t allows municipal councils to establish local police commissions to oversee municipal police services. Where no commission is established, the municipal council performs this function. The Dakota Ojbway Tribal Council has established a police commission to oversee the Dakota Ojibway Police Service. The City of Winnipeg has established a police advisory board to provide advice on policing issues to various committees of the City of Winnipeg.

Communities policed by the RCMP can establish consultation committees with local RCMP detachments. Because the RCMP is governed by federal legislation, these committees are co-operative and not legally required.

Special police units and agencies

There are a number of special police agencies that operate in Manitoba in addition to the 17 police services. These agencies deal with a wide range of issues, from investigating specific types of criminal activity to representing the labour interests of individual police officers. Examples of these special agencies include:

Manitoba Integrated Organized Crime Task Force
The Manitoba Integrated Organized Crime Task Force is an integrated partnership including investigators from the RCMP, Winnipeg Police Service, Brandon Police Service and other municipal police agencies, backed up with resources from the province.

Law Enforcement Review Agency (LERA)
LERA is an independent, non-police agency created to investigate public complaints about police conduct that are not about criminal misconduct. LERA only deals with complaints about municipal or local police performance arising out of the performance of police duties.

Manitoba Association of Chiefs of Police
The association encourages and develops the co-operation of its members. It is a management association to lead the development of policing in Manitoba and represent police leadership to the public, the minister of Manitoba Justice and the provincial government.

Criminal Intelligence Service Manitoba (CISM)
CISM is the provincial arm of the national Canadian Intelligence Service of Canada, which has been a leader in the development of an integrated and intelligence-led approach to tackling organized crime in Canada. Its fundamental purpose is to facilitate the timely production and exchange of criminal intelligence within the Canadian law enforcement community.

Winnipeg Police Association
The Winnipeg Police Association is a professional labour organization representing the police and staff members of the Winnipeg Police Service. It is responsible for all aspects of collective bargaining and helps WPS members with day-to-day issues that arise in the workplace.

Manitoba Police Association
The Manitoba Police Association represents all municipal police officers within the province, with the exception of the Royal Canadian Mounted Police. The association helps smaller police agencies with bargaining issues and legal representation, if requested. Members of the Winnipeg Police Association are also members of the provincial association.

Further Information:

More information about policing in Manitoba can be found online at:

Manitoba Justice www.gov.mb.ca/justice/

- **Laws of Manitoba**
  web2.gov.mb.ca/laws/index.php

LERA www.gov.mb.ca/justice/lera/index.html

Commission for Public Complaints Against the RCMP
www.cpc-cpp.gc.ca/

RCMP www.rcmp-grc.gc.ca/

Winnipeg Police Service www.winnipeg.ca/police/

Brandon Police Service www.brandon.ca/police

Manitoba Association of Chiefs of Police
www.macp.mb.ca/

Background: How Incidents Involving Police are Investigated in Manitoba

Investigating police incidents and police officers

There is a broad range of incidents that police may be involved in and some form of investigation will be warranted. At the most serious end are incidents resulting in death or serious injury to a member of the public. In the middle are criminal allegations that are comparatively less serious, such as general assaults. At the other end of the range are non-criminal allegations; an example would be an allegation that a police officer has been rude or disrespectful. This document provides an overview of how the range of incidents are handled now, with an emphasis on the most serious matters.

1. Protocol for the investigation of serious criminal allegations against police officers

In 2004, Manitoba Justice prepared a protocol to govern how serious criminal allegations against police officers would be investigated and prosecuted when the evidence was sufficient.

Most police services in Manitoba have signed this protocol.

It applies to cases involving death or grave injury to a civilian following contact with a police officer. It also applies to other serious potential criminal offences or events involving a police officer where there is a public interest in activating it. In these cases, the following steps apply:

1. An agency must notify the deputy attorney general of Manitoba Justice about the incident and their intent to activate the protocol.
2. The agency must either request that an outside agency review the results of the investigation or assume conduct of the primary investigation.
3. The results of the investigation are reviewed by independent legal counsel appointed by Manitoba Justice.

The decision to request an external agency to assume conduct of the investigation or review the results of the investigation is the sole decision of the police chief or commanding officer of the police service involved.

2. Public safety co-operation protocol

The Royal Canadian Mounted Police (RCMP) in Manitoba have a signed protocol with the Assembly of Manitoba Chiefs, the Southern Chiefs' Organization and the Manitoba Keewatinowi Okimakanak that allows civilians to monitor the investigation of police shootings and other serious incidents in First Nations. Under the protocol, the organizations and the RCMP mutually agree on who the community contact person can be. This civilian observer, or monitor, is provided with briefings as the investigation unfolds.

The lead RCMP case investigator can allow or deny a civilian monitor access to observe an interview.

Monitors must agree to a number of conditions including maintaining notes on their involvement and sharing them with investigators. They must be able to testify in any legal proceedings that may happen as a result of the investigation.

