

FIRST NATION POLICING

I consistently heard from researchers, parties, witnesses, and participants in our consultations that First Nation police services could help to improve the relationship between Aboriginal peoples and the police and reduce the potential for violence.

First Nation police services often support the OPP during occupations and protests in the OPP jurisdiction. First Nations police services are also often called upon to police occupations and protests within their own communities. First Nation police services also play an important role in preventing occupations and protests in the first place by acting to diffuse tensions before they escalate into a protest. These responsibilities are likely to increase for two reasons. First, the OPP is likely to withdraw from directly policing First Nation communities. Second, Northern Ontario is likely to be the site of more Aboriginal occupations and protests in the future and most of Northern Ontario is policed by First Nation police services. The security and effectiveness of First Nation police services is, therefore, very important to my Part 2 mandate to make recommendations to prevent violence in Aboriginal occupations and protests.

First Nation policing was discussed extensively at the OPP “Building Relationships” forum in January 2006 and at the Chiefs of Ontario Special Assembly with the Inquiry in March 2006. It was also discussed in several submissions to the Inquiry, most extensively in the submission from the Nishnawbe-Aski Police Services (NAPS).

Commissions and inquiries across the country have cited the potential benefits of First Nation policing. They have repeatedly encouraged the development of self-directed and culturally appropriate First Nation police services. The Royal Commission on Aboriginal Peoples is one example:

The desire to participate in both the development and operation of policing institutions and services has been articulated by Aboriginal people in conferences, research reports and justice inquiries, both provincial and federal. At the root of this is the belief on the part of Aboriginal people that long-lasting solutions to policing programs are grounded in the people and the communities themselves. Obviously, Aboriginal self-government offers the greatest scope for community involvement in policing. This is not simply because it is the most promising — although not the only — avenue to change in existing arrangements, but because it promises a coherent and comprehensive

foundation for community governmental structure, decision making and law making authority, all of which are prerequisites for the development, implementation and operation of truly autonomous Aboriginal police forces.¹

Despite continuing support from inquiries, reports, and mainstream police services, advocates for First Nation police often complain of the “second-class” funding and legal status accorded to them. They argue that First Nation forces are “set up to fail,” because they lack funding and their mandates are limited. They say that First Nation police services should be funded and supported as replacements—not enhancements—to mainstream police forces in their jurisdictions. On that subject, the Inquiry repeatedly heard that First Nation police services continue to face challenges:

- There is considerable demand for their services.
- They are generally small organizations, and not funded to provide the services that First Nation communities expect of them.
- They often lack specialized services.
- Often, they are responsible for policing huge geographic territories.
- They do not have the legal or financial security of even a small mainstream police service.

The Inquiry research paper on First Nation policing by Professor Don Clairmont was a comprehensive review of the history, services, limitations, and potential of First Nation policing throughout Canada.² Professor Clairmont’s research profiled nine self-administered police services in Canada, including five in Ontario.³

First Nation police services in Ontario are both valuable and successful. They make important contributions to public safety, promote culturally appropriate policing, and help build respectful relationships between police and Aboriginal peoples across the province. The question is how to support and sustain them so that they may be even more effective in the future.

In my view, provincial, federal, and First Nation governments need to jointly commit to renewing First Nation police services in Ontario. Together, they must consolidate the gains made so far and move to place First Nation police services on much firmer financial, operational, and legal ground. Otherwise, First Nation police services will continue to retain their status as programs or experiments, not full-fledged police services. That would be unfortunate. I believe that reforms are necessary to allow First Nation police services to realize their considerable potential as policing and peacekeeping services for their communities.

My recommendations in this chapter are intended to assist First Nation police services to develop and provide to First Nation communities the same quality of policing that most Ontarians take for granted, or which may even be available in communities neighbouring First Nations if they happen to be policed by the OPP. These recommendations are intended to protect community safety, to ensure sustainable, professional policing, to promote culturally appropriate policing and peacekeeping, and to promote and protect public order in vulnerable communities. Yet, at some level, the issue can be simply reduced to equality and fairness. There is no reason why residents of First Nations in Ontario should have lower-quality policing than non-Aboriginal Ontarians do.

This chapter will focus primarily on self-administered First Nation police services, because they have become the dominant model in Ontario. With some exceptions, it is expected to be the main form of First Nation policing in the future.

10.1 Why First Nations Want to Police Themselves

Grand Chief Stan Loutit of the Mushkegowuk Tribal Council told the Inquiry that the impetus to build a justice system is rooted in nationhood:

We want to develop our own forms of justice ... Justice is a key component of nation building. I feel that these initiatives that we've heard about today should be supported because they come from the people ... and if something comes from the people, we take ownership, we have a sense of pride, we have a sense that it's ours.⁴

Deputy Grand Chief Simon Fobister of Grassy Narrows First Nation further explained why First Nations want to control their own policing:

After years of fielding complaints from both the First Nation constables under the tripartite Ontario First Nations Policing Agreement and the complaints of our people in the communities for lack of response and disrespectful service, and too many complaints of use of excessive force used by the OPP officers, the Treaty Number 3 First Nations sought their own police service ... We desire our own police service to be able to enforce our own laws. We acknowledge that there has been a clear reduction of police harassment and use of excessive force during the arrest process involving the First Nation police.⁵

Several submissions to the Inquiry and many speakers at Inquiry forums and consultations echoed this view, including the Chiefs of Ontario:

There is a need for more recognition, support and financial resources from both Ontario and Canada for First Nations-directed police services in Ontario and for First Nations-based administration of justice systems. There is a need for greater recognition of First Nations' law and support for First Nation enforcement processes, together with a commitment to reciprocal arrangements for implementation of First Nations-based justice systems.

