

NISHNAWBE ASKI POLICE SERVICES

SUBMISSION TO

IPPERWASH INQUIRY

PART II

Prepared by:
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FORWARD

In 1905-06, the grandfathers of the Ojibway and Cree Nations in northern regions of Ontario signed Treaty # 9, a treaty of co-existence with Canada and Ontario on behalf of the Queen of England. An adhesion to Treaty # 9 was signed in 1929-30. In 1875 and 1910, the Saulteaux-Cree Nations of Manitoba, and what is now referred to as northern Ontario signed Treaty #5 with Canada. Those Treaty #5 First Nations within Ontario are part of Nishnawbe-Aski Nation (NAN).

Grand Council Treaty # 9, a political territorial organization was established in 1973 to pursue the rights of the First Nations in northern Ontario. Prior to the creation of Grand Council Treaty # 9, the communities were politically represented by an organization known as Union of Ontario Indians. In 1977, the Chiefs issued the Declaration of Nishnawbe-Aski outlining their rights and claims to their homelands to Canada and Ontario. In 1981, Grand Council Treaty # 9 organization was replaced by Nishnawbe-Aski Nation representing 49 First Nations.

Nishnawbe-Aski Nation covers about two thirds of the province of Ontario. The territory stretches across the north about seven hundreds miles in length and four hundred miles in width; from the Manitoba border on the west, to the Quebec border on the east; from the Hudson's and James Bay watersheds in the north to roughly the Canadian National Railway Line to the south. The NAN land mass is equal to the size of France. The NAN territory encompasses certain parts of the districts of Cochrane, Timiskaming, Sudbury, Algoma, Thunder Bay and Kenora.

Of the 49 communities located within the territory, 30 are completely remote and are dependent upon some form of air transportation for access to markets. During the winter months for a period of up to six weeks, the communities are connected by a winter roads system. The over-land transportation provides a certain level of reprieve from the high costs of goods. The winter road

transportation prices are still extremely high compared with access to goods and services provide by an all weather roads systems.

Most people would refer to northern Ontario wilderness as bush. Why would anyone desire to live in such rugged terrain? Yet, to the people of Nishnawbe-Aski Nation, it is not bush, but a homeland that they have occupied for centuries. Nishnawbe-Aski translated means the people and the land. The very lives of the people are intertwined with the land. Truly they are one together.

Matters of Existence, Harmony and Security- First Nations Communities

Historically, First Nations communities had governing structures that responded to the needs of the total community. To an outsider, these structures may not have been elaborate, but the actual workings were complex that required total community involvement. These structures met the demands of the day and ensured the continued survival of First Nations societies.

Under these regimes or structures, each function of community governance was clearly identified. The responsibilities of a specific function were assigned to families and in most cases the families would assign or designate the most capable and responsible individual(s) to provide leadership in the designation. Prior to designation by the community of the function, the families considered for the designation would have demonstrated a high level of competency in the specific field of the assignment or responsibility. The communities maintained various structures that covered social, economic, political and spiritual functions. In these structures, all families became part of governance, thus fulfilling the Canadian equivalent concept of “discharging one’s social responsibility”.

Although the First Nation communities were small and scattered throughout vast territories, the Nation devised methods and systems to maintain social order that ensured growth and maintenance of their society. The clan systems were the

central key element in the governance structures that provided the community with a socially acceptable environment through promotion of positive community development based upon their traditions, culture and lifestyles. As with any community, they faced daily struggles and contention over problems of individuals or of community nature that required intervention. The interventions responded varied with each situation and circumstances; all were applied with great care and compassion supported with monitoring and follow-up.

Policing, A Foreign Concept

Policing was a totally foreign concept to First Nations introduced and implemented by the then settler governments. First Nations had their own forms of maintaining community social order through peace-keeping measures. Policing and peace-keeping concepts were diametrically opposed and First Nation concepts or practices were never considered as an option by the settler governments.

The first contact between First Nations and police occurred with the signing of treaties between First Nations and the British Sovereign. Since the signing of the treaties, the Royal Canadian Mounted Police (RCMP) has and was a party present for all annual treaty payments. At the signing of most treaties, the Treaty Commissioners representing the Crown were accompanied by the RCMP. The RCMP became part of the symbol of honour in the treaty making process. It was through exchanged understandings that First Nations were assured that RCMP would provide protection from any encroachment by settlers. The Queen's children would be protected.