3. *The Provincial Police Act* equipment regulation

The *Provincial Police Act* has a regulation that requires completed investigations of police shootings where there has been an injury or death to be reviewed by a major police department not involved in the incident. This review must be submitted to the Manitoba attorney general's office by the police commission or municipal council involved. The province can require additional investigation, follow-up or clarification on the findings of the investigation.

4. The Fatality Inquiries Act

The Fatality Inquiries Act requires inquests to be held in almost all cases where someone dies in police custody, including cases where police have used fatal force. Inquests are conducted by a provincial court judge and can only focus on what happened and make recommendations to help prevent such incidents from happening again.

Between 2000 and 2008, the WPS had eight deaths by police use of force and seven in-custody deaths. The RCMP had one death by police use of force and seven in-custody deaths.

5. Independent prosecutors

Manitoba Justice's Prosecution Service has a policy to use independent legal counsel to review investigations of incidents involving police. Independent legal counsel determine whether criminal charges should be laid against a police officer and prosecute those cases.

6. Judicial inquiries
Police conduct, practices and investigations in Manitoba can also undergo external reviews by independent judicial inquiries or reviews ordered by the Manitoba government. While not always confined to reviewing the conduct of police officers, these inquiries have been launched to determine whether additional investigations should be pursued with respect to a particular officers and officials; the adequacy of certain police investigations; and to identify systemic problems and potential reforms to police practices. Examples of these inquiries include the Aboriginal Justice Inquiry, the Driskell Inquiry and the Taman Inquiry.

7. Police Professional Standards Units (PSU)
These units are responsible for the investigation of alleged criminal offences and breaches of internal regulations by police officers. Larger police services have established Professional Standards Units. Smaller police services may designate a specific officer to conduct these investigations or request that another police service conduct an investigation into a complaint against one of its officers.

8. *The Law Enforcement Review Act* and agency (LERA)
The Law Enforcement Review Agency has a legislated mandate to receive and respond to public complaints about non-criminal conduct by municipal and local police officers in Manitoba. A separate background document has been prepared on LERA and can be found at: www.gov.mb.ca/justice/policeact/pdf/lera.pdf

9. Commission of Public Complaints (CPC)
Complaints about the conduct of members of the Royal Canadian Mounted Police are dealt with by the federal Commission of Public Complaints. A separate background document has been prepared on the CPC and can be found at: www.gov.mb.ca/justice/policeact/pdf/complaints_against_rcmp.pdf

Background: Manitoba's Law Enforcement Review Agency (LERA)

Introduction

The Law Enforcement Review Agency (LERA) is an independent, non-police agency, established under *The Law Enforcement Review Act* in 1985. It investigates public complaints about non-criminal police conduct. This backgrounder provides an overview of what LERA does, how it works and how it deals with cases that are not within its mandate, such as criminal investigations, police service investigations or police policies.

How does LERA work?

LERA deals only with on-duty complaints about municipal or local police arising from the performance of police duties. LERA cannot investigate complaints about Royal Canadian Mounted Police (RCMP) officers because the RCMP is a federal agency.

It does not investigate criminal matters. Criminal matters must be referred to the provincial Crown attorney's office for investigation by the police.

LERA's staff consists of a commissioner, four investigators, a registrar and a clerk. The commissioner is required to submit an annual report on the performance of his or her duties and functions to Manitoba Justice's minister and to each municipality that has a police service.

To whom does the act apply?

The act applies to the police officers employed by Manitoba's 12 municipal or local police services, including police chiefs. It does not apply to members of the RCMP or military police.

It also applies to the conduct of police officers from other provinces or territories who have been appointed as police officers in Manitoba for specific investigations.

Complaints involving police officers from outside of Manitoba's jurisdiction can result in recommendations by a judge, but no penalty can be imposed.
The act also applies to the conduct of Manitoba police officers appointed as police officers in other provinces for specific investigations.

What does LERA investigate?

LERA investigates allegations from the public that municipal or local police officers have abused their authority by:

- making an arrest without reasonable or probable grounds
- using unnecessary violence or excessive force
- using oppressive or abusive conduct or language
- being discourteous or uncivil
- seeking improper monetary or personal advantage
- serving or executing documents in a civil process without authorization
- showing differential treatment without reasonable cause on the basis of any characteristic set out in subsection 9(2) of *The Human Rights Code*
- making a false statement or destroying, concealing or altering any official document or record
- improperly disclosing any information acquired as a member of the police department
- failing to exercise discretion or restraint in the use and care of firearms
- damaging property or failing to report the damage
- failing to help where there is a clear danger to the safety of a person or property
- violating the privacy of any person under *The Privacy Act*
- breaching any part of *The Law Enforcement Review Act* that does not already specify a penalty for the violation
- helping, counselling or causing any police officer to commit officer misconduct

What if a complaint involves criminal conduct?

LERA cannot conduct criminal investigations.

Cases involving criminal misconduct must be investigated by police. When a complaint to the commissioner or a provincial judge shows evidence that a police officer may have committed a criminal offence, the commissioner or provincial judge must refer the complaint to the provincial Crown attorney's office for investigation by the police.

In such cases, LERA investigators also let complainants know that they can make a criminal complaint to the police force involved.

