

## **ABORIGINAL JUSTICE IMPLEMENTATION COMMISSION RECOMMENDATION ON POLICING**

### **1. THE AJI AND POLICING**

The relationship between police services and Aboriginal people was central to the Aboriginal Justice Inquiry. The AJI itself was established in the wake of the controversy that surrounded the fatal shooting of J.J. Harper by a Winnipeg Police Department officer in 1988. Issues of racism, cultural sensitivity and accountability all emerged during the course of the AJI hearings. As a result, the AJI made an extensive number of recommendations in the area of policing. These recommendations on policing were based upon seven core principles:

- The adoption of Aboriginal community-based policing as the favoured strategy for policing in all Aboriginal areas.
- The development of professional, fully trained, regional Aboriginal police forces, reporting to and serving Aboriginal communities, with a broad mandate for law enforcement and crime prevention.
- A significant strengthening of employment equity programs, particularly in the case of the Winnipeg and Brandon police forces, including targets and remedies.
- A significant expansion of the availability and quality of cross-cultural training and field experience, including processes for the orientation of new staff to the Aboriginal communities to which they were assigned.
- Major improvements to the *Provincial Police Act* and Regulations, and in the role and function of the Manitoba Police Commission, to properly support the development of standards and procedures to guide all aspects of policing in Manitoba.
- The development of Aboriginal police commissions to support the rapid recruitment, training and effective support of Aboriginal police forces.
- The development of an effective public complaints body to hear all complaints concerning police.

The AJI concluded that in Manitoba, Aboriginal people “believe they are being provided with inappropriate levels and quality of policing. The most frequent complaints were that police force members are not in touch with the culture and needs of the Aboriginal communities they serve. Many communities feel that service is unavailable when needed. Aboriginal people see a large gap between the community and the police, a gap which cannot be bridged as long as the

community is unable to exert some control or guidance over the police who are present in it.” (AJI, page 595)

The AJI report stated that Aboriginal people experience both under- and over-policing. The issue of over-policing arose from evidence of Aboriginal people being stopped on the streets and questioned about their activities, being charged with more offences than non-Aboriginal people as a form of harassment, and being kept in custody in situations where a non-Aboriginal person may not have been kept in custody. The issue of under-policing arose from situations in which Aboriginal people came to the conclusion that police only came to their communities to make arrests. In many Aboriginal communities police were seen as a remote and foreign authority. These concerns led to support for measures that re-focused policing away from what the AJI Commissioners saw as a narrow approach to policing to a broader community-based and community-controlled approach.

#### **(a) Police forces in Manitoba in 1991**

In 1991, when the Aboriginal Justice Inquiry report was released, policing services in Manitoba were provided by a number of different agencies. Winnipeg, Brandon and eight smaller communities had their own police forces. According to the AJI report:

In a minority of reserves, Aboriginal police forces, such as the Dakota Ojibway Tribal Council Police Force, or “special” RCMP constables provide limited police services. In these communities, major crimes are investigated by the RCMP. Northern community constables provide services to Métis areas, with the RCMP providing back-up services for major crimes. (AJI, pages 608-609)

Under its contracted role as the provincial police force the RCMP provided police services to the rest of Manitoba. The AJI stated that in Manitoba there was no case where an Aboriginal community had full control over policing and provided a complete range of police functions to all its community members.

#### **(b) The AJI’s comments on the Provincial Police Act**

The Aboriginal Justice Inquiry report raised a number of important concerns about the Provincial Police Act. The AJI report concluded that:

Manitoba compares poorly with other western provinces in its regulation of police activities. Each of these other jurisdictions has an Act which provides, among other things, clear definitions of relevant terms, limitations on the terms of appointment of police commissioners, powers to make regulations, powers to set and enforce wide-ranging standards for the selection and training of constables and the equipping of police forces, the establishment of a police training facility. Manitoba’s Act provides few of the

specific details of similar acts in those provinces, and no regulations currently exist to actually enforce the standards which the Act implies, but does not define.

The present lack of a clear mandate and the absence of relevant regulations in regard to police appointment, training and supervision create a potential danger to the security of Manitobans, particularly in areas not served locally by the RCMP. Three different Acts may be involved in the empowerment of any one officer. The confusion in regard to the source, scope and validity of the police powers of band and municipal constables is unacceptable. (AJI, pages 624-625)

While the Manitoba Government has jurisdictional responsibility for policing, it has only a very limited ability to affect the operating policies and practices of the various Manitoba police departments. A Manitoba Police Commission would provide the government with one tool to influence policing policies and practices. The AJI report stated that a major revision of the Provincial Police Act was vital to providing an appropriate framework for the Manitoba Police Commission and for any Aboriginal police forces or commissions.

#### **(c) The AJI's comments on public complaints**

The AJI was also critical of the structures that existed for handling public complaints about policing in Manitoba. It concluded that the Law Enforcement Review Agency was not as effective as it needed to be because:

- The authority of the Law Enforcement Review Board was too restricted
- The authority of the Law Enforcement Review Commissioner was too broad
- The standard of proof was too stringent
- The penalty procedures were too limited
- The Law Enforcement Review Agency's resources were not sufficient for the investigation, and resolution of complaints in a timely manner.

