
In Search of Security: The Future of Policing in Canada



LAW COMMISSION OF CANADA
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To order a copy of the Report, contact:

Law Commission of Canada
222 Queen Street, Suite 1124
Ottawa ON K1A 0H8
Telephone: (613) 946-8980
Facsimile: (613) 946-8988
E-mail: info@lcc.gc.ca

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The Honourable Vic Toews
Minister of Justice
Justice Building
284 Wellington Street
Ottawa, Ontario
K1A 0H8

Dear Honourable Minister:

In accordance with section 5(1)(c) of the *Law Commission of Canada Act*, we are pleased to submit this Report by the Law Commission of Canada that examines the emergence of networks of policing in Canadian society and recommends changes to the legal and policy environment to reflect this new reality.

Yours sincerely,

Yves Le Bouthillier
President

Bernard Colas
Commissioner

Dr. Sheva Medjuck
Commissioner

Mark L. Stevenson
Commissioner

Roderick J. Wood
Commissioner



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Preface

For most of the last two centuries, policing has been associated primarily with modern public police institutions. However, the contemporary reality of policing presents a rather different picture. Canada—and, indeed, much of the world—is in the midst of a transformation in how policing services are delivered and understood. Today, it is more accurate to suggest that policing is carried out by a complex mix of public police and private security. In many cases these networks of policing are overlapping, complimentary and mutually supportive.

This new era of pluralized policing raises questions concerning the existing legal and regulatory environment and whether it continues to be relevant. This Report provides an opportunity to reflect on these important issues. It is meant to stimulate agencies and governments with an interest in policing to think creatively about their role within the networks of policing that currently exist in Canada. Its recommendations are aimed at governments in their capacities as lawmakers, regulators and purchasers of security; at organizations that provide policing services—both public and private; and at those who receive security services, whether these are purchased or provided as part of the public good.

The Law Commission of Canada believes that reflecting on the role of policing in Canadian society is essential to ensure that it continues to serve the public good. It is part of society's ongoing search for the provision of safety and security that reflects our core democratic values and aspirations.

The Law Commission of Canada welcomes your comments and ideas.



Acknowledgments

This Report has benefited from the counsel and advice of many Canadians and international observers of public policing and private security. We also want to thank the many citizens who contacted us with their thoughts and feedback on this important issue, and those who attended the many conferences, workshops, discussion forums and consultations that were organized or supported by the Law Commission of Canada. This Report could not have been written without their input.

The work of many individuals has inspired this Report. The Law Commission is enormously grateful for the efforts of Dr. Clifford Shearing and Dr. Philip Stenning, who prepared the initial draft of this Report. Dr. George Rigakos helped draft parts of this Report and held the pen for the Law Commission's order and security discussion paper. Don Morrison contributed substantial revisions to this Report. Susan Eng also helped draft general sections. We are sincerely indebted to all of them for their considerable input and guidance.

The Law Commission benefited greatly from research that examined emerging relationships between public and private police. Thank you to Joe Hermer, Michael Kempa, Clifford Shearing, Philip Stenning and Jennifer Wood; Michael Mopas; Laura Huey, Richard Ericson and Kevin Haggerty; Christopher Murphy and Curtis Clarke; George Rigakos; and Susan Eng. Background research by Ted Carrol, Brian Robertson, and Lucie Lemonde and Gabriel Hébert-Tétrault also provided important insights. We also benefited from the work undertaken in the context of our partnership with the Social Sciences and Humanities Research Council of Canada (*Relationships in Transition*, 2002); thank you to Stephen Schneider, Rick Linden and Margaret Beare.

The Law Commission's order and security study panel helped identify many of the key issues that were examined throughout the course of this project. Thank you to William Cameron, Pat Capponi, Susan Eng, Stuart Deans, Todd Keller, Dale Kinnear, Rob MacInnis,



Gayle MacDonald, Ross McLeod, Christopher Murphy, Jacques Roy, Garry Sears, Philip Stenning, Curtis Clarke, Helen Hopfauf and Wendy Whitecloud.

In February 2003, in Montréal, Quebec, the Law Commission of Canada hosted an international conference that brought together the world's leading experts on policing and security to examine the complex relationship between public policing and private security. We would like to thank everyone who participated in and attended this conference. The many papers that were presented, along with the various discussions and debates that took place among conference participants, provided important inspiration for the Law Commission's work on this Report. Thanks also to Emerald Publishing for partnering with us to sponsor the "best paper" award for the conference. The Law Commission would also like to thank the many conference sponsors who made this event possible: the National Institute of Justice, Securitas Canada, Intelligarde International, the Ford Foundation, The Office of Critical Infrastructure Protection and Emergency Preparedness, and *Le Centre international de criminologie comparée, Université de Montréal*. We also owe a tremendous debt of gratitude to the conference organizing committee: Jean-Paul Brodeur, John Clark, Rob Davis, Thomas Feucht, Michelle Gosselin, Ian Loader, Michel Mongeau, Graham P. Ospreay, George S. Rigakos and Jerome H. Skolnick. A special thanks to David Cayley, who attended the conference and used portions of it as a basis for a series of programs on CBC Radio's *Ideas*.