While a criminal investigation is being done, the LERA investigation has to be put on hold. Criminal investigations and court proceedings may take many months or even years to complete. This delay is beyond LERA's control and affects the length of time LERA needs to complete its investigations.

In 2007, 20 criminal complaints were made at the same time a LERA complaint was filed.

Who are complainants and respondents?

A complainant is any person who feels wronged by the conduct or actions of a municipal police officer in Manitoba and files a complaint. Complainants may file on their own behalf or on behalf of another person. If you file on behalf of another person, LERA must have written consent from that person before acting on the complaint.

A respondent is any police officer against whom a complaint has been filed by the public.

How is a complaint filed?

A complaint must be made in writing and signed by the complainant. The date, time, location and other details of the incident are important and must be included. Written complaints may be sent directly to LERA, or given to a police chief or any member of a municipal or local police service. Police will forward any complaints they receive to LERA.

Are there time limits?

The act requires a written complaint to be made to LERA within 30 days of the incident. The commissioner may extend that limit if there are valid reasons for being unable to make the complaint on time.

The commissioner may also extend the 30-day filing limit to avoid conflict with court proceedings or an ongoing criminal investigation involving a complainant.

How is a complaint investigated?

LERA has professional investigators who interview witnesses, take statements and review reports such as official police records and medical reports. LERA investigators make all the inquiries they believe are necessary to uncover relevant evidence.

How are complaints screened?

After LERA finishes an investigation, the commissioner will screen the complaint to decide if any further action should be taken. The act requires the commissioner to do this.

The commissioner will take no further action if:

- the alleged conduct does not fall within the scope of misconduct covered by the act
- the complaint is frivolous or vexatious
- the complaint has been abandoned by the complainant
- there is not enough evidence to justify referring the complaint to a provincial judge for a public hearing

If the commissioner decides to close the complaint file and take no further action, the complainant will be notified in writing. The complainant will then have 30 days from the date of the decision to ask the commissioner to refer the matter to a provincial judge for review. Reviews are arranged by LERA at no cost to the complainant.

Does a complainant need a lawyer?

Complainants do not have to have a lawyer when dealing with LERA.

Complainants and the police are both allowed to have legal representation involved during the process if they choose, but they have to arrange for those services themselves.

If complainants apply for legal aid and do not qualify, in some exceptional circumstances they can ask the Manitoba Justice minister to appoint a lawyer to represent them at a hearing. Counsel may be appointed by the minister only where applicants cannot afford to retain legal counsel.

Police officers are generally represented by a lawyer who is provided under their employment contract or collective agreement.

How are complaints resolved?

The act provides several ways to resolve complaints when the commissioner decides that there is sufficient evidence to justify referring the complaint to a provincial judge for a public hearing.

Informal resolution
The commissioner must try to resolve the complaint through informal mediation. Both the complainant and the police officer must agree to this process before it can take place. If the complaint is resolved informally, to the satisfaction of both complainant and respondent, no further action is taken and no record of the incident is made on the officer's service record.

Admission of disciplinary default
A respondent officer can admit to the alleged officer misconduct. The commissioner then reviews the officer's service record and consults with the police chief before imposing a penalty.

Referral to judge for a hearing
If a complaint cannot be resolved informally, and there is no admission of misconduct by the police officer, the commissioner must refer the complaint to a provincial judge for a public hearing.

Penalties that may be imposed by the provincial judge on respondent officers under the act are:

- dismissal
- permission to resign, or summary dismissal if the resignation is not received within seven days
- reduction in rank
- suspension without pay for up to 30 days
- loss of pay for up to 10 days
- loss of leave or days off for up to 10 days
- a written reprimand
- a verbal reprimand
- an admonition

Recent statistics related to LERA

According to LERA's 2007/2008 annual report:

- Winnipeg Police Service is the largest organization LERA deals with and 86 per cent of complaints made to LERA are about their officers.
- Brandon Police Service accounts for seven per cent and other forces account for the remainder.
- There were 308 files opened in 2007, a decrease of 59 complaints compared to 2006; the five year average is 368 complaints over the course of a year.
- The 188 formal complaints filed in 2007 was the lowest number of complaints recorded in the past five years.
- In 2006, there were 560 total investigations. In 2007, there were 422 investigations, a decrease of 138.
- There was a corresponding decrease in the number of investigations completed in 2007, down 116 to 208 files.
- There was one complaint alleging the misuse of pepper spray in 2007. There were 11 complaints of misuse of the Taser. There were 26 incidents alleging misuse of handcuffs in 2007, one more than in 2006.
- Incidents alleging injuries from the use of force decreased to 93 and were made in 49 per cent of complaints investigated.

For more information

More information about LERA is available on its website at **www.gov.mb.ca/justice/lera/index.html**

Background: Complaints Against the RCMP

Introduction

In Manitoba, complaints against members of the Royal Canadian Mounted Police (RCMP) are handled by the RCMP and the Commission for Public Complaints Against the RCMP (CPC).