The AJI report also judged the RCMP's Public Complaints Commission process to be lacking in both independence and transparency.

#### **(d) The AJI recommendations:**

The AJI policing recommendations can be roughly sorted according to the seven principles that the AJI report enunciated. In the following section the principles are stated, followed by the

appropriate AJI recommendations.

- The adoption of Aboriginal community-based policing as the favoured strategy for policing in all Aboriginal areas.

*Police forces adopt a community policing approach, particularly in Aboriginal communities.*

- The development of professional, fully trained, regional Aboriginal police forces, reporting to and serving Aboriginal communities, with a broad mandate for law enforcement and crime prevention.

*As soon as possible, Aboriginal police forces take over from the RCMP the responsibility for providing all police services in Aboriginal communities.*

*The RCMP support the establishment of Aboriginal police forces and develop a policy of cooperation with such forces.*

*The Dakota Ojibway Tribal Council Police Force be provided with sufficient resources so that it can increase staff training and development in modern police methods, and gradually assume full responsibility for all law enforcement duties within its geographic jurisdiction.*

*Aboriginal communities be encouraged to form regional police forces and regional police commissions following the model of the Dakota Ojibway Tribal Council Police Force. These should be established under Aboriginal control and management.*

*Métis and non-status communities consider the development of a regional police force, with a police commission.*

- A significant strengthening of employment equity programs, particularly in the case of the Winnipeg and Brandon police forces, including targets and remedies.

*Police forces immediately institute employment equity programs to achieve Aboriginal representation equivalent to the Aboriginal proportion of the Manitoba population.*

*New targets be set by the RCMP to bring appropriate numbers of Aboriginal men and women into the force as full officers more quickly than is currently contemplated.*

*The RCMP employ Aboriginal police and civilian staff in their detachments in proportion to at least the Aboriginal population of the province and preferably in proportion to the Aboriginal population being served.*

*The Winnipeg Police Department prepare and table with the city council and the Minister of Justice, no later than December 31, 1991, an employment equity plan which has clear targets, target dates and remedies should targets not be achieved.*

*The City of Winnipeg Police Department set an initial target of 133 Aboriginal police officers. The first step in reaching that goal should be to designate the next recruiting class as entirely Aboriginal. Thereafter, 50% of each recruit class be dedicated to Aboriginal recruits until the target has been met.*

*The Winnipeg Police Department be required to report publicly the progress of its employment equity program to the Minister of Justice.*

*A portion of the funding provided by the Province to the City of Winnipeg for police salaries be conditional on the Winnipeg Police Department's using that funding only for the hiring of Aboriginal police officers.*

*The assignment of Aboriginal police officers not be restricted to the core area or other Aboriginal areas of the city of Winnipeg*

*The Winnipeg Police Department no longer rely on the grade 12 educational criterion for police recruitment and develop approaches which more appropriately test recruits' ability to perform the functions required of police officers.*

*The City of Brandon Police Department prepare and table with Brandon City Council and the Minister of Justice an employment equity plan no later than December 31, 1991, which will increase the numbers of Aboriginal people on the City of Brandon Police Department to a level equal to their proportion of the Manitoba population. The plan should include target dates by which to achieve that proportion and remedies should those targets not be met.*

*The City of Brandon Police Department set an initial target of nine Aboriginal police officers and that the Brandon City Police dedicate that number of positions for Aboriginal recruits in its next recruit class.*

*Both the City of Winnipeg Police Department and the City of Brandon Police Department consider hiring Aboriginal police officers who already have policing experience with an Aboriginal force or with the RCMP.*

*Aboriginal people be represented among the civilian members of both the City of Winnipeg Police Department and the City of Brandon Police Department in the same proportion as their presence in the province's population.*

- A significant expansion of the availability and quality of cross-cultural training and field experience, including processes for the orientation of new staff to the Aboriginal communities to which they were assigned.

*Cross-cultural education components of all police training courses be reviewed and strengthened, and this process actively involve members of the Aboriginal community, resource persons and recognized experts.*

*All police officers be rotated through cross-cultural education programs, and periodic refresher programs be provided as part of the regular professional development programs of all police departments.*

*Any police recruits displaying racist attitudes be screened out of training, and police officers who display such conduct after joining the force be required to take further training or, if necessary, be formally disciplined or dismissed.*

*The courts adopt the Anunga Rules of Australia, as rules of the court governing the reception into evidence of statements to police made by Aboriginal persons.*

*In addition to these rules on interrogation procedures, there are other procedures police should adopt. In our report on the death of J.J. Harper, we discuss and make recommendations concerning the recording of interrogations. Those recommendations are:*

*All statements taken by police officers be either audio- or video-recorded. If the contents of a transcribed statement are challenged, or some tribunal wishes to hear how certain words were expressed, the tape or video can be played.*

*Video equipment be used to record the statements of all suspects in cases involving deaths and other serious cases. We suggest that the taping record the totality of each interview, including all introductory comments and explanations and warnings given by the police, and including any formal statement or other comments that result.*