The history between police and First Nations is one of tragedy, disgrace and dismal failure. Policing of First Nations people turned into suppression of their cultures and traditions. Police became an arm of Canada's assimilation policies through enforcement of laws prohibiting and outlawing the original people's

customs, culture and practices. Today Aboriginal peoples have on-going conflict, distrust and antagonism against police. The distrust and suspicion of police is widely accepted because of the horrendous negative experiences encountered over the past hundreds of years. It is unfortunate for First Nations people to have concluded that the one understood to have been their protectors have become their tormentors.

Police, Euro-Canadian Enforcement System

In order to examine, understand and appreciate the difficulty of acceptance by First Nations of the Canadian concept of law enforcement, it is important to try to understand the circumstances impacting on First Nations. First Nations do not dispute or even question the rule of law. First Nations had their own systems of laws and application of such laws. Application of laws is not foreign or strange.

Aside from the tragic history between police and First Nations, we need to address why policing has failed so miserably with the original peoples of Canada. Language determines and defines who you are. In the language of the Oji-Cree, there is no word for police. When the first encounter happened with the police, the people had to describe the function of the person. The Oji-Cree word or description of police is “Shee-Mah-Kan-Ish” that being literally translated as “the one who holds the weapon, the one who holds the weapon over you”.

When the Plains Cree were engaged in defending their territories, the lead warrior would carry the lance or some other weapon. The warrior was recognized and referred to as “Shee-Mah-Kan-Ish” denoting that he would use his lance or weapon to defend and kill if necessary. The same word “Shee-Mah-Kan-Ish” is used in Oji-Cree to describe a person who is in the armed forces denoting that this person can use the weapons to kill.

In the language of the Moose Cree, along the James and Hudson Bay, the Cree use the term “ Ooh-Kee-Boo-Way-Zeah” and the literal translation being” the one who locks you up or the one who binds you”.

In the Ojibway language, “Tak-Koh-No-Way-Win-Nee-Nee” for police is translated as “the one who apprehends you or the one who takes you away”

Our First Nations languages consistently confirm that policing as introduced by Canadian governments was foreign to our people. Enforcement practices were different, very intrusive and outright threatening. The literal translations of First Nations words describing police portray clear intimidation. In the language of Oji-Cree, it implies the use of weapon to kill. In the language of the Moose Cree and Ojibway, the words are very descriptive clearly defining what the police do. From the language perspective of First Nations the literal translations describing police show intent with militaristic actions and implications, and imply direct and swift action resulting in some form of detention and or apprehension. Is it possible to relate First Nations people with the friendly neighbourhood policeman attitude? The language, and perception coupled with hundreds of years of negative experiences with police make less than ideal for positive relations.

The challenge facing governments and First Nations is to begin a process whereby First Nations can have more direct impact in the field of policing. Is policing what First Nations are aspiring to promote or is it peace-keeping? If we should decide to keep forging forward with the Canadian policing concept, then the following will happen.

Firstly, the recent establishment of First Nations policing institutions under Canadian policing system will not have any significant improvement with First Nations and police relations. All that is accomplished is the transfer of policing. It will be First Nations administering a police system that has failed the Aboriginal population. First Nation police or constables will still be straddled with the same title and referred to as “ Shee Mah-Kan-Ish, Tak-Koh-Nee-Way-Win-Nee-Nee

and Ooh–Kee-Boo-Way-Zeah. Aside from the fact that our First Nations policing institutions will be under the direction of First Nations board members and our policemen are aboriginal, will policing have changed? The change of titles or names of our First Nations constables will not impact changes in policing, but if changes should come about to reflect Aboriginal forms of peace-keeping, then we will be on the right path to make significant changes.

Secondly, First Nations community policing is virtually non-existent. Where attempts have been made to foster community policing, the results have been minimal creating frustration and apathy. People who have made efforts to facilitate community policing at First Nation communities must be commended. But the odds of success and mobilization of a community to rally behind 'Shee-Mah-Kan-Ish, Tah-Koh-Nee-Way-Win-Nee-Nee or Oh-Kee-Boo-Way-Zeah will be extremely difficult. The language is fundamentally at odds with the concept of community policing. The First Nations would be more responsive and supportive with their traditional forms of peace-keeping. The concept of the friendly policeman does not exist within First Nations culture instead it describes the policeman to be very intrusive, intimidating and threatening.

