

RELEASE DATE: February 12, 2016



Manitoba

THE PROVINCIAL COURT OF MANITOBA

IN THE MATTER OF: *The Fatality Inquiries Act, C.C.S.M. c. F52*

AND IN THE MATTER OF: AN INQUEST INTO THE DEATH OF
BRIAN MCPHERSON
(DOD: AUGUST 27, 2011)

Report on the Inquest and Recommendations of
Judge Malcolm McDonald
Issued this 9 day of February, 2016

APPEARANCES:

Counsel to the Inquest: Mr. Paul Girdlestone

For the Garden Hill First Nation: Mr. Larry Monias, Mr. Larry Beardy, Mr. Leonard Flett and Chief Arnold Flett

For the Federal Government: Mr. Joel Katz

For the Government of Manitoba (Director of Policing): Mr. Jim Koch



Manitoba

THE FATALITY INQUIRIES ACT, C.C.S.M. c. F52

REPORT BY PROVINCIAL JUDGE ON AN INQUEST INTO THE DEATH OF: BRIAN MCPHERSON

Holding of the Inquest

The deceased, Brian McPherson died in the early morning hours of August 27th, 2011 while being held in custody at the Garden Hill band constable holding cells. The immediate cause of death was ischemic heart disease due to coronary atherosclerosis.

On May 17th, 2012 the Chief Medical Examiner of the Province of Manitoba, directed that an inquest be called to address the following:

1. To determine the circumstances surrounding the death;
2. To determine what, if anything, can be done to prevent similar deaths from occurring in the future

The Fatality Inquiry respecting Mr. McPherson's death covered six (6) days including hearings on October 22nd, 23rd, and 24th, 2013 in Garden Hill, Manitoba and then on July 4th and November 14th, 2014 as well as March 20th, 2015 and June 14th, 2015 in Winnipeg, Manitoba.

Formal standing to ask questions and make submissions at the hearing was granted to the Garden Hill First Nation, who was represented by Larry Monias during the proceedings held in Garden Hill, and limited standing was also granted to the Federal Government of Canada represented by Mr. Joel Katz and to the Provincial Government of Manitoba (Director of Policing) represented by Mr. Jim Koch. During the Winnipeg hearings Garden Hill First Nation was represented by

First Nation members Mr. Larry Beardy, Mr. Leonard Flett and Chief Arnold Flett.

Mr. Paul Girdlestone of the Manitoba Prosecutions Service ably fulfilled the duties of counsel to the inquest and I thank him for his invaluable assistance to the Court. I also wish to thank Mr. Joel Katz and Mr. Jim Koch for their contributions to and cooperation with the inquest. I would also be remiss not to thank Mr. Larry Monias for his thoughtful and reflective contributions to the proceedings held in Garden Hill. In particular his highlighting of the lack of psychological or emotion counselling available to those guards, security personnel and citizens who witness the death of an individual or who tend to the deceased after the discovery of his or her death. I also thank Mr. Larry Beardy, Mr. Leonard Flett, and Chief Arnold Flett for their participation in the hearings held in Winnipeg.

A total of 18 witnesses were called over the course of the proceeding.

Scope of the Inquest

In accordance with s. 19(3) of the *The Fatality Inquiries Act*, hereinafter referred to as “the Act”, the holding of an inquest was mandatory as Mr. McPherson died in police custody. A copy of the relevant section is set out below:

s. 19(3) Where, as a result of an investigation, there are reasonable grounds to believe

(a) that a person while a resident in a correctional institution, jail or prison or while an involuntary resident in a psychiatric facility as defined in *The Mental Health Act*, or while a resident in a developmental centre as defined in *The Vulnerable Persons Living with a Mental Disability Act*, died as a result of a violent act, undue means or negligence or in an unexpected or unexplained manner or suddenly of unknown cause; or

(b) that a person died as a result of an act or omission of a peace officer in the course of duty;

the chief medical examiner shall direct a provincial judge to hold an inquest with respect to the death.

Section 33(1) sets out the responsibilities of the presiding judge after the completion of an inquest:

s. 33(1) After completion of an inquest, the presiding provincial judge shall

(a) make and send a written report of the inquest to the minister setting forth when, where and by what means the deceased person died, the cause of the death, the name of the deceased person, if known, and the material circumstances of the death;

(b) upon the request of the minister, send to the minister the notes or transcript of the evidence taken at the inquest; and

(c) send a copy of the report to the medical examiner who examined the body of the deceased person;

and may recommend changes in the programs, policies or practices of the government and the relevant public agencies or institutions or in the laws of the province where the presiding provincial judge is of the opinion that such changes would serve to reduce the likelihood of deaths in circumstances similar to those that resulted in the death that is the subject of the inquest.

In addition, s. 33(2)(b) directs the presiding Judge not to make a determination of culpability on anyone's part for the death of subject of the inquest.

The death of Mr. McPherson occurred in the First Nation of Garden Hill. This reality raises issues with respect to the limits on the role of an inquest judge in making recommendations in these circumstances.

In 2005 the Inquest Report of Judge Sidney Lerner into the death of Glenn Fiddler addressed the limits of this Court's jurisdiction at paragraph 301 and 302 of his report:

... a Provincial Judge presiding at a provincial inquest is without jurisdiction to make recommendations to the Federal Government specifically directed to the policies, procedures, and management of the Federal departments and agencies. (at para. 301)

However, a provincial inquest does have the jurisdiction to make inquiries into the material circumstances or the death of one of its citizens, including as noted above, a death occurring on First Nation

land. While there is a jurisdictional limitation with respect to the nature of the recommendations that may be made as a result of that inquiry, it does not restrict the fact finding aspect of the inquiry from identifying, without recommendation, the problems or deficiencies with Federal departments or agencies that may have formed a part of the material circumstances of death. (at para. 302)

Dated at the Town of The Pas, in Manitoba, this 9 day of February, 2016.

“Original signed by:”

Malcolm W. McDonald, Provincial Judge

Copies to: Dr. A. Thambirajah Balachandra, Chief Medical Examiner
Chief Judge Ken Champagne, Provincial Court of Manitoba
The Honourable Gord Mackintosh, Minister Responsible for *The Fatality Inquiries Act*
Ms. Julie Frederickson, Deputy Minister of Justice & Deputy Attorney General
Mr. Russ Ridd, Director of Regional Prosecutions
Ms. Lorraine Prefontaine, Director of Special Prosecutions and Appeals
Mr. Paul Girdlestone, Counsel to the Inquest
Mr. Larry Monias, Mr. Larry Beardy, Mr. Leonard Flett and Chief Arnold Flett, for the Garden Hill First Nation
Mr. Joel Katz c/o Ms. Beth Tait, for the Federal Government
Mr. Jim Koch, for the Government of Manitoba (Director of Policing)
Ms. Ann Marion Monias, widow of Brian McPherson



Manitoba

THE FATALITY INQUIRIES ACT, C.C.S.M. c. F52

REPORT BY PROVINCIAL JUDGE ON AN INQUEST INTO THE DEATH OF: BRIAN MCPHERSON

TABLE OF CONTENTS

	<u>Paragraphs</u>
I. Introduction.	1
II. Summary of the Facts.	3-6
III. Evidence of the Witnesses.	7
A. Gerry Hastings.	8-11
B. Constable Hollie Maffenbier.	12-14
C. Larry Harper.	15-16
D. Douglas Keith Flett.	17
E. Kurt Mason.	18
F. Harry Harper.	19
G. Daryl Harper.	20-21
H. Shannon Beardy.	22-27
I. Rosemary Harper.	28-34
J. Patricia Munroe.	35-38
K. Louise Barkman.	39-41
L. Sergeant Brian Huff.	42-51
M. Ann Marion Monias.	52-54
N. Wayne Harper.	55-62
O. Raymond Levesque.	63-73
P. Diane Samuel.	74-77
Q. Glen Edward Lewis.	78-96
R. Michael Anderson.	97-105
IV. Assessment and Recommendations	
1. Background.	106-107
2. First Nations Policing in Manitoba.	108-118
Recommendation # 1.	119
Recommendation # 2.	120
Recommendation # 3.	121
Recommendation # 4.	122-126
Recommendation # 5.	127

3. Detention Facilities Operated by First Nations.....	128-139
Recommendation # 6.....	140
Recommendation # 7.....	141
Recommendation # 8.....	142
Recommendation # 9.....	143
Recommendation # 10.....	144
Recommendation # 11.....	145
Recommendation # 12.....	146

Appendix A – Operational Manual Island Lake Detachment

Appendix B – Exhibit List

Appendix C – First Nation Safety Officers Regulation, Man Reg 229/2015

I. Introduction

[1] The deceased, Brian McPherson, died after being placed in the band constables holding facility, or cells, in Garden Hill in the early morning hours of August 27th, 2011. The circumstances of his death are not in issue. There was and is no evidence of foul play. In layman's terms, Mr. McPherson died of sudden heart failure.

[2] The issues are how Mr. McPherson came to be placed in custody, the condition of the cell he was placed in, the number of prisoners placed in the cell, and why his medical emergency was not detected on a timely basis.

II. Summary of the Facts

[3] At the time of his death, Mr. McPherson was 44 years old and was a resident of Garden Hill First Nation. Garden Hill is a relatively isolated community located on the shores of Island Lake approximately 473 kilometres northeast of Winnipeg. The main settlement of the community is situated on a peninsula separated from the main RCMP detachment located on Stevenson Island.

[4] On the evening of August 26th, 2011, Mr. McPherson was at his home consuming alcohol with some friends. During that evening, the attention of the local band constable was drawn to the home of the deceased by way of a call received from the band constable's dispatch service directing a check on the home of Mr. McPherson where it was alleged alcohol was being consumed. It seems likely the call was received from Band Councillor Wayne Harper. On arrival the Band Constable, Shannon Beardy, three (3) volunteer assistants Kurt Mason, Douglas Flett, Elliot Wood and Band Councillor Wayne Harper eventually entered the home of Mr. McPherson. It is unclear who first entered the residence but it is clear no one invited them in and that the band councillor instructed the band constable and her volunteer assistants, known as "securities", to arrest and detain all the attendees at the party that appeared to be drinking. No one at the party appeared to be causing trouble or to be so drunk as to not be able to care for themselves. They were not told the reasons why they were being arrested nor were they told they could speak to a lawyer. They were all "arrested" and then transported to the Public Safety Building, (hereafter the "PSB"), in the community and eventually lodged.

[5] The cell block at the PSB was not in good condition. It was only 3.32 metres by 2.67 metres in size. The cell doors were secured by 2" x 4" pieces of wood rather than proper locking devices. The windows on the cell doors were covered over by cardboard and duct tape preventing the guards from looking in to check on prisoners. The only method to check prisoners was to open the cell door. The guards are not permitted to do this, absent an emergency. The only other way to check on prisoners was to view them on low resolution black and white monitors that showed the inside of the cell and which notably did not provide sound transmission. Added to these shortcomings was the extreme overcrowding in the cells. As many as 30 individuals lodged on the evening in question. There were seven (7) people lodged in the same cell as Mr. McPherson.

[6] The following morning at about 8:00am another prisoner advised the guards that Mr. McPherson was non-responsive. Attempts were made to revive him by Harry Harper who had been called by a female guard on duty. His attempts were unsuccessful as it was clear he had been dead for some time with rigor mortis evident in Mr. McPherson's limbs.

III. Evidence of the Witnesses:

[7] A summary of the evidence of each of the witnesses, in the order in which they were called follows:

A. Gerry Hastings:

[8] Mr. Hastings is a long time resident of Garden Hill. He has a diploma in Business Administration and over the years has been employed in a number of capacities by the First Nation in Garden Hill. In 2011 he began work as an Economic Development Officer and remained employed by the First Nation until July 2013. During his tenure he was advised by the First Nation that they had lost funding from the Federal Government for the Band Constable Program. He says he was shown a letter from the Justice Department saying the funding had been cut off because the First Nation had not submitted a required audit report. He developed a proposal on behalf of the First Nation to have the Band Constable Program funded by the Garden Hill First Nation Employment Training Program, a program administered by Manitoba Keewatinowi Okimakanak Inc., (hereinafter MKO) from funds provided by Human Resources Development Canada.

[9] In the spring of 2013, Mr. Hastings drafted a Band Council Resolution (BCR) requesting the RCMP provide a building to be used as a new public safety building in the community. Mr. Hastings indicated that he provided a copy of the BCR to the local RCMP detachment. He said subsequent to this he had made enquiries of staff at the PSB and was advised a new trailer was being acquired to be used as a lock up and would be located on a designated site that winter.

[10] Mr. Hastings provided a written statement to the Court that was entered as Exhibit # 3. In the statement, which was also read into the record by Mr. Hastings, he described the deficiencies in the physical set up of the cells and the staffing of the cells on the night of Mr. McPherson's death. He also expressed the guarded hope that the acquisition of the new trailer may address some of the deficiencies.

[11] Regarding the training of the Band Constables, Mr. Hastings told the Court that, to his knowledge, the band constables had not received any training in the three (3) to four (4) years prior to giving his evidence in October of 2013.

B. Constable Hollie Maffenbier:

[12] Constable Maffenbier at the time of her testimony was a member of the RCMP Forensic Identification Unit beginning her apprenticeship with that unit located in Thompson, Manitoba. She was dispatched to Garden Hill along with her mentor Sergeant Rob Romaniuk on August 27th, 2011 to investigate a reported death in the cells in Garden Hill.