First Nation police services are unique institutions. They are not simply alternatives to mainstream police services. Indeed, the consensus among previous inquiries and reports is that mainstream policing and law enforcement are generally culturally foreign to Aboriginal peoples. This is because First Nations have traditionally had their own systems of law and justice, which are considerably different from mainstream justice and policing. For example, the Nishnawbe-Aski Police Services explained that in several First Nation languages, the word for “police” means “the one who holds the weapon, the one who holds the weapon over you,” and “the one who locks you up or the one who binds you,” and “the one who apprehends you or the one who takes you away.”⁶

Indeed, many First Nation leaders believe that First Nation policing was intended to be a transition between mainstream policing and a dedicated First Nation peacekeeping service, as NAPS explained:

First Nations maintained certain level of community norms that membership were expected to up-hold. The premise of such expectations was based upon respect for rule of law or traditions/customs. When direct intervention was required, the First Nation communities had people who were assigned the responsibilities as peacekeepers or monitors. The approaches exercised were not intrusive but included counseling, reconciliation and healing.

In many of the First Nations communities where peacekeeping measures were not successful, then the community had to take progressive measures to ensure security and protection of the community members. Such measures required community support and agreement. The most extreme measure taken would have been banishment from the community. Banishment measure was not a surprise tactic as all members were aware of potential consequences for continued disrespect of community norms.

The direct intervention measures were less intrusive as to ensure that measures taken were for the good of the individual and the community.

The intervention was about healing and restoration.

Peacekeeping responsibilities varied from each nation and community. These responsibilities were determined by the community as a whole and what measures were required to resolve the issues that give rise to the need for direct intervention.⁷

It will likely be extremely difficult, if not impossible, to realize the potential of a true First Nation peacekeeping service if First Nation police services are unable to match the services and legal and financial security of even a small municipal police service.

10.2 First Nation Police Services in Ontario

There are currently nine self-administered First Nation police services in Ontario. Together, these services police 114 First Nation communities with a total population of more than 75,000.⁸

Self-administered First Nation police services are established and governed by a First Nation or band council, usually through a police commission. Subsection 81(1)(c) of the *Indian Act* provides that a band council may pass a bylaw for the purpose of “the observance of law and order,” which is the statutory authority to establish a police commission and a police service. The police commission employs First Nation constables, who are appointed in Ontario by the commissioner of the OPP under section 54(1) of the *Police Services Act*. Each self-administered police service is headed by a chief of police who reports to the police commission. Federal and provincial governments fund self-administered police services under the First Nations Policing Policy through agreements signed by the First Nation, Canada, and Ontario.

Demand for First Nation policing is likely to increase in the future. As noted earlier, the population of Aboriginal peoples, both on and off reserves, is increasing. The potential for Aboriginal occupations and protests is also increasing.⁹

10.2.1 First Nation Policing in Ontario

First Nation police services are young institutions.¹⁰ Before 1960, the RCMP was solely responsible for policing First Nations in Ontario. This began to change in 1960s, when the RCMP withdrew from policing First Nations in Ontario and Quebec. In Ontario, the transfer of responsibility for policing First Nations to the OPP was completed in 1971. Self-administered First Nation police services did not emerge as institutions until the early 1970s.

First Nation policing changed significantly in 1991 with the federal First Nations Policing Policy (FNPP). The FNPP was intended to provide First Nations with police services that were “professional, effective, culturally appropriate and accountable to the communities they serve.” First Nation police services were to be “equal in quality and level of service to policing services found in communities with similar conditions in the region.” The FNPP encouraged First Nations, the federal government, and the provinces to enter into agreements to provide First Nation policing through a variety of models, including First Nation-administered police services. Over time, the self-administered model became the dominant model of First Nation policing in Ontario.

The main elements of the FNPP are still in place.¹¹ According to the federal government, the FNPP is “a practical means to support the federal policy on the implementation of the inherent right and the negotiation of self-government.”¹²

The FNPP assumes that First Nation policing will be an add-on or enhancement to basic policing services provided by the RCMP or a provincial police service. That assumption leads to inadequate funding where self-administered First Nation police services are actually the primary service providers for their communities, as is the case in Ontario and some other provinces. This is not just an Ontario problem. It is a critical flaw in the FNPP, a national policy, which the federal government should address.

Ontario and Canada signed the first Ontario First Nations Policing Agreement (OFNPA) in 1992. The OFNPA has been renewed several times and remains in place today. The OFNPA enshrines the principle that First Nations in Ontario should decide what kind of policing arrangements are best suited to their communities. The OFNPA also provides for cost-sharing between Ontario and Canada to fund First Nation police services. Since the introduction of the OFNPA, funding for First Nation police services in Ontario has increased significantly. Combined federal and Ontario government funding for First Nation policing increased from \$16.1 million in 1992/93 to \$58.4 million in 2006/07.¹⁴

First Nation policing arrangements now serve 96% of the on-reserve population in Ontario. Seven of the current nine self-administered police services came into being between 1991 and 1996. Treaty Number 3 Police Service was established in 2002 and Mnjikaning Police Service became self-administered in 2006. The self-administered police services employ about 375 officers.¹⁵ Thirty-nine First Nations in Ontario receive policing services from the OPP, twenty directly and nineteen through First Nation constables supervised by the OPP. Over time, the OPP expects that most of these thirty-nine communities will move toward the self-administered model. In Canada, there are forty-eight self-administered police services, employing 775 officers and serving 197 First Nations.¹⁶

Despite these gains, the Inquiry was consistently told that the promise of the OFNPA has not been fulfilled. First Nation police services in Ontario continue to be underfunded, and the implementation of the OFNPA has therefore fallen far short of its objectives.