*The videotape will be of great value. The impact would be reduced if accused persons could allege that promises or inducements were offered or pressure was applied to them before the taping began.*

*Where video equipment is not available, all statements be audio-recorded. The RCMP has tape-recorded some statements for years. We recommend that all*

*police make that practice mandatory in all cases, with the use of video where statements are taken in an office with that equipment.*

*While they continue to police Aboriginal communities, the RCMP and all other Manitoba police forces develop and make public an integrated strategy to strengthen their capacity to provide culturally appropriate policing services, and the strategy include the development of a process of regular communication with Aboriginal organizations and communities, and the annual publication of reports which indicate progress in meeting the goals of the strategy.*

*The City of Brandon Police Department, in cooperation with the Brandon Friendship Centre, develop a program to reach out to and inform Aboriginal people living in Brandon about policing issues.*

- Major improvements to the *Provincial Police Act* and Regulations, and in the role and function of the Manitoba Police Commission, to properly support the development of standards and procedures to guide all aspects of policing in Manitoba.

*The Provincial Police Act make explicit provision for the recognition of any police commission or committee which is established to provide police services in any municipality, unorganized territory, or Aboriginal community in Manitoba.*

*The Manitoba Police Commission prepare and enforce a wide range of regulations covering recruitment, training, equipment, procedures, supervision of, and support for, police forces in Manitoba.*

*The development of Aboriginal police commissions to support the rapid recruitment, training and effective support of Aboriginal police forces.*

*The Provincial Police Act be amended to provide for the establishment of a provincial Aboriginal Police Commission with authority to prepare and enforce a wide range of regulations covering recruitment, training, equipment, procedures, supervision of, and support for, Aboriginal police forces in Manitoba.*

*Final decisions concerning the size, composition and manner of appointment to the Aboriginal Police Commission be made by Aboriginal people.*

*The Provincial Police Act be amended to provide for the appointment of an Aboriginal Police Commissioner, to serve the Aboriginal Police Commission, with any such person being selected by Aboriginal organizations responsible for Aboriginal police forces.*

*Agreements be developed between the provincial Aboriginal Police Commission, local*

*police commissions, the RCMP and the provincial Justice department for Aboriginal police forces to provide full police services to Aboriginal communities, with a firm timetable for achieving this goal, including training, equipping and supporting the local forces with appropriate back-up services as required.*

- The development of an effective public complaints body to hear all complaints concerning police.

*The Minister of Justice establish a plan of action to deal with any incident where possible criminal acts are alleged against the police, or where a person dies or suffers serious injury in an incident involving a police officer.*

*This plan of action include either the creation of a standing special investigations unit, or a plan to quickly assemble a special investigations team for a particular incident, able to take control of the investigation immediately following report of the incident. The unit or team should not include officers from the police department under investigation. The plan should include independent counsel to give advice concerning the laying of criminal charges. This counsel should not be a Crown attorney. The unit or team should report directly to the Minister of Justice.*

*The police forces in the province be required to provide all available assistance and cooperation to the special investigations team.*

*The Law Enforcement Review Board be reconstituted and the Law Enforcement Review Act be amended to approximate the Ontario model.*

*The board appoint independent counsel to have conduct of each case and be responsible for presenting the evidence.*

*Where the complaint is from an Aboriginal person, at least one member of a panel be Aboriginal.*

*The test to be applied by the board be proof by clear and convincing evidence, rather than beyond a reasonable doubt.*

*If the board decides that the complaint is proven, it have full power to impose whatever penalties it deems appropriate.*

*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.*

*Police officers, including the officer against whom the complaint is made, be compellable witnesses.*

*Aboriginal justice systems establish and maintain an agency to receive, investigate and resolve complaints against Aboriginal police officers similar to what we recommend for provincial police forces.*

*Complaints against the RCMP in Manitoba, when acting as a provincial police force, be investigated and heard by the Law Enforcement Review Board.*

## **2. POLICING TRENDS**

Before reviewing the progress that has been made towards implementing the Aboriginal Justice Inquiry's recommendations on police, it is useful to take note of a number of important contemporary trends in policing in Canada.

**Costs:** The cost of policing has, over the past two decades, been growing at a pace that has required governments across Canada to take measures to limit the rate of growth in the police budget. The increases in costs have been driven by a number of factors: wages, technology, and increases in public expectations.

**Funding:** Over the last decade governments have slowed the growth in spending on police, often by reducing the number of police officers per capita.

**Regionalization:** One of the strategies that governments have adopted in an effort to reduce police budgets is regionalization. By merging smaller police departments, it is hoped that economies of scale can be achieved.

**Staffing:** It is expected that most police forces will experience a high rate of retirements over the next five years. This is likely to create problems in recruiting and training.

**Crime:** While there has been a decrease in crime rates in recent years, the crime rates have not declined to the levels they were at in the 1970s. Without significant socio-economic changes it would appear that many communities will continue to experience serious, and possibly increasing crime rates.

**Services:** Budgetary pressures are leading police forces to focus more intently on the delivery of core services (crime suppression), with a greater expectation that the community and or the private sector will take on a greater portion of what was once considered the role of the police.