Many commentators were asked to review different drafts of this Report. The Law Commission of Canada would like to thank Ted Carroll, Brian Robertson, Dale Kinnear, Colin Campbell and Joanne Marriott-Thorne.

Over the years, many members of the Advisory Council of the Law Commission of Canada have been involved in discussions of policing and we have been enriched by their wise comments. Thank you to Sanjeev Anand, Jacques Auger, Darin Barney, Georges Berberi, Marie Andrée Bertrand, June Callwood, Geneviève Cartier, Paul-André Comeau, Bradley Crawford, Ervan Cronk, Janet Dench, Margaret Denike, Irène d'Entremont, Wilma Derkson, Jean Dragon, Emerson Douyon, Leena Evic-Twerdin, Dave Farthing, Gerry A. Ferguson,



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The Commissioner's would like to thank in particular Dr. Dennis Cooley, former Executive Director and Director of Research at the Law Commission, for his leadership in carrying the project forward. Dr. Cooley orchestrated the consultations and engagement strategies for this project, coordinated and organized our international conference, and prepared an earlier draft of this Report. We want to thank him for his dedication. Thanks also to Steven Bittle, Senior Researcher Officer, who took stock of all the work previously accomplished to finalize this Report. We owe him an enormous amount of gratitude for all of his efforts.

Other members of the Law Commission team should be thanked for their contributions: Rae Raymond, Stéphane Bachand and Lise Traversy (Communications); Suzanne Schyer-Belair, Maryse St-Pierre and Francine Main (Administration); Lorraine Pelot and Frederica Wilson (Research), and our many students who contributed to finalizing this Report: Linnsie Clark, Erin Donohue, Jill Boyce, Gillian Barnett, Kim Butler and Susan Jane Bennett. Thanks also to the Executive Director of the Law Commission, Bruno Bonneville, for his many contributions to the project and the completion of this Report.

Past Commissioners Alan Buchanan and Gwen Boniface contributed to the early stages of this project, and the Past President of the Law Commission, Nathalie Des Rosiers, provided invaluable leadership for this project throughout her tenure. We thank them for their contributions.

Ultimately, the views expressed in this Report, along with any errors or omissions, are the responsibility of the Commissioners.



Executive Summary

Policing is an essential component of a well-functioning society. It falls to the police to maintain peace, order, security and safety for the common good. While the desire for these objectives may be universal, pursuing them is not a simple task.

As a society, we frequently associate policing with the activities that are carried out by the public or state police. However, if we take a step back from this common perception, we can see that policing is a much more integrated task that is undertaken by a variety of groups and individuals. On a regular basis we come into contact with numerous organizations—both public and private—that are responsible for providing a range of safety and security services. Whether it is the shopping mall security guard, loss prevention officer, municipal bylaw officer, private security guard at the front door of a government building or private business, or one of numerous in-house security personnel that seamlessly occupy the spaces of our daily routines, it is becoming increasingly apparent that policing is much more than what we traditionally associate with state-directed activities.

Like many countries around the world, Canada is experiencing a transformation in how policing services are delivered and understood. In the last several decades, we have seen the extraordinary growth of the private security sector, offering a wide range of services. However, it is not simply the case that private security is filling a void left by the public police. Today, it is more accurate to suggest that policing is carried out by a network of public police and private security that is often overlapping, complimentary and mutually supportive. Within this context, it is increasingly difficult to distinguish between public and private responsibilities.

Over the past several years, the Law Commission of Canada has undertaken a program of multi-faceted research and citizen engagement to examine the changing nature of policing in society. This Report greatly benefits from, and brings together, the results of



this work to reflect on the evolution of policing and its impact on our legal, policy and social environments. This Report challenges us to rethink—indeed, re-imagine—policing in contemporary Canadian society.

In addition to describing the emergence of networks of policing in Canadian society and how this has occurred, this Report examines whether the current legal and regulatory framework adequately reflects the realities of modern policing. It also explores whether policing, in all of its manifestations, continues to reflect core Canadian democratic values and aspirations. Based on these findings, the Law Commission of Canada proposes a set of recommendations aimed at ensuring the future of democratic policing.

Social Change and Policing

The transformation in policing has taken place against a backdrop of significant social change in Canada. Canadian society is much more diverse than it was forty years ago and now encompasses a plurality of cultures, traditions and values. This is particularly so in large urban centres. This change has made public policing more complex, as organizations have endeavoured with limited success to reflect the broad mix of society within their ranks and to meet the demand for a greater range of policing services.

