First Nations Self-Administered Police Forces:

The Changing Nature of the Administration of Justice

by

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ABSTRACT

Delivering appropriate police services to Aboriginal communities across Canada is a difficult task. In the late 1980s and throughout the 1990s, a number of proposals and policies were put in place to address Aboriginal peoples' concerns with on-reserve policing procedures. These policies aimed to contribute to the improvement of social order, public security and personal safety in Aboriginal communities. This thesis investigates the evolution and the effectiveness of on-reserve Aboriginal policing options, with a particular focus on four First-Nations self-administered police services. This analysis explores how historical cultural definitions of justice have impacted policing services to on-reserve Aboriginal communities across the country. The goal of the thesis is to explore how the law enforcement component of the justice system is helping Aboriginal peoples to acquire the tools to become self-sufficient and self-governing through the establishment of structures for the management and administration of First Nations police services.

CONTENTS

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DEDICATION

This thesis is dedicated to all those involved in strengthening Aboriginal communities.

INTRODUCTION

In many ways, the current justice system in Canada does not satisfy Aboriginal peoples' legitimate demand for respect for their cultural identities. In finding a solution to this problem, national and provincial governments have begun to implement new structures to address the cultural concerns of Aboriginal peoples. An increase in the number of community-based policing programs for Aboriginal communities is providing opportunities to attempt to deliver efficient and effective policing services to Aboriginal peoples. Although the existing system is attempting to incorporate more community-based policing programs to better accommodate the needs of Aboriginal offenders, the cultural divide between the two systems continues to be in conflict. An examination of the two differing belief systems must be made in order to understand how concepts of justice differ between Aboriginal peoples and the mainstream Canadian justice system.

With the relationship between Aboriginal peoples and the Canadian justice system having been described by some as Canada's national disgrace, there is a drive from all sides to provide solutions to this problem. A major part of the solution has come in the form of policing innovations. As alternatives to existing police services, many Aboriginal communities are working in collaboration with provincial and national policy-makers in developing and instituting forms of tribal justice, which follow more closely traditional values and patterns of resolving disputes. An emphasis on traditional models of Aboriginal justice is shifting the focus to concentrate more on the themes of Elders, families, community/individual healing, and spirituality in the context of culture. The recognition that "Aboriginal affairs" includes the right of Aboriginal governments to establish their own constitutions, laws, and institutions of government is the first step to

bridging the cultural divide between Aboriginal peoples and the criminal justice system.[1] Aboriginal peoples believe that they have an inherent right to create a police force in furtherance of a right to self-government in their traditional homelands.

The purpose of this thesis is to analytically examine how cultural influences define concepts of criminality and justice, both within the Euro-Canadian and Aboriginal understandings of the justice system. In light of increasing collaboration between governments and Aboriginal peoples, it is important to analyze how and why conceptual shifts are occurring in the field of justice. In order to do this effectively, the basis for the thesis is to answer three main questions: Do concepts of justice differ between Aboriginal peoples and the mainstream Canadian justice system? If a cultural divide exists, how does it affect the nature of the administration of justice? Have Aboriginal policing services been able to adequately address the cultural divide between the two groups? In trying to provide answers to these questions, I will divide the thesis into six chapters, each focusing on one or more of the above questions. Because the justice system is so immense, I will focus primarily on policing to illustrate the existence of a cultural divide.

Before I proceed with the thesis, it is important to explain why I chose to study policing instead of another component of the criminal justice system. Having worked in an RCMP detachment myself, I have always been interested in policing issues, especially those related to on-reserve Aboriginal communities. Through my personal experience, I responded to police calls in two Aboriginal communities in British Columbia, and have seen first-hand some of the effects of a historically strained relationship between Aboriginal peoples and police officers. Most Aboriginal peoples perceive police officers

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[1] Luke McNamara, "Aboriginal People and Criminal Justice Reform: The Value of Autonomy-Based Solutions," Canadian Native Law Reporter, University of Saskatchewan: Native Law Center, 1992 (1), p. 10.

as *the* justice system because police officers are the living representations of the system across the nation. Police officers have full authority to lay charges, and the largest amount of contact between Aboriginal peoples and the justice system comes in the form of policing. Policing is where the relationship between Aboriginal peoples and the criminal justice system has been the most strained and current options are being devised to help reconcile the divide between the two. Very little has been written on this subject academically, and the study of this topic is vital in understanding why the relationship between the two has been strained, and whether current policing initiatives are addressing the cultural divide.

Chapter One will specifically focus on how concepts of justice differ between Aboriginal peoples and the mainstream Canadian justice system, and how these have impacted Aboriginal-police relations in Canada. This chapter will demonstrate that the criminal justice system historically adhered to practices that were detrimental to Aboriginal peoples at *every* level of the system. My major sources of reference for this area of the thesis will rely on the work done by the Law Reform Commission of Canada, the Canadian Ministry of the Solicitor General, the *Royal Commission on Aboriginal Peoples* and individual academics from British Columbia, Saskatchewan and Manitoba. Although this section of the thesis will be quite short (as it is not within the confines of this paper to discuss every problem with each level of the justice system, from policing, to legal representation, to court procedures, to court participants, to sentencing and incarceration), the reader will understand that Aboriginal peoples have faced systemic disadvantages wherever they were placed in the spectrum of contemporary Canadian criminal justice.

After providing a general account of Aboriginal peoples' experiences within the criminal justice system in Canada, Chapter Two will examine the changing nature of the administration of justice in Canada with an introduction to Aboriginal policing. The main link between differing value systems and policing is that, since the early days of Confederation, police officers have been and continue to be an important link between the government and Aboriginal communities as they enforce the laws of the land and protect communities. In some rural areas, Royal North West Mounted Police officers acted as representatives of the government, the judiciary, and the citizens. There was no official separation of powers between their role of enforcing the law and imposing sanctions against those that broke the law. These historical roles and the important position occupied by police officers is at the heart of much controversy surrounding the relationship between Aboriginals and police; and more abstractly, between Aboriginals and the entire justice system. Policing as a case study epitomizes the relationship between Aboriginal peoples and the non-Aboriginal justice system.

Chapter Three will then move into a comparative analysis of Aboriginal peoples' experiences with the police in Australia and Alaska. The major focus of this chapter is to introduce how the nature of the administration of justice is beginning to change across the world, not only in Canada. Chapter Three will examine restorative justice modules of the community-based policing program in Australia and the community-based Village Public Safety Officer program in Alaska to demonstrate what governments and Aboriginal communities are doing to help satisfy Aboriginal peoples' demands for cultural respect in the area of policing. From the literature, it will become apparent that the initiatives undertaken in Australia to overcome the cultural divide have been less progressive than

those introduced in Alaska. I have relied on the work done by the Australian Institute of Criminology, reports published by the Australian government, the Criminal Justice Center in the University of Alaska Anchorage, Lawrence Trostle, and other academics to study the relationship between indigenous populations and police services.

Chapters Four and Five are closely linked to one another as they both focus on British Columbia and Aboriginal policing in the province. Chapter Four is structured to address the distinctive challenges faced by Aboriginal peoples in BC in order to understand how Aboriginal-police relations have evolved over the last 130 years. I will provide the reader with a detailed look into how the political legacy in BC has impacted Aboriginal-police relations. This will be accomplished via a general discussion on the conditions Aboriginal peoples in BC have endured since contact with the Europeans. Continuing with the effects of the political legacy, there will be a brief discussion as to the role of the treaty-making process in Aboriginal policing discussions.

The unique political landscape of BC, with its limited number of historical treaties, makes it an interesting case study to analyze Aboriginal-police relations. Therefore, in Chapter Five, I devised a set of questions to be asked of police officers who have worked or are working in an area of BC where a First Nations self-administered police service is, or at one point was, in effect. Although various Aboriginal policing programs will be introduced in Chapter Two, the focus of Chapter Five is to examine one of the programs in detail, specifically First Nations Self-Administered Police Services. The questionnaire is labeled First Nations Self-Administered Police Forces and the Changing Nature of the Administration of Justice and is attached as an appendix at the

end of the thesis. The questionnaire is designed to focus on four major aspects of the unique policing program:

1. Training
2. Personal Issues
3. Cultural Impact/Significance
4. General Benefits and Concerns

I decided that the most effective method to examine both the difficulties and benefits of Aboriginal policing was to ask Aboriginal officers about their experiences with the program. When I first began to construct the questionnaire and contact police officers, I dealt primarily with officers from the former Tsewultun Police Service on Vancouver Island and the Stl'atl'imx Tribal Police in the Lillooet/Mt. Currie area. At that time, the Tsewultun police service had not collapsed, and officers from both services were eager to discuss their experiences with the program. Although the Tsewultun police service collapsed while I was in the process of conducting the questionnaire, I found that the responses to the questions were not jeopardized by the collapse.

I believe this research is important because First Nations police forces are still in the early stages of development in BC. Analyzing the benefits and concerns of officers who have been involved in the program for the last six to nine years is the most effective technique to understand whether the principal objective of attaining culturally responsive policing in BC Aboriginal communities is being accomplished. In order to protect the confidentiality of the six male and two female officers that participated in the research, it has been agreed upon by all parties that names will not be used in the thesis.[2] In most

[2] University of Victoria: Human Research Ethics Committee, First Nations Self-Administered Police Services: The Changing Nature of the Administration of Justice, Certificate of Approval: Project Number 364-00.

cases, officers were more willing to participate in the research when told about this confidentiality clause, alleviating fears from any repercussions that may arise if they discussed the negative aspects of Aboriginal policing. Officers were also instructed that they were under no obligation to provide a response to every question; therefore, at times, the numbers may not always add to eight when discussing the research findings in Chapter Five.

In the concluding chapter, I will examine how the enduring Aboriginal struggle for viable and meaningful cultural and political self-determination in the arena of criminal justice has led to a new type of justice, one that focuses on reconciliation, not alienation.[3] The restorative justice approach to policing is a new phenomenon in the justice field, and in a very real sense, it is changing the nature of the administration of justice as defined by dominant society. As policing becomes more focused on community partnerships, it becomes both ambitious and ambiguous, as community policing promises to change radically the relationship between the police and the public, address underlying community problems, and improve the living conditions of neighborhoods. New approaches to policing have led to the conclusion that although it may be difficult to reconcile cultural beliefs of Aboriginal peoples on one hand and non-Aboriginals on the other, it is not impossible.

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[3] Otwin Marenin, "Community Policing in Alaska's Rural Areas: The Village Public Safety Officer (VPSO) Program," paper presented at the annual meeting of the Academy of Criminal Justice Sciences in Denver, Colorado: March 1990, p. 11.

CHAPTER ONE
CULTURAL DIVISIONS

The policing environment around the world is rapidly changing to address the needs of Aboriginal peoples. The need for a proactive, accountable, and interactive policing system has led many Canadians to reflect on how to facilitate a better partnership between on-reserve Aboriginal communities and the Royal Canadian Mounted Police (RCMP). Since the early days of Confederation, the relationship between Aboriginal peoples and the RCMP has been complex. RCMP officers have been, and continue to be, an important link between the government and Aboriginal communities as they enforce the laws of the land and provide protection to communities. On occasion, police officers and Aboriginal peoples have become involved in disputes regarding the laws of the land; as a result, the relationship between on-reserve Aboriginal peoples and the RCMP has been characterized at times by misunderstandings, conflicts and violence.[4] The important position occupied by police officers is at the heart of much controversy surrounding the strained relationship between Aboriginal peoples and police; and more abstractly, between Aboriginal peoples and the entire criminal justice system.

The criminal justice system in Canada consists of a number of distinct and separate components engaged in maintaining the ordered process of life in society from law enforcement to courts to corrections. However, it is sometimes difficult to ascertain exactly what philosophies and beliefs these components follow as they perform their functions related to delivering justice. At times, many Aboriginal peoples have claimed that a lack of a basic philosophy reflecting the needs of Aboriginal peoples has caused a

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[4] Donald J. Loree, Policing Native Communities, Ottawa: Canadian Police College, 1985, p. 1.

cultural divide to occur. When questioning the reasons behind the apparent over-representation of Aboriginal people in the criminal justice system, Aboriginal peoples, scholars and even government officials have agreed that the criminal justice system has not always been just in the sense that it has mainly embodied Euro-Canadian beliefs. For individuals not fully ascribing to Euro-Canadian beliefs and philosophies, the justice system has become a site for practicing discrimination.

For the purposes of this thesis, it is important to understand that historically, some Aboriginal peoples conceived the maintenance of social order differently from non-Aboriginals. How these beliefs lead to differences in the treatment of individuals is what I term the "cultural divide." To illustrate the concept of a "cultural divide", this chapter will primarily use the work of Paul Tennant to examine what he terms the Aboriginal Rights view and the traditional mainstream individualist view. I will describe the differences between the two types of belief systems and apply them to definitions of justice. Although some may disagree with Tennant's work, I chose to focus on it for two main reasons. First, many Aboriginal peoples in British Columbia and across Canada have encouraged his extensive research in this field and have deemed it as both respectful and appropriate to Aboriginal cultures. The second reason I chose to examine Tennant's work is that he presents a balanced consideration of the differing belief systems. Although the majority of Tennant's work is targeted at land claims settlements, I believe his focus on binary beliefs can also apply to justice issues. His work on differing beliefs is flexible enough to not be constrained to just one focus and is respected by both Aboriginal and non-Aboriginal people.

Binary belief systems can arise for a variety of reasons, but for my argument, different historical legacies, different methods of social control, and different perceptions of the role of the community between Aboriginal and non-Aboriginal people affect how the two view the role of the justice system. This chapter provides a historical account of major political initiatives that have influenced the relationship between Aboriginal peoples and police officers. In this historical overview, I will examine specific legislative acts and court cases, and outline the progression of Aboriginal rights within both. In conclusion, I will provide the reader with a brief and very general overview of the historical differences in Aboriginal perceptions of culture and the dominant mainstream culture, using the work of Paul Tennant to illustrate that historical cultural differences have contributed to unequal treatment between Aboriginals and non-Aboriginals in the existing criminal justice system. Examining historical legislative and cultural differences in policing are important as they lay the foundations to understand why current governments have implemented new policing services over the last fifteen years to respond to Aboriginal peoples' claims for greater equal treatment in the system.

Canada: The Political Impact on the Policing Legacy

In 1868, the first semi-national police force was established to protect Parliament and other government buildings in Canada, as well as investigating federal offences such as mail theft and counterfeiting.[5] Following the entry of Manitoba into Confederation in 1870, the government required a federal police service in the west to ensure orderly settlement of western provinces/territories as well as to protect the border along the

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[5] First Nations Chiefs of Police Association, "Setting the Context-Historical Background," online, Internet: http://www.soonet.ca/fncpa/hrdc/historical.htm, 6 October 2000, p. 41.

prairies from any potential encroachment from the south by United States settlers.[6] In response to potential threats, the Canadian government established the first formal national policing service, the Northwest Mounted Police (now the RCMP). With the creation of a formal police force, many Aboriginal communities, especially those in the prairies, were required to accept a federally appointed police service sent to replace traditional methods of justice. Most Aboriginal communities did not want to relinquish social control mechanisms to police officers, especially when they came into little or no contact with police officers due to their nomadic lifestyles. A national police force was developed that enforced the laws of a colonizing government and excluded Aboriginal concepts of social control.

In 1867, prior to the establishment of the Northwest Mounted Police, the Confederation of Canada helped solidify the problems in British and Aboriginal policing relations. Powers in relation to matters dealing with resources, legislative authorities and legal matters were divided among the federal and provincial governments and Aboriginal concerns were not recognized in these proceedings.[7] Aboriginal peoples were not given any say in matters pertaining to justice and were excluded from any decision-making having to do with the establishment of a federal police force. Aboriginal peoples claimed that their rights in matters of justice and political governance were rooted within the *Royal Proclamation of 1763*, and Confederation did not extinguish such rights. The *Royal Proclamation of 1763* was a critical moment in Canadian history as it dictated the principles upon which Aboriginal and European relations were to be conducted.[8] Under

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[6] First Nations Chiefs of Police Association, "Operational Delivery of Policing Arrangements," online, Internet: http://www.soonet.ca/fncpa/hrdc/delivery.htm, 6 October 2000, p. 1.
[7] Ibid.
[8] Ibid.

the terms of the *Proclamation*, a negotiation process was to have been conducted before any Aboriginal interests or title to lands could be bargained away.[9] According to Aboriginal peoples, the *Proclamation* confirmed the existence of Aboriginal rights, including rights to oversee justice and policing within their own communities.

However, the Government of Canada gained exclusive jurisdiction over issues of national importance under the *British North America Act of 1867* (more commonly referred to as the BNA Act) at Confederation. The BNA Act established the criminal law of Canada and municipal police services were created. More importantly, the BNA Act dealt with issues pertaining to "Indians and lands reserved for the Indians."[10] Section 91, sub-section 24 of the BNA Act was a major component that defined the nature of the Aboriginal peoples' relationships to the state.[11] This Act provided that Aboriginals were the sole responsibility of the Federal Government, whereas non-Indian people would face a plurality of national and provincial governmental departments and agencies.[12] This legislation made a clear distinction between mainly white Canadian citizens and Aboriginal peoples, insinuating that Aboriginal peoples had "fewer rights" than non-Aboriginals.

In 1876, the *Indian Act* was introduced to act as a consolidation and revision of previous legislation pertaining to Aboriginal peoples. Initially, the *Indian Act* was in response to the government's view that it needed to guarantee the protection of Aboriginal peoples from encroachment onto their lands that had been reserved for them

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[9] John H. Hylton, "Aboriginal Self-Government in Canada," in Martin West Mascott and Hugh Mellon, eds. Challenges to Canadian Politics, Prentice Hall: Scarborough, 1998, p.192.
[10] British North America Act, 1867, s. 91 (24).
[11] Graham Cummings, "A Socio-Political Introduction to Indian Affairs," in The Annals of Canadian Political and Social Science (538), 1995, p. 50.
[12] Reginald Whitaker, "Canadian Politics at the End of the Millennium: Old Dreams, New Nightmares," in Stephen Eggleston, ed. Canadian Political Science: Nelson Power Pack, Nelson 2000: Scarborough, 1999, p.112.

through treaty negotiations.[13] However, as the First Nations Chiefs of Police Association points out:

> Public pressure was mounting and the need to secure more land on which to settle the influx of non-Aboriginals into Canada meant that the well-intentioned principles behind the [*Indian Act*] did nothing to protect the interests of First Nations against these growing demands... Eventually, the provisions of the *Indian Act* gave the government and its Agents the authority to impose its policies upon [Aboriginal] people.[14]

The *Indian Act* reduced Aboriginal peoples' authority over their communities and replaced it with justice and social systems that placed the power and authority in the hands of government appointed (non-Aboriginal) Indian agents.

Indian agents were delegated ultimate authority over Aboriginal people, including the right to act as Justices of Peace so that they could conduct full trials against Aboriginal peoples. If Indian agents could not act as Justices, they had the right to instruct police officers to prosecute offenders and to pass judgment on them.[15] Over the years, the role of policing became blurred as officers acted as law enforcers on the one hand and court officials on the other. Indian agents often called on the newly established RCMP to assist them when enforcing government policy. Police officers were involved in the general administration of negotiated treaties and in carrying out the business of the Department of Indian Affairs. Police officers, for example, ensured that Aboriginal peoples were relocated to reserves, and any Indian acting against this law was prosecuted.[16] Cultural ceremonies, such as the Potlatch, were banned, and police officers strictly enforced this law. Police officers were also responsible for ensuring that Indian

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[13] First Nations Chiefs of Police Association, "Operational Delivery of Policing Arrangements," online, Internet: http://www.soonet.ca/fncpa/hrdc/delivery.htm, 6 October 2000, p. 2.
[14] Ibid.
[15] Ibid.
[16] Ibid.

children who ran away from residential schools were located and returned to the schools, as well as ensuring that adults who left reserves without passes were caught and charged.[17]

Throughout the first half of the 1900s, government policies sought to convert both the children and adults from their traditional beliefs, and police officers were expected to uphold policies that blatantly restricted Aboriginal freedoms and practices. The deliberate use of federal law kept Aboriginal peoples on reserves, in a condition of tutelage, deprived of their lands, limited in their economic and social rights, suppressed in their cultures and languages, and subjected to a break up of family structure, all with a view to assimilation.[18] Police officers, through their roles as law enforcers, became closely tied to colonizing policies, and in the eyes of many Aboriginal peoples, were the physical representatives of a colonizing government. Even today, Aboriginal peoples point to the colonization experience as one that continues to contribute to their sense of dependency, alienation, and despair.

By the 1950s, Aboriginal peoples constituted a large part of the inmate population in each of the ten provinces.[19] The *Manitoba Aboriginal Justice Inquiry*, led by Judge Murray Sinclair, suggested that the large influx of Aboriginal peoples into the correctional unit of the justice system resulted from the changes to the liquor laws, which opened beer parlors to Aboriginals; new policing agreements, which stationed RCMP detachments in Aboriginal communities for the first time; the demoralization of Aboriginal war veterans who had braved battle for their country, and then returned home

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[17] Keith B. Jobson, "First Nations Police Services: Legal Issues," discussion paper presented to the Ministry of Attorney-General, Victoria, BC: November 1993, p. 13.
[18] Ibid., p. 5.
[19] Canadian Broadcasting Corporation, "To Hurt or To Heal," Ideas (transcript), 24-30 June 2000 p. 39.

to find they were still regarded as second class citizens; all resulting with public policies which undermined Aboriginal cultures.[20] Judge Sinclair also went on to state that one of the main agencies of destruction was the residential school system, where Aboriginal children were sent, in the words of one teacher, "to have the Indian educated out of them."[21]

By the early-1960s, it was obvious that initiatives had to be undertaken to help repair the relationship between the Euro-Canadian criminal justice system and Aboriginal peoples. Besides showing signs of social turmoil, most Aboriginal communities showed signs of economic disparity. Many on-reserve Aboriginal peoples were living below the national poverty line, while resource companies were obtaining permits from provincial and federal governments to extract resources from land where Aboriginal claims were unsettled.[22] Resource companies were reaping economic profits, while Aboriginal land was being depleted of non-renewable resources. Aboriginal peoples across Canada began to protest against this inequality in the form of blockades. The RCMP played a firm and authoritative role in responding to the blockades of the 1970s, as at Cache Creek and Mount Currie in British Columbia, with reinforcements on call and a *senior officer acting as government spokesperson.*[23] Again, the line between police officers and government was being blurred, and police officers became the targets of violent acts and profanities, which were generally targeted at the grievances against the Department of Indian Affairs and the federal government.[24] RCMP officers continued to act as strict agents of the

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[20] Ibid.
[21] Ibid.
[22] Paul Tennant, Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989. UBC Press: Vancouver, 1990, p. 207.
[23] Ibid., p. 208.
[24] Ibid., p. 207.

Crown, ensuring that all legislative policies undermining Aboriginal cultures implemented and enforced. As a result, the relationship between RCMP officers and Aboriginal peoples deteriorated and was characterized at times by misunderstandings, conflicts and violence. Aboriginal peoples wanted jurisdiction over their own lives, and perceived police officers as enforcers of a repressive colonial government trying to eradicate Aboriginal ways of life.

By the 1970s, Aboriginal peoples began using the courts as vehicles to protest their marginalization in the domain of public policies, which failed to consider and respect Aboriginal rights. Although the courts have been clear about the existence of Aboriginal title to the land as well as the existence of Aboriginal rights[25], the courts have been somewhat unclear as to what these constitute. Many Aboriginal peoples believe that Aboriginal rights also encompass areas pertaining to justice matters, such as policing one's own communities. There have been very few court cases pertaining to justice as an Aboriginal right, and none that have focused specifically on policing issues. However, as the courts validate general Aboriginal rights, Aboriginal peoples have used breakthrough land title victories as stepping-stones to having a greater impact in the realm of justice policies.

The Constitution of Canada has complemented the court's recognition of Aboriginal rights. Federal governments began to formally recognize Aboriginal rights under section 35(1) of the 1982 Canadian *Constitution Act,* which states that, "The existing Aboriginal *and* treaty rights of the Aboriginal peoples of Canada are hereby

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[25] For specific cases, see: Calder v. The Attorney General of British Columbia (1973), Sparrow v. Regina (1989) and Delgamuukw v. The Queen (1997).

recognized and affirmed."[26] The recognition and affirmation of Aboriginal rights in Section 35 of the Constitution acted as a catalyst for the reconceptualization of Aboriginal rights in legal and political discourse.[27] Governments and third parties cannot undertake economic development in areas that would infringe upon treaty rights or any other Aboriginal rights without specific legislative authority to do so. Recently, the Supreme Court of Canada used section 35(1) to state that Aboriginal law is an Aboriginal right. Aboriginal peoples, the court stated, were once "independent nations with...their own practices, traditions and customs."[28] Their right, according to the court's 1997 Delgamuukw decision, includes a distinctive understanding and practice of law.[29] However, because each Aboriginal community is unique in its historical customs and practices, the courts have not been keen in determining what exactly constitutes a "distinctive understanding and practice of law."

Trying to use the "broad brush approach" in applying a single standard of justice and policing across Aboriginal communities would be an inaccurate portrayal of Aboriginal customs and laws. A single "Aboriginal perspective" on justice does not exist. The simple understanding of perspectives or beliefs is that they cannot be singular because of the diversity of Aboriginal peoples. Each Aboriginal community always had its own systems of knowledge and understanding, law and governance, prior to, and after contact. These distinct systems of knowledge, however, do share some commonalities

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[26] Patrick Macklem, "Impact of Treaty 9 on Natural Resource Development," in Michael Asch, ed. Aboriginal and Treaty Rights in Canada, UBC Press: Vancouver, 1997, p. 131.
[27] Catherine Bell and Michael Asch, "Challenging Assumption: The Impact of Precedent in Aboriginal Rights Litigation," in Michael Asch, ed. Aboriginal and Treaty Rights in Canada, UBC Press: Vancouver, 1997, p. 38.
[28] Canadian Broadcasting Corporation, "To Hurt or To Heal," 2000, p. 41.
[29] Ibid.

with shared concepts and beliefs.[30] To illustrate how different beliefs have led to the existence of "cultural divide" in the criminal justice system, the next section of the chapter will focus on two types of belief systems and apply them to definitions of justice.