**Governance:** Concerns over costs have led to changes in governance. Increasingly the police are

seen as another branch of the public service and subjected to similar forms of measurement, monitoring and comparison to other services. This process challenges the traditional independence of the police.

***Family violence:*** In response to pressure from victims and women's groups there has been a growing movement to criminalize family violence. This has led to an increase in both charges and prosecutions related to family violence. (The issue of family violence will be explored in detail in another set of recommendations).

***Community policing:*** While the idea of community policing has received a great deal of attention over the past two decades there is no single definition as to what it constitutes. While many police forces have formally committed themselves to community police approaches, they are often add-ons to traditional approaches. Such initiatives are vulnerable to budget cuts and are, potentially, at odds with the other policing trends that have been identified.

#### **(a) Implications of these trends for Aboriginal communities and Aboriginal policing**

In large measure the trends identified above often run counter to the spirit of the Aboriginal Justice Inquiry recommendations. The AJI favoured community policing, the creation of Aboriginal police forces, and affirmative action hiring policies in non-Aboriginal forces. The evidence presented to the AJI favoured an approach to policing that provided a high level of traditional police services and an innovative community policing approach that dealt with issues such as public order and dispute resolution.

At least in the short-term, the establishment of community-based Aboriginal police forces is going to incur a number of cost increases. Start-up costs—both in terms of training and acquisition—will be considerable. Even if Aboriginal forces are organized on a regional basis, the economies of scale may be limited. It may well be that this process will lead to an increase in staffing (indeed such an increase might be required simply to provide many small and remote communities with adequate policing under current policing models). Furthermore, it is not appropriate to expect new models of policing, such as community policing, to be both innovative and inexpensive.

The expected staff turnover in traditional police forces will create more employment opportunities for Aboriginal people. However, it may well be the case that Aboriginal officers will leave Aboriginal forces to take positions with urban and national police forces when job openings occur since the urban and national forces offer better pay and more career opportunities. This could only increase the staffing problems experienced by Aboriginal forces, which currently have higher than average turnover rates.

The pressure to standardize police governance at higher levels may also turn out to be in conflict with desires for more community control over policing.

As a concluding note, it is important to acknowledge the legitimacy of the views expressed by the Aboriginal community. Unless there is a new approach to justice and policing, the rates of criminalization of Aboriginal people are likely to remain high. Local knowledge and an understanding of local culture are crucial to improvements in policing in Aboriginal communities, but this knowledge may not be valued in a modernized and regionalized police service.

### **3. STATUS OF THE THREE AJI PRINCIPLES IN 2001**

Given the time constraints placed on the Aboriginal Justice Implementation Commission, it has not been possible to conduct an in-depth investigation into the current state of relations between Aboriginal people and the police in Manitoba. The AJIC did commission a survey paper by University of Manitoba criminologist Rick Linden, who also prepared background materials for the Aboriginal Justice Inquiry. Dr. Linden's paper (which was prepared with the assistance of Professors Donald Clairmont and Chris Murphy) was posted on our website and circulated for discussion. It forms the basis for the AJIC's following assessment on the degree to which the AJI policing recommendations have been implemented.

1. *The adoption of Aboriginal community-based policing as the favoured strategy for policing in all Aboriginal areas.*

Progress in this area has been slow. As will be noted later in this chapter, community-policing remains a poorly defined if widely embraced concept. In Manitoba, the Royal Canadian Mounted Police has a community policing program that involves the formation of Community Consultative Groups, supporting restorative justice initiatives and creating advisory groups with representatives from the Aboriginal community. In Manitoba, there are 97 such advisory groups in 44 Aboriginal communities.

The Winnipeg Police Service's community policing program operates in several Winnipeg communities that have large Aboriginal populations. Elements of this program include:

- an Aboriginal Liaison Officer
- a 14-member Aboriginal Advisory Committee.

Members of the department are also active with a number of community groups including the Aboriginal Coalition of Winnipeg, the Manitoba Aboriginal Youth Career Awareness Committee, Winnipeg Native Alliance, and Aboriginal Ganootamaage of Winnipeg. Despite these positive steps, and an institutional commitment to community policing, it is acknowledged that community policing remains as much a goal as a reality in Manitoba.

*2. The development of professional, fully trained, regional Aboriginal police forces, reporting to and serving Aboriginal communities, with a broad mandate for law enforcement and crime prevention.*

Little progress has been made in implementation the recommendations relating to Aboriginal policing. The Dakota Ojibway Tribal Police Service remains the only Aboriginal police force in Manitoba, and it provides service to six of the eight communities that it serviced in 1991.

The Manitoba Keewatinowai Okimakinak has completed a framework agreement with the federal and provincial governments to establish a Police Consulting Group. This may lead to a regional Aboriginal police service for northern Manitoba. Chemawawin First Nations, Swan Lake First Nations, and Waywayseecappo First Nations operate under the terms of the tripartite RCMP-First Nation Community Police Service (FNCPS) agreement and are policed by members of the RCMP.