There have been other setbacks for First Nation policing in Ontario. In 1981, the governments of Ontario and Canada established the Ontario Indian Police Commission (OIPC). The OIPC provided a forum for discussing policing services in First Nations in the province, including issues involving the OPP and First Nation police services. First Nations hoped that the OIPC would eventually evolve into an agency that could assist with civilian oversight of police and public complaints about First Nation policing. In March 2004, the commission closed when the federal government decided not to renew its support.

First Nation police services are too important to allow this situation to continue. The federal and provincial governments should update their policies on First Nation policing to recognize that self-administered First Nation police services are the primary police service providers in their communities and to provide for the increased funding commitments required to carry out that role.

10.2.2 Quality of First Nation Police Services

Professor Clairmont reviewed First Nations police service studies and surveys commissioned by the federal government.¹⁷ He also interviewed many people involved in First Nation policing, including First Nation police officers, police board members, OPP officers, and members of the community.¹⁸ In general, the evaluations and surveys resulted in the following findings regarding First Nation police services:

- First Nation communities preferred them to the OPP because of the greater police presence in the communities and because of “the value of having their own people as members and managers of the police service”
- They met the terms of the funding agreements
- They provided “solid, professional crime-control policing”
- Their response times to calls for assistance were acceptable

In the interviews, First Nation leaders acknowledged the successes of First Nation police services, but also voiced the same criticisms repeatedly. There was a call for more collaboration with local agencies, more involvement with youth and more peacekeeping; in general, a common critique, not expressed stridently but a critique nevertheless, has been that the policing has yet to capture the essence of native differences or to distinguish itself from good professional mainstream policing.¹⁹

Self-administered First Nation police services in Ontario work remarkably well, considering that they are relatively new and considering the constraints imposed by federal and provincial policies and funding. The range of models for organizing local or regional police services now in use in Ontario allows First Nation communities to choose appropriate ways of providing services, rather than forcing them into one structure.

10.2.3 First Nation Police Services and the OPP

There is strong evidence that the OPP and self-administered First Nation police services enjoy very good working relationships, locally and at the senior level.²⁰ The testimony of former OPP Commissioner Boniface and the OPP submissions supported this conclusion, and supported increased funding and secure legislative status for First Nation police services.²¹

The benefits of the mutually supportive relationship between the OPP and First Nation police services flow both ways. The OPP supports First Nation police services in the following ways:

- OPP members have acted as technical advisors in every transition to a new First Nation police service. Five of the nine First Nation chiefs of police in Ontario are former OPP officers.
- The Integrated Support Services Unit (ISSU) was developed with First Nation chiefs of police to enable the OPP, RCMP, and First Nation police services to develop crime prevention initiatives to target suicide prevention, youth empowerment, and community wellness.
- Integrated Support Units (ISU) are six-person OPP squads in northwestern and northeastern Ontario which assist and mentor NAPS officers.
- The OPP developed a First Nations investigator course in 1998 and a First Nations family violence course, in partnership with the First Nations Chiefs of Police Association, in 2000. These courses were offered to First Nation officers, whether or not they were OPP members. At the OPP Academy, officers of First Nation police services have priority access to supervisor and criminal investigator courses and courses related to sexual assault.
- The OPP has worked with First Nation police services on training initiatives. As examples, a Mnjikaning Police Service officer was trained for the Emergency Response Team, twelve Treaty Three officers were to be trained in emergency response containment in fall 2006, and First Nation police service officers have been trained as crisis negotiators.

- OPP policies and Police Orders are provided to First Nation police services for their use in developing their own policy manuals.²²

As I discussed in chapter 9, the operational protocols between the OPP and First Nation police services provide for mutual support in a variety of situations, including serious crimes. Other forms of mutual support include the following:

- First Nation police officers often interpret the background of grievances and issues for their OPP colleagues, advise them on the risks involved in responding to occupations and protests, and help them to predict how occupiers/protesters and their supporters will react to police actions.
- OPP Aboriginal officers are assigned to First Nations police services for developmental purposes.
- First Nation police services and First Nation elected leaders meet regularly with OPP detachment commanders to discuss issues of mutual interest. The manager of the OPP First Nation programs consults daily with OPP-policed communities, and with self-directed First Nation police services.
- Members of senior management at the OPP, including the commissioner, participate in the national First Nations Chiefs of Police Association. This is in addition to consultations between the Aboriginal Liaison Officer–Operations, regional liaison officers, ART, ISSU, senior management, senior regional command staff, and First Nation communities, including their police services. The OPP and First Nation police services jointly carry out investigative or enforcement initiatives. As examples, the Akwesasne First Nation police force is involved in the Joint Anti-Smuggling Task Force, and the Integrated Border Enforcement Team includes First Nations police forces from Akwesasne, Six Nations, Walpole Island, Garden River, Thunder Bay, and Kenora.

The OPP supports First Nation policing, and deserves to be commended for the initiatives it has developed with First Nation police services. Best practices have emerged which are of mutual benefit, and the OPP and its First Nation partners should both receive recognition for their efforts.

First Nation self-administered police services are very small compared to the OPP and most municipal police services in Ontario. It is not efficient, therefore, for First Nation police services (or smaller municipal police services, for that matter) to provide the full range of specialized services locally, such as tactical or marine units. To provide high quality services in these fields requires networks of support with larger police services. That is why the supportive programs for First Nation police services within the OPP are important.

Operational and policy integration of First Nation police services and the OPP is therefore an appropriate strategy. Integration ensures that benefits flow in both directions. The integration of First Nation police services with other police services at the provincial and local levels “holds the key to a secure self-administered system in Ontario.”²³ All major stakeholders in Ontario prefer the self-administered model. Promoting it will contribute to effective and sustainable First Nation policing.