Lastly, First Nations must be commended for taking the responsibility for the policing within their territories. The First Nations accept and recognize that the rule of law must be enforced impartially by their police institutions, and at all times, maintain and up-hold the public trust that comes with the responsibility. Presently, there exist no venues whereby First Nations and governments can conduct real and meaningful dialogue on measures to increase public security and community harmony. It is possible to alleviate enforcement measures within First Nation communities. For instance, the tragic incident in Kashechewan where two people held in custody for drinking led to their demise could have been prevented. First Nations must have access to resources that will support their policing initiatives demonstrating less intrusiveness in the enforcement. The dialogue and opportunities for new and innovative First Nation approaches will

eventually narrow the gap of irreconcilability of relations between the Aboriginal peoples and the police.

Peace-Keeping, Alternative with a Difference

First Nations communities were subject to disputes that result in the need for direct intervention. 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 peace-keepers or monitors. The approaches exercised were not intrusive but included counseling, reconciliation and healing.

In many of the First Nations communities where peace-keeping 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.

Peace-keeping 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. The recent road blockade at Caledonia demonstrates how peacekeeping can work. Peace-keeping is about finding solutions to contributing problems. The Ontario Provincial Police maintain order and ensured safety for

the public at large and for the occupiers. The police do not have the answers to problems but in the case of Caledonia, the police become instrumental in facilitating opportunities for dialogue and eventual negotiations.

Peace-keeping practices and traditions of First nations will need to be fully explored where meaningful dialogue must happen. Peace-keeping approaches will ultimately change the character and nature of policing. This cannot be accomplished within short timeframe, but dialogue is a beginning that is sorely needed by First Nations. It will be for the betterment of Canada as a whole.

Nishnawbe-Aski Police Services

Policing has always been one of the most contentious issues negatively affecting First Nations not only within Nishnawbe-Aski Nation (NAN) but in similar fashion with other Aboriginals elsewhere. Annual reports substantiate the high population of Aboriginals in penal systems across Canada. The concern of such high incarceration rates have led to discussions on the possibility of designing an alternate justice system for Aboriginal peoples. Aside from justice issues, Canada has witnessed clear examples of wrongful conviction and incarceration both to the Aboriginal and non-Aboriginal. Donald Marshall is a classic example of such tragic fate.

The relationships between First Nations and police forces have always been under tremendous strain. Royal Canadian Mounted Police (RCMP) had the responsibility of providing police services for First Nation communities in Ontario. Sometime in the mid 1960's an undertaking took place whereby the policing responsibilities were transferred unilaterally to Ontario Provincial Police. This transfer or down-loading of federal responsibility was not consented by First Nations. There was no consultation with First Nations. Efforts have been made to secure official records to determine how this transfer of policing responsibilities was conducted. The research has been fruitless.

During this period, Indian and Northern Affairs Canada provided First Nations with nominal financial resources for the purposes of hiring Band Constables. The Band Constables would be provided limited training to provide certain level of front-line policing for each community. The Band Constables took direction and supervision from the Chief and Council. Regular police were called in to oversee serious occurrences.

In the mid 1980's, the federal government announced the new First Nations Policing Policy. The Chiefs of Ontario negotiated the Ontario First Nations Policing Agreement (OFNPA) enriching the existing First Nation police program. Furthermore, the policing program would be jointly funded 52/48 % between Canada and Ontario. The OFNPA opened opportunities for other groups to negotiate stand alone policing institutions.

In 1990, the Chiefs of NAN passed a resolution to create an autonomous Nishnawbe-Aski controlled police commission and police service. There was strong support from Ontario government for the initiative. NAN proposed a stand alone police service with jurisdiction on and off the reserve. One of the key issues that NAN representatives grappled with was traditional peace-keeping. NAN envisioned an autonomous policing service without creating a police agency that would only continue to enforce federal and provincial statutes resulting in the same experiences with external police services. Their vision for First Nations policing included a more customary, traditional peacekeeping police service enforcing NAN laws within specified jurisdictional regions.

Nishnawbe-Aski Police Service Development

The intent of the first agreement was to establish an Aboriginal police service to provide effective, efficient and culturally appropriate policing to the people of Nishnawbe – Aski Nation. Phase one of the policing service included the provision of thirty three constables. The agreement was signed in the fall of 1993

and NAPS became operational as of April 1994. The Police Services Board consisting of ten directors was formalized with its own procedures and by-laws. An independent board referred as Citizens Review board was created for the purpose of ensuring police accountability to the public.

Furthermore, the parties agreed as part of the agreement that certain legislative changes are required to fully implement all of the terms of the agreement. It was agreed that the parties would commence and actively pursue those legislative changes of which would be chaired and monitored by the then Indian Commission of Ontario.

