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CURRENT ISSUES IN POLICE ACCOUNTABILITY

Oversight in Selected Canadian Jurisdictions - Manitoba

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Good morning. I have chosen today, in keeping with the Conference theme, to talk to you as Commissioner about Manitoba's Law Enforcement Review Agency or as it is commonly known **LERA**.

I am of the thought that it is important that we have a working knowledge of the various oversight agencies and how they operate. With that in mind, I am delighted to have the opportunity to tell you about our Manitoba model on the occasion of LERA's twentieth anniversary.

At one time local political control of municipal police departments was vested in police commissions comprised of all or some members of each municipal council. These commissions dealt with public complaints. The Manitoba Police Commission established under *The Provincial Police Act* oversaw the operation of municipal police forces and generally provided consultation. From time to time, the Manitoba Police Commission would hear complaints, usually of a more serious nature, that had not been dealt with satisfactorily at the local level.

The initial citizen's complaint would be made to the local police department, investigated by the same department, and dealt with by

the police chief and at times the local police commission. The Manitoba Police Commission would become involved after an appeal of a disciplinary sanction imposed on the officer by the Chief of police or by a complainant who felt that his/her complaint had not been properly dealt with.

In 1979 the Manitoba Police Commission recommended a change in citizen complaint procedure following the Commission's investigation of an incident involving the alleged beating of a rape suspect by Winnipeg police officers in 1976 (the Frampton case).

This was the landmark case that initiated the call for reform with respect to how complaints are investigated. Two years later the Attorney General's Department issued proposals for new legislation in March 1981. Bill 2 of the 32nd Legislature *The Law Enforcement Review Act* (TLERA) was introduced into the house in November 1982 and passed in August 1983. It was subjected to vigorous debate after careful public scrutiny and many amendments by the Law Amendments Committee. In December 1984 the legislation was proclaimed.

The intent of the bill was:

First: to promote a high standard of professional conduct among police officers in Manitoba;

Secondly: to guarantee each citizen in Manitoba the opportunity for an independent investigation and review of their complaints against on duty municipal police officers;

Third: to provide a mechanism for the resolution of complaints in a manner that is fair both to the respondent police officer(s) and the complainant;

And finally...to ensure that the conduct of police officers is consistent with the rules of law and the ideals of a democratic and open society.

The new legislation required that all complaints by citizens about the actions of an on duty police officer be referred to the Commissioner whose job it is to determine whether the complaint is warranted and whether the matter complained about represents what the legislation refers to as a disciplinary default.

A board and Commissioner were appointed, regulations passed, procedures developed and other details attended to resulting in the Law Enforcement Review Agency commencing operations on February 1, 1985.

Originally the staff consisted of the Commissioner and an administrative secretary who doubled as Registrar. Law Enforcement Services provided intermittent part-time staff to investigate complaints. In 1990 the Registrar's position was eliminated and secretarial assistance was also provided by Law Enforcement Services.

In 1988 the Attorney General instructed the Research, Planning & Evaluation Branch to evaluate LERA and consider merging the Law Enforcement Review Board and the Manitoba Police Commission into

one agency dealing with police complaints. The instruction was made in the context of the expenditure review process and with a view to consolidating the functions in order to make use of available resources. Apart from resource and merger matters, the review identified issues and made recommendations concerning the governing legislation and certain operational matters.

In 1992 amendments to *The Law Enforcement Review Act* were proclaimed and resulted in dissolution of the Law Enforcement Review Board and the Manitoba Police Commission. Hearings are now referred to a Provincial Judge to enhance service to the public by providing an independent, objective trier of fact who is schooled in and knowledgeable of the law. The standard of proof required is amended to clear and convincing evidence rather than the previous criminal standard of beyond a reasonable doubt.

Other amendments included the onus of proof, time limits placed on appeals of the Commissioner's decision, and the Commissioner being given more authority to resolve complaints and other items.

In 1997 KPMG Investigation and Security Inc. were retained to review the Law Enforcement Review Agency with a goal of better understanding what constitutes an acceptable and manageable workload. Their report was received in January 1998 and all recommendations have been implemented which included an increase in staff and an improved case management system called CIPCA the acronym for **C**onduct **I**nvestigations of **P**olice and **C**ase

AAdministration which was designed by Manitoba Justice Information Technology staff.