*3. A significant strengthening of employment equity programs, particularly in the case of the Winnipeg and Brandon police forces, including targets and remedies.*

In this area both the Winnipeg Police Service and the RCMP have made significant progress. In his paper for the AJIC, Linden provides the following summary of Aboriginal employment by these two services:

There has been significant progress in hiring Aboriginal staff, particularly by the RCMP and the Winnipeg Police Service. The RCMP have added an Aboriginal sergeant as a Career Manager in the Staffing Branch to help with Aboriginal recruiting and personnel management. The RCMP has 108 Aboriginal members in the province (about 11% of the total number of officers and nearly 20% of those assigned to contract policing), 11 of whom hold supervisory ranks. Twenty-one of the province's 97 detachment clerks are Aboriginal. The RCMP tries to ensure that Aboriginal communities have Aboriginal police officers, but must also ensure that Aboriginal members have the same transfer and professional opportunities as other members. Since 1993, the RCMP has run an Aboriginal Summer Youth Employment Plan in cooperation with Aboriginal organizations, provincial agencies, and municipal groups. About half the students in this program have applied to join the RCMP.

Following the AJI report, the Winnipeg Police Service instituted several initiatives to increase Aboriginal hiring. While maintaining the minimum standard of Grade 12 or G.E.D. equivalency was maintained, the Winnipeg Police Service established three programs to train o Aboriginal and visible minority candidates As a result, the Winnipeg Police Service now has 100 Aboriginal officers compared with 18 in 1990. This is 8.5% of the total complement of 1,174 members. The department also developed an Employment Equity Policy in 1996.

The WPS has been less successful in hiring Aboriginal civilian staff and only 2.3% of civilian staff are Aboriginal. Future employment equity programs will target civilian staff. (Linden et al., page 16)

While the Brandon Police Service has an employment equity program, its increase from two Aboriginal officers to four over the past decade is less encouraging than those of either the Winnipeg service or the RCMP.

*4. A significant expansion of the availability and quality of cross-cultural training and field experience, including processes for the orientation of new staff to the Aboriginal communities to which they were assigned.*

The province's three major police forces all have ongoing multicultural training programs. They also provide training on issues such as harassment and ethics. The courses have been reviewed by outside examiners and revised in light of their findings.

*5. Major improvements to the Provincial Police Act and Regulations, and in the role and function of the Manitoba Police Commission, to properly support the development of standards and procedures to guide all aspects of policing in Manitoba.*

No action has been taken on these recommendations. There is no legislation addressing policing standards in the province. Furthermore, the Manitoba Police Commission was abolished. The absence of a police commission is a major weakness in Manitoba's police policy.

*6. The development of Aboriginal police commissions to support the rapid recruitment, training and effective support of Aboriginal police forces.*

As noted above, there currently is no Manitoba Police Commission, let alone an Aboriginal Police Commission. A Director of Aboriginal Policing has been appointed by Manitoba Justice to provide support for Aboriginal police initiatives.

*7. The development of an effective public complaints body to hear all complaints concerning police.*

The changes that the AJI recommended in this area have not been fully acted upon. Instead the Law Enforcement Review Board has been abolished; complaints that were heard by the board are now heard by a Provincial Court Judge. The standard of proof under the Act has been changed and more investigators have been added. The RCMP Public Complaints Commission continues to hear complaints about that force.

In summation, in two areas: the employment of Aboriginal people and cross cultural training, Manitoba police forces have achieved considerable success. The AJIC commends the forces for

this progress and strongly encourages their continued efforts in these important areas. However, in the area of Aboriginal policing, community policing, and improvements in accountability and oversight, progress has been either slow or non-existent. The rest of this chapter examines these three areas.

## **4 AJIC PRIORITIES**

The Aboriginal Justice Implementation Commission has identified three priority areas in the area of policing that must be addressed. They are:

- Accountability and oversight
- Community policing
- Aboriginal policing

All three of these points are interconnected. It will be very difficult for the Manitoba government to make real progress in the area of either community policing or Aboriginal policing until it adopts a new Provincial Police Act. Such an Act ought to establish standards, appointments, governance, discipline, policy and philosophy. It must also ensure adequate, efficient, and effective oversight. Such an Act would create a framework for progress in the areas of community policing and Aboriginal policing.

Community policing and Aboriginal policing are inter-connected in that Aboriginal communities have regularly expressed a desire for community policing and Aboriginal forces are likely to be most effective if they make use of community policing approaches. Furthermore, as noted above, the implementation of community policing and the expansion of Aboriginal policing initiatives are both frustrated by similar trends and developments in contemporary policing.

### **(a) ACCOUNTABILITY AND OVERSIGHT**

The Manitoba Government's failure to address the AJI recommendations on police accountability amounts to a failure to properly monitor and assess a public service. This is a clear responsibility of the Manitoba Government under section 92(14) of the Constitution. Under this section, the Manitoba Government has the authority to establish a police force with the authority to enforce provincial laws and federal criminal laws. Manitoba also has the authority to appoint, control and discipline members of the force.