Subsequent to the signing of the initial agreement, the parties negotiated and signed follow-up agreements leading to NAN to realize a full complement of officers. First set of agreements are three and five years in duration. With the over-lap development of other police divisions, negotiations became a constant task for the police service. The negotiations with governments became most frustrating not only for the negotiators but for management and officers as well. The funds attached to negotiated undertakings would not be accessible for prolonged periods, therefore, negatively impacting the operations.

It is important to note a number of issues or parameters that impact on NAPS policing that give rise to its short-falls and more-so its aspirations. These are as follows:

1. Federal Policing Policy

The federal policy on Aboriginal policing is limited to provision of front-line policing. First Nations policing services and the leadership are frustrated by such a policy that is so limited and narrow in scope and nature. The policy to promote improve policing at First Nations is now the very policy hindering and impeding further promotion and sophistication of the same police services.

The federal policy on policing does not and has not provided resources to address real capital needs of the police service. The first years of NAPS operation, the officers had to apprehend offenders which they detained in holding cells that were unacceptable and dangerous. The recent Kashechewan tragedy where two detainees died in a fire has been an accident waiting to happen in most of the communities. Federal government has not accepted the reality that capital is required to operate a police service. The Ontario government took the position that they did not have the responsibility to provide any kind of capital on First Nations community as it was the responsibility of the federal government. The political football game became the order of the day. NAPS became caught in untenable situation. The detention offenders resulted in outright compromise of civil rights of the detained persons.

2. Training

When NAPS began its operations for the whole region, there were existing First Nation constables. These positions, along with the program enrichment, were transfer to its operations. These First Nation Constables were trained at the Ontario Police College (OPC) under the same training criteria as the OPP. Many of the original trainees hired under NAPS did not successfully complete the Ontario Police College nevertheless were hired because of the costs of recruitment. At one time, NAPS had in excess of 40% officers who had not successfully completed the required training.

The Board of Directors adopted police service standards that would equal or parallel OPP and municipal policing. As one of the first steps, the police service began a process of providing additional training and supports for officers that did not qualify. The Board established a policy

stating a recruit who did not successfully complete the OPC training would not be hired as a NAPS police officer.

The training cost became one of the major expenditures for the police service. The attrition rate was extremely high. The low wages and postings in isolated regions contributed to high turn over. Interested people would apply for officer positions and secure training. Once trained, the officers would apply for police positions in the south where pay and location were more ideal. For awhile, it appeared that NAPS become a training depot for other police institutions including municipal.

The only training factored into the NAPS policing is the course content provided at the OPC. NAPS and most officers do not have any additional training such as crowd control and other specialty operations. Officers wishing to pursue career advancement take the necessary courses in order to qualify for positions.

3. Jurisdictional Dilemma

NAPS has been operational as full standing police service now in excess of a decade yet the jurisdictional issues and responsibilities that were noted still exist. NAPS and the OPP have entered into operational protocols renewed from time to time to address crisis and issues as they arise. The protocol framework has been refined to meet operational objectives and satisfy the legal requirements of policing between the two police services.

The jurisdictional issues are many and complex but not insurmountable. One of the key jurisdictional issues is the policing responsibility of First Nations constables. Canada, as their 52% contribution to policing costs insist that First Nations constable duties are restricted to within reserve land proper. Any policing outside the reserve boundaries falls within the

purview of OPP. This supposition is not practical and certainly does not promote the policing aspired by First Nations.

For example, in most reserves alcohol is banned as a means to curb abuse resulting in numerous community social and familial disruptions. Drugs are banned substance and enforced accordingly. Persons wishing to traffic banned substance have chartered small planes to deliver contraband to other sites off the reserve proper where OPP who has the policing jurisdiction should be policing such areas is not possible. As band by-laws are of no effect off the reserve, the OPP do not have the resources financial or human to be able to provide the policing within the vast remote regions of NAN territory. If First Nations officers were compelled to police according to federal policy then policing would be a disservice to public and property security of people in general.

If OPP had to provide such policing, the costs would be prohibitive and the required resources unmanageable. First Nations governments have the responsibility to provide security and protection to their people while they are occupied their traditional territories. Traditional territories are external to reserves. People occupying traditional territories have property within their sites. BNA Act 91(24) states "Indians and lands reserve for Indians". Federal government has always taken the position that they will and only accept fiduciary responsibility for Indians on reserves. They have never acknowledged that Indians can and in many cases are off reserve lands because First Nations people had their permanent land tenure regimes outside the reserve boundaries.