Alongside changing demographics, we have seen the emergence and growth of new forms of property that blur the distinction between public and private spaces. For instance, the large indoor shopping malls that dot the urban landscape are a form of “mass private property”—property that is privately owned and policed, but used extensively by the public. Similarly, “communal spaces,” such as gated communities or private health clubs, are privately owned and policed in the interests of their owners, but are used by the public. While the public police have traditionally looked after public property and places, and private property owners have been responsible for securing their own property, these new spaces place ever-increasing segments of society under private policing. This situation raises a number of concerns, including how to ensure that such policing reflects the broad public interest.



Foremost among the many factors shaping policing today is the burgeoning private security industry that operates parallel to and often in cooperation with the public police. Indeed, a key element in the proliferation of networks of policing is the ever-increasing presence of private security in most public and private spaces—in almost any place where the community comes together. At the same time, however, the nature and scope of public policing has also changed. Of particular note is the increasing commodification of state policing: public police forces sell their services directly to the private sector through “pay duty” policing (such as police officers providing security at professional sports events), and some public police forces are contracted to provide municipal policing services. In addition, public police forces are increasingly expected to justify or rationalize their resource allocations.

The Legal and Regulatory Environment

Policing in Canada is governed by a complex set of rules and regulations. While there are some important features of the legal environment that influence policing, the burgeoning role of private police in society, and the fact that it increasingly carries out functions similar to the public police, raises concerns regarding the extent to which actions of private security are authorized and constrained by law.

Currently, there is a disjuncture between the reality of policing in Canada and the legal framework for its regulation. Several important questions remain unanswered regarding how growing networks of policing should be coordinated to ensure democratic policing. Similarly, how should policing agents be held accountable? These concerns relate directly to law-making and the established legal framework. To date, however, no Canadian government has systematically addressed the challenges that networks pose for public policing.

Overall, policing-related governance and accountability mechanisms still reflect the public-private dichotomy. This framework clearly no longer applies to the reality of policing. The challenge and opportunity for legislators and policy makers, therefore, is to consider governance and accountability mechanisms that deal with policing in *all* of its manifestations. Such measures will



be vital for ensuring that policing in Canadian society, broadly defined, reflects the public good.

Re-imagining Policing in Canada

The profound changes in the landscape of policing in Canada directly affect citizens, our democracy and our notions of equality and justice. It is part of the Law Commission of Canada's goal to assess the impact of these transformations and suggest an agenda that promotes good public policy and governance in an increasingly plural society.

Consistent with this goal, the Law Commission has put forth a set of recommendations that respond to the new realities of policing and reflect the common good. As a first step, the Law Commission believes that policing should be redefined more broadly to encompass activities of any individuals and organizations legally empowered to maintain security or social order, in accordance with public or private contracts, legislation, regulations or policies. We believe such a definition represents an important starting point for redefining the legal and policy environment.

Responding to the new realities of policing also means protecting democratic ideals and values. A prominent role for the state and meaningful citizen participation are two key ways in which this can be achieved.

Despite the changing nature of policing, the Law Commission recommends that primary responsibility for the regulation of all policing remain with the various levels of government. Governments should continue to be responsible for ensuring that policing is conducted in a way that respects core democratic values.

To address the disjuncture between policing and the regulatory and legal environment, the Law Commission recommends that all levels of government review laws, regulations and policies to assess their impact for all forms of policing and to foster the best possible policing arrangements. Governments should also collaboratively develop legislation that will help to ensure that private security officers respect the core democratic values and aspirations that Canadians commonly associate with policing.



The Law Commission also recommends that new governance and accountability mechanisms be developed to address *all* policing, a premise that stems from our belief that policing no longer occurs within a simple public-private dichotomy. Specifically, we recommend that Public Security Boards (PSBs) or analogous institutions be created through legislation to govern public police and set policing policy. The Law Commission believes that such boards would not only have the power to appoint, dismiss and provide oversight to chiefs of police and senior public police officers, but would also act as a hub for fostering cooperation between the public police and other agencies involved in public safety and security, including private security. The intent would be to create partnerships with other governmental and non-governmental agencies that have important roles in maintaining public peace and security under one general umbrella. These PSBs would be established at regional or municipal levels and would include civilian representatives from the public to be policed. Such boards would have authority over budgets and a well-defined review process. Also, governments should ensure that there are appropriate institutions or procedures for receiving and responding to public complaints concerning policing.

In addition to establishing *policing* boards, the Law Commission believes there is a need to better regulate the range of private security arrangements that continue to proliferate in Canadian society. While many private security personnel occupy the visible aspects of the industry (such as security at a shopping mall), countless others provide a variety of in-house security services. Private security guards, depending on their mobilization, actively carry out patrol duties and, in the process, enforce a variety of laws, ranging from provincial property trespass acts to a citizen's Criminal Code powers of arrest. Many provinces, including British Columbia, Alberta, Ontario and Quebec, have taken steps to better regulate the private security industry. The Law Commission supports these initiatives and attempts to build on them by recommending an oversight mechanism that would provide the basis for more consistency and



further encourage the professionalization and standardization of the private security industry.

