Agenda - Executive Policy Committee - May 12, 2004

REPORTS

Item No. 1 Proposal for the Re-establishment of the Winnipeg Police Commission File GF-2

ADMINISTRATIVE RECOMMENDATION:

1. That the report be received as information.

2. That the Administration be directed to develop a discussion paper on best practices relating to governance and external oversight respecting police services.

3. That the City of Winnipeg engage in discussions with the Province of Manitoba regarding governance, prior with the Province's review of The Provincial Police Act.

DECISION MAKING HISTORY:

COUNCIL DECISION:

On January 28, 2004, Council granted a further extension of time of 120 days for the Executive Policy Committee to report back on the February 26, 2003 resolution.

On September 24, 2003, Council granted a further extension of time of 120 days for the Executive Policy Committee to report back on the February 26, 2003 resolution.

STANDING POLICY COMMITTEE RECOMMENDATION:

On June 9, 2003, the Standing Policy Committee on Protection and Community Services requested that the Executive Policy Committee clarify the status of the administrative report with respect to the re-establishment of the Winnipeg Police Commission and to advise the Standing Policy Committee on Protection and Community Services when the report will be considered.

COUNCIL DECISION:

On May 28, 2003, Council granted an extension of time of 60 days for the Executive Policy Committee to report back on the February 26, 2003 resolution.

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On March 5, 2003, the Executive Policy Committee referred the matter to the Chief Administrative Officer for report back.

COUNCIL DECISION:

On February 26, 2003, Council ruled automatic referral of the following motion to the Executive Policy Committee:

Moved by Councillor Lazarenko,
Seconded by Councillor Wyatt,

WHEREAS in August 1974, City Council established the Winnipeg Police Commission to:-

1. Provide a first quality police force and ensure it is properly equipped, housed, staffed and administered,

DECISION MAKING HISTORY (continued):

2. Constitute a body of citizens concerned with the local standing and well being of the police, interested in the maintenance of law and order and able to give advice to, and to formulate policy to be carried out by the Chief of Police,

3. Guarantee prompt, thorough and objective investigation of all complaints concerning the personnel and operation of the Police Department,

4. Play an active role in the fostering of good relations between the police force and the community it serves;

AND WHEREAS until it was dissolved in November 1986, the Winnipeg Police Commission was composed of three members of Council and two electors of the City of Winnipeg, and at time, held overall responsibility for the operations of the Police Department, including budget preparation and administration (subject to Council approval), operating rules and regulations, disciplinary matters, public complaints against the Department or any member, grievance procedures, dismissals, appointment of senior officers, training and recruitment, community relations and crime prevention;

AND WHEREAS other cities in Canada, notably Edmonton and Calgary, are now well served by a police commission with a mandate to balance the requirements of public accountability and police independence and to provide an interface between the police force and elected officials;

THEREFORE BE IT RESOLVED that City Council consider the re-establishment of the Winnipeg Police Commission.

ADMINISTRATIVE REPORT

RE: **Police Service Governance**

FOR SUBMISSION TO: **Executive Policy Committee**

ORIGINAL REPORT SIGNED BY: **J.J. Ewatski, Chief of Police**

REPORT DATE: **2004 05 05**

RECOMMENDATION(S):

1. That this report be received as information.

2. That the Administration be directed to develop a discussion paper on best practices relating to governance and external oversight respecting police services.

3. That the City of Winnipeg engage in discussions with the Province of Manitoba regarding governance, prior with the Province's review of *The Provincial Police Act.*

REPORT SUMMARY:

Key Issues:

? A motion has been considered by Council and referred to Executive Policy Committee (EPC) with respect to considering the re-establishment of the Winnipeg Police Commission.
? The City does not have legislated authority to establish a governance model such as a board or commission. Current legislation, *The Provincial Police Act*, gives authority for the Province to establish a board or commission.
? The Province of Manitoba is initiating a review of *The Provincial Police Act*. Though this process involves a two-to-three-year timeframe for completion, it is evident that governance models will be considered as part of the review.
? Governance touches on a number of aspects of the Winnipeg Police Service (WPS). Key aspects include oversight regarding public complaints, internal investigations, discipline processes, and political relationship.
? With the exception of Winnipeg and Quebec cities, all other major Canadian municipalities' police services are overseen by a form of board or commission.