[13] She attended the cell area at the PSB and took pictures of the cell block and the body of the deceased in the cell area. These photographs were entered into evidence as Exhibit # 5. She observed the cell's door appeared to be secured by 2" x 4" board and the viewing port was covered by tape, paper and cardboard.

[14] Constable Maffenbier also attended to the McPherson home in Garden Hill and searched the premises with the consent of the deceased's widow, Marion Monias, to determine if there was evidence of violence or foul play at the McPherson household. The conclusion was that there was no such evidence.

C. Larry Harper:

[15] Mr. Harper was the brother-in-law of the deceased and was a guest at his residence on the night of his arrest. He was drinking superjuice, a type of homebrew, with Mr. McPherson and others. He says that Band Councillor Wayne Harper entered Mr. McPherson's home along with a band constable and "securities" and that he along with all the other occupants of the house who had been consuming superjuice were detained and taken to the PSB cells. He says he was not advised of any right to speak to a lawyer.

[16] He told the court that there were eight (8) people altogether in one cell that included himself and Mr. McPherson. These eight people slept on the floor of the cell. Mr. Harper testified that he was awoken in the morning by a cell mate banging on the cell door and shouting for help as Mr. McPherson was not breathing. The witness indicated that Brian was "half purple" and that there was blood on the floor. He said there were no fights or arguments in the cell during the time he was there.

D. Douglas Keith Flett:

[17] Mr. Flett testified that he is a "security" explaining that "securities" are volunteers who assist the band constables in their duties policing the First Nation community in Garden Hill. On the day in question he was working with a fellow security, Kurt Mason. The two of them were checking vehicles for alcohol on the outskirts of the community when they went to assist Band Constable Shannon Beardy who had been called to attend at the McPherson residence. When they arrived they found two (2) individuals in the vicinity of the McPherson household. They had been drinking and one of them was aggressive. Both were arrested and taken to the PSB. One of the two detained was the son of Band Councillor Wayne Harper who had arrived on the scene at about the same time as Mr. Flett. When Mr. Flett returned from lodging the two (2) individuals arrested outside the McPherson residence, he says he was instructed by Band Councillor Harper to enter the McPherson house and then later told by Mr. Harper to "arrest" those found in possession of superjuice. Mr. Flett said that he did not think the occupants of the house were causing problems from what he saw and that absent the instruction to "arrest" them he would not have done so. He said specifically that Mr. McPherson did not seem intoxicated and was cooperative. He confirmed he had received no training in law enforcement.

E. Kurt Mason:

[18] Mr. Mason's evidence was very similar to that of Mr. Flett. Like Mr. Flett he recalls attending to the McPherson residence and arresting two (2) individuals found on a pathway nearby the residence. He then says that he assisted in arresting the occupants of the McPherson home after being instructed to do so by Band Councillor Wayne Harper. His evidence as to the condition and behaviour of the occupants was similar to Mr. Flett's. Like Mr. Flett, he too was a volunteer security and had received no training in law enforcement.

F. Harry Harper:

[19] Mr. Harper had been at the recreation hall in Garden Hill on the morning of August 27th, 2011 when he received a call from a guard from the nearby PSB. He was told that it was an emergency. He learned he was called because there were no other men around and believed the guards did not know what to do. Mr. Harper, at the time of the incident, had a current certificate in first aid. When he arrived he saw Brian McPherson on the cell floor. He asked Brian if he could hear him and on receiving no response checked to see if he was breathing. He found no evidence of breathing and then when he tried to move the deceased's arm he found it was stiff. He could not open Mr. McPherson's jaw. He tried to administer CPR but after making one attempt he was encouraged to stop his efforts by one of the guards who said "he is gone." In total he spent five (5) minutes at the cell area assisting the guards in attempting to revive Mr. McPherson.

G. Daryl Harper:

[20] Daryl Harper is the nephew of the deceased. He lived with the deceased and his family. He was drinking at a gathering at the deceased's home on August 26 and in the early morning hours of August 27, 2011. Those present along with the deceased, were Leonard Harper, James Day, and Brittany Harper. Daryl Harper testified that they started drinking around 7:30pm. His testimony was that the party was not loud and that there were no fights. He describes the partygoers as variously "not that drunk" to "sober." He says that the band constable showed up in the residence, along with Kurt Mason and Douglas Flett. He says Councillor Wayne Harper also attended. Kurt Mason and Douglas Flett then said "we have to take you in". He was then detained and taken to the PSB

where he was kept overnight. He says that this has happened before and that each time \$100 or \$75 has been deducted from his welfare cheque.

[21] He gave evidence that he was lodged in the same cell as Mr. McPherson and others. In the morning he heard James Day shout “this guy is bleeding.” The witness then checked Brian McPherson finding him to be cold to the touch and bleeding. He then banged on the cell door to get the attention of the guards. He said the guard checked him for a pulse. In the one (1) or two (2) months he lived with Mr. McPherson, he says that he was aware that he was taking diabetic medicine and would be sore from time to time.

H. Shannon Beardy:

[22] Ms. Beardy was a band constable on August 26th and 27th of 2011. When she gave testimony in October of 2013 she was 26 years old. She had started working as a band constable in 2011 and worked in that capacity for a year and a half before she quit that employment. She resumed work in September of 2013, earning \$800 bi-weekly. She told the inquest that prior to beginning her duties in 2011 she received no training nor was she given materials to read to assist her in performing her duties. She says she was given “on the job” training in self defence. She testified that she received first aid training, by way of a four (4) hour course, only a year before she gave testimony. This was approximately one year after the death of Brian McPherson.

[23] Ms. Beardy testified that when she is on shift only two (2) band constables work at the same time and that she often responds to matters by herself. Her evidence was that the night in question was a busy night because it was “welfare night”, lots of people were drinking alcohol, and the cells were full. She received a call from dispatch to attend to the McPherson residence. On the way to the McPherson residence she met up with Kurt Mason and Douglas Flett, who were working as securities at the bridge and they accompanied her on the call. Shortly after they arrived outside the McPherson residence, Band Councillor Wayne Harper arrived. Mr. Harper was, at the time, the councillor in charge of the Justice Portfolio for the band. Another security, Elliot Wood was also at the scene and assisted. Ms. Beardy indicated that she could hear “drunk talk” coming from inside the McPherson residence, but that the first issue was the conduct of Frankie Harper who was discovered outside the McPherson home. Frankie was drunk and acting disorderly. He was eventually detained and taken to the PSB.

Frankie Harper, we learned, is the son of Band Councillor Wayne Harper. Ms. Beardy says that then Wayne Harper went to the door of the McPherson home and ordered her and the securities to go into the McPherson house. She says the door to the home was open. She did not directly answer the question posed to her whether she was given permission to enter by the occupants. No mention was made in her testimony of having a warrant to enter the residence, not even of one of the all purpose blank “warrants” issued by the Chief and Council.

[24] It bears mentioning at this point that at no time during the testimony of this witness or the securities were notes referred to. In the normal course trained police officers seek permission to refer to notes during court hearings to refresh their memory so that their evidence can be as accurate as possible. It would seem that note taking during investigations was not a practice followed by the band constable or the securities in the course of their duties.

[25] When Ms. Beardy entered the house she saw a group of about five (5) people around a table with cups in front of them filled with superjuice. A person was asleep on the couch. She says that Wayne Harper splashed the superjuice into the face of each person who was at the table and then told her and securities to take them into custody. She said had it not been for the order from the councillor, she would not have taken them in because they were not so drunk they could not look after themselves and they were not causing any problems. The one possible exception was Leonard Harper who was acting rowdy.

[26] When she got to the PSB there were a number of visitors at the guard station playing cards and she says the guard, as a result, was not seated at the monitor. She said that at the time, Louise Barkman was the guard. There was no evidence suggesting that she ordered the guard to have the visitors leave. She told the court there is a list of guard duties posted at the PSB, and did identify Exhibit # 7 as that list. She added that if there is an a medical emergency in the cells the guards are to phone the nursing station but that this practice is not provided for in guidelines for band constables or guards. Indeed the list of the guard duties as set out in Exhibit # 7 makes no mention of this requirement. She testified that she did receive a call at about 9:00am regarding an emergency in the cells – which, of course, was concerning the death of Mr. McPherson.

[27] She confirmed that detainees on social assistance have money deducted from their social assistance cheques. She said that she quit her job in 2012 because she was “always angry”.

I. Rosemary Harper:

[28] The inquest then heard from the three (3) guards that were on duty in the early morning of August 27th, 2011, Rosemary Harper, Patricia Munroe and Louise Barkman.

[29] Rosemary Harper, at the time she gave her testimony, was the Acting Chief Band Constable in Garden Hill. In this position she said that her bosses are: “Band Office, Band Manager, Chief and Council”. She says that her training to be a band constable consisted of three (3) weeks training at Southport near Portage la Prairie. She described the course as consisting of training in self-defence, car chase techniques, how to write reports and statements, and how to handle prisoners. When asked how much time was spent on handling prisoners, she described it as being “20 minutes.” When asked by inquest counsel what instruction was given to her on the powers of arrest, she described being given a small book but that she never uses it when she goes on a calls because she has lost the book.

[30] In response to questions from the Court, Ms. Harper indicated she had been told by her instructor about warnings to give an accused on arrest regarding what he was charged with, his right speak to a lawyer and his right to remain silent but that she had forgotten those procedures and didn’t use those warnings when she arrests someone. In addition, she confirmed evidence previously received from Band Constable Beardy that the band constables never obtain warrants from judges or justices and use photocopied letters of authority from the band council to enter people’s homes.

[31] She confirmed she was a guard before she became a band constable and she attended the cells the morning of August 27th, 2011. She also says she was a guard at the RCMP detachment. She says she was not trained for her duties as a guard in either of those positions.

[32] With respect to her guard duties at the PSB, she says that the duties and responsibilities of the guards are posted on a single sheet of paper posted on the

office wall, Exhibit # 7, and that the guards knew of them. The duties were listed as follows:

1. *"Have to know where to put each prisoner when lodged because of their identity and there (sic) gang involvement."* Ms. Harper explained the principal gangs are the Renegades and Krazies and that members of these groups must be separated when they are lodged.
2. *"Sit in front of the monitor at all times if you need to go to the washroom get somebody to sit there."* Ms. Harper confirmed the monitors are black and white and that at the time of Mr. McPherson's death the recording system was broken. The expectation is that the guard would always be at the monitor observing the prisoners.
3. *"Monitor every 15 minutes."* Ms. Harper said her interpretation of this rule is that she was to record her observations of the prisoners every 15 minutes.
4. *"Check if sleeping or snoring in front of the door."* Ms. Harper explained that the guards were not allowed to open the doors and that the viewing port was covered so the guards could not see through the windows making compliance with this requirement impossible. As a result she would, from time to time, open the door if she could not hear anything on the inside of the cell.
5. *"Check every movement on every prisoner."* Once again, if a prisoner was not showing any signs of movement they were to have the cell opened to check the prisoner.

In addition to guarding the prisoner she explained guards were also dispatchers for the band constables.

[33] She says she arrived at the cells at about 7:30am on August 27th, 2011. She was told that there were 30 people in custody. Two (2) female detainees, were being held outside of the cells and were seated in the guard room with the guard, Patricia Munroe, who was on duty at the time. As she sat with Patricia Munroe, watching the cell monitors, she heard a banging on one of the cell doors and somebody saying there was something going on with Brian. She opened the cell door and Ms. Munroe went in and checked for a pulse. No pulse was found and Mr. McPherson appeared to be turning blue. She says she then phoned the nursing station and spoke with Ivan Spence, a nurse, who in turn said he would

phone the RCMP. Ms. Harper explained that the community does not have an ambulance but that there is a medical driver. A medical driver did not attend in this case. No one attended from the nursing station to check Mr. McPherson or pronounce him dead while Ms. Harper was present. Members of the band council arrived and the RCMP attended about 30 minutes after the call was made.

[34] After Mr. McPherson's death, the cell in which he was held has not been used. Only three (3) cells are now operational. The log book seized by the RCMP as part of the investigation has not been replaced. Ms. Harper said that this is because the Band cannot afford one. The guards now use foolscap on which to record lodgings, which is then placed in a box. Ms. Harper also testified that from time to time boardrooms in the PSB are used to house prisoners when there are too many prisoners to house in the cells. She confirmed the testimony of Band Constable Beardy that detainees at the PSB who are on welfare have monies deducted from their subsequent welfare cheque.

J. Patricia Munroe:

[35] Ms. Munroe had been a guard for 11 or 12 years prior to death of Mr. McPherson. She quit the job in November of 2012 due to an illness in her family. On the day in question she was scheduled to work the 5:00pm to 1:00am shift but worked overtime because of how busy it was that night. In addition to her guard duties, she was also doing the dispatch work for the band constables. She says that she saw Mr. McPherson when he was lodged and that he did not appear drunk.

[36] She says that during the early morning hours five (5) people arrived in the guard room area of the cells to visit and play cards. Despite the presence of these individuals, and the fact she and Louise Barkman were playing cards with them, she maintains that constant surveillance of the prisoners was done by herself and Ms. Barkman via the video monitors. She confirmed, however that the monitors had black and white images which were dull and blurry.