We therefore recommend that provincial and territorial governments establish Security Complaints and Accreditation Commissions (SCACs). The SCACs would have responsibility for licensing security organizations, setting training standards and establishing codes of conduct uniformly across the country. They would also be responsible for investigating complaints about their licensees, in order that they may undertake a proactive role in the oversight and regulation of the private security industry within their respective jurisdictions.

Lastly, the Law Commission recommends that a National Policing Centre be established to foster collaboration between all providers of policing services. Such a centre would be independent of any particular policing service and would have a broad mandate to foster and coordinate research, innovation and best practices in policing, policing policy and legislation.

Together, these recommendations, along with others contained in this Report, allow for policing and security to be provided in different contexts, public or private, in a manner that respects basic Canadian principles and reaffirms our collective interest in policing for the public good. With this new agenda, we can imagine how policing can remain relevant and democratic well into the 21st century.



Chapter 1 Introduction: An Overview of Police, Policing and Security

1.1 The Complex Nature of Contemporary Policing

Policing—maintaining and preserving peace, order, security and safety—is an important element of a well-functioning society. This is as true for Canada’s future as it has been for our past. The desire for policing that reflects the public good may be universal, but its pursuit is not a simple task. This Report discusses the many ambiguities and ambivalences surrounding police and policing in contemporary society, conflicting mindsets, and recent changes and developments. It proposes a strategy for better understanding and dealing with the complex continuum of policing activities that currently characterize the Canadian landscape.

For most of the last two centuries, policing has been associated primarily with modern public police institutions, first established early in the 19th century as “the new police.” By the middle of the 20th century, the almost automatic reaction of people confronted with certain kinds of “trouble” was to “call the police.”¹ While it was always recognized that the police needed the support and help of the public, “policing” came to be thought of as simply what the police do, rather than as a more integrated task to which a variety of public and private groups and individuals contribute.

Today, however, the reality of policing presents a different picture. One of the most fundamental changes over the past several decades has been the proliferation of networks of policing. Policing is much more than what we traditionally associate with state-directed law enforcement activities. No longer is policing the sole purview of the uniformed municipal, provincial or federal police officer. Our daily lives are now inundated with a complex mix of public and private policing activities. Canada, indeed much of the world, is in the midst



of a transformation in how policing services are delivered and understood. This new era of policing is one in which policing services are provided by a range of overlapping public police and private security agencies.

In contemporary Canadian society, we move through a diverse set of policing networks as we go about our daily affairs. As we travel from our homes to the streets, work, retail stores, shopping malls and recreational centres, we shift between different organizations performing the tasks we commonly associate with policing. This happens so seamlessly that we barely notice the complex mosaic of jurisdictions and legal regimes through which we pass. The textbox on the opposite page describes the policing arrangements a few years ago at Toronto's Pearson International Airport. What is interesting about this scenario is that all of the organizations identified have authority and powers granted through Canadian law.² And while it may seem like a particularly dense and multi-layered example of the intermingling of policing-related services, it is hardly unique. Similar networks exist in other institutions across Canada.

A key element in the proliferation of pluralized policing is the rapid increase of private security in most public and private spaces—in almost any place where the community comes together. It is almost impossible, for example, to visit a shopping mall without encountering some form of private security. These security personnel fulfill a range of services, including foot, bike and vehicle patrol, undercover surveillance, gang squad intelligence, communications and closed circuit television surveillance. Similarly, many Canadian cities have turned to private security firms to respond to a number of quality of life issues that are of concern to some retailers and consumers, such as homelessness, panhandling, graffiti, squeegee kids and street youth. In Vancouver, for example, the business associations in both Gastown and Granville Island employ private security to patrol public streets. In addition, private loss prevention officers not only conduct surveillance and set up covert “sting” operations for retail and auto-related thefts, but also routinely fill out reports to Crown counsel, requesting that criminal charges be laid, a task that was formerly performed exclusively by public peace officers.³



As one enters ... [the airport] ... one notices the newness of the structures, the cleanliness of the walls and ceilings, and the brightness and bustle of the building. Passengers move along various queues for airline tickets, baggage checks, and car rentals. Perhaps less noticeable are two of Canada's federal police talking to a pair of constables from the Peel Regional Police Service. After the discussion ends, the RCMP officers begin to patrol, nodding hello to two security officers from Excalibur Security making similar rounds. Farther along, they watch two armed Brinks guards carry money satchels from a nearby currency exchange kiosk. They wind by Commissionaires issuing parking tickets and Group 4 Securitas security guards checking the luggage of passengers. On the lower level, Canadian Customs agents spot a suspicious traveller and call for the RCMP and an immigration officer. In a processing centre just off the tarmac, security guards from Metropol Security meet with the immigration officials while the detainee is handed over to the security firm for transport to the privately run Mississauga Immigration Detention Centre... . The detainee is handcuffed, placed in the caged rear of an unmarked van, and driven to the centre, which from the outside looks just like another inconspicuous motel. As one gets closer, however, a 12-foot chain link fence topped with barbed wire encircling the rear of the building comes into view. ... on this short imaginary stroll you have come under the gaze of three federal policing agencies, one municipal police service, a quasi-public security force, four privately contracted security companies, and an unknown number of in-house airline security agencies, all of them working alongside one another in a generally unproblematical chain of surveillance.