Implications of the Recommendation(s):

General implications:

X **None**

? **For the organization overall &/or for other departments**

? **For the community and/or organizations external to the City**

? **Involves a multi-year contract**

Comment(s):

? Under the recommendations made herein, there are no general implications for the City organization and departments, community or external organizations.

Policy implications:

X **No**

? **Yes** **Comment(s):**

? Under the recommendations made herein, there are no policy implications.

Environmental implications:

X **No**

? **Yes** **Comment(s):**

? Under the recommendations made herein, there are no environmental implications.

Human Resources implications:

X **No**

? **Yes** **Comment(s):**

? Under the recommendations made herein, there are no human resources implications.

Financial implications:

? **Within approved current and/or capital budget**

? **Current and/or capital budget adjustment required**

Comment(s):

? Under the recommendations made herein, there are no financial implications.

REASON FOR THE REPORT:

? On February 26, 2003, Council considered and referred the following motion to EPC: *"That City Council consider the re-establishment of the Winnipeg Police Commission."*

? EPC directed the Chief Administrative Officer to report back on the matter.

HISTORY:

Winnipeg had a Police Commission from 1974 to 1986. In its first four years of existence the Commission had paramount authority over the operations of the-then Winnipeg Police Department including hearing citizen complaints, but not including collective bargaining and budget adoption. However, there was a perceived conflict in acting as the authority over the Department while also presiding over citizen complaints. As a result, in 1978, these two functions were segregated. The Police Department was placed under the authority of the City's Finance Division, leaving the Commission responsible solely for overseeing complaints. When the Law Enforcement Review Agency (LERA) was created in 1985, the Commission's role was reduced even further, at that point providing oversight for internal investigations only. The Commission requested that it be granted additional powers or be disbanded, and it was disbanded in 1986.

In order to fulfill some of the roles of the former Commission, other reporting relationships were established subsequent to 1986, including:

? Chief Administrative Officer (CAO): The Chief of Police reports to the CAO on fiscal matters and departmental operations (other than matters involving the criminal justice system).

? Chairperson, Standing Policy Committee on Protection and Community Services: The Chief reports to the Committee (on which the Mayor sits as an ex officio member) on matters of policy. The Chief also provides reports on operational matters when their outcome or profile is deemed to be of significance to elected officials who may be asked to comment publicly on such matters.

  The level of information provided in briefings to the Chairperson is determined by the Chief in consultation with the CAO. However, this relationship must not influence or be seen to influence the Chief's independence in matters involving criminal justice.

On February 26, 2003, Council considered and referred to EPC the following motion: *"That City Council consider the re-establishment of the Winnipeg Police Commission."* The City does not, however, have legal authority to set up or dissolve a board or commission. Such authority resides with the Province under *The Provincial Police Act.*

DISCUSSION:

Legislative Authorities concerning Police Governance

The City of Winnipeg Charter Act (the Charter)
The Charter does not give the City of Winnipeg the authority to create and/or appoint members to a police commission. The specific provisions of the City of Winnipeg Act (CWA) which permitted the City to create a police commission were deleted when the CWA was amended at the 1986-87 session of the Manitoba Legislature.

Review of *The Provincial Police Act*, expected to be a two-to-three-year endeavour, is anticipated to be an avenue for the Province to review and entrench governance requirements in legislation. Such requirements would apply to all Manitoba municipal police agencies.

The Law Enforcement Review Act (LERA)
Subsection 6(1) of the Act provides that every person who feels aggrieved by a disciplinary default, allegedly committed by any member of a police department, may file a complaint under this Act. A disciplinary default is one of a list of acts or omissions referred to in Section 29 of the Act. Examples of these include: abuse of authority, making false statements, failing to use discretion or restraint in the care and use of firearms, and violating the privacy of any person. The Law Enforcement Review Agency (also LERA) deals with any discipline that may flow from the complaint, and penalties are predetermined in consultation with the Chief of Police.

LERA applies to the Winnipeg Police Service (WPS) and the WPS cannot on its own investigate any citizen complaints made to LERA. However, if an individual does not want to complain to LERA and brings the matter of concern to the attention of the WPS, the WPS can investigate and deal with the complaint and any discipline it deems necessary as a result, under the authority of the WPS Rules and Regulations.

Aspects of Police Governance

The following describes matters of Police governance as it currently exists within the City of Winnipeg.