Historical Foundations and Beliefs

Paul Tennant, a professor of Political Science at the University of British Columbia, has examined Aboriginal rights extensively over the last fifteen years. His field of examination relates directly to the perceptions individuals have of Aboriginal peoples in British Columbia. He tries to reconcile the differences between two different beliefs pertaining to the question of Aboriginal rights. For those that believe in Aboriginal rights, he defines their beliefs as the "Aboriginal Rights View". For those that are against recognizing Aboriginal Rights and varying forms of self-government, he terms it the "Traditional Mainstream Individualist-Majoritarian View."

Tennant's main assertion regarding the Aboriginal Rights view is that before colonialism, Aboriginal peoples lived in distinct and recognizable societies in the form of local communities as component units of tribes or nations. Each of these communities had government, laws, and a recognized territory that often overlapped with other communities.[31] Tennant believes that once an individual recognizes and understands that Aboriginal peoples lived within the context of structures and institutions (i.e. governments, laws, and local communities), it will perhaps enable a believer of the traditionalist-mainstream view to conceptualize Aboriginal peoples as actors within a civil society utilizing operational and functional systems of governance and control.

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[30] Patricia Monture-Angus, Journeying Forward: Dreaming First Nations' Independence, Fernwood Publishing: Halifax, Nova Scotia, 1999, p. 22.
[31] Paul Tennant, Aboriginal Peoples and Politics, 1990, p.11-12.

However, if a non-Aboriginal person disregards the above assertion and claims on the contrary that Aboriginal peoples had no functional or operational structures and institutions prior to contact, then he/she may argue that Aboriginal peoples must exist within existing mainstream structures in order to bring stability and control to Aboriginal communities.

If Aboriginal peoples are thought of as a group of people who had no social control boundaries prior to contact, then it may be argued that Aboriginal peoples should continue to live on reserves, under government control, and in mainstream systems.[32] A non-Aboriginal who believes that Aboriginal peoples must exist within the parameters of mainstream systems of guidance fails to understand that Aboriginal peoples at one time had a number of methods in place to deal with governance issues. If one does not believe that Aboriginal peoples at one point had the ability to govern themselves, then one cannot implicitly understand the difficulties Aboriginal peoples encounter when they access mainstream Canadian structures, for example, the criminal justice system.

For over a century, the aim of the white majority was to limit, control, and determine what Aboriginal minorities could do, and indeed to erase and wipe out the communalism that was inherent in most Aboriginal communities.[33] As Tennant stated to the *Standing Committee on Aboriginal Affairs and Northern Development* in 1999, "The whites began to talk in terms of the majority as a designator, as the source of legitimacy for whatever should happen."[34] Due to historical practices relating to immigration beliefs and philosophies, a majority of 'white-Canadians' emphasized the right of the individual

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[32] Paul Tennant, "Debates," Hansard, Standing Committee on Aboriginal Affairs and Northern Development: Victoria: Empress Hotel, 18 November 1999.
[33] Ibid.
[34] Ibid.

as the most important entity in private and public affairs. In fact, there was a horror of what was called communalism as the immigration process had brought individuals wanting to create new lives.[35] Communalism and any ideals or philosophies stemming from such an ideology were deliberately left out of public systems, such as the criminal justice system, as the onus of an act was placed on an individual and not on the community. Traditional methods of community intervention techniques were left out of the criminal justice system as whites began to legitimize political and social structures that reflected the importance of individuals, rather than a community. A prime example of this in relation to Aboriginal peoples was reflected in the mandate of Indian agents working on behalf of governments to implement certain 'Indian-policies'. There are reports of early Indian agents describing their tasks as being to erase communalism and to erase traditional ways so that assimilation could be achieved.[36]

Prior to the arrival of the Europeans, and contrary to popular belief, the vast majority of Aboriginal communities were not living in a state of complete anarchy. As some prominent anthropologists have revealed, most Aboriginal societies had their own ideas regarding the achievement of justice and dispute resolution. Most Aboriginal customs and laws evolved in response to the need to maintain social harmony in a society dependent upon a hunting and gathering existence.[37] Due to the pressures of surviving in hunting and gathering societies, most Aboriginal communities survived through a sense of community togetherness instead of a "written law" as we see in contemporary Euro-Western structures. Legitimate officers, such as Elders, made binding decisions

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[35] Ibid.
[36] Ibid.
[37] Royal Commission on Aboriginal Peoples, Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada, Ottawa: 1996, p. 20.

regarding the maintenance of social order.[38] Social order was generally maintained through watchpersons (individuals who oversaw proper food allocation, appropriate housing conditions, etc.) and some were chosen cooperatively as counselors (e.g. Elders). Families bore the responsibility for protecting kinsfolk, and in many cases, the accompanying threat of banishment proved an effective deterrent to potential wrongdoers.[39] The intricate relationship between the community and its members reflects that there was a "psychological system" in place to deal with matters of justice.

The bulk of evidence about pre-contact Aboriginal communities proves that there were structures of political association in place and a community of families and clans performed ordering functions of society.[40] Physical structures, such as longhouses, council fires, medicine circles, sweat lodges, etc., were all places where wrongdoers came before a group of persons to reflect upon their actions. Unlike the current penal system and the traditional "jail cell", offenders were not physically separated from the community when dealing with the consequences of their actions. The report of the Osnaburgh/Windigo Tribal Council Justice Review Committee submitted to the *Royal Commission on Aboriginal Peoples* focused on the Ojibwa Nation in Northern Ontario as an example of a Nation practicing interdependent psychological and physical systems of social control. The Committee found that prior to contact, disputes in the Ojibwa Nation would be solved by a person known to both of the disputants, in contrast to the impersonalized machinery adopted by the Canadian justice system. This practice was not only reflected in the oral history of the Ojibwa Nation, but in that of many Aboriginal communities across Canada. As the *Royal Commission on Aboriginal Peoples* noted:

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[38] Ibid., p. 12-13.
[39] Ibid., p. 13.
[40] Ibid.

> Crimes were seen as a hurt against a community of people, not against an abstract state. Community meetings of 'calling-to-account' therefore played an important part in the investigation, evaluation, and sentencing of the accused. Through the shame, they could inspire punishment. The system's primary goal was to protect the community and further its goals.[41]

The individualist-majoritarian view of justice conflicted with Aboriginal notions of group harmony, community interest, and spiritual healing. In the Euro-Canadian justice system, control was elicited over actions the social majority considered potentially or actually harmful to society as a whole, to individuals or to the wrongdoers themselves. Instruments of retribution, such as swift enforcement or apprehension, were used in order to punish harmful or deviant behavior.[42] The emphasis was on the *punishment* of the individual in order to eradicate future deviant behavior. The most common expectation was that individuals would act rationally once they contemplated their misdeeds and completed their sentences in a setting that was separate from society.[43] Punishment and expectations to conform came hand in hand with the conventional model of justice and offenders were expected to learn society's rules while being segregated from it.

Most Aboriginal peoples, by their very cultures and social structures had a relatively small sense of individualism, relying rather on the groups as a unit to aid in alleviating problems. The sole purpose of justice in many Aboriginal societies, was, and continues to be, to restore peace and equilibrium within the community, and to reconcile the accused with his or her own conscience and with the individual or family that has

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[41] Ibid., p. 21.
[42] Public Inquiry into the Administration of Justice and Aboriginal People, Report of the Aboriginal Justice Inquiry of Manitoba: The Justice System and Aboriginal People, Winnipeg: 1991, Chapter 2.
[43] Institutional segregation is not the only type of sentencing option used for offenders. Community service and house arrest are examples of other types of sentencing. The reason I chose to emphasize institutional segregation is because it is the most commonly perceived type of punishment in society.

been wronged.[44] An Aboriginal belief regarding justice is that offenders cannot reconcile with the community unless they learn to live within the community, both as an individual and as a member of a larger structure. As a result, many Aboriginal peoples have stressed the importance of keeping Aboriginal offenders out of segregated penitentiaries and permitting families and community members to oversee the reconciliation process within their own communities.

Although it has not always been the case, the general trend in many Aboriginal communities reflects a strong sense of togetherness, especially in dealing with wrongdoers. In his research, Tennant recognizes that the inherent communalism demonstrated in Aboriginal tribal groups across Canada acts as an opposite to the philosophy of individualism.[45] By its very focus on punishment of the individual, the justice system is a prime example of how the two types of beliefs are in conflict with one another and have difficulty working effectively within the confines of the other. The institutional setting of the justice system is composed mostly of non-Aboriginal peace officers, non-Aboriginal lawyers, non-Aboriginal judges, non-Aboriginal community volunteers, and non-Aboriginal policy makers who have never experienced Aboriginal cultural norms and orders of social control. Metaphorically speaking, the mainstream Canadian criminal justice system is a forum of dialogue that is only understood by those that speak the non-Aboriginal tongue; therefore, it is not an equal institution in the ways it treats its clientele. If Aboriginal justice is not given its meaning by Aboriginal peoples, it is not truly Aboriginal; therefore, it would be a contradiction to talk of non-Aboriginal

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[44] Public Inquiry into the Administration of Justice and Aboriginal People, Report of the Aboriginal Justice Inquiry of Manitoba, 1991, Chapter 2.

[45] Paul Tennant, "Aboriginal Peoples and Aboriginal Title in British Columbia Politics," in R.K. Carty, ed. Politics, Policy, and Government in British Columbia, UBC Press: Vancouver, 1996, p. 11-2.

conceptions of Aboriginal rights when they are actually defined by those that adhere to the individualist-majoritarian view.[46]

Although much of Tennant's research has focused on Aboriginal rights pertaining to self-government issues, his work adequately reflects the general relationship that existed between the mainstream Canadian justice system and Aboriginal peoples. Government policies, such as the aforementioned legislative acts, have been singularly aimed, for over a century, at reducing differences that exist between Aboriginal life and the mainstream of Canadian society, in the hope that Aboriginal peoples would disappear as distinct societies with distinct beliefs.[47] The extent to which Aboriginal peoples have retained their distinctiveness is a testimonial to their strength and endurance as a people. The fundamental hypocrisy of the Canadian justice system is that in principal, the justice system is supposedly the fairest institution of all in Canada. In reality, components of the justice system, such as policing, have at times been unfair in their treatment of Aboriginal peoples.

The above statement is neither groundbreaking, nor exceptional. The criminal justice system in Canada has discriminated against Aboriginal peoples in a systemic manner. The 1992 *Royal Commission on Aboriginal Peoples* found that translation services were inadequate for Aboriginal people, court sittings in Aboriginal communities were infrequent, and the number of Aboriginal peoples who could not afford to pay bail and imprisonment for non-payment of fines was high. Currently, there is an over-representation of Aboriginals in-custody in relation to their population, and there is an

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[46] This is not merely a matter of linguistics, but is connected integrally to self-determination, which is about Aboriginal peoples defining their rights and responsibilities for themselves.

[47] T.S. Palys, Prospects for Aboriginal Justice in Canada (unpublished manuscript), online, Internet: http://www.sfu.ca/~palys/abojust.htm, 31 January 1993, p. 3.

under-employment of Aboriginal people in the justice system.[48] In principle, the Canadian justice system is a forum where neutral laws and policies apply to all Canadians equally. In reality, leaders of a society that is culturally distinct from Aboriginal societies continue to develop those laws and policies.

There have been a number of reports, commissions, and task forces that have recognized the need for change in order to ensure that Aboriginal peoples are treated in a more equitable manner in relation to their cultural identities.[49] One of the largest problems however, lies in the debate regarding adequate and inadequate justice measures. Because justice is not a static concept, and because no one problem-solving criterion can apply to all Aboriginal peoples, it is difficult for all parties concerned to agree upon adequate versus inadequate justice options. For example, the rate of on-reserve population growth has averaged three to four percent in the last two decades, compared with the national average population growth rates of one per cent over the same period.[50] However, because Aboriginal communities are on average smaller and more remote than non-Aboriginal communities, isolation and small size create logistical problems regarding on-reserve policing services.[51] While police presence has generally increased in cities where the population is greater than five thousand, it has decreased in a majority of reserve areas. A large part of the problem is recruiting officers who want to live and work in isolated communities. As I will discuss later in the thesis, until the mid 1980s,

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[48] Royal Commission on Aboriginal Peoples, Bridging the Cultural Divide. 1996, p. 33-57.
[49] For a further analysis of specific reports, see: Report on Aboriginal Peoples and Criminal Justice: Equality, Respect and the Search for Justice, Ottawa: 1991; Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada, Ottawa: 1996; Report of the Aboriginal Justice Inquiry of Manitoba: The Justice System and Aboriginal People, Winnipeg: 1991; Aboriginal People and the Justice System: Report of the National Round Table on Aboriginal Justice Issues, Ottawa: 1993.
[50] Indian and Northern Affairs Canada, Indian Policing Policy Review: Task Force Report, Ottawa: Ministry of Indian and Northern Affairs Canada, 1990, p. 4.
[51] Ibid.

policy-makers failed to put on-reserve policing concerns at the top of their agendas because very little research had been conducted in this area. "Aboriginal rights," and especially those concerned with on-reserve justice issues, were not really understood and were thought as 'side issues'—issues that were unheard of because they were rarely discussed.

Besides policing problems, academics and an array of commissions conducted in the 1990s were unanimous in condemning practices that were to the detriment of Aboriginal peoples at *every* level of the criminal justice system.[52] As Ted Palys, a professor of Criminology at Simon Fraser University, has noted in his research:

> [Aboriginals were] 'over-policed' compared to non-natives; [were] placed under greater surveillance; [were] more likely to be arrested than whites given identical circumstances; [were] less likely to have adequate legal representation; [were] less likely to understand court procedures; [were] more likely to plead guilty; [were] less likely to be granted bail; [were] more likely to be given incarcerative sentences; and [were] less likely to receive probation and parole than non-natives with similar offence histories.[53]

The general picture is easy to understand. Aboriginal peoples were systematically disadvantaged whenever they were placed in the crucible of contemporary Canadian criminal justice.

A significant problem that must be addressed in the criminal justice system is the lack of Aboriginal policy-makers, and as a result, there are inherent biases practiced by those that influence the decision-making process. Unconscious attitudes, biased perceptions, and vague generalizations are easily made against Aboriginal people, as there are few checks and balances within the system by Aboriginals for Aboriginals.

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[52] Law Reform Commission of Canada, Report on Aboriginal Peoples and Criminal Justice: Equality, Respect and the Search for Justice, Ottawa: 1991.
[53] Palys, Prospects for Aboriginal Justice in Canada, 1993, p. 16.

Although individuals may not perceive themselves as biased decision-makers, their lack of cultural affinity with Aboriginal groups can make them outsiders. Even the well-intentioned exercise of discretion can lead to inappropriate results because of cultural or philosophical differences. Because inconsistencies existed between the ways in which Aboriginal offenders and non-Aboriginal offenders were dealt with, the 1992 *Royal Commission on Aboriginal Peoples* held a Round Table Session that dealt specifically with the relationship between Aboriginal peoples and the justice system. One of the major themes that arose from this three-day session was that the current Canadian justice system has failed the Aboriginal people of Canada.

However, many Aboriginal representatives from communities across Canada agreed with the points made by Winnipeg lawyer Greg Rodin, in a presentation on behalf of B'nai Brith to the *Royal Commission on Aboriginal Peoples*. He stated that:

> It is plain to us, however, that [Aboriginals] are victims of discrimination of the most insidious kind; the kind which rarely can be remedied through our legal processes because it is often subtle and well camouflaged. The real source of this discrimination is the well-meaning individual who does not consider himself a bigot but who, without realizing it, adheres to stereotypical views concerning [Aboriginals]. When these individuals hold positions of authority in our institutions, the result is systemic discrimination against [Aboriginals] and perpetuation of injustice and lack of equal opportunity [before the law].[54]

Including more Aboriginal peoples in the decision-making process is the first step in ensuring that Aboriginal peoples have equal access to the Canadian justice system.

The fundamentally different worldview with respect to the substantive content of justice and the process for achieving justice does not satisfy Aboriginal peoples' legitimate demand for respect for their cultural identities. Differences in belief

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[54] Royal Commission on Aboriginal Peoples, Aboriginal Peoples and the Justice System: Report of the National Round Table on Aboriginal Justice Issues, Ottawa: 1993, p. 169.

orientation has caused significant differences in behavior, and when Aboriginal peoples have come into the legal context of the dominant society, the situation appears to foster behavioral conflicts within all units of the criminal justice system.[55] Differences in underlying beliefs and philosophies regarding the role of "justice" are the main focus of contention between these two perceptions of justice. When individuals argue about the over-representation of Aboriginals in the Canadian justice system, they are not necessarily arguing about the existence or the absence of such facts; but rather, conflicts occur when trying to decide how to deal with such a problem. Some argue that the existing system needs to inherit more of an "Aboriginal" sense of justice, focusing on the role of the community and less on the adversarial model of justice. Aboriginal people themselves cannot agree on one standard of justice due to the diversity of their historical and cultural backgrounds. Others argue that the justice system needs to be more "culturally-responsive" to the needs of Aboriginal offenders by incorporating more Aboriginal peoples into the decision-making process. Still others argue about whether the existing system currently works within a defined set of philosophies within its separate components, and whether or not the policing component can recognize that the problem of Aboriginal over-representation is larger than itself.

In a situation that has been nationally recognized as problematic, what one needs to focus on is not the actual statistics, but the ways in which to alleviate biases in order to find solutions to develop an equitable understanding of justice for all Canadians. Both Aboriginal and non-Aboriginal groups consistently try to legitimize their own views, forgetting that beliefs and perceptions run much deeper than arguing and persuasive

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[55] James Dumont, "Justice and Aboriginal People," Royal Commission on Aboriginal Peoples: Aboriginal People and the Justice System, 1993, p. 68.

techniques. There is a fundamentally different world-view between European Canadians and some Aboriginal peoples with respect to such fundamental issues as the substantive content of justice and the process for achieving justice for all. Again, the emphasis should be on trying to understand cultural differences and reconciling the cultural divide so that the criminal justice system can be a fair system for all.

Conclusion

The Euro-Canadian justice system that has been applied to the Aboriginal people of Canada is one that has evolved out of a history that is very different from the cultural and historical legacies of Aboriginal peoples. The current political viewpoints on Aboriginal rights, both for and against, are generally founded upon a political legacy involving the *Royal Proclamation of 1763*, the *British North America Act of 1867*, the *Indian Act of 1876*, the *Constitution Act of 1982*, and their interpretations of decisive court cases. Although the concept of Aboriginal rights is a complex one, there is a clear indication that all levels of government must recognize the special status and rights of Aboriginal peoples.[56] Aboriginal peoples argue that mainstream policing does not meet their political and social needs. Indeed, they suggest that there must be an open dialogue between governments and Aboriginal peoples to develop the types of policing services that are suitable for their own communities.

The discussion of the difference of core beliefs between the two cultures, with their ensuing behaviors, holds that Aboriginal people have little confidence in the conventional criminal justice system. As Professor Tennant's work on Aboriginal rights demonstrates, it is difficult, though not impossible, to reconcile two different systems and

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[56] Vijay Mehta, Policing Services for Aboriginal Peoples, Ottawa: Solicitor General Canada, Ministry Secretariat, 1993, p. 23.

methods of perceptions. Although the beliefs at work in policing, or more generally criminal justice structures, have been legitimized and advanced by the non-Aboriginal majority, it is apparent that Aboriginal conceptions of justice have begun to influence community-based policing. Policy-makers concerned with the over-representation of Aboriginal offenders in custody are initiating policy directives that recognize the cultural uniqueness of Aboriginal offenders. Over the last fifteen years, the criminal justice system in Canada has been less static in its old methods of reactive and swift punishment, and instead, has been more open to new ideas. Aboriginal beliefs, such as communalism and Aboriginal policing have begun to be incorporated into the justice system so that the beliefs of some of Canada's Aboriginal peoples are reflected within the system. Specifically, a focus on law enforcement and delivering culturally sensitive policing to on-reserve Aboriginal communities has become a priority on governments' agendas. Some "new" structures include less reactive and more proactive policing, as the restorative justice model provides community-based policing with general framework in which to address the cultural concerns of Aboriginal peoples.

CHAPTER TWO
ABORIGINAL POLICING IN CANADA

In the mid 1980s, governments began to recognize that the time for change in conventional policing had come. Canadian society as a whole was changing and policing had to reflect society's needs. Due to high immigration patterns from Asia and Africa in the 1960s and 1970s, Canada could no longer be perceived as an annex of European beliefs. The climate surrounding liberation movements were at an all time high, and the introduction of the *Charter of Rights and Freedoms* in 1982 recognized minority rights for the first time in a constitutional context. By 1982, policy makers were beginning to come to terms with the fact that the number of pressures, including shifting trends in society, the need for greater accountability to the public, and a greater ethnic diversity in communities, were challenging all public institutions, including police services to change to meet society's needs. Police services themselves had to reconsider the philosophy, objectives and processes related to their services. The need for a proactive, problem-solving, interactive, accountable system led many to reflect on the manner in which to re-discover the partnership between police and the community to rediscover community-based policing.[57]

By the mid 1980s, community-based policing became a reality, and governments and Aboriginal peoples began to work together to try to address Aboriginal peoples' concerns with policing techniques. A greater emphasis was being placed on the political and practical necessity for Aboriginal peoples to assume greater control over the delivery

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[57] James Chacko and Stephen E. Nancoo, Community Policing in Canada, Toronto: Canadian Scholars' Press Inc., 1993, p. xi.

of policing services to their communities.[58] Police services and Aboriginal communities began to reconsider philosophies, objectives, and processes related to policing in what I have termed the "changing nature of the administration of justice". It was, and still is not, a feasible option to conceptualize justice in the traditional European sense as discussed in chapter one, but within a larger context, a context that addresses Aboriginal peoples' demand for greater cultural respect for their identities. Alongside the community-based policing movement, police officers and administrative services began to focus on Aboriginal policing as a concept. The RCMP, in particular, focused towards on-reserve policing, and began to study methods to improve Aboriginal-police relations. The focus of policing began to change in Aboriginal communities with a greater emphasis being placed on culturally sensitive, problem-oriented, community-based policing techniques.

Community-based policing is one part of the restorative justice framework for addressing crime in ways that are more direct, personal, and constructive than the traditional incarceration techniques employed by the traditional criminal justice system. The United Nations Working Group on Restorative Justice defined restorative justice in 1996 as a "process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future."[59] By redefining crime as harm done to both the victims and the community, restorative justice recognizes that crime is more than an affront to the state. Crime is a breach of community, with real people harmed as a consequence.

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[58] Indian and Northern Affairs Canada, Indian Policing Policy Review: Task Force Report, Ottawa: Ministry of Indian and Northern Affairs Canada, 1990, p. 11-20.
[59] Don Clairmont, Restorative Justice in Nova Scotia, online, Internet: http://www.isuma.net/v01n01/clairmon/clairmon.htm, 2000, p. 2.

The restorative justice approach to crime encompasses many different frameworks, including interventions currently being labeled as "community-based policing" programs. Community-based policing may refer to a wide array of programs, practices and community-based initiatives (including bicycle, foot, and horse patrols, neighborhood block watch programs, neighborhood revitalization programs, and community police offices). In some Aboriginal communities, restorative justice has taken on a still more direct meaning in the context of policing. Restorative justice in the Aboriginal context embodies police officers who are Aboriginal, who are culturally aware of community issues, who speak the language(s) of the community, and who participate in traditional methods of justice. Traditional methods of justice can include sentencing practices, restitution, community service, sweat lodge ceremonies, healing circles, mediation, and a variety of other conflict resolution processes whereby traditional cultural practices are molded with the contemporary restorative justice framework.[60]

Definitional approaches to implementing community justice have often been useful in demonstrating innovative intervention strategies not easily initiated in existing bureaucracies and in bringing policing services closer to neighborhoods. However, the definitional approach may limit the vision and practical application of a distinctive, more holistic response to crime. Given the diversity of programs and initiatives being discussed under the banner of community based policing, it is important to understand restorative justice as a group of techniques enabling communities to have stronger voices in the decision-making process, rather than simplifying the entire spectrum of the program into the bureaucratic jargon of "community-based justice." Along with definitional concerns,

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[60] Gordon Bazemore and Curt Griffiths, Conferences, Circles, Boards & Mediations: Scouting the 'New Wave' of Community Justice Decision-Making Approaches, online, Internet: http://www.cjprimer.com/circles.htm, 1997, p. 7.

it is imperative to note that each Aboriginal community across Canada is unique and no two groups are completely identical in terms of their beliefs in traditional and contemporary cultural justice practices. It is problematic to assume that a 'broad brush' approach to developing restorative justice techniques for each Aboriginal community in Canada will work equally and effectively.

If an understanding of restorative justice is placed with the philosophical framework of a group of techniques enabling communities to have stronger voices in the decision-making process, restoration, or healing, becomes the goal of the justice process. A restorative approach seeks to repair the damage of crime in a number of ways by giving victims a voice in the justice process through some form of mediation; holding offenders directly accountable for their behavior; and giving offenders "a way back" into the community though meaningful sanctions.[61] In essence, restorative justice is concerned less with fixing blame or meting punishment than with "making things right." The concept of restorative justice, in its application of community-based policing, reflects and respects the cultural recognition demanded by Aboriginal peoples in Canada. However, policing policies implemented by federal governments under the umbrella of restorative justice still pose several unique challenges. Not all Aboriginal communities subscribe to the notions of restorative justice and culturally sensitive policing, and some communities are reluctant to become involved in a decision-making process led by non-Aboriginal governments. Some communities make the claim that until the issues of poverty and unemployment are resolved through a strong on-reserve economy, self-

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[61] Gena Gerard, Community-Based Restorative Justice: A Capacity-Building Tool for Confronting Crime, online, Internet: http://freenet.msp.mn.us/org/ssco/rj/rjpaper.htm, June 1997 p. 1.

administered policing alone cannot address the social and cultural problems encountered by Aboriginal peoples.[62]

In accordance with the restorative justice framework, this chapter outlines two major programs undertaken by Canadian governments to help reconcile the cultural and historical divide that has existed in the area of Aboriginal policing: First Nations Self-Administered Police Services and First Nations Community Policing Services. Although a large part of this chapter will be devoted to a discussion on First Nations Community Policing Services, with minor references made later, the remaining chapters will deal more with self-administered police services. The scope of this chapter is to provide the reader with a general overview of Aboriginal policing, and a context for how it fits into the restorative model of culturally sensitive, community-based policing.