G. Rigakos, *The New Parapolice: Risk Markets and Commodified Social Control* (Toronto: University of Toronto Press, 2002) at 37–38



Moreover, the private security officer who patrols a shopping centre or the neighbourhood business district is only the visible tip of the security iceberg. Alongside these services exists a less-visible side of the private security industry. For example, the high-end security industry is a mix of “in-house” or “for hire” forensic accountants, investigators, consultants, loss prevention specialists and computer programmers who engage in security work for banks, credit bureaus, insurance companies, retail outlets, stock exchanges and other private corporations, as well as for government organizations. These highly skilled, well-resourced and technologically sophisticated security professionals operate, for the most part, beyond the view of most Canadians, yet they wield considerable power and authority.⁴ It is now commonplace for business owners who suspect that an employee is embezzling money to hire a private forensic accountant to conduct an investigation. The results of this investigation may or may not become public. Based on the evidence collected by the investigator, the business owner may choose to deal with the matter privately, despite the fact that a crime may have been committed.

In addition to the expansion of private policing in recent years, the nature and scope of public policing have also shifted. Of particular note is that public police are also engaged in selling their policing services: public police forces contract their services directly to the private sector through “pay duty” policing (such as police officers providing security at professional sporting events), and public police forces receive municipal policing contracts. In British Columbia, for example, the Royal Canadian Mounted Police (RCMP) are contracted to provide municipal policing services in different parts of the province. Similarly, the Ontario Provincial Police (OPP) attempt to secure contracts to provide policing services in different municipalities throughout Ontario.

Adding to the complexity of these increasingly diverse forms of policing are the informal networks of information sharing developed between security officers and public police officers who patrol the same area. The interests of public police and private security do not always coincide, but the Law Commission of Canada’s research in Vancouver, Halifax, Edmonton and Toronto shows that on the street



level, there are highly developed networks that exist between policing personnel—both public and private. We have recently seen the practice of shared investigations between public police and private security companies and private donations to fund public investigations.⁵

1.2 Networks of Policing

What is becoming increasingly clear, as the above discussion begins to illustrate, is that although the public police remain the primary policing service providers, they no longer have a monopoly on the provision of these services in Canada. In particular, it is more and more difficult to draw a line between public or private responsibilities, as if they were two distinct and separate entities. It is not simply the case that private security is filling a void left by the public police. Nor can it be said that public police and private security agencies exist in a wholly antagonistic relationship. On the contrary, conceptualizing the responsibilities of policing in terms of public police versus private security fails to appreciate the fact that different nodes of policing are more often than not overlapping, complementary and mutually supportive.⁶ The range of organizations that are engaged in policing form a continuum. On one end are public police forces, fully trained and accountable, providing services to the public; on the other end are private security companies that guard private spaces, such as stores or factories. In

...it can be observed that there is no straightforward legal dichotomy between state and non-state police. Rather, there exists in law a continuum of police legal status and authority, with clearly state police at one end and equally clearly non-state police at the other, and a whole range of “quasi-state” and “hybrid” police in between.

J. Hermer *et al.*, “Policing in Canada in the Twenty-first Century”
in D. Cooley, ed., *Re-imagining Policing in Canada*
(Toronto: University of Toronto Press, 2005) at 31.



between, there exists a host of other organizations whose status as public or private is more ambiguous.

While we use terms such as “network” or “continuum,” one might argue that these imply a rationality that does not exist. The state regulates some private police agencies, but not others; some are granted special rights, others are not. It is the function that defines the players, their legal status, their liability and the state interest in regulation and oversight.

Even at the most public level, the job of policing is shared by a network of different organizations and office holders appointed and recognized at all three levels of government.⁷ The effective, efficient and economical deployment of these policing agencies to achieve policing that reflects the public interest, therefore, requires a coherent policing policy and a high level of coordination and cooperation, and it poses major challenges for effective governance and accountability.

Policing is being transformed and restructured in the modern world. This involves much more than reforming the institution regarded as the police, although that is occurring as well. The key to the transformation is that policing, meaning the activity of making societies safe, is no longer carried out exclusively by governments. Indeed, it is an open question as to whether governments are even the primary providers. Gradually, almost imperceptibly, policing has been “multilateralized”: a host of non-governmental groups have assumed responsibility for their own protection, and a host of non-governmental agencies have undertaken to provide security services. Policing has entered a new era, an era characterized by a transformation in the governance of security.