10.3 Policing Occupations and Protests

Very good relationships appear to exist between the OPP and First Nation police services. As the OPP submission described, they have worked cooperatively on many Aboriginal critical incidents since 1995:

The complexities of policing occupations and protests in Ontario require the utmost flexibility in how specific incidents are addressed. Existing protocols provide flexibility within broad parameters. As witnessed during the OPP Incident Simulation, it is a well-established best practice for the OPP to seek permission as part of a consultative process before deploying OPP resources on First Nations territories. Where incidents occur “off reserve”, there are a myriad of factors that inform the roles that will be played by the OPP and the First Nations police service in responding. For example, the First Nations police service may agree to assume temporary policing responsibilities for an area normally patrolled by the OPP as part of a negotiated process to defuse tensions. Six Nations Police Service has performed this role at Caledonia. Or the OPP will draw upon First Nations police service officers to facilitate discussions with particular interested parties.²⁴

As I have mentioned, First Nation police services may also provide information to the OPP on who is involved in the occupation or advise on how the occupiers will react to actions by the police. Nevertheless, as Professor Clairmont and Inspector Potts concluded, “the capacity of the First Nations police services to effectively deal or even partner with the OPP in responding to the challenge of occupations and protests is very limited.”²⁵ For example, First Nation police usually do not receive specialized training to deal with occupations and protests.

As explained in the Nishnawbe-Aski Police Services (NAPS) submission, the lack of specialized training is a serious barrier to their involvement in responding to occupations and protests: “The only training factored into the NAPS policing is the course content provided at the OPC [Ontario Police College]. NAPS and

most officers do not have any additional training such as crowd control and other specialty operations.”²⁶

In chapter 9, I recommended that collaboration between the OPP and First Nation police services be advanced through improved operational integration, with joint planning and training, and by adding cooperation on occupations and protests to existing protocols between the police services. I also recommended that First Nations develop proposals to increase community capacity for dispute resolution, and that the federal and provincial governments be prepared to support such proposals financially.

One particularly important issue arises when serious occupations and protests occur off reserve. The OPP has greater capacity to police these incidents, but may not have ready access to or awareness of key local people. Professor Clairmont and Inspector Potts reported that virtually everyone they interviewed supported the development of an integrated conflict negotiation/peacekeeping team to solidify the informal relations that have developed between the OPP and First Nation services.²⁷

The Union of Ontario Indians similarly recommended that the Ontario government support First Nations, in training and resources, in developing an Anishinabek Emergency Response Team to address critical incidents. Participants in their consultations indicated that “Anishinabek police officers are most aware of the communities they police and community members are also more comfortable with Anishinabek people.” For that reason, they suggested, that situations would be less likely to escalate with such a response team in place.²⁸

According to the OPP, however, it is preferable to work toward greater operational integration of police services. The OPP submitted that the diversity of First Nations in Ontario makes an integrated, Ontario-wide conflict negotiation team impractical, and would raise resource issues for First Nation police services. The OPP further submitted that ongoing consultations and existing OPP programs (such as ART and MELT) serve the same ends. The OPP also noted that it is often difficult for First Nation police officers to serve on tactical units in their own communities.

I support the choice of First Nation people to police themselves. However, I see two factors that weigh against creating specialized public order or tactical units within First Nation police services. The first factor is cost. To be effective, these units require full-time officers, constantly training to maintain perishable skills.²⁹ Secondly, I appreciate that it may often be difficult for First Nation police to take the lead role in responding to occupations and protests in their own communities. The OPP put it this way:

As well, despite strong support for the principle that First Nations should police themselves, the difficulties for local First Nations police officers in policing Aboriginal occupations or protests (and potentially serving as Tactics and Rescue Unit or Public Order Unit members in their own communities) has been well recognized, and acknowledged by First Nations police services. As a result, there may always be a need for the OPP to provide some policing for Aboriginal occupations or protests, even within a policing structure that financially and philosophically supports self-directed First Nations policing.³⁰

In my view, it is crucial to engage First Nation police services in the response to Aboriginal occupations and protests. It is also crucial to identify how the OPP and provincial government can support First Nation police services to be as effective as possible when policing Aboriginal occupations and protests, either within their own territories or in support of the OPP or other police services in Ontario. Therefore, I believe that the provincial government, the OPP, and First Nation police services should work together to identify how the provincial government and the OPP can best support First Nation police services in the response to Aboriginal occupations and protests.

10.4 Challenges

First Nation police services have the potential to provide services of even higher quality than they do now. I am convinced that they also have the potential to move beyond conventional policing to provide community policing and peacekeeping, to further reduce the potential for violence at Aboriginal occupations and protests, and to improve police/Aboriginal relations. Reaching that potential depends on putting First Nation police services on a firm financial and legislative footing.

Many parties and individuals told the Inquiry that the progress of First Nation policing has stalled. Deputy Grand Chief Simon Fobister related one telling example:

In April 2003 the Treaty Three Police Service (TTPS) was officially established. Currently, there are 23 Treaty Number 3 First Nations policed by the TTPS and we acknowledge that the TTPS has only assumed the administrative responsibility for providing policing services to our First Nations. What we are learning is that we have no real control with this police service because the funding provided by the federal and provincial governments remains totally inadequate, and the

lack of legislative recognition for First Nation police services allows the governments to continue recognizing the First Nation policing services as ‘just a program.’³¹

First Nation police services in Ontario risk failure unless more is done to support and sustain them. The challenges facing First Nation police services essentially fall into four categories: community expectations, legislative status, funding, and governance. These challenges must be met successfully if First Nation police services are to succeed. First Nation police services have failed in several provinces, requiring the RCMP to resume policing on many reserves.³²

I am convinced that the federal and Ontario governments should urgently address the serious developmental issues facing First Nation police services. With proper funding and support, First Nation police services will continue to progress toward their potential. Failure to act to address these issues could mean that First Nation police services in Ontario could suffer the same fate as First Nation police services in other provinces.