A new Commissioner was appointed in March 1998 and many improvements have been achieved. The reporting structure has been clarified to ensure that the public's perception of the Law Enforcement Review Agency is that ***it is*** an independent government agency. *The Law Enforcement Review Act* requires the Commissioner to file an annual report to the Minister of Justice for tabling in the legislature. For administrative reasons the Commissioner has a working relationship with the Assistant Deputy Minister of the Criminal Justice Division.

The 2000 budget approved an increase of three-person years. Permanent staff includes two investigators and a Registrar who manages all administrative functions including an independent budget at offices located at 420 - 155 Carlton St. in Winnipeg, MB. Our website address is www.gov.mb.ca/justice/lera and includes annual reports back to 1992 and should include all annual reports back to 1985 before the end of the year.

It is important that a civilian oversight agency like LERA be transparent and one method of doing this is to ensure that the public is properly notified of hearings and reviews. All dates for hearings, reviews and matters before the Court of Queens Bench are posted on our website. All dispositions have been posted for the past two years and it is our objective to post all decisions of importance back to 1985.

The history is important as it clearly outlines the evolution of LERA. With a solid infrastructure, staff and mandate defined we were able to turn our attention to matters that allow us to remain a viable entity in the legal justice system.

One of the challenges from the beginning has been to ensure the mandate is not exceeded. As the watchdog over conduct and actions of municipal police officers in Manitoba we have no jurisdiction over civilian or staff members of the various municipal police forces in the province unless those individuals, like police officers, have the power of a police officer. As you may imagine, in the public's perception, those lines may become blurred at times.

Another challenge is to protect the integrity of our operation and to be alert when challenges are made. The Commissioner's jurisdiction has been challenged several times over the years and continues to be challenged by respondent police officers. These challenges have resulted in decisions by Judges at the provincial and Queen's Bench level and have clarified issues in regards to the administration and application of *The Law Enforcement Review Act* by the Commissioner.

LERA must investigate public complaints of misconduct by on duty municipal police officers. The agency does not investigate service or criminal complaints, and the RCMP's Public Complaints Commission has jurisdiction over RCMP members stationed in Manitoba.

Anyone who feels that they have been unjustly treated by the conduct or actions of an **on-duty** municipal police officer may file a complaint. Third parties may also file a complaint; however consent must be obtained from the affected person before the complaint can be investigated.

Complaints must be in writing and should set out the date, time, location and other particulars of the incident or action. The Commissioner **does not** have the ability to initiate a complaint.

Complaints may be made directly to the Commissioner's office, to the Chief of Police or to any member of a municipal police department.

Generally, complaints must be filed within 30 days of the incident, and Law Enforcement Review Agency investigators are the ones who complete investigations.

Complaints can be resolved in a number of ways. There's a process of informal resolution where the complainant and the officer who was complained about are brought together to discuss the matter and work things out.

Complaints can also be resolved in cases where the respondent officer admits a disciplinary default to the Commissioner. And complaints can be referred to a Provincial Judge for a public hearing.

Complaints can also be dismissed. If the Commissioner believes the complaint is frivolous or vexatious, further action can be declined. If the action complained about doesn't fall within the scope of the act, if it is abandoned, or not supported by enough evidence to justify a public hearing the complaint can be dismissed.

If the Commissioner declines to take further action, the person making the complaint has thirty days to request a review by a provincial judge.

The Law Enforcement Review Agency commenced operation on February 1, 1985, and is now twenty years of age. In the interim, several legislative changes have been implemented. I have already discussed the major changes proclaimed in 1992. Further amendments included Charter Compliance Legislation clarifying matters in the *Human Rights Act* and *The Law Enforcement Review Act*.

A regulatory amendment gave LERA jurisdiction over the Dakota Objibway Police Service that serves several First Nations in western Manitoba.

Other recommendations have been made to the Minister; however are not being proceeded with at this time.

On November 25, 2004, The Cross Border Policing Act came into force. This Act has an important impact on the Law Enforcement

Review Agency's jurisdiction and resulted in a number of amendments to *The Law Enforcement Review Act*.