D. Bayley and C. Shearing, *The New Structure of Policing: Description, Conceptualization and Research Agenda*, Research Report (Washington: National Institute of Justice, 2001) at 1.



1.3 Purpose of the Report

This Report provides an opportunity to reflect on changes in policing and the impact they have on the legal, policy and social environments. In addition to describing the emergence of networks of policing in Canadian society and how this has occurred, it examines whether the current legal and regulatory framework adequately reflects the realities of modern policing, and questions whether policing, in all of its manifestations, continues to reflect core Canadian democratic values and aspirations. It also provides recommendations for reform aimed at ensuring democratic policing in Canada.

A primary concern of this Report is whether policing-related legislation has adequately kept pace with the changes that have occurred with respect to public policing and private security. For example, the importance of the *Canadian Charter of Rights and Freedoms* raises questions about the changing legal context of policing activities. Of particular concern is that the Charter applies only to governmental activities (including public police) and not to non-state activities (such as private security), unless such agents are deemed to be acting on behalf of the state.⁸ In an increasingly pluralized policing environment, questions emerge as to when someone can be considered an agent of the state and whether reforms are needed to ensure that all forms of policing (public and private) reflect the values and principles embodied by the Charter.

A second concern is whether policing continues to serve the public good in the best possible way, or the idea that policing continues to reflect core democratic values, including “equality before the law and a guarantee of civil liberties for all citizens.”⁹ Given that policing in Canadian society has become “multilateralized”, are there effective governance and accountability mechanisms in place to ensure that policing reflects core Canadian democratic values? As one commentator of policing accountability notes, “... the distinctions made between the public police and private security forces now have fewer fundamental differences to support themThe question for policy makers is to decide whether this development is a real cause for concern, and if so, what to do about it.”¹⁰



The evolving nature of policing means that the public police no longer have a monopoly over the provision of security services. In addition to various considerations regarding the nature and scope of these changes, questions surface as to what constitutes the most appropriate way to govern and regulate these new policing forms. Although there is an established history of governance and accountability of public police, these mechanisms are not beyond reproach. For example, concerns have been expressed about the democratic accountability of public police, particularly in the area of recognizing and responding to citizens' complaints and concerns with the over-policing of minority groups.¹¹ At the same time, the rapid expansion of private security means that governance and accountability mechanisms in this context, although they exist, are still evolving. Some provinces have taken steps to address these shortcomings (for example, through legislative efforts in Ontario, Quebec and British Columbia), but much work remains to be done.

The realities of contemporary policing provide unique challenges and opportunities for exploring new accountability and governance mechanisms that best serve the public good. They require critical reflection of the *status quo* as it applies to public police and private security, as well as consideration of how we might address various governance and accountability issues in a context where it is increasingly difficult to differentiate between the functions of two seemingly different forms of policing.

As this Report will illustrate, policing institutions have not yet aligned their policies and practices to reflect the emergence of *networks of policing*. There are several reasons for this:

- The private security industry is not yet sufficiently organized with effective leadership that will promote its professionalization.
- Most public police forces have not yet fully understood the implications of the growing diversity of security providers.
- Governments, through their institutions or in their role as purchasers of security, have not taken a leadership role in ensuring that policing reflects democratic values.



This Report is intended to stimulate agencies and governments with an interest in policing to think creatively about their role within the networks of policing that currently exist in Canada. Its recommendations are aimed at governments in their capacities as lawmakers, regulators and purchasers of security; at organizations that provide public or private policing services, including private in-house or proprietary security; and those who receive security services, whether these services are purchased or provided as part of the common good.¹²

The reality is that both public and private policing will continue to coexist unless one or the other is banned as postulated. How then is it possible to capture the best of both systems for the benefit of the public good? And, while we're at it, improve the existing system of police governance and accountability.

S. Eng, "Policing for the Public Good: A Commentary" in D. Cooley, ed.,
Re-imagining Policing in Canada
(Toronto: University of Toronto Press, 2005) at 328.

1.4 The Law Commission of Canada's Premises

Two important premises have guided the Law Commission of Canada's work in preparing this Report. First, we agree with many observers that policing is no longer the monopoly of the police.¹³ As we note in this introduction, and expand upon in different sections of the Report, Canadian society has witnessed a growth in networks of policing. As a result, it may no longer be helpful to conceptualize policing solely in terms of the "public" and "private" labels that have been used to distinguish between the various players who undertake policing activities.