[37] In the early morning she heard some knocking coming from Cell # 1. By this time Ms. Barkman had left and Rosemary Harper had arrived and she went to the cell and opened the door. Ms. Munroe went into the cell and saw Mr. McPherson's unresponsive body on the floor. She felt his neck for a pulse and found none. She observed he was already stiff and that his body was cold. She

observed no injury on his body. She then phoned the recreation hall to get some help in case they had to take him to the nursing station as she knew there were people there who could help. She spoke to Harry Harper requesting help. She admitted that this situation had never come up before while she was on duty and that she, herself, did not phone the nursing station or the RCMP. She says she never received information about what to do in case of a medical emergency nor did she receive any formal training as a guard but that she had taken first aid training in the past although her certificate had expired at the time of Mr. McPherson's passing. She confirmed that notes respecting observations made of the prisoners are kept on either papers or a book separate from the lodging book (Exhibit # 14). She claimed to be unfamiliar with the policies and procedures set out in Exhibit # 7 although she acknowledged seeing the paper affixed to the wall in the guardroom. She told the Court that there was no policy in place regarding what to do with unconscious prisoners. She said although they would make calls to the nursing station regarding prisoners with suspected health problems, and receive advice from them, in her experience no personnel from the nursing station had ever attended the cells to render medical aid to a prisoner.

[38] In response to a question by Mr. Monias, who appeared on behalf of Garden Hill First Nation, she advised the Court counselling was never offered to her after discovering Mr. McPherson's body.

K. Louise Barkman:

[39] Ms. Barkman testified that she started working as a guard in 2011 and she was continuing to do so part time. She told the Court that she had received first aid training but that she received no other training to assist her in her duties as a guard. She says she was not told about guidelines or policies for guards in the performance of their duties.

[40] Ms. Barkman says her shift was from 1:00am to 9:00am, that she was present when Mr. McPherson was lodged but could not say if he was drunk or not. She was certain he was cooperative as he was being lodged. Ms. Barkman acknowledges she left work prior to Mr. McPherson being discovered unresponsive in the cell area. Other witnesses have suggested this occurred between 7:30 a.m. and 8:00 a.m. Although she acknowledged there were visitors at the cells playing cards, she steadfastly maintained she did not join in the card

game but maintained her duties monitoring prisoner and dispatching the band constables to calls for assistance in the community.

[41] She echoed the opinion of other witnesses that it is difficult to observe the prisoners given the resolution of the video feed to the monitors and the fact the picture is in black and white.

L. Sergeant Brian Huff:

[42] Sergeant Huff was at the time of the hearing in October of 2013, the commanding officer at the Island Lake detachment of the RCMP located on Stevenson Island. Sergeant Huff gave evidence of a recent agreement between the RCMP and Garden Hill First Nation to establish new detention cells in the community. A copy of the Band Council Resolution accepting the RCMP's offer to establish a new facility was filed in as an appendix to an affidavit filed as Exhibit # 15 in these proceedings.

[43] The motivation for the offer arose from Sergeant Huff's awareness that the Band was operating cells that were substandard and that there had been in custody deaths at the facility. The essence of the offer was to move an ATCO trailer that had previously been used for the RCMP detachment in Moose Lake, Manitoba to Garden Hill for use as cells. Further, the staff would be hired by the RCMP through the Core of Commissionaires and would be trained and supervised by RCMP officers. The expectation would be that guards abide by the rules and regulations governing RCMP run detention facilities. In addition any prisoner in the facility would have to be a person detained lawfully in accordance with the *Charter of Rights*. All guards would be required to have a criminal record check.

[44] Inquest counsel reviewed the structure and responsibilities of guards and their supervisors at the Island Lake detachment as follows.

[45] First of all a member of the detachment is appointed a guard room coordinator, he or she is in turn responsible and answerable to the detachment commander. The guard room coordinator has a number of duties including:

- (a) Processing new guard and matron applications;
- (b) Arranging shift schedules if necessary;

- (c) Ensuring guards and matrons report any irregularities concerning the cell block area;
- (d) Hold meetings with guards and matrons biannually or as required to discuss any concerns they might have;
- (e) Ensuring compliance with directives in Nation OM 19.3.9 including completion of the necessary training and recertification requirements of all matrons and guards;
- (f) Ensuring that the guard and matron hours of work form is submitted by fax to the Canadian corps of commissionaires on the 1st and 16th of each month;
- (g) Ensuring the Legal Aid List and telephone Directory is kept up to date in each guardroom;
- (h) Ensuring there are sufficient fingerprint supplies on hand and available to meet detachment needs;
- (i) Ensuring there are sufficient supplies on hand and available to the guards to meet prisoner needs (i.e. toilet tissue, sanitary napkins, blankets, soap, towels etc.);
- (j) Ensuring that detention quilts and jackets are in good condition and cleaned as required;
- (k) Ensuring all guards and matrons have read and initialed the National Unit, Division and detachment policy concerning prisoners as outlined in Nation OM 19.3.9.1.2.

[46] Sergeant Huff explained that these specific duties of the guard room coordinator are supplemented by specific requirements and expectations of the guards and matrons themselves. The relevant portion of the Island Lake Detachment's operational manual is at chapter 19.2 and 19.3, attached to this report as Appendix "A". The detachment manual in turn refers to divisional and national standards that guards are expected to be familiar with and to comply with.

[47] Among the requirements is the use of a C-13 form during lodging. This notes the identity of the prisoner, personal effects seized from a prisoner, and general physical condition and demeanour of the prisoner including any concerns as to possible self harm. A prisoner log record book is to be kept that notes the physical condition of each prisoner at the beginning of a guard/matron's shift and then at 15 minutes interval thereafter throughout the shift. Guards are to be aware they may need to wake a prisoner during their shift to ensure he or she is

appropriately responsive. Guards also are required to be aware of how to assess the responsiveness of a prisoner and how to obtain medical assistance if a problem is found. A sign entitled “Assessing Responsiveness”, also known as a rousability chart, is to be posted in the cell block at all times and goes through the steps that the guards and matrons are to follow to determine if a prisoner maybe be in medical distress. This chart is attached to this report as Appendix “B”.

[48] Sergeant Huff in his testimony was forthright about the difficulties of recruiting and keeping staff for detention facilities. He anticipated that, from time to time, strict adherence to screening requirements, before guards could be employed, would have to be temporarily dispensed with in order to have adequate staff on hand.

[49] In St. Theresa Point, a community nearby Garden Hill on Island Lake, the local band did agree to have the RCMP place a trailer in the community and run the cells in line with RCMP practice. Prior to hearing Sergeant Huff’s testimony the Court and inquest counsel as well as Mr. Monias toured the facility. We had also toured the PSB at Garden Hill. The contrast between these facilities and the manner in they were run was notable.

[50] The facility in St. Theresa Point although far from the epitome of modern detention facility was clean and functioning, with no apparent violation of safety requirements. Locks on the doors were appropriate and record keeping appeared to be in compliance with accepted norms. The video recording system for the cells was in working condition, stored digitally and kept for 30 days. In Garden Hill the facility continued to suffer from the deficiencies noted in the testimony of the witnesses: 2” x 4” boards securing the doors, at least one door bent outwards, a utility access panel removed and exposed plumbing. One shortcoming both facilities share was black and white videos from the cells projected on to monitors with poor resolution on the screens.

[51] Shortly after the inquest concluded its hearings in Garden Hill, the inquest was advised by Sergeant Huff that the Garden Hill First Nation had withdrawn from the agreement to allow the RCMP to place the trailer on its land and operate the detention facility. No reason for this decision was conveyed to the Court. To best of the Court’s knowledge, the situation in Garden Hill respecting the detention facility and its operation remains unchanged to the date of this report.

M. Ann Marion Monias:

[52] Ms. Monias is the widow of Brian McPherson. Her testimony painted the picture of a man who was her husband and father of her two (2) children. She described a person of gentle character, who struggled with addictions, and whose health was fragile and a constant concern to his family.

[53] She confirmed that on August 26th, a number of people attended at the home she shared with Mr. McPherson and that he and his guests drank superjuice. She says her husband was happy throughout the day and was not aggressive or loud. She says that Frankie Harper, a neighbour, came by but was in and out. Ms. Monias described him as the most drunken person who came by that day. She says she did not drink that day. Around 1:00am she says the band constable and Councillor Wayne Harper and his wife showed up near their residence. Frankie Harper, Wayne Harper's son was arrested and resisted the securities. After this happened, Wayne came into their house. She says she did not invite the councillor or the police to come into the house. She says that Wayne poured a jug of superjuice over Brian's head. In reaction to this Brian said nothing. She says she was worried because when he would get wet Brian would get stiff in his hands and head. She asked him repeatedly if he was "ok". She says that she told the councillor that Brian was sick. She testified that despite this assertion Wayne Harper instructed the band constables and securities to take all of those who had been drinking to jail.

[54] At page 18, line 28 of Volume 3 of the transcript of proceedings she outlined her husband's precarious health and the efforts she and her children made to care for him:

- A. Yeah, we take good, we take good care of him at home. My kids, me (inaudible)
- Q. What did you mean by that?
- A. Like when he is on a drunk, right, when he passes out, we always, like, somebody's always there with him when he passes out, either my kids or me. Like, for him, like, we're always, I don't know, just always care, taking care of him.
- Q. You told me that Mr. McPherson was fragile.
- A. Yeah he was. He was, like, he was just, he was just really fragile, like, when he was sleepy... Like, when he 's drunk and when he

passes out, then, like, we're just always thinking, like, he might not get up. Like we're always, they're always, the kids are waking him up. Like, Dad, are you sleeping? And then Brian would nod and just...

Q. You told me something about a mirror, Mrs. Monias?

A. Oh, yeah, yeah. Like, his son, Vijay, Vijay would just go, like, put in the mouth to breathe.

Q. You mean he'd hold up a mirror against Brian's mouth?

A. Yeah.

Q. Why, what...

A. I don't know. That's just, Vijay was, for him, taking care of his dad for...

Q. Vijay was making sure his dad was still breathing?

A. Yes. Always, he'd always, he'd always be there right beside him when he's sleeping. He was always just worried about him, even though he was small.

The image of this small boy holding a mirror to his father's mouth to ensure he was still breathing continues to be the most indelible image in my mind arising out of the entirety of this sad story.

N. Wayne Harper:

[55] Mr. Harper was the final witness to give evidence during the Garden Hill portion of the hearings. At the time of the hearings and in August of 2011, Mr. Harper was a Councillor with the Garden Hill First Nation. At the time of the hearing he was the councillor holding the Social Assistance and Justice Portfolios.

[56] He explained that current expenses for the Band Constable Program came from general band funds. Funding from MKO for a job training program helped with band constable wages. He said that funding for the Band Constable Program had been cut by the Federal Government and that his understanding of the reason was the Band had failed to provide an acceptable audit of its financial affairs. He admitted, however, that at the time of the cut in funding he was not responsible for the police portfolio. He advised that at the time of the hearing the Band was under third party management of its financial affairs.

[57] When questioned about the portfolio he held in August of 2011, he seemed unclear as to what his responsibilities were. Initially, in his evidence he denied he was driving around the community in the early morning hours of August 27th, 2011. Instead said he was phoned to come to the nursing station. He could not recall who he went to see at the nursing station. He claims that while at the nursing station he received a call about something happening near the McPherson residence. He says he left to go to the McPherson residence where he found his son was struggling with a security officer, Kurt Mason. After assisting the officer he says Ann Marion Monias, the partner of Mr. McPherson told him to “do his job” and come into her house. He maintains he refused this invitation citing that he “did not interfere with police work.” Despite this initial position he says he was eventually persuaded to enter the McPherson/Monias home along with Band Constable Beardy where he saw the deceased and others with cups of superjuice in front of them on the table. He told the Court that when he saw this he told the band constable to “take care “of them. He admitted the phrase “take care of them” meant to arrest them. He said that during their arrests they were polite and cooperative and he admitted that the deceased was usually a happy drunk. He also disclosed that the deceased was a cousin of his and he was aware he suffered from diabetes. He maintained that Ms. Monias did not ask him not to take Brian away or remind him that Brian was sick. Despite his denial he said that he was thinking that maybe they should not take Brian but did not say anything. He claims that around this time Band Constable Beardy said that she could not do Brian any favours if she did not do it for everybody.

[58] Under further examination by inquest counsel, Mr. Harper admitted that after he entered the home he did pour superjuice over the heads of each of the individuals sitting at the table and chided them for drinking it with the warning it would kill them. He also admitted that he had been driving around the community on the night in question prior to going to the nursing station.

[59] In response to questions from Mr. Monias, who appeared on behalf of the Garden Hill First Nation, he continued to steadfastly deny that he phoned the PSB and requested a band constable come to the McPherson residence. Notably, he says he could not identify the voice of the person from the PSB he said phoned him, despite admitting he knew both the guards on duty for years, including Louise Barkman who is his cousin. When confronted by inquest counsel with a statement made by him to the RCMP on the day after Mr. McPherson’s death, he claimed he could not recall making such a statement. Further, he claimed to have

no recollection of having told the investigator that he phoned the PSB to have a band constable attend at the McPherson residence. Further he told Mr. Monias that he maintains the band constables derive their power to arrest from the Chief and Council and that likewise he, as a councillor has the right to enter houses on the reserve. In response to questions from the Court, he maintained it was his view that the by-law forbidding intoxication by alcohol or the possession of alcohol requires the arrest of anyone who has drank alcohol regardless of the level of intoxication.