"Culturally Sensitive Policing"

Before I begin to examine the legacy of Aboriginal policing in Canada, I believe it is important to identify "culturally-sensitive policing" and its main components. I tried to locate government documents that would provide me with a clear definition of what "culturally sensitive policing" entails. However, I was unsuccessful in my endeavor, and instead found that even bureaucrats working in the Aboriginal Policing Directorate had no records as to the origin of the term. Although there are variations as to where the term came from, two individuals from the British Columbia RCMP headquarters gave me an interesting account of "culturally sensitive policing." Both individuals were not completely positive about the accuracy of their accounts, but I think it makes for an interesting beginning to a much-used term. In their opinions, both stated that when the

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[62] Mike Cardinal, First Nations Police Services Review, report prepared for the Ministry of Justice and Attorney General of Alberta, online, Internet: http://www.gov.ab.ca/just/first/, November 1998, p. 1.

RCMP began to conduct its investigation into the experiences of Aboriginal peoples who had attended residential schools in the early 1980s, a dilemma arose. A majority of victims found it difficult to recall their experiences in the face of constant questioning in interrogation rooms by RCMP officers. Most of the victims had had very little contact with the RCMP, and many did not know what to expect when giving their statements to the police. In a small number of cases, some victims had suppressed their memories for thirty years and were not consciously aware that they had been physically, sexually, and/or mentally abused during the years they attended residential schools.

Very few Aboriginal victims came forward to inform the police about their experiences, but soon it became apparent to the RCMP that there was a pattern of abuse in many residential schools.[63] The easiest method for the RCMP at that time was to obtain victims' names and statements, and to question most, if not every living Aboriginal person who had attended a residential school. In particular, one Aboriginal man from Kuper Island became involved in the questioning process and regained memories of incidents he had not thought about for forty years. He answered all the questions the RCMP asked of him, and three weeks later, he committed suicide.[64]

After the suicide, RCMP officers were criticized for the ways in which they handled the investigation. Both Aboriginal and non-Aboriginal peoples criticized the RCMP for its lack of ongoing support and strict interrogative techniques. Aboriginal peoples especially argued that they were being treated more like suspects than victims.

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[63] Paul Tennant, Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989, UBC Press: Vancouver, 1990, p. 80.

[64] For further information in this area, please see: "No Action Taken on Island to Right Wrongs of Native Residential Schools," Times Colonist, 20 June 1998, B8; "Healing Trauma of Indian Schools Studied," Times Colonist, 7 June 1991, A6; "Plaintiffs Win Access to RCMP Documents in Kuper Island Case," Times Colonist, 22 December 2000, A3; Steve Nyce, "Breaking A Choking Silence," The Province, 25 March 1993, A14.

As a result of public pressure, the RCMP was required to review investigation techniques when dealing with Aboriginal victims. Ultimately, the review found that more "culturally sensitive training" was required for police officers handling any part of the residential school case. "Culturally sensitive training" was nationally recognized as "culturally sensitive policing" in the 1992 Federal First Nations Policing Policy. Although "culturally sensitive policing" is a working policy, there is no definition for the term, and the policy says very little about how "culturally sensitive policing" is to be delivered to Aboriginal communities.

The Federal First Nations Policing Policy

In 1990, the Department of Indian and Northern Affairs Canada released a major review of Indian policing policy titled, *Indian Policing Policy Review: Task Force Report*. The Report grew out of a concern by the Federal Treasury Board for a comprehensive policy framework to guide and support future on-reserve policing programs.[65] The Task Force noted that federal expenditures accounted for nearly sixty percent of all policing programs, while provinces and territories were covering only forty percent of the costs.[66] Along with fiscal concerns pertaining to different funding formulae, increasing costs and increasing demands for services were noted.[67] More and more Aboriginal communities in Canada wanted to establish self-administered police services in their communities. They also wanted these services changed to better meet the needs of their communities.[68]

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[65] Keith B. Jobson, "First Nations Police Services: Legal Issues," 1993, p. 42.
[66] Indian and Northern Affairs Canada, Indian Policing Policy Review: Task Force Report, 1990, p. 5.
[67] Ibid.
[68] Solicitor General Canada, Aboriginal Policing: Consulting Your Community and Preparing a Policing Proposal, Ottawa: Solicitor General Canada, Ministry Secretariat, 1995, p.1.

Under section 91(24) of the Constitution, the federal government, not Aboriginal communities, has the constitutional authority to legislate with respect to law enforcement on reserves. Although the federal government has had the power to establish band and tribal police forces through the application of Section 91(24) since 1867[69], it has done little to exercise this authority until 1990, when Ottawa chose to fund and conduct the Task Force.[70] Ultimately, the Report made little reference to Section 91(24) as it avoided the issue of federal jurisdiction for Aboriginal policing by noting that jurisdiction over policing is "shared" by the provinces and Ottawa, and any specific argument about cost or programs should be dealt with by negotiation.[71] The Task Force also refused to examine Aboriginal rights as a basis for policing services on the grounds that such rights were yet to be determined and, in the meantime, policing services could be settled by negotiation without prejudice to Aboriginal rights.[72]

The fundamental challenge identified by the Task Force was the need to provide all reserves with access to effective policing services. An examination of existing policing services in 1990 suggested that this would require ensuring that reserves have access to the same level of service as other communities in similar locations with similar crime rates; adapting policing services to reflect the social and cultural environments of the bands; training officers to mutually accepted standards prevailing in each region; and providing equipment and facilities that meet mutually accepted standards prevailing in each region.[73] The Task Force noted that significant differences existed in the effective

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[69] Although the 1982 Constitution Act replaced the 1867 British North America Act, the date 1867 is still appropriate since the language of Section 91(24) has not changed since 1867.
[70] Indian and Northern Affairs Canada, Indian Policing Policy Review: Task Force Report, 1990, p. 9.
[71] Jobson, "First Nations Police Services: Legal Issues," 1993, p. 45.
[72] Ibid., p. 42.
[73] Indian and Northern Affairs Canada, Indian Policing Policy Review: Task Force Report, 1990, p. 13.

jurisdiction and scope of services made available for remote, small reserve communities. It further stated that appropriate levels of policing services should be made available to Aboriginal communities across Canada in a manner that would be sensitive to the environment and special requirements of a particular First Nation.[74] In 1992, the federal government adopted the Task Force recommendations, which became known as the First Nations Policing Policy (FNPP).

The 1992 FNPP recognized that Aboriginal communities required a unique form of policing, one that would respond to the cultural, linguistic, and special needs of Aboriginal communities.[75] Under the FNPP, Aboriginal communities have the discretion to work with the federal government and provincial/territorial governments to negotiate Community Tripartite Agreements, outlining police services that meet the particular needs of each Aboriginal community.[76] While the federal government clearly has complete jurisdiction over Aboriginal peoples as outlined under section 91(24) of the Constitution, it has induced the provinces to take on a significant responsibility in providing services to Aboriginal peoples. By virtue of section 88 of the *Indian Act*, provincial laws of general application apply to Aboriginal peoples on reserves.[77]

The purpose of the FNPP is to contribute to the improvement of social order, public security and personal safety in Aboriginal communities, including that of women, children and other vulnerable groups.[78] The FNPP aims to increase responsibility and accountability by supporting Aboriginal peoples in acquiring the tools to become self-

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[74] Ibid.
[75] Solicitor General Canada, Aboriginal Policing: Consulting Your Community, 1995, p.1.
[76] Solicitor General Canada, First Nations Policing Policy, Ottawa: Solicitor General Canada, Ministry Secretariat, 1996, p. 1.
[77] Ibid., p. 16.
[78] Ibid., p. 2.

sufficient and self-governing through the establishment of structures for the management and administration of First Nations police services.[79] Policy-makers are hoping to implement and administer the FNPP in a manner that promotes partnerships with Aboriginal communities based on trust, mutual respect and participation in decision-making.[80] Guiding the FNPP are the following eight principles that must be considered when negotiating tripartite policing agreements:

- Services suited to and respectful to cultural beliefs;
- First Nations police to have jurisdiction to enforce all laws without exceptions;
- Equity in access to service;
- Independence of First Nations policing from band governance, yet accountable to the local community;
- Policing services to support evolving self-government;
- Implementation to be undertaken in a planned and coordinated way;
- Procedures for dealing with complaints, grievances and redress to be characterized by "generally accepted practice and due process"; and
- Local and regional variation.[81]

Under the guidelines of the FNPP, there are three types of policing options available to Aboriginal communities across Canada. The first is a **developmental policing arrangement** that is designed to smooth the transition from one type of policing arrangement to another.[82] For example, this could include a joint policing operation between the local RCMP and members of the Aboriginal community, which would eventually lead to the establishment of a First Nations self-administered police service.

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[79] Solicitor General Canada, "The First Nations Policing Policy: Objectives of Study," online, Internet: http://www.sgc.gc.ca/whoweare/Aboriginal/efnpp.htm, 2 June 2000, p. 2.
[80] Ibid.
[81] Jobson, "First Nations Police Services: Legal Issues," 1993, p. 45.
[82] Solicitor General Canada, Aboriginal Policing: Consulting Your Community, 1995, p. 4.

As I will discuss later, the most prominent developmental policing arrangement is called the First Nations Community Policing Service. The RCMP plays the largest role in administering this program, and tries to ensure that a smooth and a more culturally sensitive transition can occur for Aboriginal police officers.

The second is a **special contingent of First Nations Officers** within an existing police service, including:

- First Nations officers working in a provincial or municipal police service with dedicated responsibilities to serve a First Nations community; and
- A group of First Nations police officers hired on contract to provide police services to an on-reserve community.[83]

Some examples of specific tasks of a special contingent of First Nations Officers would include securing crime scenes, being primary responders, and interpreting statements. Generally, a special contingent of First Nations Officers is required for isolated Aboriginal communities, so that police response is prompt.

The third type of policing option available to Aboriginal peoples is the **First Nations Administered Police Service**. It is the most significant of the three because it is the only arrangement whereby Aboriginal police services are organized on a community, tribal, regional, or provincial basis, dealing specifically with on-reserve Aboriginal communities.[84] Self-administered police officers have full policing jurisdiction over a particular area and have full authority as police officers. Self-administered police forces have their own police boards and rely strongly on the input from community consultation groups to help with the direction of policing in a particular community. Depending on the specific tripartite agreement made with the Department of Solicitor General, and its

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[83] Solicitor General Canada, First Nations Policing Policy, 1996, p. 6.
[84] Ibid.

provincial counterparts, Aboriginal communities, if they choose, have access to any of the above three types of policing services in Canada.

The Aboriginal Policing Directorate (APD), a part of the Department of Solicitor General in Ottawa, is responsible for the implementation and administration of the FNPP. The APD, in partnership with Aboriginal peoples, provinces, and territories undertakes both on- and off-reserve policy, and research and program development work in the area of Aboriginal policing.[85] The APD oversees all development work in the process of achieving three-party (tripartite) negotiations between Aboriginal peoples, federal and provincial/territorial governments. Community tripartite policing agreements are designed to give Aboriginal communities access to First Nations police services that are professional, effective, responsive, and acceptable.[86] They set out the exact roles and responsibilities of the Solicitor General and the particular province/territory. For example, under the FNPP, funding is available for First Nations police services on a cost-shared basis- 52 per cent federal and 48 per cent provincial or territorial.[87] Tripartite policing agreements give concrete expressions to the role that Aboriginal communities play in the determination of the level and quality of the policing services that they receive.

The following chart outlines the tripartite policing arrangements in existence across Canada as of February 2001.

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[85] Ibid., p. 9.
[86] Solicitor General Canada, Aboriginal Policing: Consulting Your Community, 1995, p.1.
[87] Solicitor General Canada, Aboriginal Policing Directorate: Funding Guidelines, Ottawa: Solicitor General Canada, Ministry Secretariat, 1995, p. 5.

FIRST NATIONS POLICING POLICY ARRANGEMENTS - 2001[88]

Province/ Territory	Type of Police Service	Funding Formula [Fed:Prov]	Enabling Authority	Status of Police Constables	Enforcement Authority	Training	Governance Authority
British Columbia (Framework Agreement)	RCMP **FNCPS**[89] - 39 officers	52%: 48%	23 Tripartite Agreements	RCMP officers	Full authority	RCMP - Regina	Community Consultative Committee
	Stand alone **FNSAPS**[90] -13 officers	52%: 48%	3 Tripartite Agreements	Special Provincial Constable S. 9 Police Act SBC; one service under 4.1 of Police Act	Full authority	Police Academy of Justice Institute	Police Board of First Nations community members
Alberta (Framework Agreement)	Stand alone **FNSAPS** -61 officers	52%: 48%	7 Tripartite Agreements	First Nations police officer S. 42 Police Act	2 services have full policing authority	Alberta Justice Staff college	Police Commission
Saskatchewan (Framework Agreement)	RCMP **FNCPS** -87 officers	52%: 48%	30 Tripartite Agreements	RCMP officers	Full authority	Regina	Community Consultative Committee
Manitoba (Framework Agreement)	RCMP – **FNCPS - 10 officers**	52%: 48%	3 Tripartite Agreements	RCMP officers	Full authority	Regina	Community Consultative Committee
	Stand Alone **FNSAPS** - 26 officers	52%: 48%	1 Tripartite Agreement	Peace officers by Manitoba Justice	Full authority	Brandon city Police, Winnipeg PD	First Nations Police Commission
Ontario	Stand Alone **FNSAPS** - 312 Officers	52%: 48%	8 Tripartite Agreements	First Nations constables S.54 PSA	Full Authority; Some OPP Protocol	Ontario Police College	First Nations Police Services Board
Quebec	Stand Alone **FNSAPS** – 90 Officers[91]	52%: 48%	10 Tripartite Agreements	First Nations officer under Quebec Police Act	Full police authority throughout province	L'ecole Nationale du Police du Quebec	First Nations Government & Public Security Committees
	Stand Alone **FNSAPS** – 153 Officers	52%: 48%	19 Tripartite Agreements	First Nations officer under Quebec Police Act	Full authority - some limitations in jurisdiction	L'ecole Nationale du Police du Quebec	First Nations Government & Public Security Committees
New Brunswick (Framework Agreement)	RCMP FNCPS -5 Officers	52%: 48%	3 Tripartite Agreements	RCMP officers	Full authority	Regina	Aboriginal Advisory Committee

[88] Formulated from two sources:
(a) First Nations Chiefs of Police Association and Human Resources Development Canada, "First Nations Policing Arrangements: 1998," online, Internet: http://www.soonet.ca/fncpa/hrdc/arrangements.htm;
(b) Current information gathered from Aboriginal Policing Directorate Regional Offices across Canada.
[89] **FNCPS**- First Nations Community Policing Service.
[90] **FNSAPS**- First Nations Self-Administered Police Service.
[91] In Quebec, a number of self-administered services with limited jurisdiction are in the process of renegotiating their enforcement authority; therefore, the numbers of officers is only an approximate figure.

Nova Scotia (Framework Agreement)	RCMP **FNCPS** - 10.5 officers[92]	52%: 48%	4 Tripartite Agreements	RCMP officers	Full authority	Regina	Aboriginal Advisory Committee
	Stand Alone **FNSAPS** - 17 Officers	52%: 48%	1 Tripartite Agreement	Peace officers per RCMP Act and NS Act	Full authority	Atlantic Police Academy; RCMP Academy	First Nations Police Board
Prince Edward Island (Framework Agreement)	RCMP **FNCPS** - 1 officer	52%: 48%	1 Tripartite Agreement	Peace officer per RCMP Act	Full authority	Regina and local RCMP	First Nations government
Yukon (Framework Agreement)	RCMP **FNCPS** - 4 officers	52%: 48%	1 Tripartite Agreements	Peace officers per RCMP Act	Full authority	Regina and local RCMP	First Nations government
Northwest Territories (Framework Agreement)	(Pilot Project) Community Constables -22 officers	100% Territorial Transfers	First Nations Community Policing Agreement	Special RCMP Constables	Ltd. Authority -First Responders	Regina	Community Council and Solicitor General
Nunavut (Framework Agreement)	(Pilot Project) Community Constables -9 officers	100% Territorial Transfers	First Nations Community Policing Agreement	Special RCMP Constables	Ltd. Authority -First Responders	Regina	Community Council and Solicitor General

As the above chart demonstrates, by February 2001 there were 114 First Nations Policing Policy agreements in total, and out of these, forty-nine were established First Nations Self-Administered Police Services (FNSAPS). Compared to other programs, FNSAPS is the most significant because it is the only arrangement whereby Aboriginal police services are organized on a community, tribal, regional, or provincial basis, dealing specifically with on-reserve Aboriginal communities.[93] Because FNSAPS is the only Aboriginal policing program in existence that lets local communities practice policing services that are separate from RCMP control, while simultaneously being culturally sensitive to a community's needs, I will examine this program in much greater detail in chapter five. For now, it is important to note that such a program exists and Aboriginal

[92] One officer works part-time.
[93] Solicitor General Canada, First Nations Policing Policy, 1996, p. 6.

communities have the option of establishing self-administered police services if they choose to do so.

The second major program utilized in Canada under the mandate of the 1992 First Nations Policing Policy is the First Nations Community Policing Service (FNCPS). By February 2001, sixty-five FNCPS agreements were signed across Canada between Aboriginal communities and local RCMP services. The FNCPS is governed by two separate agreements: a standard Framework Agreement between the province/territory and the federal government outlining funding and other managerial arrangements; and a Community Tripartite Agreement, outlining the specific details of the community policing service.[94] Across Canada, seven provinces and all three territories have a RCMP Framework Agreement in place, which acts as an umbrella agreement for all FNCPS programs. The provinces/territories that do not have Framework Agreements in place are those that are not policed by the RCMP. Although federal and provincial officials play a part in the establishment of FNCPS contingents, the RCMP plays the largest part in that it has the authority to outline the terms and conditions of the program.

The responsibility for recruiting, training, assigning, and supervising the cadre of RCMP officers providing the FNCPS in a particular community rests ultimately with the Commissioner of the RCMP.[95] In assigning specific members to a community, the RCMP takes into consideration desired characteristics identified by a community consultative group. Two major requirements of the FNCPS program are that the community consultative group must comprise a cross-section of community members, and that all FNCPS police officers must be of Aboriginal descent. Community

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[94] Royal Canadian Mounted Police, "The RCMP First Nations Community Policing Service," online, Internet: http://www.rcmp-ccaps.com/ccaps.htm, 1999.
[95] Ibid.

consultative groups help assist in the identification and implementation of community policing initiatives by bringing policing concerns directly to the attention of the on-site RCMP commander. The RCMP provides the Chief, the Council, and the community consultative group, with periodic status reports and crime statistics that identify crime trends and clearance rates on a monthly basis.[96] The province's share of funding the FNCPS is 48% and the federal share is 52%. The program represents an enhancement to the RCMP provincial police service.[97]

The RCMP has full jurisdiction over the type of unit or detachment FNCPS officers work within. FNCPS members can work in full detachments, satellite detachments, or outside detachments. Full detachments, for example, are autonomous units with complete national records systems and fully developed administration units that function separately from all other detachments. Full detachments can be set up in Aboriginal communities that are isolated from other RCMP detachments due to distance or terrain.[98] Satellite detachments work in conjunction with "host" detachments outside the community. They are less involved in the administrative aspects of police work, but they do function as independent units as the community deals directly with the members assigned to the detachment.[99] Outside detachments operate as full detachments, but are situated outside the Aboriginal community and generally police a wider geographic area than just the community.[100] Outside community policing is generally appropriate where the level of service needed in an Aboriginal community is low, due to low population and

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[96] Ibid.
[97] Ministry of Attorney-General: Public Safety and Regulatory Branch (British Columbia), Police and Crime Summary Statistics: 1990-1999, online, Internet: www.ag.gov.bc.ca/polic_services/publications/90-99_narrative.pdf, 2000, p. 15.
[98] Royal Canadian Mounted Police, "The RCMP First Nations Community Policing Service," online, Internet: http://www.rcmp-ccaps.com/ccaps.htm, 1999.
[99] Ibid.
[100] Ibid.

crime rates.[101] Police officers working within the FNCPS in any of the above detachments are RCMP officers, with full training and enforcement authority.

In the Northwest Territories (NWT) and Nunavut, the Aboriginal policing model is different from both the FNSAPS and the FNCPS. In the NWT and Nunavut, a pilot project was initiated to place one Community Constable in each Aboriginal community wanting to participate in the program. As the above chart demonstrates, twenty-two communities in NWT and nine in Nunavut are participating in this program. There are three major differences between this program and the FNSAPS and the FNCPS. First, the direct funding for the program stems from the territorial governments and not the federal government. The territorial government transfers funds to local councils, and councils (in conjunction with the community) decide how to allocate the funds for ongoing police services.

The second difference is that neither territory has a provincial police act in effect. Any policing occurring in the areas must adhere to the *RCMP Act*, which is the only police act that applies nationally. As a result, the training of the Community Constables and the equipment used by them are funded via the Ministry of the Solicitor General. The final difference is that Community Constables do not have the same authority as officers working within the FNCPS and the FNSAPS programs. Community Constables are generally there to act as first respondents, to ensure that crime scenes are secure, and to handle minor offences. In serious cases, the RCMP assists each Constable in finding a resolution to the problem. The Community Constable program is still quite new, and the overall effectiveness of such a program is still difficult to decipher. The only thing that can be referred to with any certainty is that the community and the Constables can work

[101] Ibid.

together to build a direction for the community that entails social harmony, prompt response times, and increased community involvement.

In those communities where a tripartite agreement has not yet been signed, the RCMP continues to operate its Aboriginal Community Constable Program (ACCP).[102] The ACCP is a joint partnership between the governments of the Provinces/Territories, the RCMP, and individual communities. Currently, the program is being phased out and being replaced by the FNCPS program.[103] The major difference in the ACCP is in the funding formula, where the provincial share is 54% and the federal share is 46%. When the ACCP was active in recruiting officers, the RCMP and communities selected candidates to become By-law enforcement officers.[104] This program is similar to the Village Public Safety Officer program initiated in Alaska, as I will discuss in the next chapter, as well as the Community Constable program in Nunavut and the NWT. It gives the community constable basic training in law enforcement, fire suppression, search and rescue, water safety, and emergency medical services. The Program was designed so that local residents would police isolated Aboriginal villages, thereby employing villagers to provide for the public safety needs of their respective communities.[105]

Depending on the policing needs of a particular Aboriginal community, Aboriginal peoples themselves must play the key role in shaping the level and quality of police service they receive. Negotiating the conditions and terms of policing services helps Aboriginal communities structure police services that respect their culture and

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[102] Ministry of Attorney-General: Public Safety and Regulatory Branch (British Columbia), Police and Crime Summary Statistics: 1990-1999, online, Internet: www.ag.gov.bc.ca/polic_services/publications/90-99_narrative.pdf, 2000, p. 16.
[103] ACCP statistics not in the chart as the program is technically not part of the 1992 First Nations Policing Policy Arrangements.
[104] Royal Canadian Mounted Police, Aboriginal Policing, online, Internet: http://users.internorth.com/~rcmpgdiv/aboriginal.htm, 1997, p. 3.
[105] Ibid.

beliefs and which are equal in quality to police services found in similar communities elsewhere in their region. In the three-party negotiations process, Aboriginal communities play a major role in choosing the type of police service that best suits their needs. Each community first prepares a policing proposal outlining what specific type of policing they require. Community consultations are a mandatory part of the process as police services are expected to balance the need for cost-effectiveness and the special policing needs of particular communities.[106] Depending on which of the options an Aboriginal community decides to pursue, Aboriginal police officers usually have the full range of policing responsibilities and authority to enforce provincial and federal laws (including the *Criminal Code*), and Band by-laws.[107] In the final agreement, there are provisions pertaining to the responsiveness of police boards, commissions and advisory bodies, and their independence from inappropriate partisan and political influences. These may include conditions regarding mechanisms for impartial and independent review of improper exercise of police powers; violations of codes of conduct; and mechanisms for grievances and redress on matters related to discipline and dismissal.[108]

The First Nations Policing Policy has allowed Aboriginal peoples to devise plans to police their own communities. 1992 was a historic year for Aboriginal peoples in Canada; for the first time in Canada's history, Aboriginal peoples achieved a significant level of autonomy in the area of policing policy. Aboriginal community consultative groups can structure a police service that meets the needs of maintaining social order, public security, and personal safety if they choose to do so. Community involvement in policing has increased as communities go through the process of developing a policing

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[106] Solicitor General Canada, Aboriginal Policing Directorate: Funding Guidelines, 1995, p. 5.
[107] Ibid., p. 6.
[108] Ibid.

proposal, becoming involved in the negotiations, and developing policing standards. First Nations Self-Administered Police Services and First Nations Community Police Services are unique models in that they give greater local control to Aboriginal communities to ensure that the particular needs of each Aboriginal community are met.

Problems in the Changing Nature of the Administration of Justice

The implementation of the FNPP is part of the changing nature of the administration of justice in Canada, and Aboriginal policing initiatives are a major component of the restructuring of the general criminal justice system. Policing is not a static concept and Canadian policy-makers are working in conjunction with Aboriginal communities in an attempt to restructure policing. Aboriginal policing is being defined so that it incorporates more community-based initiatives. Community-based policing initiatives require the breaking down of traditional definitions of justice that separate the two groups and the restructuring of their mutual expectations. The changing nature of the administration of justice promotes frequent voluntary contact between the public and the police, and it recognizes that police officers are most often required for services other than law enforcement. Accordingly, community-based policing initiatives provide police officers with the knowledge, skills, orientation, and motivation appropriate for different types of interactions.[109] However, the transition to on-reserve community policing is not complete and it still faces several unique challenges.

In almost all Aboriginal communities, it is difficult to determine what constitutes proper culturally sensitive policing techniques. There is no standard template that every

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[109] Robert Depew, "Policing Native Communities: Some Principles and Issues in Organizational Theory," in James Chacko and Stephen E. Nancoo, eds. Community Policing in Canada, Toronto: Canadian Scholars' Press Inc., 1993, p. 270.

Aboriginal community can follow, and many of them rely on the RCMP to set out the conditions and policies of developing their own police forces during tripartite negotiations. This dependence can sometimes cause friction between the two groups due to the cultural divide that exists between them regarding the role of policing. The majority of conventional police services (i.e. RCMP officers) still contain "older" officers who are not familiar with, or are resistant to new policing initiatives, such as Aboriginal policing. Their methods of enforcement are still consistent with the older criminal justice system that was originally designed to prosecute, punish, and deter offenders.[110] A traditional crime control model aimed at detecting offenses, apprehending criminals and laying charges still exists as "older" officers enforce laws. Although community-based policing is standard policing policy now, there are still some limitations that stem from the traditional police organization's emphasis on reactive policing. Just because community-based policing is a policy, it does not necessarily mean that Aboriginal peoples will no longer be mistreated by police officers as some have been in the past.