This process is separate from Manitoba's Law Enforcement Review Agency (LERA), which is an independent agency that investigates complaints against municipal and local police officers. The RCMP is a federal police service and LERA does not have the authority to receive complaints from the public about RCMP officers.

CPC duties and functions

The commission is mandated to:

- receive complaints from the public about the conduct of members of the RCMP
- conduct reviews when complainants are not satisfied with the RCMP's handling of their matter
- conduct investigations
- hold hearings
- report their findings
- recommend changes in national policing policy and practice

Oversight agency role

The CPC is not part of the RCMP. It is an independent agency created by Parliament in 1988 to ensure that public complaints about the conduct of RCMP members are examined fairly and impartially.

Process

The chart at the end of this document outlines the CPC complaint process. Anyone who has a concern about the conduct of a RCMP member can make a complaint. Once a complaint has been received by the CPC, it is documented and sent to the RCMP for investigation. The law generally requires that the RCMP conduct the first investigation into a complaint. If that investigation does not satisfy the complainant, the CPC can get involved as a review body. At that point the chair of the CPC also has the option of having the CPC conduct its own investigation or hold a hearing.

Complaint dispositions

Informal resolution

The federal legislation that governs the RCMP lets them try to resolve complaints informally. Both the complainant and the RCMP members involved must agree to these informal dispositions. If a complaint is resolved informally and both parties are satisfied, the RCMP will prepare a summary of the complaint and how it was resolved. The RCMP ensure the complainant agrees with the summary document before signing it. It is important to note that RCMP policy does not allow for certain complaints to be resolved informally, including complaints that involve allegations of serious misconduct.

Dismissal of a complaint

The RCMP can refuse to investigate complaints:

- that are considered trivial, frivolous, or vexatious
- that would be dealt with better under another act of Parliament
- if they believe the investigation is not necessary or reasonably possible under the circumstances

If the RCMP refuses to investigate a complaint, they must give the complainant an explanation and the complainant can ask the CPC to conduct a review of that decision.

Investigation

When the RCMP investigates a complaint, they send regular reports to the complainant to update them on the status of the investigation. When the investigation is complete, the RCMP sends the complainant a final report letter summarizing the results of the investigation. This letter details what action, if any, the RCMP has taken or plans to take to address the complaint. If the complainant is satisfied, this will be the final step in dealing with the matter.

The RCMP must advise the complainant of his or her right to ask the CPC to review the complaint if they are not satisfied.

Withdrawal

Complainants can withdraw their complaints, but the RCMP must make sure that there is evidence that the complainant has a valid reason to withdraw. A complainant's belief that the RCMP is corrupt or that nothing good will come out of the matter is not considered a valid reason to withdraw a complaint. The reason for a withdrawal must be clearly documented on a form.

Reviews of investigations by CPC
If a review request is received from a complainant, the CPC will thoroughly review the complaint, the RCMP's response to it and all the material relevant to it. Following the review, the CPC can decide to investigate the complaint further, ask the RCMP to investigate further, end the matter or call a public hearing.

If the CPC is satisfied with the results of the RCMP investigation and the way the complaint was dealt with following their review, then the CPC chair sends a final report to everyone involved including the complainant, the member of the RCMP that was the subject of the complaint, the commissioner of the RCMP and the federal minister of Public Safety.

If the CPC does not agree with the results of the RCMP investigation, then the chair sends an interim report to the commissioner of the RCMP and the federal minister of Public Safety. Interim reports provide an explanation of the facts of the case, the findings of the CPC and recommendations for avoiding similar problems in the future.

The commissioner of the RCMP must respond to the interim report and clearly indicate whether (s)he accepts or rejects the recommendations. Where the commissioner rejects the recommendations, the legislation requires him or her to provide detailed and compelling reasons for doing so. In cases where the commissioner accepts the recommendations, (s)he must indicate how and when the recommendations will be implemented.

The CPC then prepares a final report that takes the response of the RCMP into account. The final report is sent to the federal minister of Public Safety and the commissioner of the RCMP. Copies of the final report are also sent to the complainant and the RCMP member or members against whom the complaint was laid. The CPC can choose to make the final report available to the public. They follow federal access to information and privacy legislation.

While the CPC can hold public hearings, they are rare. They are usually reserved for complaints where a public hearing seems to be the only way important details of a case will surface. Public hearings normally take place before a panel of commission members. The chair sends the panel's findings and recommendations to the commissioner of the RCMP, the federal minister of Public Safety, the complainant and other interested parties. The findings are also posted on the commission's website.

The commissioner of the RCMP must respond to the panel's recommendations through the same process.

Chair-initiated complaints
The chair of the CPC can initiate a complaint about the conduct of any RCMP member if (s)he believes there are reasonable grounds to do so.

Such cases could involve allegations of a severe or traumatic nature, allegations made by multiple complainants, or allegations involving an issue of particular interest to the public, such as those related to in-custody deaths or the use of conducted energy weapons. In such circumstances, the chair of the CPC can also call a public interest investigation. Once that is called, the CPC sends its own investigator to collect information and make a report to the chair. The CPC can choose to make the final report in such matters public.