[60] After hearing Mr. Harper's evidence, it was clear it conflicted in many important respects with the evidence of other witnesses who gave evidence at the initial part of the inquest. In assessing what evidence I accept in making my conclusions and recommendations, I am obliged to say that where Mr. Harper's evidence conflicts with other witnesses I accept the evidence of the other witnesses who gave testimony. I found his evidence internally inconsistent, at odds with the statement given by him to the RCMP during their investigation and at odds with other witnesses, and not capable of belief. The practical effect of this finding is that I am satisfied:

- (1) Mr. Harper phoned the PSB and requested a band constable attend at the McPherson/Monias residence;
- (2) That he nor anyone in his company were invited or induced by Ms. Monias to enter the McPherson/Monias home;
- (3) That he was either asked not to take Brian or reminded he was sick by Ms. Monias;
- (4) That Band Constable Beardy did not suggest she would continue the detention of Mr. McPherson because to do otherwise would show favouritism and that in fact she was following the instructions of Mr. Harper to arrest the occupants of the McPherson household who had been drinking superjuice.

[61] After the hearings in October 2013 I reviewed the evidence given in Garden Hill and considered previous inquest reports touching on issues of policing and band detention facilities. This led me to a request by myself to inquest counsel to call additional witnesses from Federal and Provincial

Governments to provide evidence respecting apparent unresolved issues arising from the recommendations made in previous inquest reports, specifically, the *Inquest into the Death of Glenn Fiddler* (Lerner, PJ 2005) and the *Inquest into the Death of Rachel Wood* (Thompson ACJ 2007). I was also aware of concurrent proceedings regarding an *Inquest into the Death of Calvin McDougall* (Lord, PJ 2015) respecting a death in the Garden Hill PSB cells in May of 2009.

[62] Four (4) witnesses gave evidence on three (3) separate dates in Winnipeg. On July 4, 2014 evidence was given by Mr. Raymond Levesque and by Ms. Diane Samuel. Mr Glenn Lewis gave evidence on November 14th, 2014. Further evidence was given by Mr. Lewis on March 20, 2015 after the introduction of amendments to the Police Services Act. Mr. Michael James Anderson of the Manitoba Keewatinowi Okimakanak also gave evidence on March 20, 2015.

O. Raymond Levesque

[63] Mr. Levesque gave testimony on July 4th, 2014 in Winnipeg. He is an official employed by Public Safety Canada, specifically he is with the First Nations Policing Program Division at the national headquarters in Ottawa.

[64] Mr. Levesque's evidence concerned itself with the history of First Nations Policing in Canada and Manitoba with emphasis on the Band Constable Program, the present state of First Nations policing and a look into its future.

[65] The Band Constable Program began in with the release of Circular 34 from the Department of Indian and Northern Development (DIAND) in 1965. The parameters of the program were further defined by Circular 55 in 1977. The circulars were not entered into evidence but Mr. Levesque described them as short documents that, amongst other things, defined the duties of band constables. The powers and duties of the constables contemplated by these circulars were limited in nature. In fact a reiteration of the duties and responsibilities of band constables authored by his department in 2010 defined these limited, (Exhibit # 20), area of duties and responsibilities with respect to policing. Mr. Levesque agreed that, in practice, the duties of band constables have far exceeded what was contemplated or authorized by the circulars and the 2010 statement of duties and responsibilities.

[66] In late 1980's and early 1990's the Federal Government began to review its approach to First Nations policing. In 1992 it overhauled its policies and programming. A decision was made not to promote the Band Constable Program and to move ahead with a more comprehensive approach to First Nations policing in the form of the First Nations Policing Program (FNPP). It entered into a framework agreement with Manitoba and other provinces for the establishment of First Nation policing arrangements which were meant to supplement core policing in First Nations communities. The initiative arose as result of a series of public inquiries and reviews that concluded First Nations were receiving substandard policing as compared to other communities throughout the country.

[67] At the same time in 1992, funding to the Band Constable Program was frozen. The responsibility for the program was shifted from the Department of Indian and Northern Affairs (INAC) to the Solicitor General's Department. In this department it became a "legacy program" with the expectation that over time it would be phased out. In its stead First Nations could apply to be funded for two (2) distinct types of programs:

- (1) a standalone First Nations Police Force (eg. Dakota-Ojibway Police Service) or
- (2) a Community Tripartite Agreement (CTA).

[68] In a fairly short period of time after 1992, a large number of First Nations and Tribal Councils, representing a number of First Nations, applied for funding under one or the other of the agreements. By the early 2000's, a vast majority of First Nations country wide were involved in the program. Typically, larger First Nations and Tribal Councils applied for a standalone force. Smaller entities applied for a CTA.

[69] A CTA involves an agreement with the Federal Government, the Province, and the First Nation for provision of supplementary police services provided for by the provincial police force. In Manitoba this is the RCMP. The RCMP is expected to acknowledge the terms of the agreement but are not a formal signatory. The expectation is that such agreements would give the signatory First Nation a say in structure and nature of the supplementary policing to be provided under the CTA.

[70] Unlike the rest of the country, First Nations in Manitoba did not take up on the new program. The reasons for this are unclear from the evidence but in 2006 Garden Hill First Nation did apply for funding under the FNPP. Unfortunately for Garden Hill their request came at almost exactly the same time that funding to the FNPP program was frozen by the Federal Government. The freeze in funding was for a five (5) year period (It should be noted that in 2013, Mr. Levesque advised, a further five (5) year freeze was put in place). As a result there could be no new agreements funded by Canada given these budget restrictions. The Garden Hill First Nation's application was denied. As a result Garden Hill was not able to participate in the program. The only supplementary policing available was the Band Constable Program with funding frozen at 1992 levels.

[71] Mr. Levesque also confirmed in addition that the band constable funding would be discontinued as of March 31st, 2015. Mr. Levesque told the Court in fact Garden Hill's band constable funding had been cut off in January of 2012. The reason for this is that it came to the attention of his department that Garden Hill had been operating an unauthorized detention facility. This was a violation of the Contribution Agreement for the Band Constable Program. He further acknowledged that this information became known to them by news of Mr. McPherson's death in cells in August of 2011. He acknowledged that concerns with respect to the operation of unauthorized detention cells in Garden Hill and province wide were known to the department. He testified his department did not do on-site inspections to ensure compliance with this requirement of the agreement but relied on self-reporting from the First Nation.

[72] A letter from the First Nation's Council dated January 7th, 2008 was produced as Exhibit # 22. The letter represents the facility operated by the community as a "Community Safety Centre" for persons who are "unable to care for themselves due to extreme intoxication" and that further the First Nation "will provide bedding and guardianship of persons who might being in danger freezing or causing harm to themselves or others....". The testimony in this inquest and findings of *Inquest into the death of Waylon McDougall* shed considerable doubt on this description of the facility.

[73] He indicated that in either 2010 or 2011 funding for the Band Constable Program was suspended because of failure to provide audited statements. It is notable that Mr. Levesque did not mention the death of Calvin McDougall in the

detention cells in May of 2009 as being a reason for termination. He was not asked if the department was aware of this death, but one must presume they were not given the action taken when knowledge of Mr. McPherson's death came to their attention. This series of events does highlight the startling lack of awareness of the existence and condition of these cells. I will comment further on this later in this report.

P. Diane Samuel

[74] Ms. Samuel testified that she is an employee of Public Safety Canada at its office in Winnipeg. Like Mr. Levesque she gave testimony on July 4th, 2014.

[75] She testified that she is the Regional Manager for Public Safety Canada and that she has been employed with the department since 2009. As part of her duties she receives and reviews the financial audits from each First Nation with a Band Constable Program. She advised there were 31 such programs in existence as of the date of her testimony. She advised that the financial statements had to be audited and were required each year. She echoed the testimony of Mr. Levesque noting that there were problems with First Nations meeting this requirement on a timely basis. It should be noted that in his testimony Mr. Levesque acknowledged that the expense for the First Nation to prepare such a report, given the limited fund available, would be difficult to bear. Nothing in the tenor of Ms. Samuel's evidence contradicted this.

[76] Ms. Samuels testified that each year a letter stating that band constable detention centres are not permitted under the contribution agreements is sent to each of the First Nations with a Band Constable Program. She, however, acknowledged no inspections are performed to ensure compliance. She also advised that she has never been advised of the operation of an unauthorized detention facility by the RCMP. It is not clear from the evidence whether her department made any enquiries to the RCMP about the existence or operation of such facilities.

[77] In questioning from the Court, she advised that the department's position is that it takes no responsibility for the supervision of detention cells and is simply a funding body.

Q. Glen Edward Lewis

[78] Mr. Lewis gave evidence before the Court November 14th, 2014 and on March 20th, 2015. Mr. Lewis is the Executive Director of Policing and Public Safety for the Province of Manitoba. He has held this position since September, 2013. His evidence thoroughly reviewed the history of policing in Manitoba, efforts to reform outdated legislation governing policing and Manitoba's role in First Nations policing with an emphasis on special constable appointments and the Band Constable Program.

[79] He told the Court that in 2009 the Legislature passed the *Police Services Act (PSA)* replacing the 82 year old *Provincial Police Act*. The new legislation incorporated three (3) key changes designed to modernize the legislation governing policing in the province. First, the legislation created a policing commission to provide advice to the Minister on policing standards and regulations. Second, the Act established mandatory police boards to provide civilian oversight of municipal police services in the province. The third element was the establishment of an Independent Investigation Unit, (IIU), responsible for investigating incidents where persons are injured or killed as a result of contact with police or where there are allegations of criminal misconduct by police officers.

[80] Prior to the early 1930's Manitoba had a provincial police force which was disbanded and replaced by the RCMP in those parts of the province in which municipal police forces did not exist. The PSA requires police boards throughout the province. However, in the case of municipalities policed by the RCMP the boards are advisory in nature given that the RCMP is a federal entity. The IIU will have jurisdiction over the RCMP as well as over municipal services.

[81] The PSA provides a framework for all police agencies province wide replacing a patchwork of legislation governing various police forces. Manitoba has 11 or 12 municipal police services. For those areas not covered by those police services the RCMP provides police services pursuant to the *Provincial Police Services Agreement (PPSA)*, a copy of which was filed as Exhibit # 26 at the inquest. The current agreement is in force until 2032. The agreement sets out that the Minister of Justice will "set the objectives, priorities and goals of the Provincial Police Service" (Art. 6.10), however, the internal management of the RCMP and its standards and procedures are under the control of the Federal

Government (Art. 6.2). Article 6.3, provides that “the Minister of Justice will determine, in consultation with the Commissioner (*of the RCMP*), the level of policing service provided ...”. In addition Article 5.1 allows the Minister to request an increase in the number of RCMP members and support staff by written request. Any increase in such resources is paid for 70% by Manitoba and 30% by Canada.

[82] Mr. Lewis’ testimony then turned specifically to First Nation policing in Manitoba. He told the Court that in the early 1990’s significant changes began to take place in First Nations policing. His analysis was that these changes came in response to the findings of several inquiries, notably the inquiry in to the wrongful conviction of Donald Marshall in Nova Scotia and the Aboriginal Justice Inquiry, (AJI), in Manitoba. He testified that in 1991 the Federal Government conducted a First Nation Policing Policy Review and concurrently formulated an aboriginal justice strategy in partnership with the provinces, territories and First Nations. In his testimony, he outlined what he believed to be the main recommendations of the AJI concerning the reform of policing in Manitoba:

- (1) that racist attitudes in the police services be addressed through cross cultural training, improved cultural awareness not only in First nations communities but also in urban centres;
- (2) the modernizing of policing legislation to provide independent processes to deal with complaints by First Nation communities and individual respecting police services and conduct;
- (3) ***the Creation of standalone police services in First Nations*** along with culturally appropriate stand alone probation services, child protection agencies and the like. (Emphasis added)

[83] In 1992 the Federal Government unveiled the First Nation Policing Policy (FNPP). Mr. Lewis’ evidence regarding the structure of the policy was similar to the evidence of Mr. Levesque. He did indicated that in Manitoba there is only one (1) stand alone First Nation Police Force, the DOPS, and only eight (8) First Nations with Community Tripartite Agreements (CTA). He confirmed the purpose of this policing initiative was to ***enhance***, (emphasis added), rather than act as a substitute for core police services. He confirmed that cost sharing for the FNPP was 52% Canada and 48% Manitoba in contrast to the 30/70 split in the PPSA. The majority of First Nations in Manitoba, perhaps as many as 55, do not have enhanced police services under the FNPP. Mr. Lewis explained that the bulk of CTA’s were signed in the mid 1990’s and the early 2000’s. He indicated that he

was not aware of Garden Hill's request to the Aboriginal Policing Directorate for a CTA in 2006 as that pre-dated his appointment as Executive Director of Policing and Public Safety for the Province of Manitoba.

[84] Mr. Lewis then addressed the province's involvement in the Band Constable Program. He advised that the limit of the province's involvement was the appointment, in some instances, of band constables as special constables under section 9 of the old *Provincial Police Act*. Mr. Lewis acknowledged that his review of the appointments suggested that band councils believed such appointments would confer peace officer status to assist in the enforcement of *Criminal Code* matters. With the passage of the PSA in 2009 and after a review of the 2600 special constable appointments that had been made under the previous legislation, a decision was made within the department to issue no further special constable appointments. From Mr. Lewis' evidence it appears the decision of the Supreme Court in *R v. Nolan*, [1987] S.C.R. 1212 and the recommendation of the Law Reform Commission of Manitoba in its 1996 Report on Special Constables, amongst other matters, caused a reconsideration of the special constable program.