Under *The Cross Border Policing Act* and through corresponding changes to *The Law Enforcement Review Act* the conduct of Manitoba police officers who are appointed as police officers in other jurisdictions is subject to *The Law Enforcement Review Act*.

Other amendments that were made to the *Law Enforcement Review Act* through the *Cross Border Policing Act* permit the Commissioner to investigate the conduct of members of other police forces working in Manitoba. The Commissioner may refer such a matter to a Provincial Judge to review and potentially make recommendations about police practices or policies. The Provincial Judge may not, however, make any findings or impose penalties with respect to a police officer from another jurisdiction.

On April 13, 1988 the Manitoba government created the Public Inquiry into the Administration of Justice and Aboriginal People which became known as the Aboriginal Justice Inquiry or AJI. The inquiry issued its report in the fall of 1991 and reported on numerous subjects including public complaints and the Law Enforcement Review Agency.

It would be inappropriate for me to comment on matters that are clearly issues of government policy however it is appropriate to understand the issues and where possible from a practical point of view take action. For example, the AJI recommended and I quote:

“In addition to what is now in Law Enforcement Review Agency reports, the agency report annually on the nature of complaints, how many were found to have merit, how many were dismissed and the type of penalty applied.”

In 1991 LERA’s annual report contained six pages of material that was of any substance. By contrast LERA’s 2003 annual report was 41 pages in length and not only included matters relative to AJI recommendations but rather was expanded to include all topics relative to LERA’s activities in a given year. As a public agency it is absolutely fundamental that our annual reports be comprehensive and transparent and available to the public. Our annual reports are also available in French.

In early 2003 the Southern Chief s’ Organization met with the Minister of Justice concerning the issue of accessibility to LERA by Aboriginal citizens in Manitoba. The meeting concluded with agreement that a committee be formed to examine the issue. The Minister of Justice and Attorney General invited me to participate with other stakeholders.

I want to take a moment to define the word accessible as defined in Merriam Webster’s Collegiate Dictionary. It includes: providing access, capable of being reached, being within reach, easy to speak or deal with, capable of being influenced, capable of being used or seen, capable of being understood or appreciated.

The issue of accessibility is subject to recommendation #5 of the Review Report on the Special Investigations Unit Reforms prepared for the Attorney General of Ontario by The Honorable George W. Adams, Q.C., dated February 26, 2003. At page 39 Judge Adams noted that public notification of the Special Investigations Unit is to be made readily accessible and that an ongoing effort is needed and that more than a website and telephone number may be necessary.

Shirley Heafey Chair of the Commission for Public Complaints against the RCMP in the Commission's 2002/2003 annual report at page 25 noted that despite media reports of a trouble relationship between Aboriginal Canadians and the RCMP, few formal complaints about RCMP members have originated from Aboriginal Communities since the Commission was established in 1988. This resulted in the Commission making a concerted effort to reach out to Aboriginal Communities making aboriginal complaints a priority.

Of the 10 provinces of Canada, Manitoba has the highest proportion of Aboriginal people. Of a 1996 population of 1.1 million, there were an estimated 77,500 First Nations residents and 57,000 Metis and Non-Status Indians.

Aboriginal Peoples make up an unequal proportion of the population in our provincial and federal correctional institutions. It naturally follows that aboriginal peoples are more frequently in contact with the

police yet many are uniformed or are unaware of how they may file a complaint against the police.

There is a responsibility on the part of civilian oversight agencies, the aboriginal community, the community at large, and indeed the police to ensure that there is indeed a profile of the civilian oversight agency in the community. Information must be posted in community centers such as stores, schools, libraries, municipal and band offices, and particularly police and detention centers and on websites. We also get the word out with media interviews and accepting speaking invitations.

We have developed a poster and brochures and while I can tell you our investigators are very busy with an average 185 cases per year, it is absolutely mandatory that any person who wants to file a complaint about the conduct of an on-duty municipal police officer be given the opportunity to do so.

The issue of accessibility by aboriginal peoples to Manitoba government programs including LERA continues to be examined by officials within the department of Justice.

I want to challenge you to exam your agency's profile in the community and determine if all citizens have accessibility to your services?

Thank you for your attention.