

Submission To the Government of Manitoba on Proposed Amendments to The Provincial Police Act before Mr. R. Perozzo

March 17, 2009

Vice Chairperson of the Manitoba Human Rights Board of Commissioners Ms. Yvonne Peters:

Good morning, Mr. Perozzo. I am Yvonne Peters, Vice-Chairperson of the Manitoba Human Rights Commission. With me today are Dianna Scarth, Executive Director, George Sarides, Assistant Director, Sarah Lugtig, Legal Counsel, Patricia Knipe, Communications Director, and Debra Beauchamp, Policy Analyst.

On behalf of the Manitoba Human Rights Commission, I would like to thank you for this opportunity to make a submission on the proposed amendments to The Provincial Police Act. I will be providing a brief overview of our mandate. Ms. Scarth and Ms. Lugtig will follow with our comments and recommendations. We would then be pleased to answer any questions that you may have.

As you are aware, the Manitoba Human Rights Commission administers The Human Rights Code. *The Code* prohibits discrimination on the basis of a number of characteristics, such as ancestry, nationality, ethnic background, sex, sexual orientation, and others. It also prohibits discrimination on the basis of membership in other groups, such as persons with disadvantaged social condition or persons who are transgendered. Discrimination is prohibited in activities such as employment and services, including police services.

In addition to accepting, investigating and mediating complaints under *The Human Rights Code*, the Commission is also responsible for educating the public about human rights and for promoting human rights. The underlying principle of our legislation is the recognition of the individual worth and dignity of every person.

Ms. Scarth will now continue with our submission.

Executive Director of the Manitoba Human Rights Commission: Ms. Dianna Scarth:

We will not be stating a position with respect to the three specific mechanisms that are proposed by the Government of Manitoba for the oversight of policing. We will, however, make a number of other recommendations for amendments to The Provincial Police Act in order to provide a stronger foundation for the equitable provision of police services, and to ensure the accountability of police forces in the province.

Currently, The Provincial Police Act does not have a preamble or statement of principles. The Commission urges the Government of Manitoba to consider an amendment to The Act that would clearly state that human rights values are central to the carrying out of powers under The Act. The Government of Manitoba has stated that “civilian oversight of policing should be a cornerstone of the new act”. We believe that human rights values should be the clearly stated foundation to the new Provincial Police Act.

We propose amending The Provincial Police Act to include a preamble or statement of underlying principles, which would provide guidance as to the application of The Provincial Police Act in accordance with human rights principles generally, and *The Human Rights Code* specifically, and would emphasize the goal of equitable and bias-free provision of policing services. To provide an example, we have attached the “Declaration of principles” in the Police Services Act of the province of Ontario as an appendix to our presentation. We recommend that the statement of principles or preamble to the new legislation set out:

- the importance of safeguarding the fundamental rights guaranteed by the Canadian Charter of Rights and Freedoms and *The Human Rights Code*;
- the need for sensitivity to the pluralistic, multiracial and multicultural character of Manitoba society;
- the need to ensure that police forces are representative of the communities they serve; and
- the need to ensure that police services are provided in an equitable manner so as to safeguard the safety and security of all persons and their property in Manitoba.

We also recommend amendments to The Provincial Police Act to incorporate measures to ensure accountability with respect to the equitable provision of police services, and in particular, the provision of services to members of racialized groups and other groups that have experienced historical discrimination in the provision of policing services, including socially disadvantaged groups and lesbian, gay, bisexual and transgendered persons.

The Human Rights Commission recommends that consideration be given to amending The Provincial Police Act to require police forces in Manitoba to have ongoing data collection designed to help assess compliance with bias-free policing goals. Many police services in North American jurisdictions have this as a legislated requirement.

Studies have shown that the collection of data can have many benefits. These benefits include that it sends a clear message that bias in policing is contrary to effective policing and to equality in the provision of police services, and it helps to change the behaviour of any officers and supervisors that is not consistent with equal treatment in the provision of police services.

Effective legislation with respect to data collection to ensure the bias-free provision of police services requires that the collection of data be ongoing, mandatory, set out the necessary data categories, and have officer identification and other accountability measures.