Throughout the Report, the Law Commission distinguishes between the police as an institution, and *policing* as an activity or function. The police as institutions (for example, the RCMP, the *Service de police de la communauté urbaine de Montréal* and the Edmonton Police Service) engage in the activity of *policing*, but so do



a range of other institutions and agencies. Too often the term “police” signifies public institutions (for example, city, provincial or federal uniformed peace officers), without taking into account the multiplicity of private and public agencies engaging in policing or general regulatory activity. In other words, the specific legal designation of different organizations tells us very little about what they actually do. “Policing” as an activity takes into account a wide range of organizations and personnel, because it focuses on tasks. The public police engage in the activity of policing, but so do security guards at various levels, such as forensic investigators, insurance adjusters and bouncers. The Law Commission of Canada, therefore, recognizes policing as the activities of any individual or organization legally empowered to maintain security or social order on behalf of a community or organization, in accordance with a public or private contract, legislation, regulations or policies.

A second premise is that the law, policing policy and policing institutions have not kept pace with the growth of networks of police; that is, they maintain a distinction between public police and private security. In short, there is a disjuncture between the realities of policing in Canada and how the law and policing policies respond to policing. The law continues to use different standards to regulate each. Industry and policing policy have not yet adjusted to the new realities of plural forms of policing.

This Report joins a growing body of literature that calls into question the conventional wisdom that public police respond to violations of the public law, such as the Criminal Code, whereas private security patrol private property.¹⁴ A great deal of our law links the geography that is policed to the policing function.¹⁵ Our legal system often assumes that *public* property is policed by *public* police, because there is a *public* interest. On the other hand, *private* security is responsible for securing *private* property. The courts, through the doctrine of state agency, have retained the legal fiction that state and private interests can be disentangled,¹⁶ and, therefore, different standards and levels of accountability exist for police officers and private security agents.



1.5 Organization of the Report

The first part of this Report provides a general overview of the nature and scope of policing in contemporary Canada. Chapter 2 provides a basic account of the institutions within which policing functions are currently carried out: public police, private security and hybrid forms of policing. Chapter 3 examines some of the broader social trends that have influenced the police as an institution and policing as a set of functions. Of particular interest is the expansion of the private security industry and the complex networks of policing that have evolved. The chapter illustrates that it is increasingly difficult to differentiate between the functions of public police and private security.

The second part of this Report examines the existing legal and regulatory frameworks for both public police and private security. Chapter 4 explores some of the important general features of the legal environment that influence the way policing is shaped and addressed through law, particularly the broad legal context that emerges from the *Constitution Act*, the Criminal Code and the *Canadian Charter of Rights and Freedoms*. Chapter 5 examines some of the more direct ways in which policing is regulated through law, as expressed through governance and accountability frameworks, as well as training requirements. Together, these chapters reveal that the legal, policy and governance environments have failed to keep pace with the pluralization of policing that currently characterizes the Canadian policing landscape.

Chapter 6, *Re-imagining Policing in Canada*, describes the leadership required to up-date policing-related legal and regulatory frameworks, and provides recommendations for action. Chapter 7 offers some concluding thoughts about the future of policing in Canada.

¹ C. Emsley, *Policing and its Context, 1750–1870* (London: MacMillan Press, 1983) c. 4; P. Stenning, *Legal Status of the Police* (Ottawa: Minister of Supply and Services Canada, 1982) c. 2.



- 2 C. Shearing, “The Relation between Public and Private Policing” in M. Tonry and N. Morris, eds., *Modern Policing* (Chicago: University of Chicago Press, 1992) at 399–434.
- 3 L.J. Huey, R.V. Ericson and K.D. Haggerty, “Policing Fantasy City” in D. Cooley, ed., *Re-imagining Policing in Canada* (Toronto: University of Toronto Press, 2005) at 140–208; R. Ericson and C. Shearing, “The Scientification of Police Work” in G. Böhme and N. Stehr, eds., *The Knowledge Society: The Growing Impact of Scientific Knowledge on Social Relations* (Dordrecht: Reidel, 1986) at 129–159.
- 4 For a review of different aspects of the high-end public and private security industry, see J.W.E. Sheptycki, ed., *Issues in Transnational Policing* (London: Routledge, 2000).
- 5 The Law Commission of Canada’s discussion paper *In Search of Security* includes a short discussion on the investigation of Weibo Ludwig. Mr. Ludwig was suspected of perpetrating a series of “eco-terrorist” attacks on oil wells in Alberta. The South Peace Crime Prevention Association was created in the community of Grande Prairie, Alberta. The Alberta Energy Company, which had a vested interest in the outcome of this investigation, made a sizeable donation of cash and computers to the Association; the donation was then used to help fund the RCMP investigation. While the court found that the donation did not compromise the integrity of the investigation, the example does at least raise a flag. See *R. v. Ludwig*, [2000] A.J. No. 509, at 293.
- 6 P. Stenning, “Powers and Accountability of Private Police” (2000) 8:3 *European Journal of Criminal Policy and Research* at 326.
- 7 This is reflected in the wide range of public officials who are designated as “peace officers” in section 2 of the *Criminal Code of Canada*, which includes mayors, sheriffs, bailiffs, jail guards, customs and excise officers, fisheries officers, airline pilots and certain members of the armed forces, in addition to police officers.
- 8 J. Hermer *et al.*, “Policing in Canada in the Twenty-first Century: Directions for Law Reform” in D. Cooley, ed., *Re-imagining Policing in Canada* (Toronto: University of Toronto Press, 2005) at 31.
- 9 S. Eng, “Policing for the Public Good: A Commentary” in D. Cooley, ed., *Re-imagining Policing in Canada* (Toronto: University of Toronto Press, 2005) at 324.
- 10 *Ibid.* at 320.