Over the years, traditional Aboriginal conceptions of justice have been eroded by mainstream justice practices and a cultural divide has been created in the area of policing. This erosion has led some Aboriginal peoples to rethink their traditional methods of policing. The line between traditional methods of Aboriginal policing and conventional methods of RCMP policing is becoming blurred, and some Aboriginal communities are refusing to participate in *any* policing negotiations, and more generally, in any restorative models of justice.[111] Some Aboriginal communities argue that there is little cultural value in establishing Aboriginal police forces when they are influenced so strongly by the

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[110] Ibid., p. 252.
[111] Ibid., p. 253.

RCMP (especially in the case of the FNCPS program). Others argue that conventional police forces need to abstain from all aspects of the negotiations process and Aboriginal policing policies should be based entirely on laws and beliefs as set out by a particular community. Some reserve communities believe that they have effective informal social control mechanisms and institutions to police themselves on the basis of their own social resources and that there is no need to participate in other forms of community-based policing program.[112] There is a large concern, and even resistance to, the aspect of policing strategy involving controls and conformity.[113]

Along with questioning the validity of Aboriginal policing programs by Aboriginal peoples, the development of Aboriginal policing services has been accompanied by a number of operational concerns with recruitment, selection and training, as will be more thoroughly discussed in chapter five. Generally, there seems to be a lack of available qualified on-reserve police candidates, inadequate selection standards, and insufficient basic recruit training.[114] One of the largest problems facing Aboriginal policing services is that many of the Aboriginals who want to go into law enforcement do so through non-Aboriginal means. Like any other group of individuals, they take the aptitude test, go to Regina for RCMP training for a period of six months and then are put in areas where there are few Aboriginal peoples. There are many qualified Aboriginal officers working in law enforcement, but they have chosen to join conventional police forces and have intentionally strayed away from Aboriginal policing

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[112] Ibid.
[113] Cardinal, First Nations Police Services Review, 1998, p. 6.
[114] Ibid., p. 15.

programs. They want to be recruited to work in urban areas where living standards are considered to be better than in rural, isolated communities.[115]

Aside from recruitment concerns, critics of the program argue that selection standards have become too low and non-qualified candidates are too easily becoming police officers.[116] There is little formal training beyond basic recruit training made available to Aboriginal police officers.[117] This in turn can have a negative effect on the level of policing they provide to their communities. In Alberta, for example, a report prepared for the Ministry of Justice and Attorney General points to poor training and a lack of ongoing training as problem areas for the FNSPAS programs in the province. The report goes onto state that poor training and a lack of ongoing training can lead to "officers who are not current with new laws; who are not familiar with revisions in police procedures, rules and regulations and, most critically from a liability perspective, firearms re-qualification and the use of force."[118] Formalized in-service and advanced training should be developed, delivered and made mandatory for Aboriginal police officers. Training inadequacies can possibly be overcome if a national Aboriginal police-training center is developed to provide basic and ongoing advanced training courses. Basic training could be applied to every Aboriginal officer who is working under the FNPP.

In all the programs I have mentioned thus far, the greatest difficulty is policing one's own community. As I will discuss in the cases of Australia and Alaska in the next chapter, it is not infrequent for an Aboriginal constable who is attempting to provide for

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[115] Ibid.
[116] Ibid., p. 16-17.
[117] Ibid., p. 16.
[118] Ibid.

the public safety needs of a specific reserve or village to be related to many of the villagers, with social ties with the rest of the community so strong that a law enforcement function is compromised.[119] Consequently, it is becoming more difficult to find villagers willing to serve as community constables in their own villages. One way to alleviate this problem would be to recruit Aboriginal Constables from outside the communities they police. This practice can work quite well if officers speak the same language(s), and have some informal understanding of the community's sense of direction related to policing procedure before they start their positions. In my discussion in chapter three, I will examine in greater detail how Alaska has dealt with filling the "cultural gap" when community constables come to work in villages outside of their own. If proper training is provided to the constables, it is usually the case that over time, social ties can be built in the community without the strain of policing one's families. As the ACCP is being replaced by FNCPS tripartite agreements, the hope is that the community and First Nations officers can work together to build a direction for the community that entails social harmony, community involvement, and traditional methods of community justice.

Although the FNPP is a working policy, a large percentage of Aboriginal communities across Canada are still not part of the program. Many bands are weary of signing onto a program that has had its share of failures. Poor candidate selection and lack of proper training have caused some communities to have little faith in Aboriginal police services. Other commonly identified problems include little community contact, a lack of preventative policing, as well as a sense that the officers themselves lack the

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[119] Darryl Wood and Lawrence C. Trostle, "The Nonenforcement Role of Police in Western Alaska and the Eastern Canadian Arctic: An Analysis of Police Tasks in Remote Arctic Communities," Journal of Criminal Justice 25, 1997, p. 370.

knowledge, skills and abilities necessary to function effectively as police officers.[120] For some Aboriginal communities, a "second class" perception of Aboriginal police services may lead to the preference of still being policed by the RCMP. Without losing sight of the special needs and aspirations of Aboriginal communities, it is important that the present operational deficiencies be specifically addressed in a meaningful way.[121] The 1992 FNPP was put into effect to balance differing perceptions of justice; yet it is not in effect in every Aboriginal community in Canada, and many communities are still having difficulties dealing with local law enforcement officials. The 1992 Policy reflects a changing nature of the ways in which justice is administered; ironically however, it forces Aboriginal peoples to continue to depend on government policies in order to restore a traditional sense of justice in their communities.

Conclusion

Traditionally, justice in the context of policing had a very different meaning in Aboriginal societies than in the dominant society. To Aboriginal peoples, the concept of "justice" meant to restore peace and equilibrium to the community by reconciling the offender with his/her own conscience as well as with the victim and the victim's family.[122] On the other hand, conventional policing expectations became conceptualized as consistent with a reactive criminal justice system that was generally designed to prosecute, punish and deter offenders, and Aboriginal peoples were expected to 'respond' to the existing structures. Police forces, being the most visible and obviously powerful manifestations of a dominant society, its institutions, customs and laws, began to change

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[120] Cardinal, First Nations Police Services Review, 1998, p. 17.
[121] Ibid., p. 19.
[122] First Nations Chiefs of Police Association, "Setting the Context: Historical Background," online, Internet: http://www.soonet.ca/fncpa/hrdc/historical.htm, 6 October 2000, p. 1

in the mid 1980s to respond to a more community-based approach to policing. Simultaneously, as Aboriginal rights were legitimized in the courts, Aboriginal peoples were, and continue to be, determined to increase the scope of their political aspirations to include Aboriginal law and justice rights. Since 1992, Aboriginal rights have included the right to administer on reserve self-policing. The federal government has recognized that the political aspirations of Aboriginal peoples were, and continue to be, very closely tied to justice issues, especially those pertaining to policing issues, and the overall goal of any policing service is ultimately to prevent crime.

Having acknowledged that there is a basis for Aboriginal resentment, the challenge for the provincial government and the Royal Mounted Canadian Police is to consider Aboriginal perspectives when devising *appropriate* police strategies. All Aboriginal communities are unique, and each requires different levels of policing strategies to help reconcile the divide. In order to incorporate Aboriginal beliefs into the delivery of police services, Canadian policy-makers have looked at how other countries in the world have dealt with the cultural divide in policing. It is important to examine the initiatives taken by countries Canada has looked towards for guidance. Therefore, the next chapter of the thesis will examine how policing in Australia and Alaska has tried to reconcile the cultural divide between Aboriginal beliefs and mainstream beliefs, and how this 'reconciliation' has begun to change the nature of the administration of policing services in those countries.

CHAPTER THREE

ABORIGINAL POLICING IN AUSTRLIA AND ALASKA

The environment of policing around the world is rapidly changing and governments have had to respond to these changes. Aboriginal peoples' demand for greater cultural respect for their identities and communities has in a sense forced countries with large Aboriginal populations, like Canada, Australia, and Alaska, to address Aboriginal peoples' concerns with policing services for Aboriginal communities. Police officers are a critical component of the criminal justice system, as they define concepts of justice through their roles of being first respondents, enforcers and decision-makers. Coupled with the fact that police officers are the most visible and obviously powerful manifestation of a dominant society, its institutions, customs and laws, it is important to specifically examine the law enforcement component of the justice system. In Australia and Alaska, their justice systems have identified the need to recognize the cultural rights of Aboriginal peoples in the delivery of policing services.

Canadian scholars and decision-makers have examined the programs undertaken in Australia and Alaska as possible solutions to overcome the problems encountered by Aboriginal peoples and police officers in Canada.[123] The popular and widespread policing initiatives in Alaskan and Australian Aboriginal communities are important because Australia has been commended on its resolve to implement restorative community-based policing, while Alaska has been practicing specific self-administered Native policing programs since the 1960s. Although Australia can provide Canada with a

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[123] Les Samuelson, Discussion Paper: Aboriginal Policing Issues: A Comparison of Canada and Australia, Ottawa: Solicitor General Canada, Ministry Secretariat, 1993, p. 1.

direction on innovative restorative justice policing programs, Alaska can provide the longevity required to review and thoroughly examine the effectiveness of such programs.

This chapter will examine the changing nature of policing in Aboriginal communities, both in Alaska and Australia. There will be a brief description of the historical relationship between Aboriginal peoples and the justice system in Australia, with a specific focus on the role of the police in fostering a particularly negative relationship between the two groups. I will introduce some guidelines and programs utilized by Australian governments in trying to reconcile Aboriginal and non-Aboriginal concepts of justice. The discussion will then turn to Alaska, with an examination of the historical relationship between Native people and the justice system there, and how Alaska has decided to address the cultural divide between Native and non-Native police services. I will conclude with a brief comparative analysis as to the common underlying themes found in both, and a discussion of the lessons Canada can learn from the two case studies.

Australia: The Policing Legacy

From the Aboriginal perspective, the criminal justice system in Australia is an alien one, imposed by the dominant white society. Wherever Australian Aboriginals turn or are shuttled throughout the system, they encounter white faces.[124] Not surprisingly, Aboriginals regard the system as deeply insensitive to their traditions and values; many view it as unremittingly racist. Abuse of power and the distorted exercise of discretion by police officers are identified time and time again as principal defects of the system. Since the mid-1990s, police forces throughout Australia have begun to examine the

[124] Hal Wootten, "Aboriginal People and the Criminal Justice System," in Chris Cunneen, ed., Aboriginal Perspectives on Criminal Justice, Sidney University Law School: Sydney, Australia, 1992, p. 49.

policing needs of Aboriginal communities, and have been more flexible and innovative in seeking solutions.[125] However, for Aboriginal peoples living in remote and reserve communities, the process of change has been slow and difficult.

Historically, Australian governments have followed a legacy of public policies hoping that Aboriginal cultures, and in some cases, peoples would cease to exist. In the early years of colonization, it was an explicit policy for governments to implement initiatives that would ensure the destruction of Aboriginal peoples.[126] Aboriginals were ignored in the public arena of policy-making except when governments decided to implement further policies that would hinder the advancement of Aboriginal communities. What could be termed as outright 'assimilation techniques' in Canada could be termed as 'extinction techniques' in Australia. It is generally agreed by academics that in comparison to Canada's treatment of Aboriginal peoples, Australian Aboriginal peoples encountered an even more direct form of racism where entire government structures were developed to try to extinguish Aboriginal cultures. For example, the historical role of police officers was to act as agents of colonization who were responsible for the extinguishment of Aboriginal peoples in remote parts of Australia.[127] The historical legacy between Aboriginal peoples and police forces can be characterized by the following observation made by the Australian *Royal Commission into Aboriginal Deaths In Custody* in 1991:

> There was one aspect of the relations between Aboriginal people and non-Aboriginal people which was very important to note for it exemplified to everyone else where the relationship was at its worst; this is the relationship, or the lack of a relationship,

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[125] Australia Reconciliation and Social Justice Library, The Recognition of Aboriginal Customary Laws-866: Self Policing, online, Internet: http://www.austlii.edu.au/au/special/rsjproject/rsjlibrary/alrc/custlaw2/237.html, 22 November 2000, p. 1.
[126] Ibid., p. 13.
[127] Ibid., p. 12.

> between Aboriginal people and the police forces of the dominant society.[128]

The criminal justice system in Australia has been used as a tool to discriminate against Aboriginals. As is the case in Canada, Australian Aboriginals were historically over-policed compared to non-natives; were placed under greater surveillance; and were more likely to be arrested than whites given identical circumstances.[129] One major factor fuelling 'over- policing' of Aboriginal peoples is in the transference of old colonial racist attitudes and practices into a new 'Law and Order' campaign. Some Australian academics argue the 'Law and Order' program, which arose in Queensland, but quickly filtered to the rest of the Australia, resulted from social tensions that arose from a depressed national economy.[130] Frequently solutions were sought through a coercive shift to expansion of police powers, changes in the criminal law, and harsher sentencing practices of the court.[131] The *National Inquiry Into Racist Violence* in Australia found that the emergent 'Law and Order' campaign has been directed particularly at Aboriginal peoples. It concluded that police forces view Aboriginal peoples as the root cause of the law and order problem, and as a result:

> Have mistakenly began to fear Aboriginal peoples as a group outside the assumed socially homogenous values which provide legitimacy for acts of racist violence...of which police violence is the most extreme and of the most concern.[132]

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[128] Royal Commission Into Aboriginal Deaths in Custody, National Report: Overview Recommendations, Canberra: Australian Government Publishing Services, 1991, p. 10.
[129] (Canada reference): T.S. Palys, Prospects for Aboriginal Justice in Canada (unpublished manuscript), online, Internet: http://www.sfu.ca/~palys/abojust.htm, 31 January 1993, p. 16;
(Australia reference): Pat O'Shane, "Aborigines and the Criminal Justice System," in Chris Cunneen, ed., Aboriginal Perspectives on Criminal Justice, Sidney University Law School: Sydney, Australia, 1992, p. 3.
[130] Les Samuelson, Discussion Paper, 1993, p. 31.
[131] Ibid.
[132] Human Rights and Equal Opportunity Commission, Report of National Inquiry Into Racist Violence in Australia, Canberra: Australian Government Publishing, Service, 1991, p. 121.

Largely as a result of the 'Law and Order' campaign, mixed with poor historical relations between the two, police forces have discriminated unfairly against Aboriginal peoples due to national attitudes. The relationship can be accurately described as a coercive relationship, one in which police officers were required to act as agents of the Crown in implementing policies meant to socially and culturally dislocate Aboriginal communities. However, Aboriginal peoples have survived government havoc. This persistence has led current governments to deal with the problematic relationship between Aboriginal peoples and police forces in ways that set up structures whereby Aboriginals have a small voice in the decision-making process.

Towards Reconciliation

In the 1960s, the findings of a research study conducted by Dr. Elizabeth Eggleston gained wide circulation and attention as it focused on the deteriorating relationship between police forces and Australian Aboriginal peoples.[133] Her most significant finding was that Aboriginal peoples were victims of racism in the criminal justice system.[134] She discovered that racism was manifested by police, magistrates, judges and prison authorities, and it was reflected in the disproportionately high rates of Aboriginal involvement at every level of the system.[135] Follow-up studies by other researchers in other parts of the country confirmed Eggleston's findings, so that by 1976, it was well established that Aboriginals were more likely than non-Aboriginals to be

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[133] Evelyn Crawford, "Aboriginal Community and Police Relations Throughout New South Wales," in Chris Cunneen, ed., Aboriginal Perspectives on Criminal Justice, Sidney University Law School: Sydney, Australia, 1992, p. 8.
[134] Pat O'Shane, "Aborigines and the Criminal Justice System," 1992, p. 3.
[135] Ibid.

arrested and charged by police in relation to certain offences, and eventually, more likely than non-Aboriginals to be sentenced for longer terms of imprisonment.[136]

Focusing primarily on cultural conflict, Aboriginal peoples' statements appeared to be particularly open to being misunderstood by police interrogators, and conveyed inaccurate information when read out in court.[137] Their vulnerability arose from the legal system's inability to break down the barriers to effective communication between Aboriginal people and legal personnel, and to differences of language, etiquette, concepts of time, distance and so on.[138] In 1976, an Aboriginal took the matter to the courts, arguing that Aboriginals were being discriminated against in the process of translation services in the case of R. V. Anunga. The Supreme Court of the Northern Territory agreed that a structure needed to be developed in order to establish the 'rules' regarding the legality of statements taken from Aboriginal suspects by police officers.

Under these rules, the Supreme Court *recommended* the following conditions in order to ensure the propriety of a statement obtained from an Aboriginal suspect:

> An interpreter should be present if necessary; where practicable, a 'prisoner's friend', whom he/she has confidence in, should be present at interrogation; care should be taken to administer a caution in simple terms; care should be taken in formulating questions that do not suggest answers; and that if requested, reasonable steps should be taken to obtain legal assistance for the prisoner.[139]

However, although the 'rules' were required to be applied universally throughout Australia in police training manuals, police departments across the country complained about their existence. Many officers stated that there was nothing wrong with the

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[136] Ibid., p. 16.
[137] Les Samuelson, Discussion Paper, 1993, p. 6.
[138] Ibid.
[139] Kathy Laster and Veronica Taylor, "The Compromised 'Conduit': Conflicting Perceptions of Legal Interpreters," Criminology Australia, 1995, p. 9-14.

previous system and that Aboriginal peoples were not being discriminated against.[140] In order to build a better relationship between police forces and Aboriginal peoples, and more generally between Aboriginal peoples and the criminal justice system, Australian "Aboriginal Legal Services" (ALSs) was developed.

One of the major concerns of ALSs was police-Aboriginal relations, and several meetings and conferences were set up with a view to at least minimizing the hostilities and violence which were the hallmarks of those relations. A quasi-structure was established, whereby *Anunga Rules* (as a result of the 1976 court case) would be utilized at the police interrogation stage, focusing particularly on cultural conflict between police officers and Aboriginal suspects.[141] However, because the *Anunga Rules* are only guidelines that are primarily oriented toward ensuring admissible statements, they have no penalty provisions for police misconduct. Compliance with the guidelines is not mandatory, and the courts have no absolute exclusionary rule when the guidelines are violated. [142]

The Canadian government has expressed interest in adopting a similar set of guidelines for taking statements from Canadian Aboriginal suspects in order to make Canadian policing of Aboriginal people more professional and culturally oriented. Both the *Manitoba Aboriginal Justice Inquiry* and the Alberta *Justice on Trial* have reported that the *Anunga Rules* could be used in the two provinces as stepping-stones to reconciling the cultural divide between Aboriginal peoples and police forces.[143] However, there is little evidence to suggest that *Anunga Rules* have contributed in any

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[140] Les Samuelson, Discussion Paper, 1993, p. 7.
[141] Kathy Laster and Veronica Taylor, "The Compromised 'Conduit'," 1995, p. 9-14.
[142] Ibid.
[143] Ibid.

notable way to positive change in Australian police handling of Aboriginal peoples.[144] Perhaps this is due to the fact that there are no penalties for police officers who do not conduct interviews with Aboriginal offenders under the provision of the guidelines. Australian governments have recognized the minimal or non-impact the *Anunga Rules* have had in establishing a reconciliation between Aboriginal peoples and police officers. As a result, Aboriginal peoples and justice officials have looked towards alternatives to help reconcile Aboriginal-police relations. In the mid-1990s, Australian governments, in collaboration with Aboriginal communities, decided to take a more community-oriented approach to policing. Given the enormous task, governments decided to tackle the problem by giving Aboriginal peoples a say in what they believed were better policing services.

Community-Based Policing in Australia

In its most basic form, community-based policing is a method used by police forces to integrate community cultures and policing styles so that police policies are respectful of the needs of the community. If police services are to become truly accessible to Aboriginal peoples, then Aboriginal peoples should be involved in developing appropriate and relevant policing strategies. In 1990, a position known as the Client Services Consultant was established in New South Wales to advise local police services on issues and policy matters which have had an impact on Aboriginal and police relations throughout the state.[145] The position of Aboriginal Client Services Consultant was the very first senior Aboriginal policy/advisory position to be created with any police

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[144] Les Samuelson, Discussion Paper, 1993, p. 32.
[145] Evelyn Crawford, "Aboriginal Community and Police Relations Throughout New South Wales," 1992, p. 8.

service in Australia.[146] It was the first hands-on program of its kind, as it considered Aboriginal peoples' views in the decision-making process. The implementation of the program was to ensure that Aboriginal peoples could speak with an Aboriginal policy-maker and have their concerns aired and addressed in government.

In theory, the Client Services Consultant gave Aboriginal peoples direct access to the Commissioner for Police; however, this was not possible due to cutbacks in government spending and a lack of communication between the Consultant and Aboriginal peoples. Even though the position was technically part of the police force mandate, everything that came under the umbrella of community policing was always the first to be dropped in the face of government restraints at that time. Despite budget cutbacks, the major problem was that if the position of the Client Services Consultant was to work, then the Consultant had to reach out to Aboriginal peoples and let them know that such a program existed. In most instances, this was difficult to do as the Consultant is usually situated in a large urban center and Aboriginal peoples were usually found in remote reserve communities.[147] There was a lack of communication between the Consultant and Aboriginal peoples and as a result, very little was bought to the decision-making table when policies on policing services were being reviewed or implemented. Poor communication between the Consultant and on-reserve Aboriginal communities proved to be a major detriment to the survival of the program.

If a Consultant traveled to a community, many Aboriginal people refused to cooperate or provide input into policing procedures because the Consultant was a stranger, and was seen as part of the alienating justice system. Aboriginal community

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[146] Ibid., p. 9.
[147] Ibid.

liaison officers were unsuccessful in facilitating dialogue between the Consultant and Aboriginal peoples. Aboriginal peoples were becoming quite frustrated with the direction of the program. To them, it was almost as if more and more go-betweens were required to speak for their beliefs. However, this came as no surprise to both groups as the historical relationship between Aboriginal peoples and police for the last 200 years has been based on conflict.[148]

One of the best methods to provide police services that are sensitive to Aboriginal culture, to understand Aboriginal history, and to have substantial powers to maintain order is to appoint Aboriginal people as regular or auxiliary police officers in police forces that have daily contact with Aboriginal people (i.e. close to reserves). Under the mandate of Aboriginal Legal Services, the Australian government decided to implement a program titled the Aboriginal Police Aids Scheme (APAS) in 1995, a successor to the Aboriginal community liaison officer program (which was under the mandate of the failing Client Services Consultant program).[149] The purpose of APAS is to develop a system whereby Aboriginal peoples (especially those living in remote areas) will have a voice in developing policies to reconcile the cultural divisions between Australian law enforcement polices and Aboriginal customs and traditions. Aboriginal officers (whether they are regular members of the force or auxiliaries) employed under APAS would also be responsible for creating an Aboriginal solution (that is, not a white person's solution) to the problem of maintaining law and order in Aboriginal communities.[150]

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[148] Ibid.
[149] Ibid., p. 10.
[150] Yves Dube, "Aboriginal Police Aides in Australia," Policing Options Available to First Nations in Canada, Ottawa: Solicitor General Canada, 1995, p. 26.

APAS officers are not self-administered police services, but instead, closely resemble the Canadian First Nations Community Policing Services. Like the FNCPS, the APAS program was designed under the banner of community-based policing, and was meant to help reconcile Aboriginal-police relations. Like the FNCPS, APAS members must be Aboriginal, and have some level of knowledge of Aboriginal cultures. Usually this knowledge comes from living in a particular community for an extended period of time prior to joining the force. Depending on the needs of a particular community, and how isolated it is from police detachments, APAS members may or may not have full policing authority. If APAS members are policing extremely remote communities, they usually have full enforcement authority and can work anywhere in the country if they choose to do so. These are officers who can conduct all types of investigations and have full authority under national, provincial, territorial, and band by-laws. In remote areas, where police response is slow, it is necessary to have full time officers working out of satellite or host detachments to ensure a strong and culturally sensitive police presence.

However, in a majority of cases, APAS officers have limited enforcement authority and are, in a very real sense, "police aides", and not "full" police officers. APAS members with limited enforcement authority closely resemble the old Aboriginal Community Constable Program in Canada. In both types of policing options, "officers" have basic training in law enforcement, fire suppression, search and rescue, and emergency medical services, but are limited as to their enforcement authority. When conventional police forces of the States or Territories have police detachments close to an Aboriginal community, it is usually the norm to employ police aides who can secure crime scenes, get to know the community members on a daily basis, and conduct minor

investigations. In matters of extreme seriousness, officers from conventional forces come into the community to conduct full investigations. Although most APAS members are limited in their enforcement authority, employing Aboriginal officers to provide for the public safety needs of their respective communities is more effective than the Client Services Consultant program mentioned above. Increasing the number of Aboriginal people in the police forces of the States and Territories, and extending cultural traditions of Aboriginal peoples through police aides, may help solve some of the problems encountered by Aboriginal communities.[151]

The aforementioned efforts flow, in good part, from the problems that arise from the conflict between police officers and Aboriginal peoples, in terms of the 'over-policing' of Aboriginals. However, one cannot assume that a program such as APAS eliminates all existing biases in the system and can create a system that is beneficial to all. Structurally, the Aboriginal police aides scheme may help solve some problems, but it does not constitute a general solution, and may, in some cases, be wholly inappropriate. Not every Aboriginal community believes that APAS is an appropriate solution for its policing problems. Logistically, problems in remote communities still persist, although the APAS program was designed to tackle problems related to isolation. For example, in remote communities, communication problems persist for APAS members, as there is a lack of radios and telephone facilities to use in emergency situations.[152] The situation

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[151] Australia Reconciliation and Social Justice Library, The Recognition of Aboriginal Customary Laws-865: Aboriginal Police, online, Internet: http://www.austlii.edu.au/au/special/rsjproject/rsjlibrary/alrc/custlaw2/236.html, 22 November 2000, p. 1.