In the paper prepared for this Implementation Commission, Linden et al state:

For decades, police in Manitoba have had less regulation, control, and guidance than almost any other province. Manitoba has no minimum standards for selection, discipline or equipment. There are no provisions for auditing the operations of municipal or regional police departments or for standardizing operational procedures. It is possible for a person

unsuited for police work to be hired by a municipality and to work in a department that has no adequate policy and procedures manual to guide the officer's conduct. (Linden et al, page 43)

As the AJI noted the Manitoba Police Commission had broad powers that included:

- crime prevention,
- providing information, advice, and research to assist municipal police,
- maintenance of standards for lock-up facilities,
- assessing the quality of municipal police forces,
- recommending selection, training, and promotion standards,
- recommending province-wide training programs including recruit and advanced training,
- developing post-secondary educational programs for police,
- establishing community relations programs,
- regulating equipment for police forces, and
- quasi-judicial functions including those established by the Law Enforcement Review Act.

The AJI concluded that the Commission was severely underfunded and did little more than fulfill its quasi-judicial functions under the Act. Since the Commission was abolished in 1992, the Law Enforcement Services Branch has been responsible, on paper for the tasks previously assigned to the Commission. However, in large measure the Branch has not taken on this role.

The AJI called on the Manitoba Government to make “Major improvements to the *Provincial Police Act* and Regulations, and in the role and function of the Manitoba Police Commission, to properly support the development of standards and procedures to guide all aspects of policing in Manitoba.” The AJIC fully endorses the need to take action in this area.

As noted above, one of the issues that led to the creation of the AJI was the shooting death of J.J. Harper. Considerable attention was devoted both prior to the establishment of the AJI and during its hearings to the rapid internal review that the Winnipeg Police Force conducted into that death. There was a concern at the time that in matters such as this, police forces should not be investigating themselves. For this reason, the AJI proposed a method of outside review for all police forces in Manitoba. However, little has been done to address this issue. The AJIC believes, with the AJI, that it is necessary for the provincial government to establish an effective and independent oversight mechanism.

## **(b) COMMUNITY POLICING**

As noted earlier, community policy policing is a widely embraced but often vaguely defined approach to policing. For this reason it is not a simple matter to say whether or not a police force has or has not implemented a community policing approach. It is apparent that moves to implement community policing have the potential to run counter to many other contemporary

policing trends, particularly policies that focusing on core services, regionalization and centralization. Aside from the various trends that run counter to the implementation of community policing, it should be noted that police training itself focuses in large measure on traditional criminal justice approaches to crime prevention that tends to delegitimize alternative approaches.

The Aboriginal Justice Implementation Commission associates community policing with the following elements that Linden et al. identified as being necessary in a meaningful community policing program.

- **Community involvement in decisions about policing.** The community members who receive police services should help set policing priorities and influence the policies of police departments. The police should not just have a one-way relationship with their communities. They must develop institutionalized ways of consulting with their communities and they should actually *listen* to what the communities say. A common failing of community policing has been a reluctance of the police to give the public meaningful input into police priorities.
- **Decentralized management.** Communities and neighbourhoods vary widely and policies that are appropriate in one area may not work in another. In recognition of this diversity, a community policing program should assign responsibility and authority to the police at the local level. This means that officers must be trained to handle this responsibility and authority and must be held accountable for their work.
- **Problem orientation.** Problem-oriented policing means that police are encouraged to work with the community to solve local problems rather than just focussing on enforcement. In addition to their traditional task of reacting to calls for service, the police work with the community to identify and to resolve the community problems that underlie the service calls. This proactive, preventive approach has great potential in some Aboriginal communities where social and economic problems lead to high levels of calls for service. (Linden et al., page 30)

Community policing approaches mesh with the approaches that Aboriginal communities wish to see taken on justice issues, they fit with Aboriginal concerns over self-government, they adapt to community variety, and they bridge the gaps of culture and class that currently separate police and Aboriginal people. For these reasons the AJIC believes that it is important that governments and police services continue to work together towards the implementation of these policies. However, the AJIC also recognizes the numerous barriers and countervailing forces that police services face when they attempt to implement such a policy.

### **(c) ABORIGINAL POLICING**

The lack of progress that has been made in Manitoba in the development of Aboriginal police forces must be viewed in the context of national policing trends in this area in 1992 the Government of Canada approved a First Nations Policing Policy. This policy transferred Aboriginal policing from Indian Affairs to the Solicitor General. The government committed itself to negotiating agreements with First Nations and Provincial Governments under which the federal government and the province would pay for the costs of on-reserve policing, although First Nations government had the option of topping up funding to provide additional services. The intent was that the police services that were to be developed under this agreement would be:

- comparable to that received by non-native communities under similar conditions,
- subject to significant First Nations control and direction, and
- responsive to the distinctive traditions and social circumstances of First Nations communities.

The negotiations between the Federal Government, the Provincial Government and the First Nation were to lead to community tripartite agreements. The agreements promoted two police service delivery models:

- 1) First Nations Administered Police Service: organized on a band, tribal, regional or provincial basis, including arrangements providing for one First Nation to contract for the policing services of another.
- 2) Special Contingent of First Nations Officers: within an existing police service, including:
  - (a) First Nations officers employed within a provincial or municipal police service with dedicated responsibilities to serve a First Nation community.
  - (b) A group of First Nations police officers employed through a contractual arrangement to provide a policing service to a First Nation community.