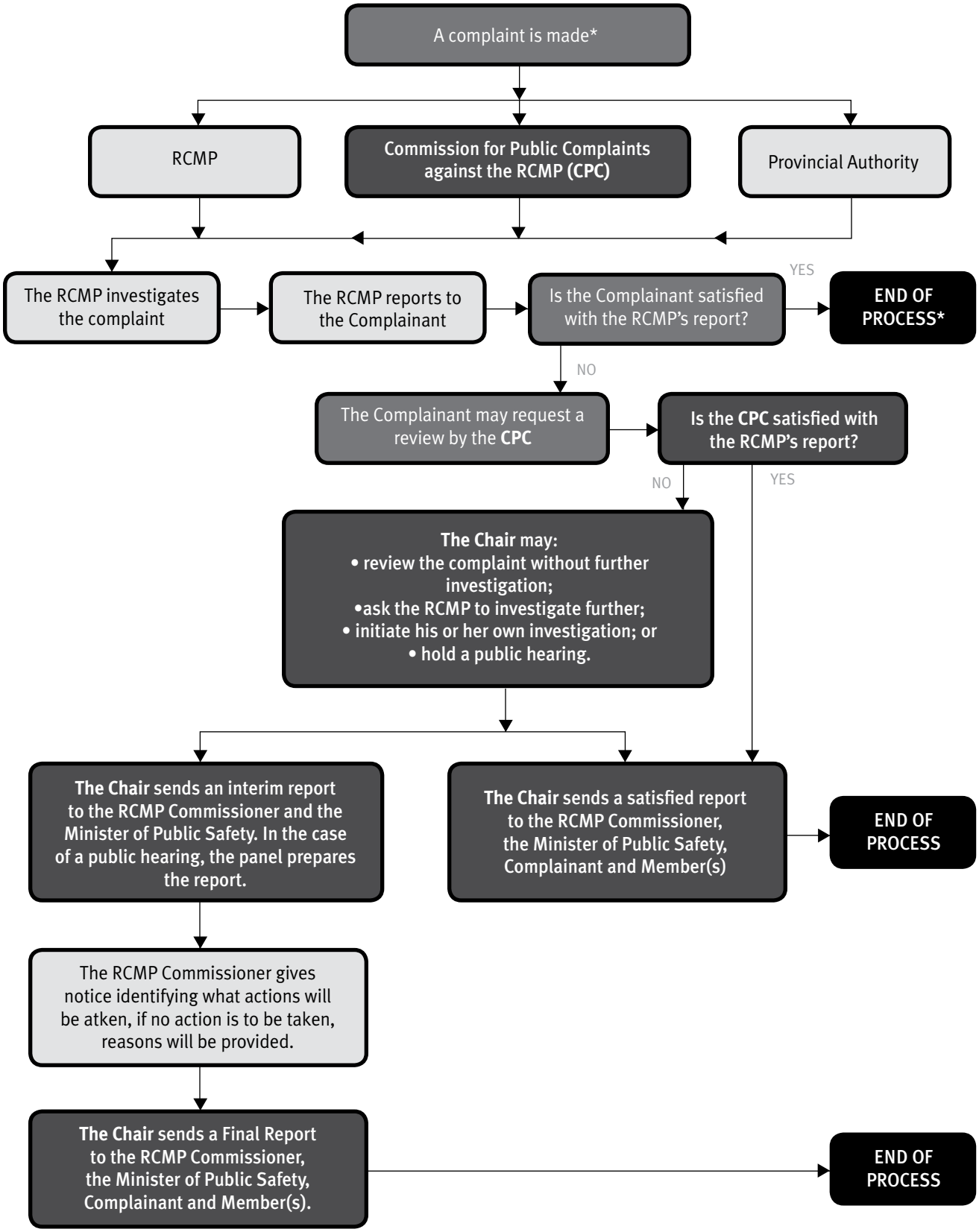
Statistics

Statistics on complaints against the RCMP in Manitoba are available on the CPC website.

More information

This document is based in part on material provided by the CPC. Annual reports and other information about the CPC can also be found on their website at:
www.cpc-cpp.gc.ca

CPC complaint process flowchart



* **The Chair** can initiate his/her own complaints. In addition, at any stage of the process, the **Chair** may institute an investigation or hearing where (s)he considers it advisable to do so.

Background: Canadian approaches to investigating police officers

Introduction

The new act will include an independent unit to investigate

- incidents involving police where the use of force results in a death
- 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 having an independent investigation

This background document summarizes some of the approaches used in other provinces to investigate major incidents involving police officers and criminal allegations against police officers.

A consultation paper on a proposed Manitoba model has also been prepared and can be found at: **www.gov.mb.ca/justice/policeact/pdf/independent_investigation_unit.pdf**

How do other provinces investigate police officers?

There is no single approach used by other provinces to investigate police use of fatal force, other major incidents or criminal allegations against police officers.