[152] Chris Cunneen, ed., "Policing and Aboriginal Communities: Is the Concept of Over-Policing Useful?" in Aboriginal Perspectives on Criminal Justice, Sydney, Australia: Sidney University Law School, 1992, p. 83.

has been that police officers may take up to a week to enter a crime scene on a reserve, or however long it takes to order portable long range radios from headquarters.[153]

Furthermore, a common problem identified with any sort of Aboriginal self-policing, whether in Canada, Australia, or Alaska, is that Aboriginal police officers may have difficulty in dealing severely with relatives. A consequence of this in Australia may be that APAS members can find themselves in direct confrontation with Aboriginal peoples as they try to reconcile Aboriginal customs and Australian laws, while APAS members themselves must reconcile their Aboriginal identities with new identities as police officers. Besides dealing with their own communities, there are conflicts *between* some Aboriginal communities; therefore, it is sometimes difficult for APAS members, or any Aboriginal officer for that matter, to deal in an effective manner with members of conflicting communities. As is the case for a majority of police officers throughout Australia, as well as Canada and Alaska, there is no training for APAS members in regards to dealing with substance abuse (i.e. alcohol, gasoline, narcotics), which is the most common problem on reserves.[154] Furthermore, APAS officers' recommendations have no legal basis; therefore, there is no guarantee that those recommendations will be implemented. As already demonstrated with the *Anunga Rules*, recommendations do not always translate into policies. Although these problems exist, it must be noted that one program alone cannot reconcile the relationship between police officers and Aboriginal people, which has formed over 200 years.

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[153] Yves Dube, "Aboriginal Police Aides in Australia,"1995, p. 26-28.
[154] Ibid.

From Australia To Alaska

Although community-based policing programs in Australia have made the attempt to make the relationship between police forces and Aboriginal peoples into a more communicative one, there is no single solution to reaching an appropriate balance between the two. The challenge in Australia is for police forces to cope with change in a manner that permits Aboriginal police services to be sensitive to their situations and have real powers to maintain order. Compared to Canada, where there is at least a First Nations Policing Policy in effect, in Australia, Aboriginal peoples have had to work within the confines of weak community-based policing programs. Regardless of the *Anunga Rules,* the role of the Aboriginal Client Services Consultant, and the Aboriginal Police Aids Scheme, the current situation is one that can be described as less than progressive when dealing with shifting trends in society, and greater accountability to Aboriginal peoples.

The Village Public Safety Officer program in Alaska is quite a contrast to any of the above police services designed to improve the relationship between Aboriginal peoples and police forces. In Alaska, the Village Public Safety Officer program is not imposed by outside decision-makers, but rather, by Aboriginal communities themselves. The services are generated within the Native communities served, and the program both facilitates local initiatives and encourages communities to determine their public safety needs. In the next part of this chapter, I will examine the Alaskan Village Police Officer and the Village Public Safety Officer programs, detailing the initiatives undertaken and the consequences of each program.

Alaska: The Policing Legacy

Historically, the political legacy encountered by Alaska Natives[155] has been somewhat different from both Canada and Australia. Reservations akin to those established in the rest of the United States, or reserves as they are called in Canada and Australia, were not created in Alaska in order to clear indigenous Alaskans from public land sought by settlers. Alaska Natives and non-Natives endured federal control from 1867 to 1959 (until it obtained statehood status), with Interior Department Agents in control of most substantive government affairs, including criminal justice and policing services.[156] Without the pressures of white settlement on the Alaskan frontier, the question of Aboriginal title was left to the second half of the twentieth century for resolution and was resolved in a manner that did much to question the issues of tribal authority, the scope of tribal powers and the territorial basis for tribal governance.[157]

Due to the physical isolation of the state, Alaska caused no real threat to Washington, and as a result, more and more "local" control was given to the state. Alaska Natives have, and continue to seek firm commitments from the state and federal governments that their traditional uses of land will continue into the future, and that they will have a meaningful role in management of the land, resources and of their own affairs, including criminal justice jurisdiction. However, no system has been harder to

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[155] In Canada and Australia, the term "Aboriginal peoples" is used in contemporary scholarly articles describing the countries' indigenous peoples. In the United States, "Native" is used and its legal definition means, "A citizen of the United States who is a person of one-fourth degree or more Alaska Indian Eskimo, or Aleut blood, or combination thereof. It also includes any citizen who is regarded as an Alaska Native by the Native village or Native group of which he/she claims to be a member and whose mother or father is (or, if deceased, was) regarded as Native by any village or group." The term "Native" is used in contemporary scholarly articles; therefore, I will use it when referring to Alaska's indigenous peoples.

[156] Stephen Conn, "The Aborigine in Comparative Law: Sub-national Report on Alaska Natives," paper presented at the 12th Congress of the International Academy of Comparative Law in Sydney-Melbourne, Australia: August 1986, p. 1.

[157] Ibid.

synthesize and adapt than the administration of justice between Alaska Natives and non-Natives. The early traders and whalers bought with them a set of laws that was alien to the Native population and difficult to understand. This cultural gap, and the difficulties in overcoming it, has led to decades of experimentation in law enforcement in Alaska.[158]

Most Alaska Natives lived in small groups ranging from a population of anywhere between 25-700 and survived by whaling, hunting, and food gathering.[159] In the substantially nomadic communities, the family and the community provided the means for dealing with antisocial behavior and crime. The social control system was not founded on individual rights, but on a network of obligations among members of the community that permitted survival in the vast Arctic environments.[160] Although no obvious formal systems of laws or the administration of justice existed, there were time-honored patterns of social relations, and the family of the deviant person corrected most deviant behavior.[161] Some tactics used to restore harmony consisted of community condemnation, community awareness, and abandonment to nature or to another kin group.[162]

However, more formal methods of justice that were based on English common law arrived with the white whalers and trappers in the late 1800s. Magistrate positions were created and non-Native processes instituted in uneasy coexistence with Native traditions.[163] In 1959 when Alaska achieved statehood, Alaskans, not citizens from any

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[158] L.D. Burton, A History of Law Enforcement on the North Slope, Barrow, Alaska: North Slope Borough Department of Public Safety, 1989, p. 1.
[159] Stephen Conn, "The Aborigine in Comparative Law," August 1986, p. 1-2.
[160] John E. Angell and Lawrence C. Trostle, "Policing the Arctic: The North Slope of Alaska," Journal of Contemporary Criminal Justice 10(2): 95-108, May 1994, p. 97.
[161] Ibid.
[162] Ibid.
[163] Ibid.

of the other American states were appointed as Magistrates.[164] Non-Native Magistrates began to depend more and more on community members to assist them in local cases, and as a result, junior Native police officers were appointed to assist Alaska State Troopers in dealing with local problems in Native communities. During the late 1960s, the formalization of local policing began to occur, but it occurred in a way that concentrated policy-making powers into the hands of mainly non-Native State Troopers. New personnel were predominately whites hired from police agencies in the "lower 48 states."[165] As one scholar in the criminal justice field stated:

> [Local] law enforcement experience was missing from the social structure of most Native populations. Few have ever seen police officers, few have ever been members of well-organized and efficient police departments; and those who have, rarely have moved to another location from their original home towns.[166]

In the 1960s and 70s, Natives and police officers began questioning the validity of formal law enforcement mechanisms in Native communities. Decision-makers relinquished some criminal justice authority to local control due to the logistical problems encountered by state troopers. Native villages were in large part only accessible by river, sea, or air, and state troopers had great difficulty in responding to criminal activity within the communities.[167] Geographic isolation in a sense forced Native peoples to abide by their own justice traditions as police officers arrived days or even weeks after being called to respond to serious crimes in the communities. By the time troopers had reached Native communities, it was often too late to salvage any physical evidence from a crime

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[164] The first Magistrate in the North Slope region was a Native female, Sadie Brower Neakok; however, the majority of Magistrates were Alaska non-Natives.
[165] Angell and Trostle, "Policing the Arctic: The North Slope of Alaska" May 1994, p. 98.
[166] K.L. Moeller, The Challenge to the Police Role in Rural Alaska, Barrow, Alaska: North Slope Borough Department of Public Safety, 1977, p. ii.
[167] David M. Blurton and Gary D. Copus, "Administering Criminal Justice in Remote Alaska Native Villages: Problems and Possibilities," The Northern Review, 11: Winter 1993, p. 118.

scene. Sometimes community members would have dealt with the a minor crime (i.e. alcohol and drug abuse, disorderly conduct, security checks, vandalism and firearms abuse) in their own way, and failed to cooperate with police officers who were outsiders and strangers to the communities.

Governments recognized at that time that, if Native communities were given more local control over policing issues, then justice could be achieved in a manner that would maintain more social control and accountability than the formal white method. Although this was an indirect method of rule, Native communities were given a larger say in what they believed constituted justice in policing policy. From this devolution of powers, two rural justice programs were developed by the Alaska State Troopers in an effort to meet the unique public safety needs of rural Alaskan communities: the Village Police Officer program and the Village Public Safety Officer Program.

Village Police Officer Program: Community-Based Policing

Since the late 1960s, greater local control over law enforcement has been given to Alaska Natives. The first locally controlled police service was the Village Public Officer (VPO) program, beginning in 1968.[168] The VPO was funded by the Bureau of Indian Affairs to provide direct and local law enforcement services to rural communities. Under the direction of the Alaska State Troopers, a twelve-week long training course was offered to any Natives who lived in remote communities.[169] The training included basic general education as well as law enforcement training. The records of this program

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[168] The date is a little unclear. Some articles refer to the beginning of the VPO as of 1964; others state that it was in 1966 ***or*** 1968. From my research, I will use 1968, as there is some consensus on this issue in the Justice Center at the University of Alaska, Anchorage.

[169] John E. Angell, Alaska Village Police Training: An Assessment and Recommendations, report prepared for the Alaska Criminal Justice Planning Agency, Criminal Justice Center, University of Alaska Anchorage, December 1978, p. 2.

indicate that 29 Native students completed the training program.[170] However, when the program was implemented, officers encountered many problems.

One of the greatest difficulties with the program was in terms of funding. A substantial portion of the VPO funding went towards officers' salaries, leaving little for equipment, supplies or training.[171] A survey of VPOs conducted in 1978 found that only 42 percent of respondents had received any training at all, and many of them lacked paper for record keeping and report writing.[172] Besides regular office supplies, VPOs lacked support in terms of having use of detention facilities. Usually, officers would often have to take intoxicated individuals into their own homes for sobering-up.[173] A lack of proper funding guidelines jeopardized the existence of the VPO program, leading to very high turnover rates, inadequate training, and ultimately poor police delivery.

Village Public Officers also lacked support from the community and local village councils. There is little known about why such tensions existed between VPOs and Native communities, but a part of the problem seemed to be related to alcohol. There seemed to be a general disregard for police officers (and for village councils) that sought to deal with problems brought about by drinking.[174] Villagers questioned the officers' authority to deal with problems brought about by drinking.[175] The general lack of support toward the VPOs made their jobs all the more difficult as they were frequently called upon to perform various other public safety tasks, so that their duties were not

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[170] Ibid.
[171] Darryl Wood, "Turnover Among Alaska Village Public Safety Officers: An Examination of the Factors Associated with Attrition," University of Alaska, Anchorage: Justice Center, March 2000, p. 18.
[172] Ibid.
[173] Ibid.
[174] Ibid.
[175] Stephen Conn, "Town Law and Village Law: Satellite Villages, Bethel and Alcohol Control in the Modern Era—The working Relationship and its Demise," paper presented at the Annual Meeting of the American Society of Criminology, Toronto: 1982. p. 47.

necessarily confined to law enforcement.[176] VPOs were required to be fire fighters, doctors, counselors, as well as police officers.[177] It is estimated that only thirty percent had access to a fire extinguisher and only ten percent had first aid equipment.[178] As the *Alaska Justice Forum* reports:

> As VPOs assumed their duties they became overwhelmed with the responsibility of providing the entire spectrum of public services to their respective villages, with the result that the program began to erode.[179]

Because the exact roles of VPOs were not clearly defined by the Department of Public Safety, VPOs themselves were overwhelmed by what they thought policing should consist. For VPOs, policing meant dealing with criminal acts, acting as doctors and fire fighters, and maintaining good relations with Native communities whom they were policing. However, because the roles were so vague, the relationships became tenuous and uneasiness about the existence of such a program began to take shape by the late 1970s. The erosion of the VPO program led to the creation of a replacement program, the Village Public Safety Officer program in 1980, and it was this program that led to a more effective administration of justice in isolated Native villages.[180]

Village Public Safety Officer Program: Community-Based Policing

Since the Village Public Safety Officer program (VPSO) began in 1980 as a small pilot program consisting of approximately 19 officers, over the years there have been as many as 125 authorized VPSO positions created across the state, and as of June 30, 1998,

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[176] Lawrence C. Trostle, Darren McShea and Russell Perras, "The Nonenforcement Role of the VPSO," Alaska Justice Forum 8(4), Winter 1992, p. 1.
[177] Wood, "Turnover Among Alaska Village Public Safety Officers," 2000, p. 19.
[178] Ibid.
[179] Trostle et al, "The Nonenforcement Role of the VPSO," 1992, p. 1.
[180] Not all Alaskan villages elected to replace their VPOs with VPSOs and some villages are still served exclusively by VPOs. Many villages have retained a VPO position in conjunction with a VPSO.

there were 75 VPSOs serving 74 Alaska Native villages.[181] The VPSO program was originally designed so that local residents would police rural Alaska villages; thereby employing villagers to provide for the public safety needs of their respective communities.[182] It was felt that Native people who were culturally aware of a particular village's need could best provide for meeting the public safety needs of that village in a socially and culturally accepted manner.

James Messick, one of the first scholars to examine the evolution and structure of the VPSO program, identified five problematic areas pertaining to public security that were addressed by the VPSO program. The first was with direct law enforcement procedures. Messick stated that the Department of Public Safety was not able to provide rural villages with prompt response times due to the geographic isolation of villages and the lack of limited resources. Besides geographic and resource problems, troopers themselves were called as last resorts by villages when a law enforcement problem could not be dealt with by a village, rather than as the initial response mechanism.[183] In conjunction with this, troopers' tasks were made more complex by the Native groups' traditional law enforcement ways, and methods of dispute resolution were often perceived to be in conflict with the dominant Western adversary system.[184] The VPSO eliminated both problems, as VPSOs were on-site police officers who could deal with a crime from the moment it occurred, or was discovered.

Messick's next major areas of concern pertained to water safety, fire services, medical services, and search and rescue techniques. According to Messick, Native

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[181] Wood, "Turnover Among Alaska Village Public Safety Officers," 2000, p. 19.
[182] James Messick, "Village Safety Officer Program," Alaska Justice Forum 3(6), June 1979, p. 1.
[183] Ibid.
[184] Ibid.

Alaskan villages in 1979 had the distinction of having the worst record for public safety of any of the fifty states.[185] It had the highest per capita loss of life and property due to accidental fires in the western hemisphere, suffered the highest per capita loss of life due to boating and water related accidents of any state, and was one of the most isolated areas of the country in respect to obtaining emergency medical and law enforcement assistance.[186] Rural Alaska led the state, and possibly the country, in the number of search and rescue missions, and had the fewest local government resources to deal with the range of public safety problems.[187] The VPO program could not deal effectively with these problems; therefore, the Alaska Department of Public Safety created the VPSO program and tailored it specifically for rural Alaska. The VPSO program provided state funding for Alaska Native villages to hire their own public safety officer.

Since 1980, the VPSO program has followed a path of what has recently been coined community-oriented or community-based policing. Community oriented policing encompasses the involvement of the community to accomplish policing goals, permanent geographical assignment of officers to facilitate better relations, establishment of police priorities based on community needs and desires, and of course, allocation of police resources.[188] Although the VPSO program does not include all these aspects, it has nonetheless been an innovative approach to policing in Alaska. As complex patterns of legal, political and cultural norms and institutions have been imposed on Native peoples, the VPSO program has helped Native communities retain some cultural power and

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[185] Ibid., p. 2.
[186] Darryl Wood and Lawrence C. Trostle, "The Nonenforcement Role of Police in Western Alaska and the Eastern Canadian Arctic: An Analysis of Police Tasks in Remote Arctic Communities," Journal of Criminal Justice 25, 1997, p. 369.
[187] Ibid.
[188] Lawrence Trostle, "The Future of the VPSO in Village Alaska: Preliminary Data," paper presented at the annual meeting of the Western and Pacific Association of Criminal Justice Educators in Irvine, CA: October 1992, p. 2.

sovereignty over their policing services. Beliefs such as integrity, a genuine sense of community, egalitarianism, mediation and reconciliation between offenders and victims; respect for the natural environment and community; self-reliance and self-sufficiency remain strong within the VPSO program.[189] The program returns to the notion that policing is not just crime fighting, but constitutes the use of beliefs and law to provide for minimal social order and the services people need to be protected against accidents, emergency, disorder, or victimization, and to be secure in their personal welfare.[190]

In 1995, a statewide public opinion poll conducted by the Justice Center revealed that the majority of Alaskans were satisfied with the quality of life in their communities and believed that their communities were good environments in which to raise their children.[191] Moreover, most Alaskans considered their communities to be safe and were willing to become involved in police and public safety efforts.[192] A part of the results come from the positive and direct relationship between communities and Village Public Safety officers. The VPSO program has achieved a relatively high rate of success in terms of encompassing and following through on community-based policing initiatives. The most important initiative pertaining to community-based policing is that authority and responsibility are decentralized to the village level concerning matters of policing. Because VPSOs are on their own, not just on a shift beat, but for weeks on end, they are permitted to use discretion when dealing with Native offenders. In many instances, VPSOs work with the community to deal with an offender in a manner that is not

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[189] Otwin Marenin and Gary Copus, "Policing Rural Alaska: The Village Public Safety Officer (VPSO) Program," American Journal of Police 10(4): 1-26 (1991), p. 3.
[190] Ibid., p. 16.
[191] Justice Center: University of Alaska Anchorage, "Public Safety and Quality of Life: Alaska Perceptions," Alaska Justice Forum 12(3), Fall 1995, p. 1.
[192] Ibid., p. 1-7.

constrained to one legal tradition, but can respond to a variation of two. The legally pluralistic environment in which they work and the small size of their communities practically mandate that they go beyond reactively meeting minimal legal requirements to problem-solving activities, if they are to be effective at all.[193] VPSOs embody an inclusive generalist conception of the policing role that stresses public safety and social order, and addresses causes of disorder and threats to welfare.[194]

Although the VPSO program generally meets the theoretical requirements of community-based policing, one cannot assume that it has been free from its share of difficulties. The nature of the program, with its limited resources, makes it almost impossible to pay for more than one officer per village. One officer is expected to be on-call twenty-four hours a day, and must respond to every police incident in the community. Sometimes the job becomes so demanding that VPSOs "burnout," and it may take months for an individual to return to his/her job, or it may take months to find a replacement VPSO. If a replacement is eventually found, the entire process has to be started from scratch, from the training, to learning the cultural intricacies of the particular community, to what types of activities the officer is expected to participate in, and generally just getting a feel for the policing needs of the community.

Because a VPSO is on his/her own, it sometimes becomes too stressful to respond to calls in five public safety areas: law enforcement, fire suppression, search and rescue, water safety, and emergency medical services.[195] Although training in the five areas is necessary, one individual cannot effectively deal with every situation. The role of a VPSO in a village entails some policing functions that have been left unclear in the

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[193] Marenin and Copus, "Policing Rural Alaska," 1991, p. 18.
[194] Ibid.
[195] Wood and Trostle, "The Nonenforcement Role of Police in Western Alaska," 1997, p. 369.

training of these officers. Alaska State Troopers sometimes take days to arrive at a Native village and cannot be relied upon as immediate back-ups for VPSOs in dangerous situations. In a very real sense, VPSOs are on their own, regardless of what type of training they have had. In dangerous situations, VPSOs are dependant on the community for protection and must establish strong relationships with village members.

As discussed earlier in the case of Australia and the Aboriginal Police Aids Scheme, it is not unusual for an Aboriginal or Native police officer who is attempting to provide for the public safety needs of a specific reserve or village to be related to many of the villagers, with social ties to the rest of the community so strong that his/her law enforcement function is compromised.[196] As Wood and Trostle state:

> How does one enforce the law against a father, brother, uncle, or cousin without prejudice or tremendous internal turmoil and stress...The rural or small-town police officer cannot escape his/her role, and is often viewed by the community as a 24-hour police officer. This generates stress because the officer cannot participate in the social activities of the community as a person but is forced to be constantly identified as a police officer.[197]

Consequently, it has become difficult to find villagers willing to serve as VPSOs in their own villages. As a result, more and more VPSOs now come from outside of the communities they police.[198] Overall, this practice seems to be working quite well because the cultural sensitivity void is filled, and VPSOs working outside their own villages seem to be able to build social ties without the strain of policing their own families. Because VPSOs are expected to police communities for extended periods of time without expecting to be transferred, the community and the VPSO can work together

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[196] Ibid., p. 370.
[197] Ibid.
[198] Ibid.

to build a direction for the community that entails social harmony, community involvement, and traditional methods of community justice.

Themes and Lessons

With the focus of policing changing around the world to emphasize culturally sensitive, community-based techniques in Aboriginal communities, arguments can be made that community policing adds to the list of acceptable goals and objectives for policing. For example, some propose that community policing increases the emphasis given to such goals as responding to emergencies, reducing fear, mobilizing communities to accept partial responsibility in controlling crime, and enhancing the sense of security.[199] Other researchers suggest that community policing leads to a reduction in dependence on the police for resolution of minor, non-criminal complaints, as well as resolution of any number of problems identified by the specific community.[200] Still others say that police are expected to redirect their energies into the delivery of humanitarian and multifaceted services, crime prevention, mobilization of community partnerships and customer satisfaction.[201] An examination of Aboriginal policing programs utilized in Australia and Alaska can provide a better understanding of how innovative policing techniques are being integrated into the general nature of the administration of justice.

Canada has looked at how other countries in the world have dealt with Aboriginal policing in the face of constant change and reorganization of police services. Academics and bureaucrats have focused their energies on examining Aboriginal policing in

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[199] Kim Polowek, Community Policing: Is It Working and How Do We Know? A Source Guide for Police Practitioners, British Columbia Police Commission: Ministry of Attorney General, 1995, p. 95.
[200] Ibid.
[201] Ibid.

Australia and Alaska as potential sites for further research in this area. It is only natural that Canada would look towards it neighbor in the north and its ally in the west, especially when both have large Aboriginal populations of their own. The historical legacies and the experiences of colonization of Aboriginal peoples in Canada and Australia have been quite similar, and it is only natural for Canada and Australia to look towards one another when trying to find new ways to reconcile Aboriginal-police relations. Strong relationships between Aboriginal peoples in the Canadian territories and Alaska have evolved into a continuous dialogue between the two. Geographical and situational similarities between Canada's north and Alaska have created a unique bond between the two.

In my research of Canadian Aboriginal policing programs, I found that other researchers had referred to the Client Services Consultant, the Aboriginal Police Aids Scheme, and the Village Public Safety Officer as complementing Canada's initiatives in the same area. In my opinion, it is important for Canadian researchers to look towards other countries for education, but to remember that solutions used in other countries are not always practical for Canada. A country like Canada can look to Australia for some general recommendations, but it must take note of the fact that Aboriginal policing has not evolved to the same extent in Australia as it has in Canada. In Australia, there is no national policy in effect as extensive as the Canadian 1992 First Nations Policing Policy. Through my research, I found that Australian governments have not been keen on giving extensive local police control to Aboriginal communities. With the historical legacy between police and Aboriginal peoples full of even greater mistrust and abuse than in Canada, this is not so surprising.

The dominant theme in Australia currently is that community-based policing is necessary to increase faster response times, to reduce fear, and to increase crime prevention. However, the Australian government is not committing itself to the fact that Aboriginal policing goes beyond community-based policing definitions. Like the First Nations Community Policing Service program in Canada, Aboriginal policing is run by mainstream police forces. Although Aboriginal officers are policing Aboriginal communities, they answer to, and work within the confines of, non-Aboriginal policing structures. The greatest lesson Canada can learn from Australia is to not repeat the mistakes of the past, and to recognize the unique nature of Aboriginal policing through continuously enhancing the national Aboriginal policing policy. Canada should look to Australia for ideas, but it cannot assume that the structures set up in Australia will work in Canada.

In the case of Alaska, the Village Public Safety Officer program seems to be offering a more functional approach to Aboriginal policing, especially in isolated Native villages. In both Canada and Alaska, a large percentage of Aboriginal communities live in areas where there is access only by air or sea. Ensuring timely police response is a big step towards helping to build better Aboriginal-police relations. An even bigger step is allowing Aboriginal communities to be policed by their own people, using both traditional and conventional styles of policing. The VPSO in Alaska and First Nations self-administered police services in Canada resemble one another in the type of police service they provide to their respective communities. Both policing services are independent from outside intervention, and communities, not non-Aboriginal policy makers influence the type of policing service the community wants. Both the VPSO and

the FNSAPS programs are autonomous policing structures, based on two types of policing traditions.

In Alaska, the historical legacy has been different from that encountered by Canada's Aboriginal peoples, and Canadian policy-makers can look towards Alaska as a case study where colonization did not impact traditional models of justice as much. In Alaska, again due to its geographical isolation, Natives were able to work with governments in developing strong policing structures. The strength of the VPSO lies in the fact that both communities and governments support the program, and that it has been in existence and has evolved for over thirty-five years. Unlike Canada, where the program has only been in effect since 1992, Alaska can provide the longevity required to review and thoroughly examine the effectiveness of Aboriginal police services.

Of course not all Aboriginal people support reconciliation. Some seek out more independent forms of administering criminal justice and would like to see a complete overhaul of the existing system, or the development of a separate system specifically administering to the needs of Aboriginal peoples. A major problem encountered by all Aboriginal peoples is to decide what works better for their particular communities: reconciliation or independence? If the restorative justice model is lacking in delivering effective police services, what are the alternatives? In Alaska, Natives are able to work with governments in developing mainly autonomous policing structures. In Australia, governments are concentrating their efforts on reconciliation and restoration. In Canada, it almost seems like Aboriginal policing programs, and the options available to Aboriginal peoples fit somewhere in between reconciliation and independence. Aboriginal peoples can choose to stay out of the police process if they wish to do so, or

they can participate in a semi-autonomous police service. The one conclusion I can make with any certainty is that governments must take the first step by recognizing that the relationship between police officers and Aboriginal peoples has been problematic, and must take the even larger second step to help reconcile the divide between the two.