Raising the level of funding and securing the mandate of First Nation policing will require the cooperation and agreement of the federal and provincial governments and First Nations in Ontario. Unfortunately, however, Aboriginal policing does not seem to be a high priority on the current agenda of either the federal or the provincial government. For example, the Ontario “New Approach to Aboriginal Affairs” (2005) document on Aboriginal Affairs does not set goals or strategies for First Nation policing.³³ It simply describes current arrangements with the OPP for supporting and supervising First Nation police services.

10.4.1 Community Expectations

The federal First Nations Policing Policy set the objective of providing access to “policing services that are responsive to their particular needs and that meet acceptable standards with respect to the quality and level of service.” First Nations themselves also have appropriately high expectations of their police services. Unfortunately, it is not clear whether either the FNPP objective or the expectations of First Nation communities are being met.

Grand Chief Stan Loutit told the Inquiry about the experience in the Treaty 9 territory:

Policing, the way it’s structured, is something that we do not have any ownership of. In our territory, policing is administered by a tripartite agreement with Canada and Ontario and ourselves to create the Nishnawbe-Aski Police Services. I am proud of that in some respects

that we have our own police service. But I am bothered in other respects that we have merely copied other police services.

And I am bothered as well by the by the fact that we can't administer policing in our territory as we would like to, due to limited funding coming out of that tripartite agreement. The limited funding ... for us to be able to have adequate facilities that any municipality in this province and country takes for granted limits our ability to be able to produce policing in a high standard. It relegates us unfortunately in my opinion to be a second-rate police service.

I implore the government to recognize that need and to provide the resources for us to have the facilities required and the human resources required to be on parallel with any police service in Ontario and the country.

I am proud of the officers and the leadership of our police service who have had to work under dire conditions.³⁴

Nishnawbe-Aski Police Services, which serves a huge territory in the north (three-quarters of the land area of Ontario), catalogued the shortcomings of the present system in its report to the Inquiry.³⁵ NAPS has no capacity to provide community-based policing. Also, any policing outside reserve boundaries is the responsibility of the OPP, yet the OPP has minimal capacity to police the vast areas of the north. As the NAPS report pointed out, "If OPP had to provide such policing, the costs would be prohibitive and the required resources unmanageable."³⁶ According to NAPS, it is virtually impossible for its service to meet the expectations of the community.³⁷

Our research suggests that the criticisms directed at self-administered policing from within First Nation communities have generally centred on police presence (visibility), inadequate specialized active services (such as crime prevention and restorative justice) and the desire for a more problem-solving orientation in policing (community-based policing). First Nation communities also want and expect solid professional policing in order to meet the high level of crime, social problems, and frequent intra-band occupations and protests. Unfortunately, however, as Professor Clairmont points out, self-administered First Nation police services are not in a position to meet those expectations.³⁸

I also know that Aboriginal peoples experience a kind of cultural clash with conventional Canadian policing. There is a tradition of peacekeeping that many people would like their First Nation police services to recapture. Perhaps that

aspiration should be reflected in legislation, policies, and agreements, so that people will start to work out what it means and make concrete plans for ways to build it into day-to-day operations. Similarly, I suggest that the goal of moving towards community policing should be recognized and resources should be applied to getting there.

A good place to begin to address these concerns would a joint federal, provincial and First Nation planning exercise. This would allow all levels of government to participate in the development of long-range plans for First Nation policing in Ontario.

10.4.2 Legislative Status

First Nation police services in Ontario have a tenuous existence in law. Although the federal *Indian Act* provides that a band council may establish a police commission, it does not set out a framework of governance, funding, policing standards, and appointment and powers of officers. Nor does the Ontario *Police Services Act* apply to First Nation police services, beyond providing for the appointment and powers of constables.

I believe that First Nation police services should have a specific legislative foundation. I heard support for that change from First Nation leaders at the Chiefs of Ontario Special Assembly held with the Inquiry.³⁹ The NAPS report to the Inquiry likewise made the point:

The Chiefs of NAN have stated from the beginning that they wanted a police service under their control, a police service that would be culturally appropriate and a police service that would have the legislative base preferable under their own recognized legislative regime.⁴⁰

The OPP also recommended that “[t]here be consideration for a legislative framework for First Nation police services which does not exist today,” and that “[w]ithin that legislative framework, the appointment of First Nations officers by the OPP Commissioner be discontinued, and be transitioned into appointment by the First Nation Police Service or Board.”⁴¹

In my view, the lack of a secure legal basis reinforces the perception that First Nation police services are a temporary phenomenon, a program instead of a legitimate service. First Nation police services in Ontario do not even have the authority to appoint their own officers: the *Police Services Act* gives this power to the commissioner of the OPP jointly with a First Nation police commission.⁴² By way of contrast, municipal police officers are appointed under the sole authority of their police service boards.

I am aware that some First Nations and political organizations in Ontario, probably most, have concerns about the propriety of any provincial legislation with respect to First Nation policing. They believe that their treaty relationship is with the federal Crown and that federal legislation is more appropriate. These are legitimate considerations.