We further recommend that the Government of Manitoba consider amendments that would require all Manitoba police forces to conduct regular cultural diversity and anti-bias training. We think that in order to address the concerns that were raised with us during the community consultations of the Racialized Communities and Police Services Project, it is important that all police services in Manitoba are required to both collect data to assess compliance with bias-free policing goals and to conduct regular anti-bias training to ensure the equitable provision of service.

Ms. Lugtig will now speak to our recommendations regarding the powers and the composition of any oversight body to be created under the new legislation.

Legal Counsel for the Manitoba Human Rights Commission: Ms Sarah Lugtig:

The Manitoba Human Rights Commission recommends that any new oversight entity or mechanism continue to have jurisdiction to address violations of *The Human Rights Code* by police. The current oversight body, The Law Enforcement Review Agency (LERA), presently has concurrent jurisdiction with the Commission to address “differential treatment without reasonable cause on the basis of any characteristic set out in subsection 9(2) of The Human Rights Code”. (s.29(a)(vii)).

The Manitoba Human Rights Commission has consistently supported the trend in legislative and case law development towards other administrative bodies having concurrent jurisdiction with the Commission to address discrimination and harassment where feasible. This avoids the unnecessary duplication and complication of processes.

It is also important that policing oversight bodies receive ongoing human rights training. In order to provide an effective redress mechanism for concerns relating to discrimination and harassment by police, ongoing human rights training for staff and decision-makers of any new oversight body is a must. We recommend that any amendment to create a new oversight mechanism be accompanied by a provision, policy, or other public commitment to this effect.

The Commission has considerable expertise in providing training on human rights, which it makes available to other agencies and departments. We have provided assistance through training and ongoing consultation to the Workplace Safety and Health Division and the Workers Compensation Board in the development and implementation of specialized regulatory jurisdiction over harassment and reasonable accommodation of disability issues, respectively.

Any new police oversight bodies and procedures must also respond effectively to the disadvantaged social status of many potential claimants. The Commission can also assist in this regard. Our human rights complaint processes were developed with awareness of the social disadvantage of many potential human rights claimants, and the resulting power imbalance when faced with an employer, government department, service provider, business owner or landlord. This power imbalance, which may exist between some potential claimants before the new oversight body and police, will also be mitigated if the oversight body is, and is seen to be, independent from the police.

People who are disadvantaged in social status may also be more likely to come into contact with the police and to face a power imbalance, particularly when human rights issues arise. The Commission’s processes are designed to be accessible by potential complainants, and to mitigate the effects of social disadvantage to the degree possible while maintaining impartiality. The Commission’s independence from government also enhances this impartiality.

The Commission recommends requirement in the new Provincial Police Act that the police oversight body be representative of the diversity of Manitoba’s communities. This recommendation is rooted in the Commission’s own experience, for the diverse makeup of our Board has enhanced both its legitimacy in serving Manitoba’s diverse population, as well as its ability as a whole to understand and respond to the issues that come before it. There are precedent provisions in Manitoba law. For example, the legislation setting up the Social Services Appeal Board has such a requirement. Pluralist representation and independence are

internationally recognized essentials for bodies entrusted with addressing human rights issues. These will also be key considerations for any entity developed to address complaints and concerns with respect to policing, including those of disadvantaged and/or racialized individuals and groups.

Thank you. We would be happy to answer any questions that you may have.

Appendix A

Excerpt from the Province of Ontario: Police Services Act (R.S.O. 1990, CHAPTER P.15)

“Declaration of principles

1. Police services shall be provided throughout Ontario in accordance with the following principles:

1. The need to ensure the safety and security of all persons and property in Ontario.
2. The importance of safeguarding the fundamental rights guaranteed by the Canadian Charter of Rights and Freedoms and the Human Rights Code.
3. The need for co-operation between the providers of police services and the communities they serve.
4. The importance of respect for victims of crime and understanding of their needs.
5. The need for sensitivity to the pluralistic, multiracial and multicultural character of Ontario society.
6. The need to ensure that police forces are representative of the communities they serve. R.S.O. 1990, c. P.15, s. 1.”