By accepting that there is a basis for Aboriginal resentment and suspicion about police conduct, the challenge for Australian police departments, Alaska State Troopers, the Royal Mounted Canadian Police, and provincial police forces, is to consider the Aboriginal perspective when devising appropriate police strategies, hopefully permitting Aboriginals to develop police policies themselves. In the next chapter, I will focus on British Columbia and Aboriginal policing initiatives undertaken in the province. Chapter four is structured to address the distinctive challenges faced by Aboriginal peoples in BC in order to understand how Aboriginal-police relations have evolved over the last 130 years. This will be followed by a brief discussion as to the role of the treaty-making process in Aboriginal policing discussions.

CHAPTER FOUR
ABORIGINAL PEOPLES IN BRITISH COLUMBIA

In British Columbia (BC), the necessity for First Nations policing services is rooted in the historical, cultural, and legal policies leading to the apparent failure of mainstream policing to serve Aboriginal peoples well. Aboriginal peoples in BC have stated time and time again that the justice system is insensitive to their cultural traditions and values, and is systemically discriminatory.[202] While specific BC data are sparse, there is no reason to believe that evidence from commissions of inquiry, such as the *Royal Commission on Aboriginal Peoples* and the *Aboriginal Justice Inquiry of Manitoba*, are not broadly representative of similar systemic discrimination in BC.[203] Aboriginal concepts of justice have been blanketed by mainstream justice practices, and Aboriginal peoples have suffered greatly as a result. Social and cultural practices in Aboriginal communities demonstrate significant differences when contrasted to the time prior to European contact and imposition of the reserve system under the *Indian Act*. In BC, coastal and inland Aboriginal communities were populous and prosperous with well-developed social structures for allocating responsibilities and maintaining order. Clan and tribal societies were based on communal principles where a close relationship to the land was central.[204] A holistic view of the world gave reverence and respect not only to the individual, the family and the clan, but also to all of nature, inanimate and animate.

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[202] Marion R. Buller, A Review of Legal Services to Aboriginal People in British Columbia, Victoria: Ministry of the Attorney General, 1994, p. 3.
[203] Keith B. Jobson, "First Nations Police Services: Legal Issues," discussion paper presented to the Ministry of Attorney-General, Victoria, BC: November 1993, p. 7.
[204] Ibid., p. 5.

Following contact, a white view of Aboriginal peoples began to emerge. It held that the Aboriginal groupings in existence prior to contact consisted of primitive peoples, not meaningful societies, with no recognizable laws and governments.[205] There was no relationship to the land that any new authority should acknowledge as meaningful, and BC was seen as *terra nullius*, the land of no one, seen as empty of rights. Part of the support for this view emerged in what became the founding myth of BC, where white colonists tended to oppose anything deemed as Aboriginal rights to a point where they would ignore or actively undermine such rights.[206] In BC, the colonial approach was especially harmful because government officials for various reasons failed to follow the law when taking land from Aboriginal peoples. The law required that the land be taken away only by treaty. Apart from the fourteen Douglas Treaties in southern Vancouver Island and a portion of northeastern BC, which fell within Treaty 8, no such treaties were signed.

The colonial approach further damaged BC's Aboriginal communities as it encouraged the relocation and confinement of Aboriginal peoples to reserves under the *Indian Act*. Reflecting on assumptions of cultural superiority, the white view assumed that Aboriginal peoples were uncivilized peoples who needed to be converted to Christianity and to adhere to western values of individualism, sovereignty, and authority. Colonization and its policies attacked traditional family and political structures; repressed spiritual and traditional practices; deprived Aboriginal peoples of lands; imposed wardship under the *Indian Act*, and left most Aboriginal communities in BC

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[205] Paul Tennant, "Debates," Hansard, Standing Committee on Aboriginal Affairs and Northern Development: Victoria: Empress Hotel, 18 November 1999.
[206] Hamar Foster, "Honoring the Queen's Flag: A Legal and Historical Perspective on the Nisga'a Treaty," BC Studies: 120, Winter 1998/99, p. 13.

impoverished, dependent and alienated.[207] In addition, smallpox, measles, and other diseases decimated BC's Aboriginal population, and the effects of those diseases led to severe despair and social dislocation within Aboriginal communities. From an estimated 200,000 Aboriginal peoples in BC at the time of contact, the population plunged to 22,605 by 1929.[208] Villages were further decimated as mandatory residential schooling for Aboriginal youth literally took an entire generation of Aboriginal culture away from Aboriginal communities. It is likely that the consequence of losing their cultures and communities through the process of colonization contributes significantly to the conflict that Aboriginal peoples experience with the law.

Having acknowledged that there is a basis for Aboriginal resentment, the challenge for the provincial government and the Royal Mounted Canadian Police is to consider Aboriginal perspectives when devising appropriate police strategies. The purpose of this chapter is to provide the reader with an in-depth view of how the political legacy in BC has impacted Aboriginal-police relations. The unique political landscape of BC has impacted administration of justice issues and has resulted in a negotiations process that is focused on resolving land rights and self-government issues. This chapter is structured to address the distinctive challenges faced by Aboriginal peoples in BC over the last 130 years in order to understand how Aboriginal- police relations have evolved.

British Columbia: The Political Impact on Aboriginal Peoples

Aboriginal peoples have been historically marginalized throughout the history of BC. By the time BC entered into Confederation in 1871, the tone had already been set

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[207] Jobson, "First Nations Police Services: Legal Issues," 1993, p. i.
[208] Aboriginal Rights Coalition of British Columbia, "The Early Days," online, Internet: http://arcbc.tripod.com/earlyday.htm, 13 January 2001, p. 1.

across the country as to the treatment and perception of Aboriginal peoples. At the union of the initial two colonies of Canada in 1841, Lord Sydenham, the Governor-General, criticized those who advocated the intermingling of Aboriginal peoples with European settlers. He stated:

> The attempt to combine a system of pupilage with the settlement of these people in civilized parts of the country, leads only to embarrassment to the Government, expense to the Crown, a waste of resources of the province, and injury to the Indians themselves. Thus circumscribed, the Indian loses all the good qualities of his wild state, and acquires nothing but the bias of civilization. He does not become a good settler, he does become a drunkard, and a debaucher and his females and family follow the same course. He occupies valuable land, unprofitably to himself and injurious to the country. He gives infinite trouble to the Government and adds nothing either to the wealth, the industry, or the defense of the Province.[209]

National attitudes towards Aboriginal peoples were reflected in provincial attitudes, and were especially exemplified in BC.

Vancouver Island was made a British colony in 1849, with the Hudson's Bay Company in charge of all issues regarding settlement. At that time, both the British government and the Company recognized Aboriginal title under the *Royal Proclamation of 1763*. As discussed in chapter two, the *Royal Proclamation of 1763* was intended to give land title to Aboriginal groups in order to alleviate hostilities to help build a more positive and honest relationship between Aboriginal peoples and European settlers. At that time, Chief Factor James Douglas proceeded to arrange purchase treaties with Aboriginal communities, and the treaties explicitly proved that the land was being 'sold' and that with the exception of village areas, "the land itself... becomes the entire property

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[209] Cariboo-Chilcotin Justice Inquiry, Report on the Cariboo-Chilcotin Justice Inquiry, Campbell River: Ministry of the Attorney General, 1993, p. 9.

of the White people forever."[210] Douglas eventually became the Governor of the colony and completed fourteen treaties. Eventually, the British Colonial Office said it would no longer make money available to buy Indian lands. Douglas had to turn instead to a policy of assimilating Aboriginal peoples through education, conversion to Christianity, and allowing them the same homesteading rights as whites.[211] When he retired in 1864, Joseph Trutch, in the role of the Commissioner of Lands and Works, emerged as the most influential official in the colony.[212] He prohibited preemption by Aboriginal peoples and restricted them to reserve areas. In 1870, he became the first official in BC to deny the right of Aboriginal title to the land, and in 1871 he arranged the colony's entry into Confederation. At that time, Ottawa had little knowledge of BC Aboriginal policy and assumed that the province was not encumbered by any Aboriginal title.[213]

East of the Rockies, governments in Canada followed the principals of the *Royal Proclamation* and established the treaty process that was followed in advance of settlement.[214] In BC, the principals of the *Royal Proclamation* were ignored and the fourteen treaties signed on Vancouver Island under Douglas have at times been deemed as nothing more than inconsequential "friendship agreements." From the 1850s to the late 1980s, BC governments asserted that the Proclamation did not apply to their territory and had not been intended to do so.[215] Whereas the *Royal Proclamation* was used in other provinces to negotiate settlements with Aboriginals, BC political parties in power continued to ignore the implications of the Proclamation.

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[210] Paul Tennant, "Aboriginal Peoples and Aboriginal Title in British Columbia Politics," in R.K. Carty, ed. Politics, Policy, and Government in British Columbia, UBC Press: Vancouver, 1996, p. 47.
[211] Ibid., p. 48.
[212] Ibid., p. 49.
[213] Ibid.
[214] Paul Tennant, Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989, UBC Press: Vancouver, 1990, p. 13.
[215] Ibid.

After the *Royal Proclamation Act of 1763*, the major events that affected Aboriginal rights were the *British North America Act of 1867* and the *Indian Act of 1876*. Together, the Acts provided that Aboriginals be the sole responsibility of the national government, whereas non-Indian people would face a plurality of national and provincial governmental departments and agencies.[216] As previously discussed in chapter two, these two pieces of legislation made a clear distinction between the rights of Canadian citizens and the rights of Aboriginal peoples. When Aboriginal peoples clamored for more control over the administration of justice, they were told to go the federal Department of Justice, as the province had no say in Aboriginal affairs. Because Aboriginal peoples were excluded from the structure of Canadian federalism, they also became excluded from provincial affairs. For example, when a left-wing socialist party came into power under the leadership of Dave Barrett in 1972, many Aboriginal peoples thought that more progress would be made in the area of Aboriginal rights due to the social wing of the New Democratic Party. On the contrary, Barrett failed to recognize the rights of Aboriginal peoples in BC. He claimed that Aboriginal issues were the responsibility of the federal government. BC has been unique in that it denied Aboriginal title and Aboriginal rights the longest of any province in Canada.

Aboriginal-Police Relations in BC

Legislative colonial Acts have resulted in the destruction of traditional ways of life in many BC Aboriginal communities. Aboriginal systems of justice and social control have been displaced by systems of social control and political organization

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[216] Reginald Whitaker, "Canadian Politics at the End of the Millennium: Old Dreams, New Nightmares," in Stephen Eggleston, ed. Canadian Political Science: Nelson Power Pack, Nelson 2000: Scarborough, 1999, p.112.

dominated by "white" values of justice. Political systems and bureaucratic interference have left many Aboriginal peoples angry, confused and lost.[217] As Judge Anthony Sarich notes in his examination of Aboriginal communities residing in central BC:

> [Aboriginal peoples] neither respect nor understand the non-native system of social control as exemplified by the justice system, yet they are bound by law to adhere to it. They are angry at real and perceived injustices and distrustful of all authority figures. Indeed, through resulting alcoholism, family destruction and self-abasement, many are reduced to a state of anomy.[218]

Although the findings of the 'Sarich Report' come from individual Aboriginal accounts from approximately fifteen bands in the Cariboo-Chilcotin area of central BC, there is no reason to believe that evidence from this commission of inquiry is not broadly representative of similar accounts from Aboriginal peoples in BC. In most Aboriginal communities across BC, the historical relationship between police officers and Aboriginal peoples has been quite similar as relationships have been full of mistrust and conflict. Police officers have been accused of indifference, arrogance, disrespect, contempt and abuse by Aboriginal peoples, regardless of where they are living in the province. There is a sense that police detachments often show an unwillingness or inability to substitute formulated procedure for spontaneous and timely responses to a situation.[219]

Because many Aboriginal reserves in BC are situated in isolated and remote communities, police response time has always been an issue in Aboriginal communities. Jurisdictional problems between police detachments in some cases delay immediate responses in search and rescue situations. In other cases, police officers arrive

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[217] Cariboo-Chilcotin Justice Inquiry, Report on the Cariboo-Chilcotin Justice Inquiry, 1993, p. 10.
[218] Ibid.
[219] Ibid., p. 18.

unannounced days after a crime had been committed and proceed with the investigation when in reality, the situation has already been diffused and taken care of by the community. Time and time again, police officers are accused of abusing their authority by invading people's homes without proper search warrants and sometimes arriving in homes while not on duty, conducting personal investigations. Aboriginal peoples have accused police officers of invading their privacy. In one case, an officer without a warrant walked into the home of a sleeping man whom he awakened while pointing a gun at the man's head, wanting to know where a friend of the individual was hiding.[220] There was no search warrant and the victim argued that the officer's use of the gun was unwarranted and unauthorized.[221] Although this one case is an extremely small sample, similar stories like this were told to the *Cariboo-Chilcotin Justice Inquiry*.

Incidents like the ones above have tended to alienate officers from the communities they police. Aboriginal peoples are not convinced that an isolated visit by the police accompanied by arrests, searches and interrogations is the kind of police service they need in the vast majority of cases.[222] In addition to complaints against police conduct, Aboriginal peoples feel that the issues of land claims and resource management are tied closely with the right to Aboriginal justice.[223] They argue that policing and justice are inextricably tied with the recognition of land rights. Once Aboriginal peoples are recognized as a legitimate group with inherent basic rights, justice and policing rights will automatically fall under their control.

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[220] Ibid., p. 21.
[221] Ibid.
[222] Jobson, "First Nations Police Services: Legal Issues," 1993, p. 9.
[223] Cariboo-Chilcotin Justice Inquiry, Report on the Cariboo-Chilcotin Justice Inquiry, 1993, p. 8.

When the *Constitution Act of 1982* affirmed that Aboriginal and treaty rights existed, many Aboriginal peoples in BC believed it was the catalyst the provincial government needed to finally recognize the legitimacy of Aboriginal claims to land, resource management and justice. However, because the *Indian Act* continued to shield treaty rights from provincial legislation, the Social Credit Party in BC at that time did nothing to affirm and recognize Aboriginal rights. Even after the recognition of treaty rights in the *Constitution Act of 1982*, the legacy of British values and institutions as well as colonial doctrines continued to shape how BC identified and interpreted Aboriginal and treaty rights.[224] Questions pertaining to justice issues were left in the hands of federal officials, and no provincial policy was initiated to help reconcile the problematic relationship between Aboriginal peoples and police officers.

Only over the last decade or so, Aboriginal concerns pertaining to self-government, land rights and the administration of justice have been acknowledged as justified claims. Prior to the early 1990s, BC governments left Aboriginal concerns in the hands of federal officials and in doing so, failed to develop constructive relationships with Aboriginal communities. Any initiatives provincial governments took prior to the late 1980s when dealing with Aboriginal communities were usually less than effective in any positive outcome for the Aboriginal group in question.[225] From the beginning, provincial government officials were unable or unwilling to accept that the community and family centered cultural values of Aboriginal peoples were in conflict with the values of a free enterprise, individual-oriented, self-acquisitive society.[226]

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[224] Michael Asch, "Introduction," ed. Aboriginal and Treaty Rights in Canada, UBC Press: Vancouver, 1997, p. xv.
[225] Buller, A Review of Legal Services to Aboriginal People in British Columbia, 1994, p. 4.
[226] Cariboo-Chilcotin Justice Inquiry, Report on the Cariboo-Chilcotin Justice Inquiry, 1993, p. 9.

First Nations Policing and the Treaty Process

In 1991, the British Columbia New Democratic Party (NDP) had once again come to power under the leadership of Michael Harcourt and the political rhetoric surrounding Aboriginal rights had begun to change. The election of the NDP dramatically improved the climate for Aboriginal treaty negotiations. The new government was much more committed to resolving Aboriginal issues than any previous government had ever been.[227] The NDP increased the scope of the Ministry of Aboriginal Affairs by giving it primary responsibility for treaty negotiations in BC. The Ministry of Attorney General was given the primary responsibility to oversee any Aboriginal concerns in the areas of justice and policing. Prior to 1991, most correspondence between Aboriginal peoples and governments occurred at the federal level. Once the NDP came to power, a conceptual shift occurred, and Aboriginal rights became a priority on the provincial agenda.

In July 1990, the Social Credit government had agreed to take part in the treaty-making process and to be more responsive to Aboriginal peoples' concerns, and various First Nations groups from across BC formed the British Columbia Claims Task Force. The Task Force's mandate was to determine how the three parties (Aboriginal Bands, Victoria, and Ottawa) could begin negotiations and what the negotiations would include.[228] Its recommendations included establishing a six-stage treaty process for negotiating treaties.[229] Prime Minister Mulroney, Premier Mike Harcourt, and five First Nations Summit representatives signed an agreement establishing the British Columbia

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[227] This can be seen in Harcourt's forty-eight-point election platform titled A Better Way British Columbia. It committed the new government to resolving Aboriginal issues as seen in point twenty-one stating: "It's time to get down to business and negotiate a fair settlement of the Indian Land Question."

[228] British Columbia Treaty Commission, "The British Columbia Treaty Commission," online, Internet: http://www.cariboolinks.com/ctc/bctc.html, 24 November 1999.

[229] Ministry of Aboriginal Affairs (British Columbia), "Historical References," online, Internet: http://www.aaf.gov.bc.ca/history/history.stm, accessed 16 February 2001, p. 8.

Treaty Commission (BCTC) on 21 September 1992 in North Vancouver.[230] All First Nations groups in BC wanting to participate in negotiations now must go through the BCTC. Although the Ministry of Aboriginal Affairs is responsible for treaty negotiations, it works with other Ministries and agencies to enhance self-reliance in Aboriginal communities both on and off reserves.[231]

During the same time when the province was establishing the BCTC, the 1992 Federal First Nations Policing Policy was launched, and the province agreed that self-policing corresponded with the right to self-government. By 1992 then, the historical rhetoric was beginning to be overtaken by an environment advocating an arena for discussing and promoting Aboriginal rights. The Justice Unit within the Ministry of Attorney General was given the responsibility to oversee Aboriginal policing initiatives in BC.[232] Immediately thereafter, seven communities from the Stl'atl'imx Nation put forward a community proposal to initiate a First Nations self-administered police service under the mandate of the 1992 Policy. The Stl'atl'imx Tribal Police (STP) was formally established on April 1, 1992 following the first successful negotiation of a Tripartite Agreement between the participating Bands, the Solicitor General of Canada and the Attorney General of the Province of British Columbia.

Under the guidelines of the federal policy, the STP is comprised primarily of Aboriginal officers. The authorized strength of the department now consists of ten sworn positions including the Chief Constable, Deputy Chief Constable, a supervisor's position, three constables in Lillooet, three constables in Mount Currie, and a constable in Seton

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[230] Ibid.
[231] Ministry of Aboriginal Affairs, "Mandate," online, Internet: http://www.aaf.gov.bc.ca/aaf/ministry.htm, 1 December 1999.
[232] The 'Police Services Division' eventually replaced the 'Justice Unit' in overseeing all Aboriginal policing initiatives in British Columbia.

Lake.[233] The policing of the STP is intended to be proactive rather than reactive, and there is an attempt by the officers to become part of the community, rather than to appear only when there is trouble.[234] The force is solely responsible for law enforcement on the reserves, although the RCMP is occasionally called in as back-up officers. The STP also operates a ride-a-long program for community residents, some of who are appointed to be community watchmen.[235] There is strong support for the program among both the participating Aboriginal communities and criminal justice personnel in the area, and many Aboriginal peoples even feel that it is the first step towards self-governance.[236]

Self-policing and self-government are closely tied in the eyes of many Aboriginal peoples in BC. Many Aboriginal peoples believe that they have a right to self-government as sovereign nations who have never given up their authority and nationhood, and that such jurisdiction is of a nature that no one or no other government has ever taken or can take from them.[237] They also believe that as sovereign nations, they should have control over their own policing. Many Aboriginal peoples believe that they have an inherent right to create a police force in furtherance of a right to self-government in their traditional homelands. The unique political landscape of BC, with only a small number of historical treaties in existence, has resulted in a negotiations process that is focused on resolving land rights and self-government issues.[238] An appreciation of the

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[233] British Columbia Police Commission, Stl'atl'imx Tribal Police: Section 42—BC Police Act Inspection, Victoria: Ministry of Attorney General, April 1997, p. 3.
[234] Curt Taylor Griffiths, Darryl S. Wood, Evelyn Zellerer and Janice Simon, Aboriginal Policing in British Columbia, report submitted to the Policing in British Columbia, Commission of Inquiry, December 1993, p. 170.
[235] Ibid.
[236] Ibid., p. 171.
[237] Vijay Mehta, Policing Services for Aboriginal Peoples, Ottawa: Solicitor General Canada, Ministry Secretariat, 1993, p. 23.
[238] Richard Sigurdson, "The British Columbia New Democratic Party: Does it Make a Difference?" in R.K. Carty ed. Politics, Policy and Government in British Columbia, UBC Press: Vancouver, 1996, p. p. 331.

political aspirations of Aboriginal peoples is essential, as these developments will have significant implications for the ways in which police services are provided in Aboriginal communities. Because matters pertaining to the administration of justice have become a large part of the treaty negotiations process, there is an overwhelming possibility that Aboriginal controlled police programs will become a contingency of Aboriginal self-government.[239]

The province has recognized that changes in policing must occur in order to reconcile Aboriginal-police relations; as a result, the province is working closely with Aboriginal communities involved in the treaty making process to ensure that Aboriginal peoples' concerns with the administration of justice are resolved in the negotiations process. Through the negotiations process, the province is beginning to understand that any comprehensive plan for Aboriginal policing in the province must be flexible and adaptable to the individual needs of each Aboriginal group.[240] Although many Bands have expressed interest in self-administered policing, obtaining the approval of the entire community can sometimes be difficult. Some Aboriginal peoples want to encompass self-policing in the treaty process, while others cannot reach an agreement as to how a self-administered police service should work. The 1992 policy has thus far facilitated Tripartite Agreements between the federal government, the province and four Aboriginal communities who wanted to establish their own self-administered police force.

The first was the Stl'atl'imx Nation Tribal Police in Lillooet/ Mt. Currie region, which was established in 1992, comprised of ten officers. It serves the N'Quatqua Indian Band, Cayoose Creek Indian Band, Douglas Indian Band, Fountain Indian Band, T'it'kit

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[239] Mehta, Policing Services for Aboriginal Peoples, 1993, p. 24.
[240] Jobson, "First Nations Police Services: Legal Issues," 1993, p. 85.

Indian Band, Mount Currie Indian Band, Pavilion Indian Band, Samahquam Indian Band, Seton Lake Indian Band and Skookumchuk Indian Band, equaling a population of approximately 3000 citizens. The second, the Kitsoo-Xaixais Public Safety Department, situated northwest of Bella Bella, was established in 1994. Two officers serve the Kitasoo-Xaixais Indian Band of 400 people. The third, Tsewultun Police Service situated in and around Chemainus and Ladysmith area, was established in 1996. Five officers served the Chemainus First Nation, Halalt Indian Band, Lyackson Indian Band, and Penelakut Indian Band, policing approximately 1600-1800 citizens. However, this police service collapsed in September 2000. The reasons behind the collapse, however, had little to do with the police service, as I will discuss briefly in the next chapter. The fourth was the Ditidaht First Nation Public Safety and Police Service situated west of Lake Cowichan area established in 1997 with one officer serving the Ditidaht Indian Band of 350 people.

The Nisga'a Nation has the capability to practice the only other First Nations self-administered police service in BC, if it chooses to do so in the future. The provincial government concluded the terms to the historic agreement with the Nisga'a Tribal Council and the federal government on April 13, 2000. The *Nisga'a Treaty* is the first of its kind to delegate self-government provisions to any First Nation group in the province. Along with the full range of self-government powers, the Nisga'a Nation has the responsibility to provide its citizens with the administration of justice, including a First Nations Self-Administered Policing provision.[241] The policing provisions in Chapter Twelve of the *Nisga'a Treaty* provide general guidelines for the establishment of a

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[241] For a further analysis of specific policing provisions in the Nisga'a Nation, please see: The Nisga'a Treaty, Chapter 12 (1-22).

Nisga'a Police Board and a Nisga'a Police Service. The Treaty stipulates that Nisga'a policing provisions must conform to provincial legislation in regards to minimum standards for certification of police officers and board members, use of force, discipline and dismissal procedures, and a public complaints procedure.[242] The police service is also expected to be compatible with provincial legislation in respect of selection standards, a code of conduct, and police operations.[243] Although general guidelines are provided within the Treaty, the Nisga'a Government has the final authority to enact specific police policies as to how it wants to put the general guidelines to work.

While the Nisga'a Nation has the legislative authority to police itself under the provisions of the Treaty, currently, the RCMP is on contract with the Nisga'a to police its communities. Because it is the first modern-day Treaty, the Nisga'a Nation is still in the process of transition. Although the Nisga'a Nation is not currently policing itself, it can do so at any time. The Administration of Justice chapter to the Treaty is designed so that the Nisga'a Nation will police itself, using its own members who are familiar with the cultural needs of the Nisga'a people as constables. Eventually, there will no longer need to be an outside force coming into the community and implementing an outsider's viewpoint. The Nisga'a Nation will be able to establish guidelines and police policies in order to meet the needs of both the community and the police service in their own language and with their own people.

Conclusion

First Nations self-administered police forces and the designation of the Nisga'a Police are the first steps in reconciling the cultural divide between differing models of

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[242] The Nisga'a Treaty, Chapter 12 (4a).
[243] The Nisga'a Treaty, Chapter 12 (4b).

justice. The main difference between First Nations self-administered police services under tripartite agreements and the delegation of police services via treaty negotiations is in the amount of time it takes to establish the service. If a community wants to establish a police force within the mandate of a full treaty, the police service may not be established for a number of years, as the treaty process usually takes years to negotiate. Self-administered police forces established under tripartite agreements on the other hand can be established more quickly, as long as the community can agree to a general policing framework. BC is unique in that its small number of historical treaties has resulted in an atmosphere where treaty negotiations seem to supercede all other types of negotiations. In BC, 66-70% of Aboriginal bands are currently involved in the treaty process, and there exists a possibility that Aboriginal self-policing will become contingent on self-government treaty provisions.[244] Treaty negotiations will have a significant impact on the treatment of Aboriginal peoples within Canadian justice.

An appreciation of the political aspirations of Aboriginal peoples is essential, as these developments will have significant implications for the ways in which police services are provided to Aboriginal peoples.[245] Each Aboriginal community needs to address a number of questions when negotiating simultaneous governance and policing issues to determine how to achieve the most effective Aboriginal self-policing:

- What types of policing services will the community require?
- Through what process will the community assume control over police services and how will these developments occur?[246]
- Is there an existing service to look toward for guidance?