It has been the accepted practice of federal government to promote the notion that the treaty and aboriginal rights of First Nations are not portable but that once you leave reserve lands that your rights become non-existent. The First Nations leadership has fought against such notion

politically and in defense in courts. First Nations believe such notion is of the remaining colonial vestiges of Canada. Ontario, MNR are still legally challenging lower court decisions favouring First Nations in their aboriginal and treaty rights practices. Both governments have failed to recognize and appreciate First Nations rights and freedoms that have fuelled anger, distrust and continued suspicion between First Nations and governments.

The Commissioner of the O.P.P. appoints and issues the warrant cards for NAPS constables. Under this appointment, these police officers have the duty and responsibility of enforcing laws both on and off reserves. The capacity is there.

One of the more recent jurisdictional disputes involved the traffic on the winter roads system. The OPP were enforcing the Highway Traffic regulations through warnings of non-compliance to drivers. Most of the drivers do not have the necessary licences or insurance coverage as required. This led to blockading the winter road as such enforcement was creating hardship for people. The winter roads provide opportunity for people to access goods and services at lower costs. The people driving know and recognize that within regular road systems that they cannot drive vehicles without license and insurance. The enforcement of highway regulations created unnecessary problems that now have been resolved through intervention of First Nations leadership NAPS and OPP. The policing services operate under the winter roads protocol identifying public education and steps and opportunities for northern residents to meet highway traffic requirements.

The OPP does not enforce band by-laws which is consistent with non-enforcement of municipal by-laws. At the same time, Indian Act provisions made it possible for First Nations Councils to develop and adopt by-laws that were consistent with other laws and regulations. The irony of this

exercise was that the Minister of Indian affairs was and is still approving such by-laws. When Canada unilaterally off-loaded policing responsibilities to Ontario either they willingly and knowingly decapitated any possibility of enforcement of by-laws within first Nations reserves in Ontario or it was done with complete ignorance as such other measures where the right hand did not know what the left hand was doing.

Thus one of the key jurisdictional issues that need to be addressed has to do with territorial designation. Territorial designation is the responsibility of NAN leadership and the Ontario government. The Commissioner of OPP and the Chief of Police for NAPS have accomplished what could be termed as transitory steps that meet potential gaps in steps. Territorial designation will have numerous implications including the costing of services. NAN preference is to provide total policing coverage for all remote communities, with certain specific exceptions such as Pickle Lake, Moosonee, highway and railway points. Policing for First Nations adjacent to municipalities would be done by First Nations with negotiated protocols for surrounding areas.

Territorial designation is not a new concept with NAN. NAN negotiated a major Child and Family services undertaking with Ontario that included territorial designation. Under the designation Tikingan and Peyukewtano Child and Family Services provide care for child regardless of race. It is important to note that the Child and Family Services Act has special provisions in the services to Aboriginal families including Part X of the Act. The present form of the Act, although much more Aboriginal friendly than predecessor acts is still viewed very intrusive by First Nations.

The jurisdictional issues need to be negotiated between First Nations and Ontario under government to government undertakings. In most cases,

the undertakings by Ontario will require legislative changes to existing Ontario Police Services Act.

Under the accountability sections of the Polices Services Act, the Special Investigations Unit (SIU) is charged with the responsibility of investigating police services in Ontario where fatality or serious harm has been rendered by police in the course of their enforcement of their responsibilities. First Nations constables are exempt form such legislation because they are not classified as police officers. By amending the Police Services Act to authorize a form of SIU regime to be applied to First Nation police is accepting Ontario legislation to be implemented on the First Nations. Chiefs of Nan do want clear accountability measures to be instituted so such amendments can be view and understood as transitory. In the end police legislation must be within First Nation legislation.

4. NAPS, A Policing Program

The creation of NAPS is by negotiated agreement between Canada, Ontario and NAN. The policing agreement exists at the pleasure of the three parties subject to availability of financial resources to provide to program.

Canada and Ontario will maintain the program as long as are readily available but if funds should become restricted then NAPS is subject to down-sizing or even dismantlement. Canada or Ontario can determine the fate of NAPS in isolation. NAPS is incorporated under Ontario incorporation laws. As long as NAPS is a program then there is no real certainty.