NAPS commented on the potential for First Nations to use the Ontario *Police Services Act* as a framework:

The need for legislative change is to accommodate the NAN policing. Legislative changes will have implications that will need to be worked through with NAN. Most of the Ontario First Nations have fundamental differences in accepting provincial legislation as a means to meet or improve present capacity and service. Many of the First Nation political organizations will oppose any attempts by Ontario government to enact provincial legislative measures over First Nations policing. NAN is unique to this particular conundrum. Ontario is a signatory to Treaty # 9, therefore NAN is in a position to negotiate legislative undertakings that respond to their peculiar needs. In this case, NAN would negotiate a special recognition clause within the Act that specifically states that Ontario recognizes the First Nations to design, develop, control and implement policing as recognized under section 35 of the Constitution Act of Canada. This recognition, along with reference that amendments to the Police Services Act be a transitory mechanism to the First Nations own legislation.⁴³

The Nishnawbe Aski Nation participated in discussions with the federal and provincial governments, as far back as 1994, to examine ways to devise a better legislative framework for First Nation policing. The discussions produced several alternatives, the best of which was thought to be complementary federal and provincial statutes. There were no such changes, however, mainly because the governments were not prepared to bring forward legislation.

The time has come for the federal and provincial governments to provide First Nations policing with a secure legal foundation. I recommend, therefore, that the federal, provincial and First Nation governments Ontario jointly commit to providing a secure legislative basis for First Nation police services in Ontario. The best approach may very well be complementary federal and provincial statutes. The federal and provincial governments should develop an appropriate model with the full participation of First Nations in Ontario.

I want to emphasize, however, that the provincial government does not have

to wait for the federal government to take steps to improve the legal status of First Nations police services in Ontario.

There is an interesting precedent in the field of child and family services, which may translate well to First Nation policing. The provincial *Child and Family Services Act (CFSA)* recognizes that Native people should be entitled to provide their own child and family services. It states that all services to Native people should recognize their culture, heritage, and traditions, and provides that a First Nation may designate a body to be a child and family service authority. It also empowers the minister to enter into negotiations and agreements for the provision of services where a First Nation designates such a body.⁴⁴

An equivalent approach in First Nation policing would see the provincial government enact legislation recognizing the right of First Nations to provide their own policing. The purpose of these provisions would be to allow a First Nation to opt in to all or parts the existing provincial *Police Services Act* or to some form of stand-alone provincial First Nation policing legislation. This would allow an individual First Nation and First Nation police service to establish a more secure legal foundation in areas already covered in the *Police Services Act* or in areas that might be addressed in new legislation.

It would be important that the application of this legislation not be mandatory for First Nations or First Nation police services. Any potential *Police Services Act* amendment or stand-alone legislation must acknowledge the right of individual First Nations to choose to follow all or parts of the provincial legislative scheme. This would promote flexibility and would acknowledge that a uniform approach to First Nation policing is not appropriate. This would also promote negotiations between the province and individual First Nations on the applicability of specific legislative provisions and any provincial government concerns or conditions.

The *CFSA* example shows that provincial First Nation policing legislation could be successful in the right circumstances. Interestingly, I have been advised that the provincial government, Nishnawbe Aski Nation, and NAPS have been discussing a similar approach for NAPS for some time.

I believe that this is an option worth exploring. It may provide all or part of the secure legal foundation that First Nation police services need. As a result, I recommend that the provincial government work with the Nishnawbe Aski Nation, NAPS, and other First Nations in Ontario as appropriate to develop a “made in Ontario” legislative or regulatory framework for First Nation policing in Ontario.

Of course, provincial First Nation policing legislation could be subject to constitutional challenge on the grounds that it infringes upon the federal government

authority with respect to First Nations. I note, however, that the *CFSA* provisions have been in place for a long time without challenge. Nor has there been a challenge to the provincial *Police Services Act* section conferring appointment powers on the commissioner of the OPP. This section has been in place for more than a decade. Finally, the new legislation would be permissive, not mandatory for First Nations. This would make a constitutional challenge more difficult.

Another obvious and straightforward step that could be taken by the provincial government would be to amend the *Police Services Act* to allow a First Nation police service or board to appoint its own officers. There is no good rationale for giving this power to the commissioner of the OPP.

Of course, First Nations that choose not to follow the new provincial legislative framework will also need a more secure legal foundation. I therefore encourage Canada, Ontario, and First Nations to develop alternative arrangements. Perhaps the existing agreements could be improved to address the most important issues. Or, the federal government could decide to follow Ontario and develop a complementary or alternative legislative framework. I am hopeful that Canada, Ontario, and First Nations will agree on measures to ensure that First Nation policing has a more secure legal foundation.

Finally, Canada, Ontario, and First Nations need a venue where they can conduct real and meaningful dialogue on what NAPS called “measures to increase public security and community harmony.”⁴⁵ In that regard, it seems to me that the province will need an ongoing, professional forum for discussing policing with First Nations. At the national level, there is a First Nations Chiefs of Police Association. A similar body at the Ontario level could provide professional advice to the government and the OPP, as well as to other police services. I see value in such a forum in areas such as working on policing standards, the legislative framework, protocols and planning for public order events, officer recruitment, training, development, and many other matters of shared concern. I believe, therefore, that the provincial government, First Nation police services, and the OPP should jointly establish an Ontario First Nation Chiefs of Police Association.

10.4.3 Funding

The funding formula for First Nation police services in Ontario under the FNPP seems to be based on the assumption that basic policing will be provided to First Nations by the OPP. For funding purposes, therefore, First Nation police services are regarded as enhancements to the OPP. This means that the funds are mainly for additional officers and modest administrative support. Funding is not intended to pay for the whole apparatus of policing, including buildings, equipment,

specialized units, legal services, and so on. The reality of First Nation police services in Ontario proves that this assumption is incorrect.

According to the FNPP, “[c]alculating the costs of a policing arrangement for a community should be consistent with the calculation of costs for policing arrangements in other communities with similar conditions in the region.” This provision leaves unanswered the question of what constitutes “similar conditions in a region.” Does it mean similar conditions in a First Nation police service or in a mainstream police service? The distinction is significant, because First Nation police services are typically expected to respond to the unique conditions of their communities, including the lack of social service supports for mental health and domestic violence cases, higher unemployment, and intra-band disputes. If anything, First Nation police services need comparatively more funding than mainstream police services do, not less.