Current approaches include:

Ontario

The Ontario *Police Services Act* was amended in 1990 to create a Special Investigation Unit (SIU) to conduct independent investigations when on-duty police use fatal force or allegedly cause serious injuries to a civilian. SIU does not investigate incidents involving federal police officers, such as RCMP officers.

Ontario police services must notify the SIU when a member of the public dies or suffers a serious injury as the result of contact with one of its officers. Serious injuries are defined by the SIU as:

> " Serious injuries" shall include those that are likely to interfere with the health or comfort of the victim and are more than merely transient or trifling in nature and will include serious injury resulting from sexual assault. "Serious injury" shall initially be presumed when the victim is admitted to hospital, suffers a fracture to a limb, rib or vertebrae or to the skull, suffers burns to a major portion of the body or loses any portion of the body or suffers loss of vision or hearing, or alleges sexual assault. Where a prolonged delay is likely before the seriousness of the injury can be assessed, the unit should be notified so that it can monitor the situation and decide on the extent of its involvement.

SIU is led by a civilian director and composed of:

- 12 full time investigators
- 30 part time investigators
- 10 part time forensic technicians

Many SIU investigators are retired police officers.

Ontario's Ombudsman issued a report in September 2008 called 'Oversight Unseen' that made 44 recommendations to improve how the SIU works.

Further information about SIU can be found at:

- **www.siu.on.ca/home.html**
- **www.ombudsman.mb.ca**

Alberta

Alberta amended its *Police Act* in 2007 to create an independent investigation unit called the Alberta Serious Incident Response Team (ASIRT).
ASIRT has jurisdiction over all sworn police officers in the province of Alberta. The RCMP in Alberta have agreed to ASIRT investigating incidents involving RCMP officers. ASIRT's mandate is to investigate incidents or complaints involving serious injury or death of any person and matters of a serious or sensitive nature that may have resulted from the actions of a police officer. ASIRT can investigate incidents involving on and off-duty police and its mandate is broader than Ontario's SIU.

ASIRT is lead by a civilian director who is a Crown attorney. Reporting to the director are:

- a civilian assistant director
- two civilian criminal analysts
- four civilian investigators
- 10 sworn police officers from the Calgary Police Service, Edmonton Police Service and the RCMP

The director may also use members of the public to oversee the investigative process to ensure independence.

Once an investigation has been completed, the ASIRT director reviews the results of investigations to ensure completeness and fairness. A report is then sent to a Crown attorney requesting an opinion on charges. After the director receives the opinion, he or she will decide what charges, if any, will result from the investigation.

Information about ASIRT can be found at:
www.solgps.alberta.ca/programs_and_services/public_security/policing/policing_oversight_complaints/Pages/asirt.aspx

Other Approaches
A variety of approaches are used in other provinces to investigate police use of fatal force, major incidents involving police officers and criminal allegations against police officers. For example:

Civilian monitors: Alberta, British Columbia and Saskatchewan have used civilian monitors to observe investigations of some major incidents involving police. The Commission on Public Complaints that investigates complaints against members of the RCMP has also tested the use of civilian monitors in various cases across Canada.

Using another police services: Some police services will request that other police services take over, monitor or review the results of an investigation into a major incident. This approach has been used in provinces such as British Columbia, Nova Scotia and Newfoundland. In some cases, this has included involving a police service from another province.

Consultation Paper: Municipal and First Nation Police Boards

Introduction

The Manitoba government believes that civilian oversight of policing should be a cornerstone of the new act. This paper focuses on police boards (the current act uses the term "police commission") and the role they can play in providing civilian oversight and management of municipal and local police services.

This document also asks you questions about whether and how Manitoba's new police act should deal with civilian oversight of local police services. Your answers to these questions will assist the government to prepare the new police act.

Police Boards in Manitoba

Currently, a police board may:

- provide a formal point of contact for the minister to consult and advise local bodies on policing issues
- hear appeals from police officers on disciplinary action taken against them by a police chief or deputy chief
- serve as the point of contact for labour bargaining by senior officers' associations
- address liability provisions for acts or omissions by police chiefs and officers

Manitoba has 12 municipal and First Nation police services. Only the Dakota Ojibway Tribal Council has formed a specific police board. Municipalities use their city/town councils as the local police board. Some municipalities, such as the City of Winnipeg, have also set up different committees or boards to provide advice to city council on policing and public safety issues. This includes the City of Winnipeg's police advisory board that was recently established.

Municipalities policed by the Royal Canadian Mounted Police (RCMP) are not required to have police boards because the RCMP is established under federal law and have agreements between provinces and the federal government. Provincial police acts cannot legislate how the RCMP operates or how it is controlled.

As an alternative, municipalities using the RCMP can establish advisory boards that work with local RCMP detachments on public safety priorities and emerging issues within their communities.

Other Provinces

Police acts in most other provinces require municipalities that have their own police services to create local police boards. British Columbia, Alberta, Saskatchewan and Nova Scotia, for example, have made it mandatory for municipal police boards to be established to oversee municipal police services.

Some provinces, like Alberta, specifically allow municipalities to establish advisory committees for the local RCMP. Regional advisory committees can also be established for groups of municipalities that receive police services from the RCMP. The powers and duties of these advisory committees are more limited than police boards which oversee municipal police services.