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[244] Ministry of Aboriginal Affairs, "General Inquiries," 2001.
[245] Mehta, Policing Services for Aboriginal Peoples, 1993, p. 23.
[246] Ibid., p. 24.

- If the community is engaged in treaty negotiations, does it want to encompass administration of justice policies into the existing process?
- If policing issues are contingent on a final Treaty, how long will the process take? Can the community afford to wait for an extended period of time to have more effective policing services?
- What types of criteria are needed to determine the requirements for levels of policing services directed in the community?
- What types of roles would the federal and provincial governments provide in the development of self-policing?
- What types of roles would the RCMP and local police forces provide in the development of policing?
- Depending on whether the police service is part of a Treaty or a part of the 1992 First Nations Policing Policy, what types of funding arrangements are adequate to maintain a high level of community policing?
- How responsive will the governments be to the claim to self-police?

Communities wanting some form of self-policing must answer each of the above questions, especially in BC, where only one Nation has a fully negotiated Treaty. Prior to establishing self-administered police services, it is important to find answers to difficult questions in order to create the most responsive and effective police force possible.

As the next chapter will demonstrate, self-policing is not a simple task. The results of a questionnaire presented to First Nations officers will reveal the difficulties and benefits of Aboriginal policing. Chapter five will examine the effectiveness of First Nations self-administered police services in order to better understand the implications of the changing nature of the administration of justice in BC. What will be revealed is that the difficulties with self-policing have little to do with the daily policing, but more to do with different cultures, different values, and different concepts of justice.

CHAPTER FIVE
ISSUES WITH ABORIGINAL POLICING

Thus far, a large portion of my thesis has focused on the theoretical aspects of Aboriginal policing. In this final chapter, a greater focus will be given to the actual benefits and problems surrounding Aboriginal self-policing. As a part of my thesis, I devised a set of questions to be asked of Aboriginal police officers who have worked, or are working, in an area of BC where a First Nations self-administered police service is, or at one point was, in effect.[247] The questionnaire is designed to focus on four major aspects of the unique policing program: training standards, personal issues, cultural significance, and community involvement. The rationale behind the structure of the questionnaire is to study firsthand how Aboriginal police officers perceive the most important elements of the program to function. Although much effort has been put into the development of First Nations policing, very little has been done in the examination of the effectiveness of the program at the provincial level. Analyzing the responses of front line officers is the most effective technique to understand whether the principal objective of attaining culturally responsive policing in Aboriginal communities is being accomplished.

Before I proceed with the analysis of the responses, it is important to note that eight officers participated in the research, and it has been agreed upon by all parties that

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[247] Please note that the responses for this chapter are limited to interviews with police officers who have worked, or are working, in a First Nations self-administered police service. Although similar concerns and benefits *may* be found in Aboriginal communities where First Nations Community Policing Services are in effect, I did not interview any FNCPS officers. The findings in this chapter should not be considered representative of FNCPS concerns and benefits.

names will not be used in the thesis.[248] Although eight may seem like a small sample number, there are currently only thirteen officers working in First Nations self-administered policing services across BC. Unfortunately, I was unable to obtain responses from all thirteen; therefore, the responses provided by the eight may not apply to every officer participating in a FNSAPS in BC. However, as I was conducting the questionnaire, I found that most officers had had similar experiences. After analyzing the raw data, I decided to only incorporate responses that had received similar responses from two or more officers. Throughout the chapter, there are no benefits or concerns mentioned that only one officer provided a response for. I felt that this was the easiest method to ensure that the problems or benefits discussed were significant enough to affect FNSAPS. The eight participants were also instructed that they were under no obligation to provide a response to every question; therefore, at times, the numbers may not always add to eight when discussing the research findings.

It is important to note that the interviews went beyond the four areas of discussion I had initially identified. The eight interviewees were allowed to talk freely about their experiences; as a result, many discussed issues I had not anticipated. Besides the above four areas of discussion, topics such as the administration of police services, communication structures, and the relationship with local RCMP detachments also surfaced. As a result, I decided to present the results of the interviews in two parts. First I will present the data regarding the concerns about Aboriginal policing. In this section, there will be a specific focus on the administration of police services, communication difficulties, personal issues, training standards, and the relationship with the RCMP. The

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[248] University of Victoria: Human Research Ethics Committee, First Nations Self-Administered Police Services: The Changing Nature of the Administration of Justice, Certificate of Approval: Project Number 364-00.

second section of the chapter will examine the benefits of Aboriginal policing, focusing primarily on the cultural impact of the program, and the increased level of community involvement with policing services. In order to fully understand the changing nature of the administration of justice, it is important to study what problems and benefits Aboriginal police services might entail and how they will dovetail with the dominant institutions and structures.

I: First Nations' Officers Concerns with Aboriginal Policing

Administration and Communication Difficulties

Aboriginal Police Governing Authorities (PGAs), more commonly referred to as police boards, play a vital role in the daily governance and monitoring of police operations to ensure the police service is accountable to the community it serves, and to maintain police independence from partisan and inappropriate political influence. Five officers noted that during the developmental stage, Aboriginal police boards often have minimal experience and do not know what their role is, or what is expected of them, as little training is available for new members. Although PGAs are established so that there is a link between the police service and the community, officers stated that not all board members attend community meetings, and attendance is often small and irregular. A challenge faced by many communities has been to put in place the type of structure that can balance the conflicting responsibilities of sincere community representation on one hand and competent police governance on the other.[249] Effective policing must be ensured while at the same time cultural and social concerns of the communities must be

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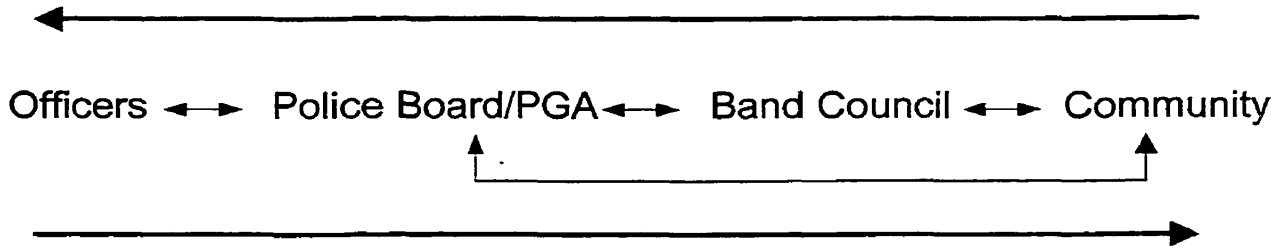
[249] Lauren Saunders, First Nations Police Governing Authorities Operations and Procedures: A "How To" Manual, Ottawa: Solicitor General Canada, Ministry Secretariat, 1995, p. 1.

met. The majority of the interviewees felt that communication between PGAs and the community was one problem regarding the administration of a FNSAPS.

Communication between police administration and the community should be frequent and informative. The following is a standard chart describing how the general flow of communication pertaining to policing issues *should* occur:[250]



Theoretically, PGAs should represent the interests of the community, and act as liaisons *between* police officers and local band councils. In actuality, four officers reported that communication was sometimes hindered because many individuals belonged to both local band councils and police boards. This type of membership pattern can lead to difficulties distinguishing between the powers of police services and local political institutions. In order to become legitimate institutions, police services should be free from all political interference. Officers were concerned that when members belong to both political institutions and police boards, the legitimacy of the police board can be questioned. Four of the eight officers recommended that there needs to be a separation between the people who initiate police policies and those that have general control over the daily lives of the community. If individuals belong to both police boards and band councils, one member may use his/her influence on the police board to guarantee the passing of a band by-law to ensure a greater amount of personal power within the community.

[250] Formulated from interviews with one officer and one former member of the Tsewultun Police Board.

At first glance, the above complication seems like an easy one to solve: governments need to initiate a policy ensuring that no police board members are band council members at any one time. However, the problem becomes more complicated when one examines the types of individuals required to be on police boards or local band councils. In most Aboriginal communities in BC, there are very few individuals who can speak both the traditional language and English; have some educational training in policy-making; and who are willing to oversee community issues. A large part of the problem stems from residential schools where Aboriginal children were forbidden to speak traditional languages that were eventually forgotten. In BC, only nineteen percent of Aboriginal peoples speak an Aboriginal language.[251] Another twenty-five percent understand, but do not speak an Aboriginal language.[252] This leaves approximately fifty-six percent of Aboriginal peoples who cannot speak or understand their traditional language(s).

Along with language concerns, few Aboriginal peoples have the basic educational backgrounds required to be on police boards or local band councils. According to 1996 national statistics, only 1.8 percent of "registered Indians on reserves" had completed a university degree.[253] This small figure is not surprising when considering that only twenty percent of Aboriginal children stay in school to the end of the secondary school level, compared to the national rate of seventy-five percent.[254] Very few Aboriginal

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[251] Labour and Social Statistics Section, Census 91 Fast Facts: Issue 35, Knowledge of Aboriginal Languages, online, Internet: http://www.bcstats.gov.bc.ca/DATA/CEN91/issue 35.htm, accessed 7 February 2001, p. 1.
[252] Ibid.
[253] Indian and Northern Affairs Canada, Comparison of Social Conditions: 1991 & 1996, online, Internet: http://www.inac.gc.ca/pr/sts/hac/socl_e.pdf, Ottawa, 2000, p. 3.
[254] Vijay Mehta, Policing Services for Aboriginal Peoples, Ottawa: Solicitor General Canada, Ministry Secretariat, 1993, p. 25.

peoples attend post-secondary institutions, and those who do often look for employment in large urban centers where employment opportunities are greater.

As a result, many Aboriginal communities are left with only a handful of individuals having the credentials to be members of police boards and band councils. Participants noted that dilemmas occur because the number of individuals qualified to fill "government positions" is not always sufficient in many Aboriginal communities. If governments begin to enforce restrictions pertaining to who may, or may not, sit on a board, many positions will be left vacant and the service they are trying to provide may suffer as a result. For the individuals who are qualified, the expectations are quite high. They are expected to be, and are elected to be, on local band councils, police boards, *and* act as representatives of the community in the treaty-making process. Besides the possibility that dual memberships may lead to "conflict of interest" situations, the amount of responsibility on these individuals' shoulders is enormous. Not only is the credibility of their positions at stake, but personal reputations can be damaged if a community finds that a particular member on a board or council is abusing his/her powers.

Personal Issues

The problem with protecting personal reputations affects not only police board members, but also the officers themselves. Most First Nations police officers police within their own communities in BC or in communities where there is a strong familial link. As discussed in chapters two and three, policing one's own family members can be difficult. In the interviews, I found that all eight officers had been involved in at least one case where they personally knew the offender(s). Seven of the officers stated that

this did not affect their roles as police officers,[255] and five of the seven officers further stated that the consequences of such cases could be devastating in terms of personal relationships. Besides finding it difficult to jail a sibling, cousin, or friend, the seven officers felt that the emotional repercussions were strong. In two cases, police officers had to move out of the community in order to protect themselves and their families from angry individuals related to the offenders. In six of the cases, immediate families of police officers were shunned from community events and were scorned for being related to a "traitor" when an officer had to put his/her own family members into detention facilities. Because the family name is the most significant tie to the community, many officers felt as if they were outsiders with few connections to the community. They were no longer thought of as community members, but officers working "around the community."

Officers also stated that because their own police service is so small, they felt as if there was a lack of a support group with whom to discuss similar problems. In comparison to First Nations police services, the RCMP and municipal police services provide support services for any officer requiring them. All RCMP officers have access to unbiased third-party counselling services, whether they are on- or off-site services. When RCMP officers are in training, they are instructed time and time again to use the services available to them to make them better officers, so that they may serve their communities better. Proper counselling and support services are considered common services for police officers as a result of job related stress. The interviewees noted that for police officers working in self-administered police services, obtaining unbiased third

[255] One participant abstained from answering this part of the questionnaire; therefore, the numbers do not add to eight.

party counselling services is a difficult task. Of the officers interviewed, five noted that there was a general lack of counselling and support services for First Nation police officers working in Aboriginal communities. A large part of the problem has to do with funding problems related to belonging to small police forces. Due to the expense of funding full time counselling services, many small police forces are not able to provide this service to their officers. A lack of on-site counselling services has led to situations whereby officers are now expected to discuss job related stresses with the Chief of Police. Three of the interviewees noted that the Chief usually has no training in counselling, and is usually too busy to entertain problems in any significant manner. The same officers also noted that they find it difficult to discuss personal issues with their employer instead of an unbiased third party, especially if the particular problem is with the Chief of Police.

The officers from the Tsewultun Police Service (TPS) felt that if an officer had a grievance with the Chief, there were very few avenues open to the officer in terms of dealing with the issue in a manner so that their jobs would not be jeopardized. This problem certainly cannot be attributed to all Aboriginal self-administered police services, as no officers outside of the TPS bought this issue up during the interviews. In the case of TPS specifically, strained relations between police officers and the Chief of Police impacted negatively on officers' perceptions of the program. To illustrate one TPS case, the Chief of Police terminated an officer who was considered to be a vital link between the community and the police service. The officer had a good rapport with the female population, and when she was fired, the entire police service lost credibility with the public it served. Although other officers were concerned with the circumstances

surrounding her termination, no one filed a grievance with the Chief of Police regarding his decision. The Police Board had little experience and wanted to maintain good relations with the Chief, who had had prior policing experience. In this case, the Chief made a decision, and no one investigated the matter until the former police officer filed a civil suit against the police service.[256]

All TPS officers interviewed felt there were no effective structures in place to deal adequately with job related problems and internal grievances for their former police service. In the case of TPS, officers who had a grievance against the Chief felt there was very little they could have done to protect themselves from the repercussions of filing such a complaint, and possibly losing his/her job. The policy that was in place specified that the Chair of the Police Board was the "disciplinary authority" for the Chief of Police. The problem with this was that there was no immediate process in place to protect the officers from wrongful dismissal by the Chief in cases where the relationship was strained between the two. As illustrated in the case of the ex-officer and the Tsewultun Chief of Police, no officer went against the Chief's decision, no matter how wrong it may have been. Although this concern may be limited to only the TPS, it is significant enough to point out, as all TPS officers interviewed felt that there was no real process at work that would protect the interests of the officer in the case of an internal complaint against the Chief of Police.

First Nations Police Training

When discussing the training aspect of the program, many officers felt that it could be improved. When asked whether the training emphasized the cultural importance

[256] The former officer won her case against the Tsewultun Police Service and was awarded damages for wrongful dismissal.

of the program, the responses were split. Four of the officers stated that the training they received at the Justice Institute of British Columbia (JIBC) in New Westminster was sufficient in that it fulfilled its function of teaching an individual the basic skills required to become a police officer. They stated that it was not necessary to focus on the Aboriginal cultural component of training at the JIBC. The interviewees who believed that the JIBC fulfilled its requirements felt that individual Aboriginal police services should be responsible for teaching officers the cultural component of the program. For example, one First Nation police officer stated that aside from the JIBC training, the Stl'atl'imx police service trained new recruits within the community to teach them the cultural importance of the program. The Stl'atl'imx police service required all potential officers to undergo personal development workshops, sweat lodge ceremonies, and cultural events. This permitted the officers to obtain hands-on training to learn the cultural intricacies that were unique to the Bands policed by the Stl'atl'imx police service.

The other half of the group stated that there should be a greater emphasis on the cultural importance of such a program during the training at the JIBC. They believed that it would benefit the program greatly if a clearer outline was given as to what culturally sensitive policing meant and what types of policing services it entailed. Three officers felt that although they were told that the mandate of First Nations policing is to provide "culturally sensitive policing" to Aboriginal communities, there were no specific definitions as to what "culturally sensitive policing" meant, and the responsibilities of officers, more often than not, replicated mainstream policing techniques. The three officers found it difficult responding to two 'legal cultures.' When asked what they

meant by two 'legal cultures' each of them replied that mainstream policing is easy to follow, as there are laws and standards that are clearly identified and must be observed. In the case of Aboriginal policing, besides the general standards that must be followed by all police officers, there are no clear definitions as to what their roles are in providing culturally sensitive policing to the communities. As officers, they felt that without a general framework of differences, a conflicting message is being sent to Aboriginal peoples who may feel that self-administered policing is nothing but another type of conventional policing, when it clearly is not. As one officer points out:

> The entire First Nations Policing Policy was established so that Aboriginal people would have alternate options to conventional or mainstream policing. But sometimes even I have problems figuring out how culturally sensitive policing is different from mainstream policing. Obviously there *are* differences between Aboriginal policing and mainstream policing, but because the difference lies in the unique historical relationship with Aboriginal people and police officers, they are not easy to point to, or understand, unless you have lived through them.[257]

Each of the interviewees alluded to the fact that it would have been very beneficial to them in their understanding of their roles as First Nation officers if some cultural workshops were held during the training at the JIBC, prior to them entering the community they would eventually police. Of the eight officers, five believed that this could alienate them from the non-Aboriginal trainees in the class, and could act as a catalyst to cause animosity between Aboriginal and non-Aboriginal trainees. However, two former officers from the Tsewultun police service stated that the JIBC training needed to emphasize the theoretical importance of such a program for *all* officers, not only for Aboriginal police officers. Both officers expressed some concern regarding the "second class" perception First Nations policing services have and both thought that

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[257] First Nations Police Officer, personal interview, Victoria, BC, 4 January 2001.

cultural education via the standard JIBC training program could help alleviate this stereotype. They also pointed out that it would benefit the program greatly if officers received some training or direction from existing Aboriginal police officers, even if they worked in other jurisdictions.

All those interviewed had had no contact with Aboriginal police trainers at the JIBC, but many pointed out that the Stl'atl'imx police service was a great point of reference for them in their personal understanding of First Nations policing. The Kitsoo-Xaixais Public Safety board, the Tsewultun Police Service, and the Ditidaht First Nation Public Safety and Police Service have all looked towards the Stl'atl'imx Tribal Police (STP) as a source to help with networking, establishing internal policies, and purchasing equipment. Although Aboriginal officers did not train the officers, all officers were well aware that there was a support service via the officers and administration working with the STP. Besides the initial police training at the JIBC and the contacts at STP, seven officers felt that there should be more formalized training to educate First Nations officer on new laws, revisions in police procedures, rules and regulations, and the use of force. Besides ensuring a cultural component during the JIBC training, all eight officers agreed that formalized in-service and advanced training should be developed, delivered and made mandatory for Aboriginal police officers.

Relationship with the RCMP

In my research on First Nations police services in BC, I had encountered very little literature pertaining to the relationship between self-administered police services and local RCMP detachments. However, during the course of the interviews, when asked, "What is the most difficult aspect about belonging to an Aboriginal police force?"

two officers from the former Tsewultun Police Service (TPS) identified difficulties with local RCMP detachments.[258] Both officers stated that they had each experienced some level of difficulty in maintaining an efficient working relationship with nearby RCMP detachments. In the case of the Tsewultun officers, interviewees attributed the complexity of the relationship between RCMP officers and themselves to two major causes: a lack of communication in the transition phase, and the replacement of RCMP services by First Nations police services. Two officers from the TPS noted that when the TPS began organizing its inception in 1995/96, things were very disorganized in terms of finding appropriate police recruits, establishing criteria for the organization of the police board, and obtaining police related equipment, such as cars, communication systems, and so on. TPS was only the third police force of its kind in BC and the entire Aboriginal policing structure was, and is still extremely young in its development. Although there had been some communication between the organizers of TPS and local RCMP detachments, discussions regarding the transition to the TPS were few and far between. As one officer stated in the interview:

> It was a touch and go situation in 1996. We did not really have a specific rulebook to follow in our organization of TPS, and we may have forgotten to communicate effectively with the RCMP detachments we were replacing. But then again, we were more concerned with establishing our own police force than worrying about the ones we were replacing.[259]

In 1996 when the TPS was formally launched, there was a period of time when local police forces phased out certain services to make room for the First Nations police service. The TPS took over a part of the responsibilities from the following RCMP

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[258] There is no similar evidence pertaining to the relationship between the Stl'atl'imx Tribal Police and local RCMP detachments in that area. The answers for this section came strictly from Tsewultun police officers.

[259] First Nations Police Officer, personal interview, Victoria, BC, 28 December 2000.

detachments: Gabriola Island, Duncan and Ladysmith. All three RCMP detachments relinquished some power to the TPS, and the Ladysmith detachment in particular relieved itself of one RCMP position, which in the opinion of two TPS officers, left some hard feelings between RCMP officers and TPS officers. The interviewees noted that the relationship between RCMP and TPS officers was further affected due to the fact that the TPS had to share some existing services with the RCMP. Because the TPS was such a small police force, it was required to use the same communications systems, detention facilities and dispatch units as local RCMP detachments. Reoccurring difficulties such as jurisdictional matters in regards to which detention facilities to take offenders to and slow response times from the dispatch unit strained the relationship further. TPS officers at times felt that the RCMP thought of them as a "second-class" police force with no facilities of their own.

Between 1996 and 1999, there were a number of internal dismissals and problems within TPS, unrelated to the RCMP. Three officers were fired, internal problems between officers and the Chief of Police were becoming apparent, and the community was beginning to lose faith in the TPS Police Board. Two TPS officers believe that this in turn gave ammunition to those RCMP members and community members who felt that the RCMP should begin to police the Chemainus First Nation, the Halalt Indian Band, the Lyackson Indian Band and the Penelakut Indian Band once again. All TPS officers interviewed felt that the combination of administrative, policing, and external problems contributed to the collapse of TPS in September 2000.

Concerns

The responses gathered from the questionnaire make it clear that First Nations self-administered police services are not exempt from structural, administrative and communication difficulties. Improvements must be made to ensure that there is a continuous dialogue between police boards, police officers, and community members. An open dialogue will help build a stronger rapport between individuals and police forces. Additionally, officers and police board members should be given training in speaking both the traditional language of the Band and English, so that *all* community members can have an effective dialogue with police officers. Services need to be budgeted for counselling and support to deal with difficulties such as policing one's own family members. All officers agreed that formalized in-service and advanced training should be developed, delivered and made mandatory for Aboriginal police officers. In addition, the RCMP should work with Aboriginal communities and Aboriginal officers to develop more Aboriginal cultural workshops for police officers, dispatchers, and management at the detachment level. This training should be specific to Aboriginal cultures in the officers' jurisdiction in order to help foster a more communicative relationship between the RCMP and self-administered police services. If the above concerns with Aboriginal policing are met, an increased number of Aboriginal communities may partake in the police process, which will enhance the idea of Aboriginal self-policing.

II: Benefits of Aboriginal Policing

Cultural Significance of the Program

From the foregoing, it may seem as if First Nations self-administered police services are in need of repair. The areas needing improvement include the lack of proper administrative and organization services; insufficient advanced training; inadequate communication between police boards, Chief Constables and police officers; and increased pressures on police officers themselves. Most of these problems pertain to administrative and personal troubles and have little to do with the day-to-day relationship being forged between police officers and community members. If one examines the principal objective behind the implementation of the 1992 FNPP, it is easy to notice that the cultural significance of the program is not in jeopardy. All eight of the interviewees were unanimous in their support of self-administered police forces, stating that the cultural component of the program is intact, and is helping to repair the relationship between police officers and Aboriginal peoples. The goal of the 1992 policy was to ensure more culturally responsive policing for Aboriginal peoples, and First Nations self-administered police services have attempted to follow through on this goal. There is general agreement that being policed by people from one's own community increases the cultural awareness of the officer when enforcing the law.

Under the policy, First Nations self-administered police services are instructed to deliver "culturally-sensitive policing" to their communities. Although the major goal of the program is to ensure a more culturally responsive policing environment for Aboriginal communities, there is no real direction given by policy-makers as to how this is supposed to be achieved. There are no definitions or procedures provided as to what

"culturally sensitive policing" entails, only a general understanding that it does not mean conventional policing. As discussed in the above section, a lack of "cultural guidelines" has caused concern amongst some police officers as to what procedures they should follow; on the other hand however, a lack of strict guidelines has meant that First Nations officers, not non-Aboriginal policy makers, have greater control over what they think are the best methods to deliver policing within their communities. As one officer pointed out in the interview, "Each Aboriginal community is unique, and one standard template outlining cultural procedures for every Aboriginal community would send the wrong message to Aboriginal peoples and officers."[260]

Increased Community Involvement

Because there are no definitive procedures outlining what "culturally sensitive policing" entails, seven of the officers noted that they were given a great deal of latitude as to how they were able to handle offenders during the initial stages of response. In many cases, officers felt that they had a good understanding of the needs, beliefs and preferences of the community. This had helped to develop and foster a closer tie between the community and officers. Community members feel less alienated from police officers, and have become more involved in the decisions about which types of services are better suited to meets the needs of the community. Aboriginal communities practicing self-administered policing have greater control over policing.

Because entire process of self-policing is so novel, there are bound to be problems with police structures. However, with the establishment of police boards, community members now have greater input into the ways in which the delivery of policing can take

[260] First Nations Police Officer, personal interview, Chemainus, BC, 29 December 2000.

place within their communities. One of the main roles of police boards is to ensure that the interests of the community are represented; therefore, the members are selected from the community and reflect the make-up of the community (i.e. elders, youth, women).[261] Because PGAs are responsible for the employment of the entire police force, including a Chief of Police, a Deputy Chief of Police, constables and civilian staff, if a particular individual working within the police force is found to be corrupt, the individual ***and*** the PGA are responsible for the negative influence the actions have bought to the community.[262] Of the participants, five felt that if Aboriginal PGAs are run properly, they are in a good position to develop police services that reflect the specific philosophies of the communities. Accordingly, policing means different things to different governing authorities, but ultimately, all policing must reflect what individual communities need. All eight officers alluded to the fact that it is necessary to acknowledge the importance of attitudes held by community members because these attitudes can influence the character of the relationships between citizens and the police, and can function to further or hinder cooperation between the two.[263] The attitudes that the public possesses about the police impact on their level of trust and confidence in the police. This affects the extent and quality of information flow to the police from the public, and in turn, influences police effectiveness.

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[261] Although this thesis does not discuss problems that Aboriginal women have with FNSAPS (as none of these concerns were brought up during the interviews), I would like to note that not all Aboriginal women agree with the three options under the FNPP. Some argue that although their interests should be represented on PGAs, not all communities have equal gender representation on police boards and police forces. Some Aboriginal women claim their concerns are being silenced by male elders and leaders who have committed crimes against women (i.e. sexual and physical abuse). I would like to recognize the concerns of these women here, as there is no further mention of this problem in the thesis.