1. <u>Developing and Setting Policy</u>
   Operationally, Subsection 166(1) of The Charter provides that Council may establish and pass by-laws respecting a police service. The City has passed by-laws which implement the organization of the Service, its government, administration, control and discipline of members, and further, delegates to the Chief of Police the powers to implement policies in that regard. The Rules and Regulations of the WPS regarding discipline also are set out in a by-law.

2. Hiring the Chief of Police
   The Charter provides the manner in which the Chief is hired by the City of Winnipeg, through appointment by the CAO.

3. Determining Staff Levels
   The Charter empowers Council of the City of Winnipeg to determine the staffing level for the WPS.

4. Maintaining Labour Relations
   In accordance with the Charter and the City's Administration By-Law, labour relations for purposes of collective bargaining is the responsibility of Executive Policy Committee. In all other instances, it is the responsibility of the WPS. However, the WPS is required where necessary to follow practices established by the City generally with regard to labour-related matters. The Chief of Police reports to the CAO and, in the context of discipline, the CAO has final authority, subject to arbitration, in the grievance process and disciplinary matters which result in suspension and dismissal.

5. Overseeing Finances
   Council has final authority in accordance with the Charter.

6. Reviewing Performance
   The Charter, and the Rules and Regulations of the WPS, provide the Chief of Police and the CAO the power to review performance of members. See discussion above, point #4, Labour Relations.

Additional Issues Relevant to Police Governance

Three further aspects of Police governance identified as key – namely complaints and discipline, budgets, and political relationship – are areas where gaps have been identified in the current model:

1. Investigating Complaints and Assessing Discipline
   With respect to police conduct, the LERA process provides external oversight of conduct, but only when a citizen files a complaint with LERA. The WPS has jurisdiction, pursuant to its Rules and Regulations, over members where there are no citizen complaints but where there are issues of performance and/or the manner in which members carry out their duties and responsibilities.

   A distinction also must be noted that LERA investigates complaints, but does not investigate criminal allegations; such allegations are investigated by the Crown through the Police. Therefore, LERA does not oversee these or any criminal investigations conducted by Police.

Concerning internal investigations, the WPS has a formal protocol that is invoked in major investigations of officer conduct, including officer-involved shootings that result in death. This protocol is recognized externally as being effective in supplementing the efforts of a dedicated Professional Standards Unit to ensure thoroughness, accuracy and objectivity of investigations. This is accomplished by the WPS referring the completed investigation files for outside review (to organizations such as the RCMP or Ontario Provincial Police, or KPMG).

However, a gap exists as there is no formal, ongoing external body mandated to review such major internal investigations. In addition to stipulating requirements respecting governance, the Provincial review and subsequent revisions to *The Provincial Police Act* may compel the City to operate under a new model respecting internal investigations as well. This underscores the importance of initiating discussion with the Province in the near future.

2. Budget

With regard to staffing levels and finances, the Chief of Police presents a business plan and request for resources to the Administration through the annual budget process. The request for resources is prioritized along with the requests of other department heads for the consideration of EPC and, ultimately, Council.

3. Political Relationship

The Chief of Police has a unique role in the City bureaucracy because of the need for autonomy relative to the criminal justice system. For this reason, the Chief must balance two roles:

- operating independently and without influence or the appearance of influence in decisions relating to the role of Police in the criminal justice system, and
- being accountable for the Service's fiscal and other administrative matters.

This autonomous role of Police relative to the criminal justice system is empowered by legislation at the Federal, Provincial and Municipal levels.

A fundamental consideration of any communication between the Chief of Police and other political or administrative officials is that such interaction should not affect the Chief's authority.

FINANCIAL IMPACT STATEMENT:

Under the recommendations herein, there are no financial implications.

Financial Impact Statement — Date: May 7, 2004

Project Name: Police Service Governance — **First Year of Program 2004**

	2004	2005	2006	2007	2008
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Total Additional Debt Required	$ -	$ -	$ -	$ -	$ -
Current Expenditures/Revenues					
Direct Costs	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ -	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

There is no financial Impact resulting from this report.

Radhika Abeysekera
Manager of Finance and Administration

IN PREPARING THIS REPORT THERE WAS CONSULTATION WITH, AND CONCURRENCE BY:

City of Winnipeg Corporate Services Department, Legal Services Division

THIS REPORT SUBMITTED BY:

Winnipeg Police Service
Office of the Chief of Police

Prepared by: Steve West, Manager of Administrative Strategic Issues, 986-5093