In addition, the negotiations could lead to a Developmental Policing Arrangement which was designed to smooth the transition from one type of policing arrangement to another. Provincial governments had an incentive to participate in these programs since under the new agreement their share in the funding of the policing of Aboriginal communities would drop from 70 per cent to 52 per cent. In practise this has not lead to a decline in provincial spending on the policing of

these communities, since the costs of Aboriginal forces under either model have been higher than under the previous policing model.

There has been considerable progress towards implementing this policy outside of Manitoba. Over 112 tripartite agreements had been signed by 1998, and almost 66 per cent of eligible First Nations persons were being policed under the agreement. The policy had led to the creation of over 50 self-administered First Nations police services. Most of these forces have been created in Ontario and Quebec. In Saskatchewan there is a province-wide agreement under the FNPP. In Manitoba DOPS remains the only First Nations Administered Police Service. Since DOPS predates the FNPP, it is not appropriate to view its creation or existence as the result of the FNPP.

Three First Nations, Chemawawin First Nation, Swan Lake First Nation, and Waywayseecappo First Nation, operate under the terms of the tripartite RCMP-FNCPS agreement and are policed by Aboriginal members of the RCMP. Furthermore, MKO is involved in negotiations with the federal and provincial government that could lead to the establishment of a regional Aboriginal force.

The fact that Manitoba has made slow progress in establishing Aboriginal police forces at a time when significant progress has been made nationally appears to be due to a number of factors. Two of the most significant are costs and issues of service delivery. While a number of provincial governments entered into First Nations policing agreements with an expectation that their costs would decline, or at least remain the same, the experience has been that Aboriginal policing is more expensive than the previous police services. This is due to a variety of reasons that have been discussed elsewhere in this chapter. Secondly, there have been a number of concerns with the level of service provided by Aboriginal services both in Manitoba and elsewhere in Canada.

There have been a number of assessments of First Nation police services conducted over the past five years. They have concluded that while the policy was being implemented in terms of its overall goals (Aboriginal officers, self-administration, and the number of agreements reached), there were concerns about the conventional nature of the policing strategies pursued by these forces, their lack of resources compared to the crime levels they must address, and high public expectations.

For example, there is an expectation that Aboriginal forces provide a high-quality of traditional, autonomous law enforcement. Simultaneously, there is an expectation that good policing in an Aboriginal context will go beyond crime suppression and do so in a manner that is distinctive and under community control. Aboriginal police forces are being asked to blaze a new trail in policing with resources that may not be adequate. The generic trends in policing that were noted earlier in chapter all evolved in response to shortfalls in resources. However, many of these trends (regionalization and standardization) all run counter to the thrust of Aboriginal policing.

Recently two Alberta First Nations police services closed, temporarily, while other Alberta forces are reported to be facing difficulties.

One apparent solution to the challenge of creating economically viable and culturally sensitive Aboriginal police forces is the development of regional Aboriginal police forces. This approach was endorsed by the AJI. Such forces would also have to enter into collaboration agreements with non-Aboriginal police forces. This approach has governed the growth of Aboriginal police forces elsewhere in Canada, with the Alberta government currently giving consideration to the creation of a province-wide Aboriginal force.

Aboriginal communities must play the lead role in developing these services. The Commission is in favour of an approach which provides communities with a reasonable degree of choice in determining how they are to be policed. The options currently available to Aboriginal people for policing (regional Aboriginal forces, local Aboriginal forces, continuing with the current style of policing with the RCMP, and working with the RCMP to develop a more satisfactory form of policing) ought to be sufficiently flexible in nature to allow for the development of community-appropriate policing arrangements.

The process of establishing such a force should involve each Aboriginal community in a needs assessment, a thorough review of options, and ongoing monitoring and evaluation. (These issues are discussed in detail in Linden et al.) The AJIC encourages the Manitoba Government to work with Aboriginal communities that express an interest in establishing Aboriginal forces and to work with the RCMP to develop improved approaches to policing Aboriginal communities.

Another approach that might be worth considering is the creation of a Prairie Region Aboriginal Police Force or a Prairie Provincial Police Force with an Aboriginal component. Given the pressures facing police services noted above, Prairie forces may be an answer to the need for increased efficiency and effectiveness while at the same time bringing greater local control.

## **5. AJIC RECOMMENDATIONS**

The issues that have been outlined in this chapter are complex. While significant progress has been made in a number of areas of policing, the issues of accountability and oversight, community policing and Aboriginal policing are far from resolved. The issues involve several layers of government, the public, as well as fundamental questions of funding, policy, and governance. While the Aboriginal Justice Implementation Commission believes that progress must be made all three areas, the Commission believes that what is required to break the current impasse is a provincial task force on policing that is mandated to make recommendations on a new Police Act for the province of Manitoba.