The OPP regards First Nation police services as primary service providers.⁴⁶ For that reason, the OPP asked me to “recommend increased funding for First Nation police services and those police services which deliver services to the First Nation communities, so that they can help in building community capacity.”⁴⁷

Our research, consultations, forums, and submissions from the parties have consistently confirmed that First Nation police services are working with restricted budgets and substandard facilities, which frustrates their efforts to provide high quality police services.

The funding model must reflect the realistic needs of First Nation communities and First Nation police services. Yet, the reality of First Nation policing is very different from the conditions assumed in the current funding model. First Nations, Aboriginal peoples, and the police services themselves want and expect First Nation police services to provide service of high quality and at a high level. Simply put, this means more capital and operational funding.

As I commented earlier, this problem does not exist only in Ontario. Since it originates in the national First Nations Policing Policy, it affects First Nation police services across Canada. The policy and the funding arrangements should be changed.

The comparative lack of capital and operational funding for First Nation police services has significant consequences in a number of areas, including their ability to recruit and retain qualified police officers, respond to occupations and protests, provide professional, efficient police services, train and support their officers, and meet even basic capital and infrastructure requirements. A recent assessment by Public Works Canada (2005) rated one-third of all self-administered police facilities in Ontario as “poor” and another 40% as only “fair.”⁴⁸

For First Nation officers, the stress of policing their own communities, the isolation of one or two-person postings, the lack of housing, and poor facilities often lead to burnout and high turnover.⁴⁹ Unfortunately, First Nation police services do not have the resources to offer counselling support for their officers or to provide coach officers to guide new recruits.

NAPS explained the effect of financial constraints at length in its submission to the Inquiry.⁵⁰ The submission summarized the areas in which investment is needed to move toward a “fully functioning police service,” including the following:

- Up-to-date capital infrastructure at all sites
- Operational capacity to respond to confrontations, blockades, and protests
- Communications and public liaison
- Full-time coach officers to guide new recruits
- Auxiliary police program
- Professional counseling for officers and their families.⁵¹

The need for more resources for First Nation officer training is particularly acute in the field of peacekeeping and dispute resolution, especially given the trend in recent years toward more intra-band conflict. Don Clairmont wrote that more training in this field appeared to be a major concern for officers and First Nation leaders, “recognizing that just because they are First Nation people does not automatically give them appropriate skills and dispositions but also holding that this is an area of policing where they can ‘bring something to the table’ in their collaboration with the OPP.”⁵²

Finally, First Nation chiefs and police service leaders told the Inquiry that the uncertainty of funding negotiations with Canada and Ontario is a great burden. Often, new agreements are signed only after existing agreements have expired, putting the police services under cash flow pressure.

Better financial support for First Nation police services is necessary to protect community safety, ensure sustainable, professional policing, encourage culturally appropriate policing and peacekeeping, and promote and protect public order in vulnerable communities. The federal and provincial governments should therefore increase capital and operational funding for First Nation police services in Ontario to allow those services to better meet the urgent and diverse needs of their communities. Such funding should be secured by renewable, five-year agreements between the federal, provincial, and First Nation governments.

10.4.4 Governance and Accountability

The research in the course of the Inquiry profiled several Ontario First Nation police services and considered the structure and role of their police commissions. As I noted earlier, the legislative basis for the First Nation police services is minimal. Thus, unlike municipal services or the OPP, their governance arrangements are not prescribed (or protected) by law. This raises several important issues that affect the quality, sustainability, accountability, and credibility of First Nation police services:

- First Nation police commission members and band councils lack legislative protection and are liable for the civil damages and financial deficits that may arise from policing.
- The policing standards established by the Ontario *Police Services Act* do not apply to First Nation services.
- There is no formal requirement or process for dealing with citizen complaints about policing.
- The Special Investigation Unit (SIU) does not have authority to investigate death or serious injury arising from First Nation policing, an authority it does have with respect to the OPP and municipal police services.
- There is no requirement to publish information about policing results.

It is beyond the mandate of this Inquiry to make recommendations on the complex issue of specific governance arrangements for First Nation police services. Nevertheless, I urge the federal and provincial governments to work with individual First Nations and provincial First Nation organizations to consider how to address these issues for the benefit of First Nation communities, First Nation police services, and all Ontarians.

Recommendations

56. The federal and provincial governments should update their policies on First Nation policing to recognize that self-administered First Nation police services in Ontario are the primary police service providers in their communities.
57. The provincial government, OPP, and First Nation police services should work together to identify how the provincial government can support First

Nation police services to be as effective as possible when policing Aboriginal occupations and protests, either within their own territories or in support of the OPP or other police services in Ontario. The OPP and First Nation police services should engage in joint planning and training for Aboriginal occupations and protests and existing protocols should refer to occupations and protests.

58. Federal, provincial, and First Nation governments should commit to developing long-range plans for First Nation policing in Ontario.
59. Federal, provincial, and First Nation governments should commit to developing a secure legislative basis for First Nation police services in Ontario.
60. The provincial government should work with the Nishnawbe Aski Nation, the Nishnawbe-Aski Police Services, and other First Nations in Ontario as appropriate to develop a “made in Ontario” legislative or regulatory framework for First Nation policing in Ontario. The provincial government should also amend the *Police Services Act* to allow First Nation police services or boards to appoint their own officers.
61. The provincial government, First Nation police services, and the OPP should establish an Ontario First Nation Chiefs of Police Association.
62. The federal and provincial governments should increase capital and operational funding for First Nation police services in Ontario. This funding should be secured by renewable, five-year agreements between the federal, provincial, and First Nation governments.