The power to enforce federal and provincial laws including the power to arrest is made possible through an agreement by principals who have the legislative authority and mandate being Canada and Ontario. This is referred to as delegation. The First Nations policing institutions are the

only policing services in Ontario that have no legislative base. The municipal policing services have greater degree of autonomy and recognition than First Nations.

The program nature of the policing service renders all aspects of its functions and services to be program oriented. For example, NAN Citizens Review Board supposedly to parallel the accountability requirements of policing in Ontario does not have compelling authority therefore constables and public have responded under goodwill measures. All decisions of the Citizens Review Board can be challenged because they have no legislative base. The Board of Directors do not have similar mandates or authorities as municipal boards under legislation.

Various First Nations that are located adjacent to municipalities have approached the First Nation to discuss joint policing initiatives. These relationships between the First Nation and municipalities have been fostered through many years of co-existence and through many difficulty periods and incidents but yet the people from sides see the need for closer working relationships in such areas policing being one of them. Unfortunately, the Board of Directors and the administration cannot enter into contractual relationship with such municipalities as they have no legal capacity to do so. NAPS can only perform services according to the confines of the tripartite policing agreement. Therefore contracting policing services with municipalities is not possible under present arrangements.

All First Nation constables are appointed and receive their warrant cards from the Commissioner of OPP. The Commissioner has utilized discretion and flexibility as to these appointments with various First Nation policing institutions. In the end, the Commissioner maintains liability for all those

appointments for which she has no supervising responsibilities. The Police Services Act authorizes municipalities with the mandate and power to appoint their police officers.

5. Need for Legislative Change

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. The Chiefs had threatened at one time that they would not approve or sanction any further policing agreements between Canada, Ontario and NAN because they viewed the existing agreements as merely administrative agreements. As long as NAPS has a program designation under these agreements then they are administrative undertakings. The Chiefs were more focused and committed to their right and capacity to design, develop and implement a policing institution responding to their peoples demand and needs under their governments.

The immediate legislative issues that need to be addressed are;

1. Appointment of NAPS police officers,
2. Territorial designation and resolving other jurisdictional issues with policing,
3. NAPS board responsibilities and authorities,
4. Mandates and authorities (police accountability) for NAN Citizen's Review Board,
5. Police contracting powers.

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 Nations 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.

Without the recognition clause, it is inevitable that the Chiefs of NAN will not accept any form of inclusion into the Police Services Act. Ontario had supported and are signatory to the Constitution Act. Ontario has already enacted Child and Family Services Act that is forerunner in recognizing cultural, traditional and governmental rights of First Nations. The government of Ontario is seen as one of the leading proponents supporting the First Nations government development. With the historical background, the recognition would simply be the next step to the unfolding of First Nation governments.

NAPS Policing a Unique Territory

As previously described NAN territory covers two thirds of the Ontario land mass. It is compared to the same size as the country of France. Most of the communities are isolated year round and even with a six week period of winter roads system, policing becomes a very costly operation and service.

1. Travel and Logistics

Travel costs and logistics become a critical factor in determining deployment. If you have a hostage taking situation in one of the remote communities combined with civil unrest where additional officers have to be transported to maintain support and security in a volatile environment, NAPS would have depleted present budget allocations. Any prolonged period of such events would actually bankrupt the police services. For example, an officer transported from Sachigo Lake to Sioux Lookout (return trip) on regular schedule flights is anywhere from \$560.00 to \$660.00. Same distance with road accessibility would lessen the costs by two thirds. Mobilizing a ten man unit to respond to crisis will be extremely costly. Furthermore, NAPS would have to call in either the OPP E.R.T or T.R.U. to respond to critical situations. NAPS would eventually have to underwrite the costs of such units.

NAPS lease their own plane in order to minimize travel costs but also to have the available means to respond quickly to crisis. The operational and maintenance costs must be factored into the equation adding to already high costs of travel. Regardless of what transportation mode is taken the cost is still there.

Whenever a person is apprehended, the offender is transported to a safe holding cell either in Sioux Lookout or Kenora. NAPS has to underwrite the transportation costs. When the court hearing is convened then NAPS has to transport the offender to the community for hearing and if the case is remanded for some reason then NAPS has to transport the offender back to Sioux Lookout or Kenora. In other jurisdictions, once the offender is delivered to court, then the justice system assumes all other related costs including transporting costs regardless of number of remands. This cost burden is high for NAPS which has limited and restrict travel budget.

2. Capital Requirements

The lack of capital resources to develop proper infrastructure for NAPS policing could have justified calling for international monitoring for potential abuses of incarcerated individuals. Many of the holding cells and police stations were make-shift premises that did not meet standards for holding offenders in custody. The liability and risks are high and remain high.