[85] The department's position is that:

- (1) legislation must be enacted to confer peace officer status and;
- (2) any appointment must clearly specify the limits of the authority.

Mr. Lewis did advise, despite this legal limbo, that existing special constable appointments have not been revoked.

[86] Mr. Lewis took the position that the province has no supervisory authority or responsibility over band constables, who are also special constables. He opined that qualification and supervision is the responsibility of the employer (i.e. the First Nation). He agreed that in many instances a band constable is the only resource for a remote community to keep the peace where there is no resident RCMP detachment particularly given that a community has to await the arrival of RCMP officers. He acknowledged that Manitoba has more band constables than any other province.

[87] Inquest counsel questioned Mr. Lewis about recommendations made by my brother Judge Lerner, contained in his 2005 Inquest Report in to the death of

Glenn Fiddler in Wasagamack, Manitoba. One of Judge Lerner's recommendations was that an agreement be fashioned between the province, Canada and Wasagamack First Nation "for a professional police agency at Wasagamack First Nation," (*Fiddler Inquest* para. 305), to be established. Mr. Lewis conceded that no such agency has been created. He explained that Manitoba has urged an expansion of such forces under the FNPP but the freezing of funding by Canada in 2006 has made expansion of the program to communities such as Wasagamack, and by implication Garden Hill, impossible. For essentially the same reasons he explained, Judge Lerner's recommendation that all parties "work to established enhanced police services in Wasagamack", (*Fiddler Inquest* para. 305), has not be achieved.

[88] With respect to Judge Lerner's recommendation that band constable training be mandatory and comparable to other professional police agencies, (para. 306), Mr. Lewis indicated that Manitoba has had no involvement in the training of band constables and that this was entirely a federal responsibility. He offered that he was aware that training for band constables had been offered at the University College of the North but was currently not being offered.

[89] With respect to Judge Lerner's recommendation that negotiations take place with a goal of increasing police manpower in Wasagamack, (para. 313), he confirmed that no such negotiations are underway. As to the recommendation, that given Wasagamack's remote location, band constables be given the authority to properly perform their duties including being eligible to be appointed as peace officers, (para. 313), Mr. Lewis repeated to the Court that no special constable appointments are being made. He reiterated the department's view that such special constable appointments should not be made and that a special constable appointment cannot confer peace officer status unless specifically provided for in legislation.

[90] Mr. Lewis echoed the testimony of Mr. Levesque that the Band Constable Program was due to end on March 30th, 2015 but indicated that negotiations were underway about what to do after the conclusion of the program. In response to questions from the Court, Mr. Lewis acknowledged his department's concern about the gap in police services in the affected First Nations at the end of this program but contended that fixing the Band Constable Program is not the solution. He contended that all parties had learned from inquest reports and departmental deliberations about the program's shortcomings including issues

respecting qualifications, training and retention of band constables. He also questioned the legal foundation of the program. He indicated that the Federal Government had expressed a willingness to continue funding equal to its contribution to the Band Constable Program, approximately 1.5 million dollars, but paid through the FNPP with the expectation Manitoba would approximately match the amount based on the 52/48 cost sharing formula of the FNPP.

[91] After Mr. Lewis gave his testimony in November of 2014, the Court learned that *Bill 5*, amending PSA to include the creation of First Nation Safety Officers, had been introduced before the Legislature. Concurrent with this, Counsel for the Department of Policing wrote the Court requesting a further opportunity for Mr. Lewis to give evidence before the inquest. Given the fact the amendment touched directly on issues dealt with at the inquest, the request was granted and Mr. Lewis gave evidence again on March 20th, 2015.

[92] His evidence concentrated on the issue of special constables and the provisions of the new bill and its expected impact on First Nations policing. He reiterated his previous testimony about issues surrounding the appointment of special constables in the context of a modern policing framework contemplated by the PSA. He confirmed that although Part 8 of the PSA contemplates the appointment of special constables, no further appointments would be forthcoming given the issues identified during the course of the inquest. He advised no new regulations have been drafted concerning qualifications for special constables. A list of special constable appointments for Garden Hill, which was marked as Exhibit # 28, showed none of the individuals involved in the arrest of Mr. McPherson had special constable appointments.

[93] Mr. Lewis explained that *Bill 5* provides for a new type of law enforcement officer call First Nation safety officers. The provision is akin to the community safety officers contemplated in Part 7.1, (not yet proclaimed), of the PSA. In the case of First Nations safety officers, (FNSO), a First Nation or “entity” must enter into an agreement with Manitoba and Canada and the local policing authority to set up such a program.

The agreement must deal with the:

- (a) the management of the program,
- (b) financing,
- (c) direction and supervision of the officers,

- (d) the geographical area they will perform their duties in,
- (e) the relationship between the local policing authority and the FNSO and
- (f) the process for dealing with complaints about FNSO.

The agreement would allow flexibility in the type of enforcement to be emphasized in a community. Qualifications and training would be prescribed in regulations as would the provincial enactments FNSO would be allowed to enforce. FNSO are permitted to assist local policing authorities as per s. 77.16 “as long as the assistance **does not involve any criminal law enforcement activities**” (Emphasis added). Mr. Lewis pointed out that the program is different from community safety officers in that it requires the agreement of Canada and it also provides for an “entity” to be a signatory to the founding agreement so that a tribal council could be a party as opposed to only an individual First Nation. The funding for FNSO program will be split between Canada and Manitoba, with Canada putting up 52% to a maximum of 1.4 million and the remaining 48% from Manitoba.

[94] Mr. Lewis told the Court that Manitoba, Alberta and New Brunswick are the only jurisdictions that still have Band Constable Programs. When asked how band detention cell standards could be monitored under this new system, Mr. Lewis acknowledged previous inquests have raised concerns on those points and that standards could be monitored on a “case by case basis.”

[95] The Court asked the witness to address a hypothetical scenario. The scenario posed was what happens where a FNSO is the only law enforcement presence in a remote community with no RCMP detachment nearby and a criminal emergency is on-going? Mr. Lewis acknowledged this scenario was the subject of considerable conversation during the drafting process and in ongoing discussions with the RCMP. He advised a strategic review respecting policing in the province is underway including reviewing the deployment of RCMP personnel and resources. He acknowledged this scenario presents a gap in police coverage but contended it is unavoidable and that the current measures are preferable to doing nothing.

[96] In response to questions from the Court about how the new legislation, or intended regulations, would deal with the training and supervision of guards or matrons at detention facilities used by FNSO, he suggested that training for

guards or matrons might be included in regulations contemplated by *Bill 5*. He agreed protocols for the training and supervision of these individual must be put in place.

R. Michael Anderson

[97] Manitoba Kewatinowi Okimakanak (MKO) is an organization representing the Northern Chiefs, and First Nations, of Manitoba. Its territory covers an area from Swan River in the southwest to the Nunavut border in the north and the area south of Island Lake in the southeast. Mr. Anderson is the Director of the Natural Resource Directorate of MKO. He has been in this role since 1988. During his time with the organization he has been called on to work on justice issues including matters respect policing in MKO communities.

[98] In 2001 MKO entered into a framework agreement with Canada and Manitoba with a view to entering into CTA's under the FNPP. CTA's were concluded at OCN (the Pas), NCN (Nelson House) and Chemawawin (Easterville). However there was no concrete progress on the framework agreement itself which contemplated MKO as a signatory to CTA's or stand alone agreements for Police services on a regional – tribal council basis. Despite this, in 2011 MKO developed a plan to identify and train 30 First Nation candidates to qualify as peace officers over a period of three (3) years and then to serve as an initial cadre for a MKO regional police force. The proposal planned for two (2) troops of 15 candidates to be recruited and then trained at the Winnipeg Police Academy and RCMP Depot. In the end, Manitoba would not agree to participate in funding the plan.

[99] Mr. Anderson indicated that it was MKO's position that fully fledged peace officers are needed in MKO communities to supplement the services provided by the RCMP under the PPSA.

[100] Mr. Anderson testified that the University College of the North, (UCN), had been offering a course in policing geared toward band constables seeking special constable status. MKO consulted with UCN and learned that no assistance was being given to graduates wanting to apply for special constable status. MKO staff then assisted the graduates by providing the necessary application. In time however, it became clear Manitoba was not granting special constable appointments anymore. The course was discontinued in 2013.

[101] The witness expressed concerns respecting the adequacy of the proposed FNSO program. Mr. Anderson noted that funding for the program from Canada is limited to 1.4 million dollars; represent 52% of the overall budget, with Manitoba funding the remainder. In 2012, MKO surveyed 30 MKO First Nations respecting their expenditure on their Band Constable Programs. Nineteen First Nations responded to the survey and reported that the total expenditure for these bands was \$4,526,127.00 of that sum Canada contributed \$1,182,484.00 leaving the bands' contributions at \$3,343,673.00. If Canada was to contribute to the FNSO at the same level and Manitoba's contribution was equal to Canada's contribution – the senior levels of government's contribution to the new program would be \$2,161,159 less than the cost of the former Band Constable program in the respondent MKO communities (Exhibit # 30 p page 6 and 7).

[102] As an illustration of the frustration felt with the current system of policing, Mr. Anderson recounted an event that took place one in Lac Brochet, Manitoba. Lac Brochet is a remote First Nation community in the far northwestern portion Manitoba. A detention facility operated by the RCMP had been established in the community. Part of the agreement between the community and the RCMP required that only a band constable with a special constable appointment could have the keys to the facility, (see Exhibit # 31). Unfortunately the only band constable in the community with such an appointment quit. An individual had to be arrested on a day when there was no inland patrol by the RCMP. No one in the community had the key to the RCMP detention facility. The RCMP had retrieved it when the special constable quit. As a result the detainee had to be driven around the community all night by a band constable while waiting for the RCMP's arrival from Thompson.

[103] Mr. Anderson told the Court that neither MKO nor any other First Nation organization was invited to participate in the renegotiation of the present PPSA. He added that MKO only obtained a copy of the PPSA after making an application under the *Freedom of Information and Privacy Act* (FIPA). He also pointed out that the PPSA makes no specific mention of First Nations nor Aboriginal policing and that word "aboriginal" does not appear in the agreement. In contrast, the agreement between the RCMP and Alberta lists aboriginal policing as one of the agreement's top three priorities.

[104] He expressed the organization's concern for the gap in police services given the present deployment of RCMP in the north. He indicated he understood

resources for full-time detachments in each community are not economically feasible. He expressed the concern that the appointment of special constables was being abandoned as a potential solution.

[105] Mr. Anderson's evidence concluded the viva voce evidence. Submissions were heard from Mr. Girdlestone and Mr. Koch on June 19th, 2015.

IV. Assessment and Recommendations:

1. Background:

[106] There is little doubt Brian McPherson would have died on August 27th, 2011 regardless if he was arrested or not. There is, though, clear evidence that he was not lawfully arrested and that he should not have been detained and certainly not detained in cells that were overcrowded and in an unacceptable condition. It is foreseeable that others unlawfully detained and kept in such conditions could die as well if action is not taken. The issues respecting policing in Garden Hill that arose in this Inquest mirror, in many respects, the concerns that motivated Judge Lerner's recommendations in the Fiddler Inquest Report. The concerns about the state of band run detention centres and training of guards and matrons also echo those of several previous inquests reports including the Calvin McDougall (2015)(also Garden Hill Band Cells), Rachel Wood(2007), Darlene Owens (2009).

[107] The inquest heard considerable evidence on the history of policing in Manitoba and the history of First Nations policing in this province and nationwide. In addition, evidence was heard concerning the history of the appointment of special constables and how that history ties into First Nations policing and the Band Constable Program. The Court heard evidence of historical deficiencies and current deficiencies in First Nations policing in Garden Hill and province wide. Reports of previous inquests which have outlined similar deficiencies identified in this inquest have been considered.

[108] The Court heard and witnessed significant evidence of deficiencies in the band operated detention facilities in Garden Hill. I have reviewed previous inquest reports that have dealt with this subject specifically in Garden Hill and in other First Nations.

The Court had the benefit of reading a number of reports and studies concerning special constables¹, the Band Constable Program², First Nation policing in general³, and the FNPP in particular.^{4 5 6}

2. First Nations Policing in Manitoba:

(i) The Band Constable Program:

[108] The history of the Band Constable Program was canvassed in the evidence of Mr. Levesque and Mr. Lewis, I will not repeat it here. A question left unanswered by their evidence is - why did First Nations in Manitoba retain the program when it was abandoned for the FNPP by other First Nations throughout the country in the 1990's and early 2000's? The evidence and studies are not clear on this point. The PRA study into the Band Constable Program found that a challenge to FNPP implementation included:

“...securing the funding of provincial partners, securing funding for housing and detachment facilities, and maintain funding for band constables even after an FNPP agreement is implemented.