This table summarizes the police board provisions in other provinces' police acts:

Municipal Police Boards in Other Provinces					
	British Columbia	**Alberta**	**Saskatchewan**	**New Brunswick**	**Nova Scotia**
Required?	Yes	Yes	Yes	No	Yes
Composition	Provincially weighted. Mayor is chair and deciding vote.	Municipally weighted with limits on number of councilors and municipal employees appointed.	Municipally weighted. Mayor and at least one councilor required to be members.	Municipally weighted. Mayor or mayoral designate must serve on board. Chief is a non-voting member.	Municipally weighted. 5 or 7 members including 2 or 3 council members.
Qualifications	No	No	No	No	No
Ineligibility	Councillors and those ineligible to run for council.	No	No	No	No
Code of conduct	No	No	No	No, but dismissal for cause	Yes
Functions	- Establish municipal police department - Appoint chief and officers - Priorities and objectives - Budget - Rules for: police administration, prevention of neglect and abuse by officers, efficiency - Study, investigate and report on policing	- Appoint chief - Designate a Public Complaint Director - Budget and annual policy plan - Oversee police - Allocate funds - Establish policies to provide for efficient and effective policing - Ensure sufficient personnel - Conduct inquiries into the police service or the conduct of an officer	- Appoint chief - Deliver policing services - General admin. policy - General direction, policy and priorities - Budget	- Appoint chief and officers - Provide and maintain an adequate police force - Make rules for performing its functions	- Advise chief - Budget - Civilian governance of policing - Admin. direction, organization and policy for an adequate, effective and efficient police department - Priorities and objectives - Oversee the chief - Act as a conduit between the community and police - Establish policy re: extra-duty and off-duty employment of officers

Issues and Questions

The provincial government believes that civilian input into policing is important in ensuring effective, efficient policing for all Manitobans. Civilian oversight is critical and must be properly exercised to prevent such things as interference in specific investigations.

The current police act establishes boards but has limited detail about what they should do. It sets no qualifications or restrictions on who can be appointed to these boards and does not refer to codes of conduct or rules on what members can and cannot do.

Your answers to questions on the following major issues will help the government prepare a new police act:

Police Boards: Mandatory or Discretionary?

Most provincial police acts contain provisions requiring municipalities to ensure adequate and effective policing by selecting from a range of legislated options. Where a municipality chooses to establish its own police service to meet these requirements, most provincial police acts make it law that municipalities have to establish local police boards to oversee their municipal police services.

Functions of Municipal Police Boards

Mandates of police boards vary across provinces, but generally deal with staffing (ex: hiring police chiefs), setting or administering budgets, approving police service policies and ensuring that the police service complies with the provincial police act. Police boards are explicitly, or through practice, prohibited from directing individual investigations or daily operations of a police service.

Some of the duties and functions of police boards are not overly controversial (ex: notice of meetings, number of meetings, appointment of board executive, etc.). However, other functions are particularly critical:

Hiring police chiefs and executives
Police boards in some provinces hire police chiefs and other members of the executive of a municipal police service.

Direction of chiefs of police by police boards
The extent to which municipal police boards can direct chiefs of police continues to be one of the most controversial aspects of this issue. The recent trend has been to specifically define the duties and powers of boards and chiefs so that boards can direct chiefs on policy matters, but not on operational matters.

Budgets
The police budget process varies widely across jurisdictions. Ontario and BC provide an arbitration mechanism to address disputes between boards and councils.

Alberta's act gives police boards the power to allocate police budgets set by municipal councils as part of the overall municipal budget. This process recognizes that elected municipal councillors are responsible for setting municipal budgets for a wide range of services, including policing.

Complaints
Some jurisdictions let municipal police boards be involved in monitoring some aspects of the police complaints process.

Ontario's act requires boards to establish guidelines for dealing with complaints and boards must review the police chief's administration of the complaint system.

Police Board Membership

Different provinces have different practices when it comes to which level of government appoints people to local police boards. Manitoba is considering whether the appointment process should be outlined in the new police act. Most provincial police acts allow municipalities to make most or all of the appointments to local police boards. Other jurisdictions allow the provincial government to make some appointments, with the majority made by the local municipality. For example, a municipality would appoint three or four people to its police board while the provincial government would appoint the remaining one or two positions on a police board.

Qualifications to sit on a Municipal Police Board

The qualifications and restrictions on who can be appointed to local police boards is a key issue. Qualifications generally include a requirement for residency in the municipality, good character and a clean criminal record check.

Some jurisdictions allow a mayor, city councillor and/or municipal employee to sit on police boards in either a full or limited capacity. Some provincial police acts prohibit certain people from being appointed to a board, such as current judges, criminal defence counsel or current and former police officers. Other provincial police acts have no restrictions on who can be appointed.

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.

Should Manitoba's new police act make it mandatory for municipalities to establish local police boards if they have or set up their own police service?

What role, if any, should municipal police boards have in:
– hiring police chiefs and executives?
– police service policy?
– police budgets?