The First Nation governments would take whatever measures were required to provide police stations that would be leased to NAPS. NAPS had no option to demand buildings according to certain standards. NAPS leased whatever was made available; there was no choice. It is only recently that the federal government has made efforts to provide minor capital. One of the means is to cover the costs of specially designed police buildings with cells that could be transported over the winter road. This option has been available with NAPS for the last two years and which they have capitalized. The only problem is that not one RTM police station have been transported over the winter road because of the poor winter roads seasons. NAPS has these building delivered to road access communities or are in certain holding areas waiting a better winter roads transportation season. Capital requirements must be provided under normal supply methods as available to any police institution. We cannot afford any more Kashechewan tragedies.

It is ludicrous to think or believe that First Nations policing could be accomplished without the necessary capital infrastructure to support policing. Governments must provide the resources for major capital expenditures so that each community will have the police station and the required holding cells according to established Ontario policing standards. Anything less will be seen as supporting a second class policing system.

3. Drug Enforcement and Specialty Services

First Nation communities have to contend with increase drug trafficking into their communities. The federal policy on First Nations policing does not provide for NAPS to deploy its officers in drug enforcement. NAPS cannot purchase the necessary tools or specialty equipment or services to mount any serious counter measures to rising drug problems. Aside from the increase of illicit drug trafficking, the constable and First Nations must contend with increase substance abuse and alcoholism.

The OPP is prepared to provide services in drug enforcement but NAPS will have to pay the associated costs from existing budgets that they do not have under the agreements. NAPS dose not have drug strategy as they do have the resources to deploy such strategy.

4. Stress, a Daily Challenge

Generally, policing has been found to be high stress related occupation. Continued high stress conditions may cause officers to make wrong decisions that may lead to tragedy or an warranted crisis resulting in high costs or damaged relations in a remote location. First Nation policing was seem as an opportunity for individuals to provide policing for their own communities. It was seen as a way for cutting the over-all costs to program as there would be no necessity to bring in external people to provide policing. Most of the communities did recommend and hire their own people as police officers but the stress level from policing your own community began to rise to the point that most of the individuals who are from their own communities have terminated their policing careers or have joined other police institutions.

Sadly, the officers had to encounter family isolation and withdrawal because they had to enforce the laws whereby they would have had to lock up and apprehend relatives. The officers were in a situation that

forced them separation with relations. Furthermore they were treated and viewed with indifference from family. Policing your own community no longer became an opportunity sought after by the community members. Most officers hired and performing exceptionally well are from other community and regions.

NAPS do not have the resources to provide the technical counseling supports to their officers. OPP and other major police institutions have recognized treatment supports for officers encountering traumatic situations. Young officers who just came out of training have experienced where they had to cut down suicide victims from hanging. Many of these young officers were left to manage their situation and eventual left as they could not function any longer and many of these same individuals have social problems directly related to such traumatic incidents.

5. Coach Officers

The present funding levels does not allow NAPS to hire coach officer supports for their newly recruits. Once the officer has completed their training, then they are deployed to their postings. There is no opportunity to pair them with experienced officers at every community. Due to constant shortages of constables, the newly trained constables will find often themselves providing policing alone.

The Constables require mentoring support to enable the new recruits gain confidence and experience. The posting in isolation especially for a lone officer usher new and at times overwhelming challenges that can easily exasperate the officer. They are often cast into the midst of complex issues dealing with families and community issues that require pro-active measures in order to ease potential community flare-ups.

Without the resources for NAPS to hire coach officers then the police services stands to be compromised and potentially exposed to unnecessary risks and liability of the police service.

6. 24/7 Police Coverage

NAPS is required to provide 24/7 police coverage at all communities. Although the police officers expect regular hours and shifts, the community feels that the officers are there to provide around the clock coverage. Prior to NAPS most of the communities had one First Nation constable and now each community should have a two officer complement.

At every community, the demands on officers are high that cannot be met during regular working hours. At most times, there is one officer on duty but if alcohol or drugs are involved then the other officer must be called in to assist in the domestic disturbances. NAPS has to pay over-time costs that are not included adequately with the over-all annual budget allocations. The police service experiences higher officer burn-out, increase requests for stress and medical leave. The existing officer availability does not meet the demands and often communities have to do with police services or adequate coverage. Although, the pay is now comparable to OPP, officers have left the organization because it is not worth the demands placed upon them.