Communities are reluctant to give up their band constables as a condition of an FNPP agreement.”⁷ (Emphasis added)

This study included site visits to six (6) First Nations in Manitoba including Garden Hill , Wasagamack and St. Theresa Point. In addition to funding issues, it appears that the study found a level of comfort with the Band Constable Program and corresponding discomfort with what the First Nation believed they would receive under the FNPP regime. The study also makes clear, however, that there was recognition by the stakeholders that the program was woefully underfunded and the constables undertrained and equipped⁸. This conclusion echoed the findings of the Fiddler Inquest Report amongst others. The PRA study recommended that

¹ Manitoba Law Reform Commission, Special Constables, Report#96, November 1996

² PRA Inc., Evaluation of the Band Constable Program (Final Report), November 2005 –prepared for Public Safety and Emergency Preparedness Canada

³ Aboriginal Policing in Manitoba, A Report to the Aboriginal Justice Implementation Commission, Linden and Clairmont (undated)

⁴ Terms and Conditions for Contribution Funding Under the First Nations Police Program, Public, Safety Canada, May 2, 2014

⁵ 2009-2010 Evaluation of First Nations Policing Program, Public Safety Canada

⁶ Report of the Auditor General of Canada, First Nations Policing Program – Public Safety Canada, Spring 2014, Office of the Auditor General of Canada

⁷ Supra PRA Inc. report page iv. “The BCP and FNPP implementation”

⁸ Ibid page 22-23 “Training and Certification”

the Band Constable Program not be discontinued but restructured and reinvested in as part of a transition to inclusion in the FNPP⁹. The similarity of this recommendation to the recommendations of Judge Lerner is striking. As it turned out, however, the Government of Canada choose to continue the freeze on funding for band constables at 1992 levels and the following year, froze funding on the FNPP. This effectively meant it could not expand into those regions that had not already opted into the FNPP. This affected Manitoba First Nations disproportionately given the small number of CTA and standalone agreements reached in Manitoba prior to the 2006 funding freeze.

(ii) The FNSO

[109] As is clear from the evidence of Mr. Levesque and Mr. Lewis, the future of the Band Constable Program is sealed. In his evidence Mr. Lewis laid out a persuasive case as to why it should not be revived. He asserted the program was flawed from the start and that it was implemented with no provision for ongoing professional supervision or training, no structure for effective discipline and or a complaint mechanism and no impartial civilian oversight. Although not specifically stated, the court was left with the firm impression that the province also questioned the jurisdiction of DIAND to create a police force without the input or consent of the provinces which have the jurisdiction for the administration of justice inside their borders. Lastly, although Circular 55 and the 2010 statement of Band Constable General Duties and Responsibilities, (Exhibit # 20), attempted to set parameters on activities of the officers – it appears these restrictions were seldom adhered to.

[110] The evidence of Sergeant Huff also made clear another difficulty arising from the use of an undertrained and unsupervised police force – that being that the RCMP will not make their detention facilities available when they believe a detainee may have been detained unlawfully. RCMP detention facilities which are inspected, up to code, and presumably staffed by trained guards and matrons will not be made available to those detainees brought into custody by band constables or securities without powers to detain persons beyond those of an ordinary citizen.

⁹ Ibid page iv-v “The BCP and FNPP implementation”

[111] Can the FNSO program meet the needs of Garden Hill and similar communities? Since Mr. Lewis gave his evidence, the proposed regulations for *Bill 5* have been published. They are attached as Appendix “C” to this report, amongst other things they outline the provincial enactments that FNSO may enforce including s. 2 of the *Intoxicated Person Detention Act*. The provincial enactments to be enforced in each First Nation are determined by the tripartite agreement contemplated in s. 77.12 of *Bill 5*. The regulations also set out the type of training required, who can provide the training, and the type of equipment an officer can carry depending on the training given to use the equipment.

[112] Currently the proposed amendment to the *Police Services Act*, which would be enacted as Part 7.2, would govern the parameters and requirements of the First Nation Safety Officers (FNSO) Program. Given the findings of this inquest there are significant concerns regarding the direction given to band constables by their employers under the band constable and “security” system that existed at the time of Mr. McPherson’s detention. The proposed sections 77.18 and 77.19 set the provision respecting responsibility for the officers and their supervision as follows:

s. 77.18(1) First Nation safety officers must be employees of the operator of a First Nation safety officer program.

s. 77.18(2) The operator of a First Nation safety officer program is responsible for ensuring that its officers perform their duties and exercise their powers in a proper manner.

s. 77.18(3) The operator of a First Nation safety officer program is liable for the acts and omissions of its officers in the performance or exercise, or intended performance or exercise, of their duties and powers.

s. 77.19 The operator of a First Nation safety officer program must provide the director with requested information and documents respecting the operation of the program and its officers.

[113] These proposed enactments result in very little direct supervision of the officers by anyone other than their employers. This is a structure which is not in place with respect to other police forces and harkens back to the system used for the supervision of band constables and special constables. As was demonstrated in this case, too often, the direction of the band constables fell to persons with little or no training in proper police procedure, powers of arrest or detention, or

search and seizure. The concern is that the requirements to provide information and documents to the director on his or her request will be too little too late as demonstrated by the ineffective self-reporting regime put in place by the Federal Government on the band detention cell issue.

[114] The regulations do not set out the specifics of reporting requirements to the director concerning “the operation of the program and its officers”, as set out in s. 77.19, it may be that the intention is that the specifics of this reporting will be set out in the individual agreements. The concern is that without regulatory or legislative consequences for ineffective supervision the program may face the same problems as suffered by the Band Constable Program. Termination of an agreement as a consequence is not enough – the continuation of the Band Constable Program in Garden Hill and the continued operation of its substandard detention facility after the termination of the band constable funding by Canada illustrates this. This concern is further magnified because there is an acknowledged gap between the needs of many remote First Nations communities and the service a FNSO can lawfully provide. The example provided by Mr. Anderson concerning Lac Brochet illustrates the gaps that will occur. The temptation will exist for FNSO to do more than they are trained for, or allowed to do, because they are the only ones there to do it. The narrow powers of arrest accorded to an ordinary citizen under s. 494 (1) of the *Criminal Code*, (i.e. found committing an indictable offence or escaping a peace officer), are not likely fill this gap when s. 494(3) requires a citizen to deliver an arrested person “forthwith” to a peace officer. The geographical realities of communities like Garden Hill, and even more so Wasagamack, St. Theresa Point and many others, are incompatible with a sole reliance on supplemental law enforcement by FNSO.

[115] The Court has no information about whether further regulations are contemplated, prior to the passage of *Bill 5*, I noted with concern that the existing regulations do not address the issue of the training of matrons and guards for detention facilities used by FNSO. There appears to be nothing in the legislation or regulations respecting the building, maintenance, and operation standards for such facilities.

[116] The province should work with the local policing authorities, the RCMP and the Federal Government to establish a regime whereby First Nation safety officers and band peace officers would receive supervision and direction in the execution of their duties from the officer in charge of the collaborating local

policing authority, be it the RCMP or otherwise. Local boards could provide advisory direction (in the case of RCMP supervision), and broader authority, akin to that exercised over municipal police authorities, where the collaborating force is not the RCMP. This would divorce untrained individuals from directing the FNSO in the day to day execution of their duties while giving citizens of each First Nation a voice in policing strategy to be employed for their community.

[117] There remains the disquieting issue of the adequacy of funding, be it to the FNSO program or otherwise. Given the MKO 2012 survey of the expenditures by 19 MKO First Nations on the Band Constable Program , referred to in Mr. Anderson's evidence, it appears the proposed funding for the FNSO program, currently estimated at \$2.7 million province wide, will be significantly less than the funding for band constable program that was largely self financed by the First Nations. There can be no serious argument that the Band Constable Program was not seriously underfunded. The overwhelming evidence of this and previous inquests has been that band constables were underpaid, undertrained, and underequipped. It is hard to imagine a new system of policing, no matter how carefully thought out, provided with less resources but faced with the same challenges will produce a better result.

[118] It must be remembered that Garden Hill has a population of 2776, (2011 census), a population greater than several towns in southern Manitoba with RCMP detachments. According to their websites, St. Theresa Point has a registered population of 3,019 and Wasagamack 1,423 – these two (2) communities are even further away from the detachment on Stevenson Island. Red Sucker Lake with an on reserve population of 930 is more isolated yet.

(iii) The FNPP

[119] The FNPP was born out the conclusions of the policy review conducted by the Government of Canada in 1991. The review occurred close in time to the recommendation of a number of inquiries across the country including the Aboriginal Justice Inquiry in Manitoba. The conclusion was that aboriginal communities were receiving inadequate and culturally inappropriate policing both in manpower and in responsiveness to the needs of the communities. The FNPP was developed to address the deficiencies and to supplement the core policing provided by provincial police forces.

[120] As discussed Manitoba First Nations did not embrace the program like other first nations across the country. At present there is no funding to allow expansion of the program to those Manitoba First Nations that are not presently participating. For those First Nations in the program funding has been frozen at 2006 levels until 2018.

[121] The Auditor General's 2014 report on the FNPP was critical that funding not being used to enhance services and that there was confusion about what constituted "enhanced services". It also observed First Nations did not, as was intended, have meaningful input into the negotiation of policing agreements under the FNPP. It criticized all levels of government for lack of oversight of FNPP police facilities (including cells). The Auditor concluded financial performance of the program was adequately measured but implementation of the principles and objectives were not adequately measured.

[122] Despite the difficulties of the FNPP it appears to be one of the few alternatives available to fill the gap in policing for remote communities even with the implementation of the FNSO program, however without further funding by Canada it presents no alternative at all to First Nations such as Garden Hill.

Recommendation # 1

[123] That the province initiate talks with Canada to provide funding through the FNPP that allows First Nations in Manitoba to participate in the program given that the 2006 funding freeze has disproportionately affected participation in the program by Manitoba First Nations.

Recommendation # 2

[124] That pending the implementation of the FNPP in Garden Hill and other affected Manitoba First Nations, the Government of Manitoba consider focused legislation granting appropriately trained and equipped band peace officers powers of arrest as set out in section 495 of the *Criminal Code* in communities where remoteness requires such a law enforcement presence. In the alternative, that the province redeploy or enhance policing by the RCMP through the PPSA to allow for the presence of a fully empowered peace officer, perhaps on a 24/7 inland patrol basis, in each remote First Nation communities working with assistance of a FNSO.

Recommendation # 3

[125] Until such time as the FNPP program can be implemented, the Province establish in conjunction with First Nations and the Federal Government, proper training for First Nation safety officers, or band peace officers, working in First Nation communities including training concerning powers of arrest and detention as well as search and seizure.

Recommendation # 4

[126] That First Nation safety officers and band peace officers be properly paid and equipped and have job security.

Recommendation # 5

[127] That First Nation safety officers and band peace officers take instruction from and be supervised by professional police officers who are trained in appropriate use of powers of detention and arrest as well as search and seizure. That they be free from the direction of untrained individuals in the performance of their duties as safety and peace officers and that they be subject to the policing standard requirements of Part 6 of the *Police Services Act*.

3. Detention Facilities operated by First Nations:

[128] The evidence respecting the condition of the band run detention facilities in Garden Hill has been set out in this report's summary of the evidence of the various witnesses heard at this inquest. Their deficiencies are obvious. Sadly a potential solution to some of these issues that seemed to be in place at the conclusion of our hearings in Garden Hill in October of 2013 unravelled soon afterward. Why the RCMP trailer, with up-to-standards cells, was not moved onto the agreed upon site remains an unanswered question. The Court is concerned that part of the reason maybe the First Nation's unwillingness to discontinue the practice of untrained and unauthorized band constables detaining people for band by-law violations. It must be clearly stated these are unlawful detentions and should stop. The deduction of monies from detained person's welfare cheques without due process is very concerning.

[129] That being said the Court recognizes the issue of substance abuse in Garden Hill and many First Nations is serious and rightly concerning. Indeed, the Aboriginal Justice Inquiry, in 1991, itself suggested strong measures be taken to curb the flow of bootleg liquor onto “dry reserves” that had by-laws prohibiting alcohol to include amendments to the *Liquor Control Act* regarding quantities to be sold and sales to individuals previously convicted of bootlegging.¹⁰ Despite this concern, however, the detention of persons who have consumed alcohol but are not causing disturbances and are still able to care for themselves cannot be a reasonable approach. Detention of intoxicated persons in facilities meant for public protection is fraught with danger. Intoxication often masks signs of serious illnesses and often intoxicated persons are more prone to falling and internal bleeding – being placed in cells without bedding and hard walls and floors presents obvious dangers. It should only happen in the clearest of cases and as a last resort.

[130] I endorse the recommendations of Judge Lord in her report into the death of Calvin McDougall as found at paragraphs 111 to 119 of her report. The recommendations are as follows:

It is recommended that the Province of Manitoba in partnership with the Garden Hill First Nation establish a public safety program in the community of Garden Hill, Manitoba to respond to the immediate needs of individuals who are suffering from intoxication by drug or intoxicants and/or suffering from mental health difficulties, who pose a danger to themselves or others. (at para. 111)

It is recommended that this program be staffed with trained Peace Officers authorized to enforce Provincial Statutes and Band By laws. (at para. 112)

It is recommended that the Province of Manitoba in partnership with the Garden Hill First Nation establish a community safety facility in the community of Garden Hill to lodge or detain individuals suffering from intoxication by drug or intoxicant and/or mental health difficulties while they pose a danger to themselves or others. (at para. 113)

It is recommended that the facility be staffed by individuals trained in first aid, and with specific training dealing with individuals who are

¹⁰ Supra. Linden and Clairmont p. 14

intoxicated by drug or intoxicant or suffering from mental health difficulties. (at para. 114)

It is recommended that the facility contain safe sanitary detention cells that are secure but easily accessible by staff in an emergency. (at para. 115)

It is recommended that the cells be monitored by means of video equipment as well as frequent in person checks, and that a formal log be maintained of all video monitoring and in person checks. (at para. 116)

It is recommended that the facility be inspected regularly to ensure the continuing safety and security of staff and detainees. (at para. 117)

It is recommended that the Province of Manitoba in partnership with Garden Hill First Nation establish a community referral program to assist individuals who have been detained due to intoxication and/or mental health difficulties, to connect with required medical assistance and support resources upon their release from detention at the community safety centre. (at para. 118)

It is recommended that a method for regular evaluation of the community safety program, community safety centre and the community referral program be included in the First Nation Safety Officer Program Agreement to ensure that the needs of the community continue to be met. (at para. 119)

[131] In my view this approach constitutes a more humane and modernized approach to the detention, when it is necessary, of truly intoxicated individuals. The recommendations tie into the stated goals of the FNSO program respecting crime prevention and helping community member access appropriate social services and it seeks to take advantage of the FNSO programs potential strengths. Follow up with NADAP, AFM or other social services will do much more to allow community members to come to grips with the root causes of substance abuse than deducting money from their welfare cheques.