A systematic review of all policing issues in Manitoba, culminating in the adoption of a new act, would ensure that all the issues and trends identified in this paper are fully examined and that

appropriate strategies developed and adopted. Such a review would undoubtedly raise and examine other policing issues that do not directly touch on the relationship between Aboriginal people and the police. Conventional law enforcement approaches, which are being reinforced by numerous trends, must be held up to close scrutiny. This process must ensure that the proposed beneficiaries of changes in police policy, have effective participation in the review process. If Manitoba is committed to community policing – and therefore in Aboriginal communities, to Aboriginal policing—then it may be the case that a new model of policing is required for the entire province. The AJIC believes that a more transparent and independent governance system coupled with a community policing approach which requires use of peacekeeping or restorative community-based policing philosophies and strategies (and that is properly funded), will create a police force that is more credible, legitimate and effective.

## **(b) SUMMARY**

From the foregoing it is apparent that the provision of police services in Manitoba is quite complex, involving both municipal and provincial governments in providing services outside of First Nations and First Nations, provincial and federal governments in providing police services on First Nations. In addition, the RCMP's role as the provincial police force and federal/provincial arrangements to share the cost of the RCMP further complicates matters.

Given the nature of the issue, the limitations in the Commission's mandate with respect to time and the need to focus on those issues solely within the responsibility and accountability of the provincial government, the Commission has decided not to make detailed recommendations in this area. It is the Commission's view that recommendations in this area will require extensive consultation with all interested parties. The Commission will recommend parallel, short-term and medium-term approaches. Before setting out its recommended approaches, the Commission wishes to review the conclusions it has reached in its investigations into policing issues and the Aboriginal Justice Inquiry (AJI) recommendations dealing with police.

1. The Commission recognizes the efforts that the RCMP and the Winnipeg Police Forces have made in increasing Aboriginal representation and in cross cultural training. The Commission respects these efforts and strongly encourages both forces to continue their work in this area. (The Manitoba Métis Federation has suggested that the Winnipeg Police Force enter into a partnership with the MMF to promote recruiting of Métis into the Force). The Commission also has been advised that a recent review of the RCMP Aboriginal Police Services recommends enhanced training of members in Aboriginal culture and Aboriginal concerns.
2. The Commission agrees that there is a need for a strong legal foundation for the delivery of police services in Manitoba. The Commission notes that while Alberta conducted a review of its Provincial Police Act in 1988, a further review, by a committee of members of the Alberta Legislative Assembly is currently in process.

3. The Commission agrees that there is a need for independent oversight of police forces, particularly in cases of serious injury or allegations of criminal conduct by police officers. This need is grounded, at a minimum, in the need for the public to believe that such cases are being dealt with appropriately.
4. The Commission agrees with the AJI's recommendation concerning the adoption of a philosophy of community policing. The Commission also agrees that the description offered by Professor Linden, et al., establishes a good working definition to assess community policing efforts.
5. The Commission agrees that, in general, it would be preferable for Aboriginal communities to be provided police services primarily by Aboriginal officers under local Aboriginal control. (The Commission recognizes, however, that in operational matters police forces are not subject to political control.)
6. The Commission recognizes that any police service must be delivered in a cost-effective manner and there will be inevitable tensions between the desire for locally controlled community policing and the need for efficiency.

## **(b) RECOMMENDATIONS**

### **(i) Medium-Term (1 – 3 years)**

1. **The Commission recommends that the Province of Manitoba initiate a process involving all stakeholders (with Aboriginal representation that includes the Assembly of Manitoba Chiefs and the Manitoba Métis Federation) to review policing issues in Manitoba with a goal of a new Provincial Police Act within 3 years. The review should deal with, among other things,**
  - **The role of the province in encouraging the adoption and delivery of effective community policing**
  - **Whether current mechanisms to fund police services are equitable**
  - **The role of the province in ensuring adequate and effective levels of policing**
  - **Complaints and discipline mechanisms for alleged criminal and non-criminal conduct**
  - **Establishing training and performance standards**

- **Crime Prevention**
- **Victim Services**
- **The role and responsibilities of bodies charged with providing general supervision of police**
- **The distribution of powers between municipal governments, police supervisory bodies and the chief of police**
- **The role of the RCMP as a provincial police force and arrangements for provision of specialized services by the Provincial Police Force to other forces such as, First Nation Police forces and municipal forces, both RCMP and non-RCMP**
- **What, if any, legislative provisions are required to deal with Aboriginal Police Forces**

**(ii) Short-Term (Immediate**

**Ongoing work to improve the provision of police services to Aboriginal people should not stop while this review is being conducted. The Commission suggests the province adopt the short term recommendations suggested by Professor Linden, et al that**

- 2. The Province and Aboriginal communities adopt a process through which Aboriginal communities could choose the most appropriate type of police structure; such a process should include,**
  - **A needs assessment,**
  - **Option assessment, and**
  - **Monitoring and evaluation.**
- 3. The province work with Dakota Ojibway Police Service (DOPS) to explore ways to improve the efforts of DOPS to provide a community-based police service.**
- 4. The province work with the RCMP to determine whether the RCMP is sufficiently responsive to community needs and concerns and whether the degree of responsiveness can be improved.**