PROPOSED RECOMMENDATIONS

1. It is recommended that Ontario and Canada provide financial resources for NAPS to further develop into a fully function police service. The present financial base that is negotiated on continual interim basis restricts and stifles growth and development. NAPS must have adequate resources to respond to policing

needs of the communities including not only front-line services but other policing services such as drug enforcement, and special investigation capability.

2. It is recommended that Canada renew its Aboriginal policing policy to support progressive development of Aboriginal police services to fully functioning police service units. The present policing policy as outlined has or is lagging behind Aboriginal policing growth and development.

3. It is recommended that Ontario take measures to provide the resources for NAPS to further its capacity policing development as a fully functioning police service. These measures may include exceptional resources arrangements independently or with OPP. These arrangements must be viewed and recognized as investments wherein such development will advance unique capabilities that NAPS may provide in the event of direct action undertakings.

4. It is recommended that Canada and Ontario provide the required capital resources for NAPS to have the required up-to-date capital infrastructure at all sites. NAPS should have the capital infrastructure parallel to what is available to RCMP and OPP. Ontario and Canada must approach financing for NAPS under a new fiscal transfer mechanism that will be consistent and dependable.

5. It is recommended that NAPS develop internal operational policing capacity to not only to adequately respond to confrontations, road blockades, and protests but implement unique systems of managing and resolving future direct action undertakings without collateral damage. The recommendation recognizes that additional financial resources will need to be secured and designated strictly for this capability. In light of increased direct action undertakings by First Nation not only in northern Ontario but throughout Ontario and elsewhere, NAPS would be in a position to deploy such expertise responding to such incidents.

6. It is recommended that NAPS be provided with financial and human resources to engage full time additional positions for communications and public liaison specialty functions. These individuals would be fully trained, and have the expertise to design negotiation formats and processes. These individuals would be engaged as front-line functionaries assisting the protestors with negotiation processes and in turn will restore confidence and calm at occupations. This will be key pro-active policing measure.

7. It is recommended that NAPS be have the resources to employ coach officers on full-time basis. The newly recruits who find themselves as the only police officer because of time-off, medical leave and other policing demands expose new officers to potential personal safety risks and crisis.

8. It is recommended that NAPS be provided with resources to implement a full Auxiliary Policing Program that will not only provide non-direct policing for NAPS officers but that the program can be designed to promote constable development at ground level.

9. It is recommended that NAPS be provided with resources to design, develop and implement program to support officers that have encountered traumatic situations. NAPS should have access expertise to provide professional counseling and supports at its disposal.

10. It is recommended that NAPS be recognized as a legitimate police service under appropriate legislative base as with other police services. NAPS present status as a police program is a disservice and at best viewed as secondary policing institution. Under this recommendation, the following must include;

- territorial designation,
- police appointment powers,
- powers and responsibilities of board,

- powers and responsibilities of Citizens Review Board (policing accountability),
- contracting police services,

11. It is recommended that Ontario commission an undertaking to fully explore, design and recognize the traditional peace-keeping practices of First Nations. Once designed, peace-keeping should not be considered as an option at First Nations but a cornerstone for providing public security and protection for all.

12. It is recommended for Ontario to begin discussions and negotiations with Nishnawbe-Aski Nation on the spirit and intent of Treaty # 9. Ontario is a signatory to Treaty # 9 and its adhesion. The discussions should include the traditional or customary land tenure systems of First Nations and how such systems will be recognized by Ontario.

13. It is recommended for Ontario to undertake negotiations with First Nations to determine and implement real and meaningful resources sharing opportunities with First Nations in Nishnawbe-Aski Nation territory. Revenue sharing opportunities that will have real and meaningful impact on the present quality and standard of lives for First Nations must be developed and pursued.

14. It is recommended that Ontario review existing legislation, policies and regulations on land management affecting First Nations and to amend ensuring consistency with the Supreme Court of Canada consultation parameters. The present regimes and actions of Ontario undermine the Aboriginal land and resources interests. Specifically, the Mining Act, Ontario's Mineral Strategy, Ontario's best Practices Manual, Ontario's Forest Management Process, Terms and Condition #77 (now referred to T&C #34), Ontario's Timber Class Environmental Assessment and others.

15. It is recommended that Ontario and First Nations jointly design and implement Aboriginal and Treaty Rights Impact Assessment process. The assessment process should review all potential issues affecting Aboriginal, public and private sector interests. The design and implementation process must involve the impacted First Nations.