[132] Those who are not intoxicated but have consumed or possessed alcohol should be charged with a violation of the by-law and given an opportunity to answer to the charge in Court if the First Nation feels that level of enforcement is still necessary.

[133] This approach should lead to fewer detentions and less overcrowding in detention facilities. This will in turn assist guards in managing and properly observing the detainees.

[134] The evidence in this inquest has revealed that a stumbling block for the implementation of past inquest recommendations respecting the condition of band run cells is that no senior level of government has taken responsibility for the maintenance, upkeep and supervision of detention cells on band land. The province has taken the position that such cells were part of the band constable program and hence outside the jurisdiction of the province. Canada takes the position that it provided funds to the Band Constable Program and had no supervisory duty.

[135] Unless RCMP cells are put in place in a community and the RCMP accepts responsibility for maintaining and operating those cells, any other detention cells should be inspected and supervised by the province as part of its jurisdiction to administer justice within its borders. The fact that such substandard detention cells exist and are being used cannot be ignored. Sergeant Huff put it best when he was asked by inquest counsel:

“Q. ...do you have any responsibility with respect to the operation of the Band constable cells here in Garden Hill?

A. Aside from moral ... none.” (Vol. 2 pg. 122 Line 13 -16)

Despite this he helped drive the effort which very nearly resulted in a proper facility being placed in Garden Hill. His attitude is one to emulate.

[136] Another deficiency which seemed wholly unnecessary and was observed in Garden Hill and St. Theresa Point was the poor resolution black and white video feeds from the cells to the guard rooms. Although no technical evidence was heard by the Court on this matter, it is common in this day and age to walk into any commercial establishment and see oneself in dazzling colour on a high definition security camera television screen. It is hard to understand why this type of widely available technology is not being employed in detention facilities. All witnesses who were guarding the prisoners on the date of Mr. McPherson's death spoke of the difficulty they had observing the prisoners with such poor resolution video feeds. A number of them agreed they may have seen the blood

coming from Mr. McPherson's nose and mouth if they had a proper high resolution colour video feed. The addition of audio feeds would further assist guards to determine if there are sounds, (i.e. snoring or breathing), coming from individual detainees.

[137] The record keeping at this detention facility left much to be desired. The log book had very minimal information concerning each detainee. Essentially it was limited to the person's name, the names of the band constables and securities that lodged him, when he was lodged, and when he was released. Marginal notes were made about how long the individual was to be held or whether they were to be released to a particular person. Very occasionally a note of personal items taken from the detainee would be recorded. Although each witness maintained they took notes of checks done on the prisoners every 15 minutes, no such records were ever produced and certainly no such notations were kept on the log book. At best the system was a hodge podge not in keeping with any professional standard. Prisoner record keeping of the standard required by the RCMP should be the norm.

[138] The use of guards as police dispatchers should be avoided where multiple cells have to be monitored. The admission of unauthorized personnel to the cell and guardroom area should be strictly limited to those escorted by a peace officer and then only for a limited time.

[139] Training for the guards in Garden Hill was virtually nonexistent. Some had first aid training that was current – others did not. The bare bones statement of duties and responsibilities taped to the guardroom wall were not known to some of the guards. There was no procedure in place to summons qualified individuals to respond to a medical emergency despite the close proximity to the nursing station. There was no evidence of the presence of a defibrillator on the premises despite this equipment being common at most public facilities throughout the province.

Recommendation #6

[140] That standards be established by the Province in conjunction with First Nations, the Federal Government and the RCMP for the construction, establishment of and maintenance of any detention facilities on First Nations

lands along with a system of periodic inspections to ensure facilities are maintained to a proper standard of safety and hygiene.

Recommendation #7

[141] That proper standards be established for the operation of detention facilities including, but not limited to, requirements for proper record keeping in prisoner log books that include prisoners name, age, medical concerns, officer who lodged individual, time of lodging and release, and observations of the guard(s) made during in person intermittent checks of the prisoner that are no more than 15 minutes apart.

Recommendation #8

[142] That standards be implemented to prevent overcrowding of cells which interferes with guard's ability to meaningfully observe the condition of prisoners in the cells and that periodic inspections be conducted to ensure operations are being conducted to the required standard.

Recommendation #9

[143] That proper first aid equipment including defibrillators be placed in detention facilities on First Nations lands.

Recommendation #10

[144] That standards be established to ensure guards are trained in proper procedures to follow regarding contacting medical or fire services in case of an emergency. Including establishing a proper medical emergency protocol to enable guards and matrons to respond effectively to medical emergencies at detention facilities on a 24/7 basis. That guards and matrons receive training in first aid, fire safety and security procedures, proper surveillance of prisoners to determine their health, welfare and rousability, and maintenance of proper lodging records.

Recommendation #11

[145] That those working as dispatchers for First Nations safety officers or band peace officers not also act as guards for prisoners in the detention cells.

Recommendation #12

[146] That high resolution colour cameras with sound transmission be installed in cells to assist guards in effectively assessing the condition of prisoners.

“Original signed by:”

Malcolm W. McDonald, Provincial Judge

Appendix "A"

Operational Manual Island Lake Detachment To the Inquest Report into the Death

Manual OPERATIONAL MANUAL ISLAND LAKE DETACHMENT	Chap. Title CPIC CHECKS AND CELL BLOCK SECURITY	Chap. No. 19.1
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1. CPIC Checks

1.1. Ensure that CPIC and other appropriate database checks are conducted on all prisoners before they are lodged in cells, consistent with [National OM 19.1.1](#), and [D Div OM 19.1.1](#).

2. Cell Block Security

2.1. A thorough physical search will be conducted on all prisoners before they are lodged in a cell and personal effects will be safeguarded and noted on the C-13, including anything that the prisoner could use to escape or cause injury.

2.1.1. The prisoner will be asked to sign the C-13 to acknowledge the safeguarding of their effects, and if a signature is not possible, another member or guard/matron will sign as a witness.

2.2. The Shift Supervisor, or the senior member on shift (in the absence of an on duty Shift Supervisor) is responsible for ensuring cells are safe and habitable in accordance with [National OM 19.1.2.1.1](#).

2.3. The Shift Supervisor, or the senior member on shift (in the absence of an on duty Shift Supervisor) working early day shift and early night shift is responsible for physically checking the condition of all prisoners at the beginning of their shift and documenting this check in the Prisoner Log Record Book.

2.4. The Shift Supervisor, or the senior member on shift (in the absence of an on duty Shift Supervisor) working the late night shift is responsible for physically checking the condition of all prisoners at the end of their shift and documenting this check in the Prisoner Log Record Book.

2.5. Physical checks of prisoners may necessitate waking the prisoner to confirm the appropriate level of responsiveness outlined as outlined in [National OM 19.3.2](#)

Brian L. Huff SGT.
Island Lake Detachment
2013-01-14

Appendix "A"
Operational Manual Island Lake Detachment
To the Inquest Report into the Death

Manual	Chap Title	Chap. No.
OPERATIONAL MANUAL ISLAND LAKE DETACHMENT	ASSESSING RESPONSIVENESS/MEDICAL ASSISTANCE	19.2

1. General

1.1. All members and guards/matrons will be familiar with all directives relative to assessing prisoner responsiveness and obtaining medical assistance as outlined in [National OM 19.2](#), and [D Div OM 19.2](#).

2. Medical Assistance

2.1. If there is any reason whatsoever to believe that a person is in need of medical assistance as outlined in the above directives, immediately obtain emergency assistance by calling 456-2626.

Brian L. Huff SGT.
Island Lake Detachment
2013-01-14

Appendix "A"

Operational Manual Island Lake Detachment To the Inquest Report into the Death

Manual	Clip Title	Clip No
OPERATIONAL MANUAL ISLAND LAKE DETACHMENT	GUARDING PRISONERS/PERSONAL EFFECTS	19.3

1. General

1.1. The applicable directives and unit supplements pertaining to prisoners will be posted on the "Care and Handling of Prisoners" clipboard hanging on the wall in the Island Lake Detachment guardroom.

1.2. All members of the Island Lake Detachment will, every six months, read the applicable national and divisional directives and unit supplements pertaining to prisoners in accordance with [National OM 19.3.9](#). An acknowledgment sheet for signature is posted with the above noted documents in the guardroom ([Island Lake Unit Supplement Appendix 19-3-1](#))

1.3. The Guard Coordinator been appointed as the Island Lake Detachment member responsible for the orientation, initial training and re-certification of guards/matrons as well as ensuring that each guard/matron, every six months, has read and initialed and understands the guard duties and applicable national and divisional directives and unit supplements pertaining to prisoners as outlined in [National OM 19.3.9](#). An acknowledgment sheet for signature is posted with the above noted documents in the guardroom ([Island Lake Unit Supplement Appendix 19-3-2](#))

1.4. The sign "Assessing Prisoner Responsiveness" will remain displayed in the cell block area at all times.

1.5. The bilingual sign informing prisoners of their right to counsel will remain posted in a conspicuous place in the cell block area.

1.6. Prisoners will be permitted to contact legal counsel in accordance with [National OM 19.6](#).

1.6.1. A telephone book will be made available and the 24 hour legal aid number (displayed in the cell area telephone room) will be provided to afford a prisoner with free legal advice.

2. Prisoner Log Record Book

2.1. A prisoner log record book will be maintained in accordance with [National OM 19.3.3](#).

3. Supervisor

3.1. Shift Supervisors will ensure compliance of [1.2](#) by each member that they supervise.

3.2. Shift Supervisors will complete quality checks of C-13's and the prisoner ledger in accordance with [D Div OM 19.3.4.2](#).

Brian L. Huff SGT.
Island Lake Detachment
2013-08-01

Appendix "A"

Operational Manual Island Lake Detachment To the Inquest Report into the Death

Manual	Chap. Title	Chap. No
OPERATIONAL MANUAL ISLAND LAKE DETACHMENT	GUARDING PRISONERS/PERSONAL EFFECTS	19.3

4. Prisoner Visits

4.1. Members are under no obligation to permit or facilitate visits for the prisoners.

4.1.1. The Shift Supervisor, or the senior member on duty (in the absence of an on duty Shift Supervisor) has the discretion to allow a visit.

5. Prisoner Meals

5.1. A prisoner in custody over a meal period will be offered a meal.

5.2. Due to safety concerns, a meal will not be provided to someone who is intoxicated to the extent that providing food may be a choking hazard.

6. Guard/Matron Responsibilities

6.1. The primary responsibility of the guard/matron on duty is to monitor prisoners in custody which will include intermittent physical checks not more than 15 minutes apart.

6.1.1. Physical checks of prisoners may necessitate waking the prisoner to confirm the appropriate level of responsiveness outlined in [National OM 19.3.2](#)

6.2. Prisoners will not be provided with mail, parcels, articles of clothing or medications without the authorization of a member.

6.3. The total hours in cells and the number of meals served will be tallied on the bottom of form C-13 by the guard/matron on duty at the time of the prisoner's release.

6.4. The guard/matron on duty at the time of the prisoner's release will inspect the vacated cell to ensure that no articles are left behind.

6.5. Except in the case of an emergency, a prisoner will only be removed from a cell by a member.

6.6. In the event of a medical emergency immediately call 456-2626 and advise Winnipeg Telecoms Center. If no members are on duty advise Winnipeg Telecoms at once and they will contact the on-call member. If necessary, start CPR immediately.

6.7. In the event of a fire immediately activate the fire alarm, and if time permits, call 456-2626 to advise Winnipeg Telecoms Center.

Brian L. Huff SGT.
Island Lake Detachment
2013-08-01

Appendix "A"

Operational Manual Island Lake Detachment

To the Inquest Report into the Death

<small>Manual</small> OPERATIONAL MANUAL ISLAND LAKE DETACHMENT	<small>Chap Title</small> GUARDING PRISONERS/PERSONAL EFFECTS	<small>Chap. No</small> 19.3
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6.7.1. If a member is not immediately available, remove the prisoners from the detachment to a safe area outside the detachment.

6.7.2. Should a prisoner start to run away from you, order him/her to stop, but do not pursue a fleeing prisoner. Observe the direction of travel and advise a member of the circumstances on his/her arrival.