Endnotes

- 1 Canada. Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada* (Ottawa: Royal Commission on Aboriginal Peoples, 1996), p. 57.
- 2 Don Clairmont, "Aboriginal Policing in Canada: An Overview of Developments in First Nations" (Inquiry research paper).
- 3 Clairmont, pp. 43-127. For the purpose of analysis, the study divided the police services into four types: (1) the full-service town model: Six Nations and Akwesasne (both Ontario); (2) the niche model: Wikwemikong (Ontario), Huron-Wendake, and T'suu T'ina; (3) the regional model: Nishnawbe-Aski and Anishnabek (both Ontario); and (4) the micro-transitional model: Timiskaming and Whapmagoostui.
- 4 Chiefs of Ontario, Special Assembly with the Ipperwash Inquiry, March 9, 2006. (Inquiry event).
- 5 Ibid.
- 6 Chiefs of Ontario Part 2 submission, p. 63.
- 8 Ibid., p. 7.
- 9 Clairmont, p. 10.
- 10 Ibid., pp. 7-14.
- 11 Ibid., p. 18. See also pp. 6-11, where Professor Clairmont provides a detailed chronology of the development of First Nations policing.
- 12 Department of Public Safety and Emergency Preparedness Canada, "First Nations Policing Policy," <<http://www.psepc-sppcc.gc.ca/pol/le/fnpp-en.asp>>.
- 13 Ibid.
- 14 Data provided at the request of the Inquiry by the Aboriginal Policing Directorate, Public Safety and Emergency Medical Preparedness Canada, December 13, 2006, and the Ontario Ministry of Community Safety and Correctional Services, Public Safety Division, December 20, 2006 (on file with the Inquiry).
- 15 Clairmont, pp. 31-32.
- 16 Ibid., p. 31.
- 17 Clairmont, p. 32. Professor Clairmont reported that "[Federal] Aboriginal Policing Directorate officials have indicated in interviews that self-administered [police services] in Ontario on the whole represent the success of the First Nations Policing Policy. As two such officials stated, 'Ontario is our strongest.' The self-administered [police services] in Ontario have indeed experienced reasonable stability and steady growth in complement. The contrast in these regards to self-administered [police services] elsewhere in Canada outside Quebec is notable."
- 18 Ibid. See particularly pp. 49-51, 64-5, 69, and 100.
- 19 Ibid., p. 64.
- 20 Ibid., pp. 26-7.
- 21 Gwen Boniface, testimony, June 14, 2006, Transcript pp. 19-24.
- 22 OPP Part 2 submission, pp. 29-30.
- 23 Clairmont, p. 37.
- 24 OPP Part 2 submission, p. 28.
- 25 Don Clairmont and Jim Potts, "For the Nonce: Policing and Aboriginal Occupations and Protests" (Inquiry research paper), p. 86.
- 26 Nishnawbe-Aski Police Services Board Part 2 submission, p. 12.

- 27 Clairmont and Potts, p. 36.
- 28 The Union of Ontario Indians submission, p. 4.
- 29 See, for example, Nishnawbe-Aski Police Services Board, “Confrontations over Resources Development,” (Inquiry project), p. ii: “NAPS does not have the capacity to respond to direct action challenges of First Nations.”
- 30 OPP Part 2 submission, p. 48.
- 31 Chiefs of Ontario Special Assembly with the Ipperwash Inquiry, March 9, 2006.
- 32 Clairmont, p. 32. This happened in Alberta, Manitoba, and Nova Scotia when self-administered First Nation police services ran into difficulties.
- 33 Ontario Secretariat for Aboriginal Affairs, “Ontario’s New Approach to Aboriginal Affairs,” <<http://www.aboriginalaffairs.osaa.gov.on.ca/english/news/brochure.html>>.
- 34 Chiefs of Ontario Special Assembly with the Ipperwash Inquiry, March 8, 2006.
- 35 Nishnawbe-Aski Police Services Board, pp. 77-96.
- 36 Ibid., p. 82.
- 37 Ibid., p. 89.
- 38 Clairmont, p. 33.
- 39 Chiefs of Ontario Special Assembly with the Ipperwash Inquiry, March 9, 2006. Chief Simon Fobister told the Assembly that “the lack of legislative recognition of First Nation police services allows the governments to continue recognizing the First Nation police services as just a program.”
- 40 Nishnawbe-Aski Police Services Board, p. 85.
- 41 OPP Part 2 submission, pp. 48-9.
- 42 Section 54 (2) of the *Police Services Act* states that “If the specified duties of a First Nation Constable relate to a reserve as defined in the *Indian Act* (Canada), the appointment also requires the approval of the reserve’s police governing authority or band council.”
- 43 Nishnawbe-Aski Police Services Board, p. 86.
- 44 *Child and Family Services Act*, <http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90c11_e.htm#BK1>.
- 45 Nishnawbe-Aski Police Services Board Part 2 submission, p. 6.
- 46 OPP Part 2 submission, p. 50.
- 47 Ibid., p. 49.
- 48 Clairmont, p. 34.
- 49 Nishnawbe-Aski Police Services Board, pp. 88-90.
- 50 Since it serves a huge region, the Nishnawbe-Aski Police Services must contend with much higher travel costs than municipal police do. NAPS also faces a high attrition rate among its officers. The stress of postings in isolated locations contributes to the high turnover. Moreover, once trained, many officers apply for policing positions in the southern parts of the province, where pay and conditions are better. The governing board of NAPS adopted the standards set by the *Police Services Act*, even though the legislated standards are not mandatory for First Nation police services, because the board believed that the communities it served were entitled to the same quality of policing as non-Aboriginal communities were. As a result, training for officers became a major expenditure.
- 51 Nishnawbe-Aski Police Services Board, p. 97-98.
- 52 Clairmont, p. 51.