[262] Saunders, First Nations Police Governing Authorities Operations and Procedures, 1995, p. 4.

263 Kim Polowek, Community Policing: Is It Working and How Do We Know? A Source Guide for Police Practitioners, British Columbia Police Commission: Ministry of Attorney General, 1995, p. 100.

For example, officers from the Stl'atl'imx police service have noted a decrease in the number noisy house parties to which they have had to attend over the last eight years. A large part of the reason behind this is that throughout the years, police officers became engaged in a process whereby homeowners were not officially charged with disturbing the peace or with providing minors with a facility to consume alcohol. Instead, the community and the police came up with a plan which would require homeowners, whether they were physically present at the party or not, to publicly apologize to the families whose children drank at their houses and to neighbors disturbed by the noise. Over the years, the police service found that the communities became their first line of defense in controlling this type of criminal activity. An effective partnership with the community has put the onus on the parents/guardians to oversee that their homes are not the sites of loud house parties. A decrease in the number of petty offences such as this has given officers more time to deal with more serious offences.

Of the participants, seven believed that the principles of First Nations policing involved a recognition that the police and the community must work together to address issues in the community. This involved recognition that the police alone cannot address the issues which, in the past and in the present, result in high rates of Aboriginal contact with the criminal justice system.[264] Participants felt very strongly that First Nations self-administered policing has helped foster a realization that the police must work together with the community to address the causes of these difficulties, rather than merely reacting to the problems. One such initiative is the Bail Supervision Program. It was developed through the collaborative efforts of the local corrections office, the Lillooet RCMP

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[264] Curt Taylor Griffiths, Darryl S. Wood, Evelyn Zellerer, and Janice Simon, Aboriginal Policing in British Columbia, report submitted to the Policing in British Columbia, Commission of Inquiry, December 1993, p. 159.

detachment and the Stl'atl'imx Tribal Police. The program allows individuals who are charged with an offence to be supervised by a community committee which sets the conditions the alleged offender must meet while waiting trial.[265] This might include participating in sweat lodge ceremonies, counselling by the Elders, and/or drug and alcohol counselling.[266] The supervising committee then prepares a report for the presiding judge at the time of trial. At the sentencing, the judge uses this report to decide the severity of the punishment. The intent of the program is to stabilize the life of individuals who are coming before the courts as well as to increase community participation in addressing the needs of persons in conflict with the law.

Increased community involvement includes the work done by the First Nations officers themselves. Of the participants, seven of the officers strongly felt that First Nations policing increases a sense of shame and remorse amongst Aboriginal offenders when being detained by Aboriginal police officers. There is an apparent decrease in the number of repeated offences committed in communities with First Nations self-administered police services, and some officers attribute this to an increased sense of shame that offenders demonstrate when being arrested by officers from their own communities. In the interview, two officers from the Stl'atl'imx Tribal Police pointed to one particular case when asked, "Subjectively, do you think that Aboriginal offenders under your jurisdiction ever felt shame and/or remorse when being arrested by an Aboriginal police officer?" In the STP example, a seventeen-year-old Aboriginal female was arrested on a break and enter charge in 1991. At that time, the RCMP investigated break and enters on the reserves, and using conventional policing techniques, she was

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[265] Ibid., p. 171.
[266] Ibid.

questioned, arrested, charged, found guilty and sentenced to a two-year prison term. Both officers reported that RCMP incident files stated that the offender had been uncooperative, unwilling to answer questions, and had attempted to physically and verbally abuse the officers. In 1993, the STP had begun to investigate all break and enter offences and in 1994 the offender was arrested once again on the same charge. After reading the initial report by the RCMP, the arresting officers were surprised to find the offender remorseful and embarrassed, being extremely cooperative, silent and making apologies for her actions.

Due to her previous conviction, the officers went ahead with an official charge, but they asked the court to use a restorative justice approach in her sentencing. This time the court agreed with the officers and found that the offender had displayed genuine remorse for her actions. The community was given the task of sentencing the individual instead of sending her to jail once again. The offender, the officers, the victim(s) and all interested community members were asked to attend a Chief and Council meeting where it was agreed upon by all parties concerned that she would publicly apologize to the victim and do community service within her Band, under the supervision of the officers and the Band Council. For five years, the offender has kept in contact with both officers and continues to work within the community, although her community service finished over three years ago. On a number of occasions since the incident, the offender has expressed her gratitude to the officers for understanding her, and taking the time to help her understand that her actions were hurting her entire community, not just the owner of the home she attempted to burglarize.

Although the above example is only one case of community and police intervention, seven of the officers I interviewed conveyed similar types of stories to demonstrate the impact of being arrested by an officer from one's own community, with whom the offender generally is familiar. Perhaps this is the kind of procedure that police should routinely try to do. Embarrassment, shame and remorse are strong emotions and can impact young offenders or first time offenders greatly. If the offender is a "hardened" criminal, remorse and shame do not play such a strong role in the rehabilitation process, but they can help the officer in dealing with an offender in a more peaceful and cooperative manner. In such cases, the pattern is that the offender usually acknowledges an understanding of doing something wrong, is usually quiet and cooperative and is less likely to become confrontational and physical with officers he/she knows. Although there is no statistical proof to validate the cause and effect pattern, seven of the interviewees stated that knowledge of the arresting officer(s) *may* lead to less criminal activity in the long run. Of course this is not a standard pattern, only a general recollection of officers' experiences.

Removing Barriers

Knowledge of the culture and peoples has helped First Nations self-administered police services to adequately reflect the policing needs of the individual communities. The move towards First Nations policing helps to set priorities and allocate resources based on consultation with the communities being policed, rather than priorities being set by detachment commanders and RCMP headquarters in Ottawa.[267] Participants agreed that police officers have the discretion to use their roles in the community for purposes

[267] Ibid., p. 174.

other than law enforcement. Officers can be role models for the communities they police, and some officers are using their 'influence' to participate in community-oriented events to raise awareness about issues important to the community. In 1998 for example, Stl'atl'imx officers, along with the assistance of the members from the Lillooet RCMP detachment volunteered to shave their heads to raise money for the Canadian Cancer Society. In 2001, STP officer Steve Johnny came up with the idea for a "Cops for Cancer Lillooet Calendar". The proceeds from the calendar went directly to the Canadian Cancer Society, which then put money back into the community to raise awareness about tobacco addiction.[268]

Along with meeting the specific needs of the community, First Nations officers are able to respond more quickly to disputes than the RCMP were under previous policing arrangements. The respondents unanimously agreed that this has led to an overall increase in the level of policing services to the community. Familiarity between police officers and the public helps remove barriers from both sides. Of the police officers, five noted that they cannot treat citizens in a disrespectful manner as their credibility can be questioned within the community. Another beneficial change arising from Aboriginal policing is that offenders and officers are both accountable to one other and must face the other on a daily basis. When concepts such as familiarity, credibility, and accountability become a reality in policing, officers themselves feel a sense of pride in the work they deliver to the communities. All of the officers interviewed felt that they had made a difference in their respective communities, and each felt that an effective police service could help bring a sense of achievement to Aboriginal communities.

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[268] Stl'atl'imx Tribal Police and Lillooet RCMP Detachment, 2001 Lillooet Calendar: Connect For Cancer. Canadian Cancer Society (British Columbia and Yukon Division).

Officers from TPS and STP also felt that a delivery of an effective police service is the first step towards self-governance.

All eight interviewees repeatedly stressed the cultural importance of the program. Each stated that understanding the people, their history, their struggles, and their aspirations made them into better police officers. Enforcement of the law is only one part of their role as officers. The second, more important role they play is to help establish community harmony and to give faith to people who have been mistreated by officers in the past in order to help build a bridge between Aboriginal peoples and the criminal justice system. Identification with the culture helps remove many barriers between officers and victims, officers and suspects, and more generally, between officers and the community. One member from the former Tsewultun police board summed up the situation nicely when he said:

> The most important thing to realize is that police officers have to stand above everyone else. When officers build a rapport with the community, they are respected as police officers. However, they can only build a strong connection to the community if they recognize and respect the culture. This may mean discussing an issue as a friend, rather than a police officer. Or it may mean dropping off someone who is intoxicated at a relatives' home instead of a jail cell. Or it may even mean turning a 'blind eye' to small infractions that are considered everyday practice by our people. Together, these things will maintain our understanding of what constitutes law enforcement, as well as giving police officers the respect they are due.[269]

An overall increase in the level of policing services to the communities has been developed than that previously provided by the RCMP. Some officers can even help

[269] Personal interview, Chemainus, BC, 28 December 2000.

educate the community and the Elders about the justice system in their own language, a problem that posed difficulty in the past for RCMP responsible for policing reserves.[270]

Conclusion

The responses gathered from the questionnaire make it abundantly clear that First Nations self-administered police services provide many benefits to Aboriginal peoples, but are not free from difficulties. Self-administered police forces are not exempt from structural, administrative and communication difficulties, but the responses illustrate that the cultural significance of the program, and increased community involvement have helped tear down some of the barriers encountered between Aboriginal peoples and the police. For some, the difficulties pertaining to training and administrative issues continue to outweigh the benefits of such a program. For others, helping to bridge the cultural divide and to deliver culturally sensitive policing overshadow many of the concerns. Regardless of where one falls on the spectrum, it cannot be overlooked that First Nations self-administered police services are a part of the changing nature of the administration of justice in BC. Policy-makers have recognized that the time for change has come to help develop better policing services for Aboriginal peoples. Daily policing done by Aboriginal officers is helping to mend the cultural divide that has existed between Aboriginal and non-Aboriginal peoples since, and prior to, Confederation.

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[270] Neal Hall, "Native Police on Lillooet Reserves Credited With Cutting Crime Rates," The Vancouver Sun, 31 January 1991, B5.

CONCLUSION

SEPARATE BUT EQUAL

Police officers are a critical component of the justice system as they define concepts of justice through their roles of being first respondents, enforcers, and decision-makers. Police officers are the most visible and obviously powerful manifestation of a dominant society, its institutions, customs and laws. Although law enforcement is only one part of the criminal justice equation, it is by far the most important. The recognition of the importance to deliver culturally sensitive policing to Aboriginal communities is the first step to bridging the cultural divide. "Culturally sensitive policing" techniques are changing the relationship between Aboriginal peoples and the criminal justice system. In collaboration with Aboriginal communities, national and provincial governments are creating new types of police services, services that help address the cultural divide in the treatment between Aboriginal and non-Aboriginal people within the justice system.

Different historical legacies, different methods of social control, and different concepts of the role of the community between Aboriginal and non-Aboriginal people affect how the two perceive the role of the justice system. As was argued in Chapter One, understanding how historical beliefs affect access to equal treatment between the two groups in the system is the first step to addressing the cultural divide. Historically, there was a fundamentally different world-view between European Canadians and Aboriginal peoples with respect to such fundamental issues as the substantive content of justice and the process for achieving justice for all. Euro-Western concepts of sovereignty, authority, and individualism were in conflict with Aboriginal concepts of

restoring peace and equilibrium within the community by reconciling the accused with his/her own conscience, and with the individual or family that was wronged.

Differing beliefs resulted in a situation whereby Aboriginal peoples were not able to fully understand and translate expectations of the justice system in a way that would permit them to understand the rules of the system in an equitable manner with mainstream society. Prior to the 1980s, government officials were unable or unwilling to accept that the community, and family centered cultural values of Aboriginal peoples were in conflict with the values of a free enterprise, individual-oriented, self-acquisitive society.[271] Competing beliefs, such as the Aboriginal-rights view and the individualist-majoritarian view, as discussed by Tennant, were expressed differently in Canadian institutions, as mainstream institutions reflected the beliefs of the latter and not the former. Discriminatory systemic biases within the criminal justice system resulted from the philosophical divide between the two beliefs.

The needs and characteristics of the criminal justice system were further reflected in police agencies' frequently adversarial style of intervention and investigative functions, rapid response requirements, and internal discipline and management control.[272] The limitations that stemmed from conventional police organizations' narrow emphasis on crime fighting and law enforcement were in direct contrast to traditional Aboriginal methods of policing.[273] Historically, most Aboriginal communities' cultural and social structures reflected a wide range of community concepts of order that provided

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[271] Cariboo-Chilcotin Justice Inquiry, Report on the Cariboo-Chilcotin Justice Inquiry, Campbell River: Ministry of the Attorney General, 1993, p. 9.
[272] Robert Depew, "Policing Native Communities: Some Principles and Issues in Organizational Theory," in James Chacko and Stephen E. Nancoo, eds. Community Policing in Canada, Toronto: Canadian Scholars' Press Inc., 1993, p. 252.
[273] Ibid.

the foundation for social control. Social control was emphasized to maintain group harmony, rather than a narrow focus on prosecution and strict punishment. Aboriginal policing was conceptualized as a reciprocal constraint between the individual and the community. A cultural divide in perceptions of justice led to inadequate police services for on-reserve Aboriginal peoples.

Delivery of police services to reserve communities was characterized as inadequate, untimely, culturally and linguistically insensitive, poorly managed, and politically motivated. Non-Aboriginal RCMP officers did not always mete out justice in Aboriginal communities. Aboriginal-police relations were tainted with accusations of indifference, arrogance, disrespect, contempt, and abuse. There was a strong sense among Aboriginal communities that police detachments often showed an unwillingness or inability to provide timely responses to situations. Throughout the thesis, evidence from commissions and inquiries demonstrate the tenuous historical relationship between Aboriginal peoples and police officers, as police officers often attended at Aboriginal homes without proper warrants, without proper authority, and without proper reasons.

In the mid 1980s, governments began to recognize that the time for change in conventional policing had come. By 1982, policy makers were beginning to come to terms with the fact that a number of pressures, including shifting trends in society, the need for greater accountability to the public, and a greater ethnic diversity in communities were challenging all public institutions, including police services, to change to meet society's current needs. As examined in Chapter Two, police services themselves had to reconsider the philosophy, objectives and processes related to their

services. The need for a proactive and accountable system led many to reflect on the manner in which to rediscover the partnership between police and the community.[274]

Community-based policing is part of the philosophical framework for addressing crime in ways that are more direct, personal, and constructive than the incarceration techniques employed by the formal criminal justice system prior to the mid 1980s. By redefining crime as harm done to both the victims and the community, the changing nature of justice recognized that crime is more than an affront to the state. Crime is a breach of community, with real people harmed as a consequence. The beliefs encompassed within the idea of community-based policing reflect the traditional values of many First Nations groups across Canada. As discussed in Chapter Two, community based justice programs have often been useful in demonstrating innovative intervention strategies not easily initiated in existing bureaucracies, and in bringing policing services closer to neighborhoods. In Canada, First Nations Self-Administered Policing Services (FNSAPS) and First Nations Community Policing Services (FNCPS) can be understood as programs, which enable communities to have stronger voices in the decision-making process. Community-based policing programs are helping to eradicate the historical, discriminatory biases that have led to a controversial relationship between Aboriginal peoples and police; and more abstractly, between Aboriginals and the entire justice system.

Since the implementation of the 1992 First Nations Policing Policy, Canadian governments and Aboriginal peoples have begun to work more closely than ever before to try and address their concerns with policing techniques. A greater emphasis is being

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[274] James Chacko and Stephen E. Nancoo, Community Policing in Canada, Toronto: Canadian Scholars' Press Inc., 1993, p. xi.

placed on the political and practical necessity for Aboriginal peoples to assume greater control over the delivery of policing services to their communities.[275] As argued in Chapter Two, tripartite policing agreements give concrete expressions to the role that Aboriginal communities play in the determination of the level and quality of the policing services that they receive. Community tripartite policing agreements are designed to give Aboriginal communities access to Aboriginal police services that are professional, effective, responsive, and acceptable.[276] In the negotiations process, Aboriginal groups, and provincial and federal governments have begun to reconsider philosophies, objectives, and processes related to policing in what some have termed the "changing nature of the administration of justice". No longer is it feasible to conceptualize justice in the traditional European sense, but within a larger context, a context that addresses self-reliance and cultural respect for Aboriginal peoples.

The changing environment of justice has affected policing services across the world. As argued in Chapters Two and Three, a major part of the solution has come in the forms of cultural recognition and alternative policing programs. As alternatives to existing police services are being formed, many Aboriginal communities across the world are working in collaboration with local and national governments in developing and instituting forms of tribal justice. In Australia, for example, the focus has been on delivering a more restorative justice framework of community policing to Aboriginal communities. There is an increase in the number of Aboriginal peoples being hired as police officers and in developing appropriate and relevant policing strategies. In Alaska,

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[275] Indian and Northern Affairs Canada, Indian Policing Policy Review: Task Force Report, Ottawa: Ministry of Indian and Northern Affairs Canada, 1990, p. 11-20.
[276] Solicitor General Canada, Aboriginal Policing: Consulting Your Community and Preparing a Policing Proposal, Ottawa: Solicitor General Canada, Ministry Secretariat, 1995, p.1.

the focus has been on strengthening existing community-based policing programs into ones where greater local control is given to Native Officers, especially in those areas where isolation is the most significant factor in eliciting timely responses from police. The Village Public Safety Officer program has helped Native communities retain some cultural power and sovereignty regarding policing procedures. The existence of a restorative justice framework in Australia and the Village Public Safety Officer Program in Alaska, as discussed in Chapter Three, point to a reconciliation of the cultural divide between Aboriginal peoples and mainstream criminal justice systems through the ways in which values define people's understanding of justice and policing. Community-based policing programs in Australia and Alaska have begun to assist in shifting public perceptions of police and in redefining the role of the justice system. Aboriginal police services reflect the changing nature of the administration of justice as a greater emphasis is being placed on the role of the community and community-based policing programs.

The changing nature of the administration of justice recognizes the historical legacy of Aboriginal peoples as well. Chapter Four examined the distinctive challenges faced by Aboriginal peoples in BC over the last 130 years and how these challenges are now affecting the political landscape of the province. A large part of self-reliance in Aboriginal communities comes in the form of self-policing. Many Aboriginal peoples in BC believe that they have an inherent right to create a police force in furtherance of a right to self-government in their traditional homelands. An appreciation of the political aspirations of Aboriginal peoples is essential, as these developments will have significant implications for the ways in which police services are provided in Aboriginal communities. Self-policing and self-government are closely tied in the eyes of many

Aboriginal peoples and the necessity of First Nations policing services is rooted in the historical, cultural, and legal policies leading to the apparent failure of mainstream policing to serve Aboriginal peoples well. Aboriginal peoples feel that the issues of land claims and resource management are tied closely with the right to Aboriginal justice.[277] They argue that policing and justice are inextricably tied with the recognition of land rights. Once Aboriginal peoples are recognized as a legitimate group with inherent basic rights, justice and policing rights will automatically fall under Aboriginal people's control.

As was argued in Chapter Five, the transition to on-reserve community policing is not complete and it still faces several unique challenges. The responses gathered from the questionnaire make it clear that First Nations self-administered police services are not exempt from structural, administrative, and communication difficulties. Improvements must be made to ensure that there is constant communication between police boards, police officers, and community members. Officers and police board members should be given training in speaking both the traditional language(s) of the community and English, so that everyone can communicate directly with officers. Counselling and support services need to be budgeted for when developing self-administered police forces to deal with difficulties such as policing one's own family members. In addition, the RCMP should develop Aboriginal cultural workshops for police officers, dispatchers, and management at the detachment level. This training should be specific to Aboriginal cultures in the officers' jurisdiction in order to help foster a more communicative relationship between the RCMP and First Nations police services. A challenge faced by many communities has been to put in place the type of structure that can balance the

[277] Cariboo-Chilcotin Justice Inquiry, Report on the Cariboo-Chilcotin Justice Inquiry, 1993, p. 8.

conflicting responsibilities of sincere community representation on one hand and competent police governance on the other.[278]

Although self-administered police services do encounter their share of problems, the general consensus is that they are good structures to have in Aboriginal communities. The information gathered through the questionnaire can speak to the cultural effectiveness of the program. The responses from First Nations' officers make it clear that First Nations self-administered police services provide many benefits to Aboriginal peoples. The cultural significance of the program has helped increase community involvement by tearing down historical barriers encountered between Aboriginal peoples and the police. Self-administered police services are helping to bridge the cultural divide in the delivery of police services to Aboriginal peoples. The cultural component of the program is intact, and is helping to repair the relationship between police officers and Aboriginal peoples. The goal of the 1992 policy was to ensure a more culturally responsive policing for Aboriginal peoples, and in most ways, First Nations self-administered police services have followed through on this goal. There is general agreement that being policed by people from one's own community increases the cultural awareness of the officer when enforcing the law. Daily policing done by First Nations' officers is helping to mend the cultural divide that has existed between Aboriginal and non-Aboriginal peoples.

The principles of Aboriginal policing involve a recognition that the police and the community must work together to address issues in the community. First Nations officers are able to respond more quickly to disputes than the RCMP could under

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[278] Lauren Saunders, First Nations Police Governing Authorities Operations and Procedures: A "How To" Manual, Ottawa: Solicitor General Canada, Ministry Secretariat, 1995, p. 1.

previous policing arrangements. Familiarity between police officers and the public helps remove barriers from both sides. The key to a successful First Nations self-administered police service is that officers are drawn from and recommended by the Aboriginal communities where they will eventually work. Aboriginal policing programs can effectively offer Aboriginal communities an administration of justice that can help to ensure social order, public security, and personal safety. First Nations self-administered police forces are a part of the changing nature of the administration of justice, an administration focusing on equal understandings of justice.

The changing nature of the administration of justice may be a difficult concept to grasp, but its implications in helping to reconcile the cultural divide between Aboriginal peoples and police services are immense. The changing nature of the administration of justice is addressing the cultural divide by embodying the use of informal or traditional forms of thinking and acting about disputes or violations of order and safety. Community oriented policing, whether it is based in Canada, Australia, or Alaska encompasses the involvement of the community to accomplish police responsibilities, to facilitate better relations, to establish police priorities based on community needs and desires, and to allocate police resources in the areas where they are needed most. The legally pluralistic environment in which they work and the small size of their communities practically mandate that they go beyond reactively meeting minimal legal requirements to problem-solving activities, if they are to be effective at all.[279]

By placing the community at the center of the process- as a victim, as a responsible party, as a healer, as an arena for problem solving, and as a place for

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[279] Otwin Marenin and Gary Copus, "Policing Rural Alaska: The Village Public Safety Officer (VPSO) Program," American Journal of Police 10(4): 1-26 (1991), p. 18.

cooperative action- it can simultaneously engage and strengthen communities. By exploring the tie between community resources and cultural continuity, Aboriginal peoples may no longer continue to be over represented at every level of the criminal justice system. Not only can community-based policing programs give greater strength to Aboriginal communities, they can also address crime in ways that are more direct, personal, and constructive. Community-based policing embodies an inclusive generalist conception of the role of policing. It stresses the complexities of public safety and social order, and addresses the causes of disorder and threats to welfare for Aboriginal peoples in order to adequately address the cultural divide.

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APPENDIX A

First Nations Self-Administered Police Forces and the Changing Nature of the Administration of Justice

1. How did you first hear about the First Nations Self-Administered police service program?

2. How were police officers chosen for the program? What types of requirements were mandatory to apply for the program?

3. In your opinion, how stringent were the entrance requirements?

4. What type of training did you undergo to become a part of this program?

5. Did you feel that the training emphasized the cultural importance of the program? If so, how was the cultural importance stressed?

6. Who was in charge of the training sessions? Did you receive any direction from Aboriginal police officers in other jurisdictions that were familiar with similar types of programs?

7. When the training was complete, can you recall how many trainees passed and how many failed?

8. Did all the trainees who passed begin working in self-administered police forces or were some sent to other policing jurisdictions (i.e. RCMP or Municipal police forces)?

9. Once you began policing, what kinds of issues arose for you or any of your partners? What was done to solve these issues?

10. Have you ever been involved in a case where you personally knew the offender (i.e. family member, friend, family friend)? If so, did this in any way affect your role as a police officer?

11. In your opinion, how vital is the cultural importance of such a program?

12. What types of policing initiatives were undertaken to fulfill the "cultural-sensitivity" component of the program?

13. As you recall it, what type of criminal activity occurred most often within First Nation reserves?

14. Did your knowledge of the culture ever overtake your role as police officers? By this, I mean, did you on occasion ever deal with an occurrence in a more traditional sense of "Aboriginal justice" instead of using policing techniques as outlined under the rules?

15. Were "banishment practices" ever used by the community as ways to deal with offenders?

16. As police officers, did you ever participate in a healing circle ceremony, a sweat-lodge ceremony, or a mediation circle?

17. Are you familiar with any situations whereby the community worked with police officers in dealing with individuals who partook in criminal activity? If so, what types of activities were undertaken by community members and/or Elders in conjunction with police services?

18. Subjectively, do you think that Aboriginal offenders under your jurisdiction ever felt shame and/or remorse when being arrested by an Aboriginal police officer?

19. What, in your opinion, is the most beneficial aspect about belonging to an Aboriginal police force?

20. What, in your opinion, is the most difficult aspect about belonging to an Aboriginal police force?

21. Has there been a great turnover in police officers? If so, why do you think this has occurred?

22. Do you believe that a cultural divide exists between community-based justice programs and basic policing techniques taught to you during the training sessions? If so, do you think that self-administered police services are able to help bridge the cultural divide?

23. Do you think "culturally-sensitive" policing programs are able to effectively overcome some of the biases' found in jurisdictions where no such programs exist? If so, can you outline some of the biases'?

GLOSSARY

LIST OF ACRONYMS

ACCP- Aboriginal Community Constable Program

ALS- Aboriginal Legal Services

APAS- Aboriginal Police Aids Scheme

APD- Aboriginal Policing Directorate

AST- Alaska State Troopers

BC- British Columbia

BCTC- British Columbia Treaty Commission

BNA Act- British North America Act

FNCPS- First Nations Community Policing Services

FNPP- First Nations Policing Policy

FNSAPS- First Nations Self-Administered Police Service

JIBC- Justice Institute of British Columbia

NDP- New Democratic Party

NWT- Northwest Territories

PGA- Police Governing Authority

RCAP- Royal Commission on Aboriginal Peoples

RCMP- Royal Canadian Mounted Police

STP- Stl'atl'imx Tribal Police

TPS- Tsewultun Police Service

VPO- Village Police Officer

VPSO- Village Public Safety Officer