What qualifications should be established for appointments to a municipal police board and what restrictions, if any, should be imposed on who can be appointed?

Consultation Paper: Provincial Police Commission

Introduction

The Manitoba government believes civilian oversight of policing should be a cornerstone of the new legislation. This document focuses on the development of a provincial police commission made up of members of the public.

It would provide advice to the government on policing regulations, standards and emerging issues. A provincial police commission could also help train municipal police boards and maintain a list of civilians to monitor certain major police investigations.

Background

Manitoba

Manitoba had a provincial police commission until 1992. Its role was to provide civilian input and governance of policing in the province. The former commission's mandate was broad and included *Provincial Police Act* regulations, crime prevention and training. When it was abolished, most of its duties were divided amongst provincial court judges, the Law Enforcement Review Agency (LERA), and Manitoba Justice.

Other Provinces

Four provinces have police commissions to provide a form of civilian oversight of policing. Here's a summary of how they work:

	Saskatchewan	Ontario	New Brunswick	Nova Scotia
Composition	Not fewer than three commissioners appointed by the Lieutenant Governor (LG)	Members appointed by the LG, including a chair and vice-chair(s)	Members appointed by the LG, including a chair and vice-chair, appointed for terms not exceeding 10 years	Not fewer than three persons, including a chair and vice-chair, appointed by the LG for a term not exceeding 3 years with the potential for reappointment
Powers and Duties	General functions: • promote adequate and effective policing • promote the preservation of peace, crime prevention and police efficiency • promote the improvement of community-police relationships Further duties and powers in the following areas: • research studies • co-ordination of police services • Sask. Police College • audit and review police services to ensure compliance with the act • training programs • policy and procedure manual • information and statistics service • hear certain types of appeals	• direct police boards to comply with standards • appoint replacement chief • conduct investigations re: municipal police matters • conduct inquires into crime and law enforcement-related matters as directed by LG • conduct inquiries into complaints re policies or services of a police force or the conduct of a member • hear and dispose of disciplinary appeals • direct another police force to investigate an internal complaint under certain circumstances	• assess the adequacy of each police force and the RCMP • assess adequacy of policing by province and municipalities • receive complaints and refer them to the appropriate body or person • characterize certain complaints • process conduct complaints or take over the processing of a conduct complaint • investigate any matter relating to any aspect of policing • establish and maintain a list of qualified investigators • conduct a hearing with respect to an investigation and report to the minister	• conduct investigations and inquiries • at the direction of the minister, investigate, inquire into and report on matters related to crime, law enforcement, and the operation and administration of a police department • hold hearings related to the discharge of its functions • publish statistics respecting complaints and their resolution • hear complaints that the complaints commissioner is unable to resolve • review internal discipline complaints appealed to it by officers

Creating a Provincial Police Commission

The Manitoba government is considering establishing a provincial police commission as part of Manitoba's new police act to provide advice to the government on policing regulations, standards, and emerging issues. The commission would also provide training to local police boards and assign civilian monitors to observe investigations of police officers and major police incidents.

Tentative ideas about a new provincial police commission in Manitoba include having it:

- **consist of not less than five persons appointed by the Lieutenant Governor in Council on the advice of Cabinet**
  The commission would be made up of community representatives and would include representation from First Nation and Aboriginal groups. Police chiefs and police officers could not be part of the commission.

- **provide advice on policing regulations**
  Regulations are an important part of governing how police services operate. Regulations are used to address a wide range of issues, such as:
  - qualifications to become a police officer
  - training for police officers
  - equipment used by police officers
  - codes of conduct for police boards
  - issues concerning the operation of the new independent investigation unit

- **provide training and support to local police boards**
  It is proposed that local police boards be required under the new act to oversee their local police services. A separate background document has been prepared on police boards, available at: **www.gov.mb.ca/justice/policeact/pdf/municipal_police_boards.pdf**

  A new provincial police commission could be responsible for approving and coordinating training for local police boards. The commission could also be responsible for developing codes of conduct for local police board members and could develop policy manuals and other support materials for local boards.

- **undertake special studies referred to it by the Minister**
  The commission could undertake special studies on issues referred to it by the justice minister. This could include things like the use of new equipment that police services wish to start using.

- **oversee civilian monitors**
  Revisions to *The Provincial Police Act* could include allowing civilians to monitor the investigation of certain major police incidents, such as a police shooting or the investigation of police officers for criminal conduct. Under the act, monitors could be requested to monitor a case by a civilian director of a new independent investigation unit. The commission could be responsible for maintaining a list of civilian monitors that could be used when needed. The commission could also find civilians to monitor an investigation when specific skills are needed that people on the list don't already have.

Questions

You can respond to these questions below by completing the online questionnaire at:
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You can also download the questionnaire at:
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and send it by mail, e-mail or fax.

What do you think of the role proposed for a new Manitoba Police Commission? Are the proposed responsibilities appropriate, or do you think they should be changed?

Do you have any comments on the membership of the proposed new Manitoba Police Commission?

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:

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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?