Brian L. Huff SGT.
Island Lake Detachment
2013-08-01

**Appendix “B”
Exhibit List
To the Inquest Report into the Death**

EXHIBIT LIST

<u>Exhibit No.</u>	<u>Description</u>
1	Autopsy Report with Toxicology Report as well as a Neuropathology Consultation
2	Garden Hill First Nation Constable Policing Program Proposal
3	Statement of Gerry Hastings
4	Consent to Search
5	Photo Booklet of In-Custody Death of Brian McPherson
6	Floor Plan of Cell Block Including Cell No. 1
7	Guards Duties (Handwritten Page)
8	Pink Sheets submitted by Brian Huff – Duties and Responsibilities
9	Re: Guard Duties/Care of Prisoners
10	The Operation Manual – CPIC Checks and Cell Block Security
11	Rousability Chart
12	Preliminary Report of Death
13	Seized Log Notes from Band Constable Office
14	Lodged Book
15	Affidavit of Candace Houston attaching Exhibits A (Band Council Resolution), B (Garden Hill Band Council Resolution dated September 8, 1987), C (Garden Hill Band Council Resolution dated September 14, 1987), and D (Garden Hill First Nation Band Solvent and Gasoline Abuse By-Law dated May 4, 1992)
16	Letter dated October 10, 2006 to Chief of Island Lakes First Nations
17	Letter dated October 24, 2014
18	Syllabus – RCMP Training - 2008
19	Band and Community Constable Training 2010, UCN Training Schedule
20	Band Constable General Duties and Responsibilities
21	Band Constable Program: Detention Cells Prohibited – April 8, 2011
22	Letter from the Garden Hill First Nations – January 7, 2008
23	Letter from the Garden Hill First Nations – Use of Unauthorized Detentions Cells – January 17, 2012
24	Band Constable Agreement – Garden Hill First Nations – 2007 - 2009
25	Aboriginal Policing Bundle
26	Provincial Police Service Agreement – April 2012
27	Affidavit of Raymond Levesque

<u>Exhibit No.</u>	<u>Description</u>
28	Constable List of Garden Hill First Nation
29	Framework Agreement made June 2001
30	Letter from Chief Harper to Minister of Justice with Band Constable Curriculum
31	Memorandum of Understanding dated May 12, 2012
32	Letter dated December 1 st from Grand Chief to Minister
33	Letter of Signing of MKO Framework Agreement

Appendix "C"

First Nation Safety Officers Regulation To the Inquest Report into the Death



Home > Manitoba > Statutes and Regulations > Man Reg 229/2015

First Nation Safety Officers Regulation, Man Reg 229/2015

Current version: as posted on Jan 6, 2016

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THE POLICE SERVICES ACT
(C.C.S.M. c. P94.5)

First Nation Safety Officers Regulation

LOI SUR LES SERVICES DE POLICE
(c. P94.5 de la C.P.L.M.)

Règlement sur les agents de sécurité des
Premières nations

Regulation 229/2015
Registered December 30, 2015

Règlement 229/2015
Date d'enregistrement : le 30 décembre 2015

TABLE OF CONTENTS

Section	
1	Definitions
2	Qualifications
3	Required training
4	Additional enforcement powers
5	Additional duties and powers
6	Agreement must authorize additional powers
7	Restrictions
8	Additional equipment
9	Coming into force

Definitions
1 The following definitions apply in this regulation.

"Act" means The Police Services Act. (« Loi »)

"additional powers" means

(a) the enforcement of an enactment set out in section 4; and

TABLE DES MATIÈRES

Article	
1	Définitions
2	Conditions
3	Formation requise
4	Pouvoirs supplémentaires liés à l'application de dispositions législatives
5	Attributions supplémentaires
6	Pouvoirs supplémentaires - entente
7	Restrictions
8	Matériel supplémentaire
9	Entrée en vigueur

Définitions
1 Les définitions qui suivent s'appliquent au présent règlement.

« arme-aérosol » Appareil permettant de propulser une substance en aérosol dans le but de neutraliser une personne. ("aerosol weapon")

Appendix "C"

First Nation Safety Officers Regulation

To the Inquest Report into the Death

POLICE SERVICES

P94.5 - M.R. 229/2015

(b) the performance of a duty or the exercise of a power set out in section 5. (« pouvoir supplémentaire »)

"aerosol weapon" means a device from which a substance can be propelled as a spray for the purpose of incapacitating a person.
(« arme-aérosol »)

"operating agreement" means the agreement entered into under section 77.12 of the Act that authorizes a First Nation or an entity representing a group of First Nation to operate a First Nation safety officer program. (« entente de fonctionnement »)

Qualifications

2 A person is eligible for appointment as a First Nation safety officer if he or she

(a) is 18 years of age or over;

(b) is a Canadian citizen or a permanent resident as defined in the Immigration and Refugee Protection Act (Canada); and

(c) holds a valid class 5 driver's licence.

Required training

3(1) In order to be appointed a First Nation safety officer, a person must have received training respecting the following:

(a) public safety and crime prevention;

(b) victims' services and social services;

(c) enforcement of provincial enactments;

(d) arrests, searches and seizures;

(e) use of force and officer safety;

(f) note-taking, report writing, interview basics and court preparation.

« entente de fonctionnement » Entente conclue en vertu de l'article 77.12 de la Loi qui autorise une Première nation ou une entité représentant un groupe de Premières nations à offrir un programme d'agents de sécurité. ("operating agreement")

« Loi » La Loi sur les services de police. ("Act")

« pouvoir supplémentaire » Pouvoir de faire appliquer les dispositions législatives indiquées à l'article 4 et d'exercer les attributions prévues à l'article 5. ("additional powers")

Conditions

2 Les personnes qui satisfont aux conditions ci-dessous peuvent être nommées à titre d'agentes de sécurité des Premières nations :

a) elles ont au moins 18 ans;

b) elles sont citoyennes canadiennes ou résidentes permanentes au sens de la Loi sur l'immigration et la protection des réfugiés (Canada);

c) elles sont titulaires d'un permis de conduire valide de classe 5.

Formation requise

3(1) Les personnes nommées à titre d'agentes de sécurité des Premières nations sont tenues d'avoir suivi avec succès une formation portant sur les sujets suivants :

a) la sécurité publique et la prévention du crime;

b) les services aux victimes et les services sociaux;

c) l'application des textes provinciaux;

d) les arrestations, les perquisitions et les saisies;

e) le recours à la force et la sécurité des agents;

f) la prise de notes, la rédaction de rapports, les techniques d'entretien et la préparation en vue des audiences judiciaires.

Appendix "C"

First Nation Safety Officers Regulation

To the Inquest Report into the Death

SERVICES DE POLICE

P94.5 - R.M. 229/2015

3(2) The training set out in subsection (1) may be provided by one or more of the following:

- (a) the Royal Canadian Mounted Police;
- (b) the Winnipeg Police Service;
- (c) the Brandon Police Service;
- (d) the Manitoba Department of Justice;
- (e) a service provider that has been approved by the director.

Additional enforcement powers
4 Subject to section 6, a First Nation safety officer may enforce the following enactments:

- (a) sections 75, 85, 119, 124.5, 138, 145, 147 and 222 and subsections 4.2(1), 76(3), 88(1) and (2), 95(3), 122(1), 124(1), 137(5), 139(2), 140(1) and (2), 141(5), 145.1(2) and (3), 182(3), 183(1) and (1.1), 186(3), (6) and (9), 186.1(1), 188(2), 215.1(2) and 221(1) of The Highway Traffic Act;
- (b) subsection 28(1) of The Off-Road Vehicles Act;
- (c) section 63 and subsections 57(1), 62(1), 75(4) and 75(5) of The Liquor and Gaming Control Act;
- (d) subsections 3(1) and (2) of The Minors Intoxicating Substances Control Act;

Additional duties and powers
5 Subject to section 6, a First Nation safety officer may perform the following duties and exercise the following powers:

- (a) directing traffic under subsection 76(1) of The Highway Traffic Act;
- (b) stopping vehicles under subsection 76.1(1) of The Highway Traffic Act;
- (c) requiring production of documentation under clauses 76.1(4)(a) to (c) of The Highway Traffic Act;

3(2) La formation visée au paragraphe (1) peut être fournie par :

- a) la Gendarmerie Royale du Canada;
- b) le Service de police de Winnipeg;
- c) le Service de police de Brandon;
- d) le ministère de la Justice du Manitoba;
- e) un fournisseur de services approuvé par le directeur.

Pouvoirs supplémentaires liés à l'application de dispositions législatives
4 Sous réserve de l'article 6, les agents de sécurité des Premières nations peuvent faire appliquer les dispositions législatives suivantes :

- a) les articles 75, 85, 119, 124.5, 138, 145, 147 et 222 ainsi que les paragraphes 4.2(1), 76(3), 88(1) et (2), 95(3), 122(1), 124(1), 137(5), 139(2), 140(1) et (2), 141(5), 145.1(2) et (3), 182(3), 183(1) et (1.1), 186(3), (6) et (9), 186.1(1), 188(2), 215.1(2) et 221(1) du Code de la route;
- b) le paragraphe 28(1) de la Loi sur les véhicules à caractère non routier;
- c) l'article 63 ainsi que les paragraphes 57(1), 62(1), 75(4) et (5) de la Loi sur la réglementation des alcools et des jeux;
- d) les paragraphes 3(1) et (2) de la Loi sur le contrôle des substances intoxicantes et les mineurs.

Attributions supplémentaires
5 Sous réserve de l'article 6, les agents de sécurité des Premières nations peuvent exercer les attributions suivantes :

- a) diriger la circulation conformément au paragraphe 76(1) du Code de la route;
- b) ordonner au conducteur d'un véhicule de s'arrêter conformément au paragraphe 76.1(1) du Code de la route;
- c) exiger la communication des renseignements ou la présentation des documents visés aux alinéas 76.1(4)a) à c) du Code de la route;

Insert Date

Appendix "C"

First Nation Safety Officers Regulation

To the Inquest Report into the Death

POLICE SERVICES

P94.5 - M.R. 229/2015

(d) taking an intoxicated person into custody under section 2 of The Intoxicated Persons Detention Act;

(e) staying with a person taken into custody by a member of the local policing authority for an involuntary medical examination or involuntary psychiatric assessment under The Mental Health Act, as requested by a member of the local policing authority under subsection 15(1) of that Act;

(f) apprehending children under section 53 of The Child and Family Services Act.

Agreement must authorize additional powers
6 A First Nation safety officer may

(a) enforce a specific enactment set out in section 4; or

(b) perform a specific duty or exercise a power set out in section 5;

only if the operating agreement expressly authorizes First Nation safety officers to do so.

Restrictions
7 A First Nation safety officer who exercises additional powers under this regulation is subject to the following restrictions:

(a) the officer may exercise the additional powers only within the area specified in the operating agreement, except the power set out in clause 5(e);

(b) the officer may exercise the additional powers only when he or she is on duty;

(c) the officer must not engage in the vehicular pursuit of a person suspected of committing an offence under an enactment referred to in section 4.

d) mettre sous garde une personne en état d'ébriété conformément à l'article 2 de la Loi sur la détention des personnes en état d'ébriété;

e) demeurer avec une personne appréhendée par un membre du corps policier local afin qu'elle subisse un examen médical obligatoire ou une évaluation psychiatrique obligatoire conformément à la Loi sur la santé mentale, lorsqu'un membre de ce corps le leur demande en vertu du paragraphe 15(1) de cette loi;

f) appréhender un enfant conformément à l'article 53 de la Loi sur les services à l'enfant et à la famille.

Pouvoirs supplémentaires - entente
6 Les agents de sécurité des Premières nations peuvent faire appliquer les dispositions législatives indiquées à l'article 4 et exercer les attributions prévues à l'article 5 seulement si l'entente de fonctionnement les a expressément autorisés à le faire.

Restrictions
7 Les agents de sécurité des Premières nations qui exercent les pouvoirs supplémentaires visés par le présent règlement sont assujettis aux restrictions suivantes :

a) ils peuvent exercer ces pouvoirs seulement dans le territoire visé par l'entente de fonctionnement, sauf dans le cas visé à l'alinéa 5e);

b) ils peuvent les exercer uniquement s'ils sont en service;

c) ils ne peuvent poursuivre à bord d'un véhicule une personne soupçonnée d'avoir commis une infraction à une disposition législative mentionnée à l'article 4.

Appendix "C"

First Nation Safety Officers Regulation

To the Inquest Report into the Death

SERVICES DE POLICE

P94.5 – R.M. 229/2015

Additional equipment

8 A First Nation safety officer may carry and use the following equipment while on duty:

- (a) handcuffs;
- (b) a defensive baton;
- (c) an aerosol weapon;

if he or she has received training in the use of that equipment by an entity set out in subsection 3(2).

Coming into force

9 This regulation comes into force on the same day that The Police Services Amendment Act (First Nation Safety Officers), S.M. 2015, c. 3, comes into force.

Matériel supplémentaire

8 Dans l'exercice de leurs fonctions, les agents de sécurité des Premières nations peuvent porter et utiliser des menottes, un bâton de défense ou une arme-aérosol s'ils ont reçu une formation portant sur leur utilisation par une entité mentionnée au paragraphe 3(2).

Entrée en vigueur

9 Le présent règlement entre en vigueur en même temps que la Loi modifiant la Loi sur les services de police (agents de sécurité des Premières nations), c. 3 des L.M. 2015.

December 29, 2015
29 décembre 2015

Acting Minister of Justice/Le ministre suppléant de la Justice,

James Allum

Insert Date

5