- ¹¹ *Ibid.* at 327.
- ¹² I. Loader and N. Walker, “Policing as a Public Good: Reconstituting the Connections Between Policing and the State” (2001) 5:1 *Theoretical Criminology* at 9–35.
- ¹³ See, for example, D. Cooley, ed., *Re-imagining Policing in Canada* (Toronto: University of Toronto Press, 2005).
- ¹⁴ M. Kempa *et al.*, “Reflections on the Evolving Concept of ‘Private Policing’” (1999) 7 *European Journal of Criminal Policy and Research* at 197–224.
- ¹⁵ See Stenning, *supra* note 6.
- ¹⁶ For a comprehensive review of the law relating to police and private security, see N.J. Groot, *Canadian Law and Private Investigations* (Toronto: Irwin Law, 2001).



Chapter 2 Policing in Contemporary Canada

2.1 Introduction

This chapter describes the various institutions through which policing is currently carried out: public police, private security and hybrid policing (hybrid institutions exist in the borderland between the two broad categories of public police and private security). Although distinctions between them are becoming increasingly difficult to draw clearly, it is useful (and familiar) to start by considering policing that is under the authority of the state and outside the authority of the state.

The functions that comprise policing vary greatly. The law enforcement function has become so routine and so closely associated with the public police that they are now frequently referred to as “law enforcement agencies.” This suggests that law enforcement is their principal responsibility and is what policing is all about.¹ If this ever was the case, it is no longer so, and the public police, like many other organizations that do policing, employ a wide range of policing strategies and practices, of which law enforcement is only one. Other functions include surveillance (including patrol), intelligence gathering, investigation and environmental design, including the use of barriers, alarms and other hardware (for example, electronic access control systems). Different policing organizations deploy different policing technologies depending on their legal powers, access to and control over property and their relationship to those whom they police. Nevertheless, because of their historical association with the criminal justice system, the enforcement of criminal and other penal laws (such as highway traffic and liquor laws) continues to be a central aspect of the public police role.



2.2 Sizing-up the Public (State) Police

The size of the public police establishment in Canada is usually represented by a count of the number of police officers employed in the 350 or so conventional public police services in the country. These services include the Royal Canadian Mounted Police (RCMP), the Ontario Provincial Police (OPP), the *Sûreté du Québec* (SQ),² and a large number of regional and municipal police services, which vary greatly in size. Some police services, such as the Toronto and Montreal police departments, employ thousands of officers, others fewer than 20. Although the RCMP is a federal police service, more than half of its officers provide policing services to provinces, territories or municipalities, under contract to these levels of government. There were 61,050 sworn public police officers employed in these various federal, provincial, regional and municipal police services as of June 15, 2005, one police officer for every 529 Canadians.³

Policing expenditures totalled \$8.8 billion in 2004. This represents an increase of 4 percent from 2003. With an adjustment for inflation, expenditures were up 4.2 percent, marking the fifth year in a row that constant dollars have increased. The \$8.8 billion spent on policing in 2004 translates into a cost of \$276 per Canadian.⁴ And, in light of the tragic events of September 11, 2001, there is no indication that federal policing expenditures will decrease in the coming years.⁵

At the same time, however, public policing, as with other areas of the public realm, is being asked to justify its resource allocation. In recent years, in response to pressures to provide more services, particularly in relation to new and emerging crimes such as organized crime, computer- and internet-related offences and terrorism, public police organizations have been forced to “rationalize their services.”⁶ We will examine this trend in greater detail in chapter 3, particularly how changing governance structures, which include a rationalization of resources, has helped blur traditional distinctions between public police and private security. For now, we simply note that a business model has started to characterize the provision of policing services in Canada.



Total Expenditures for Some of Canada's Largest and Smallest Policing Organizations

In 2004, police expenditures in Canada totalled \$8.8 billion, which is the equivalent of \$276 per Canadian. Police expenditures include salaries and wages, benefits and operating expenses such as accommodation, fuel and maintenance; however, the contents of the police operating budget differ from city to city. The following provides an overview of police operating expenditures for 2004 from some of Canada's larger and smaller jurisdictions.

Police Service	Total Operating Expenditures
Federal policing and other RCMP expenditures	\$1.87 billion
Toronto (Ontario)	\$739,861,175
Ontario Provincial Police	\$565,536,000
Montréal (Quebec)	\$442,746,603
Calgary (Alberta)	\$219,716,747
Peel Regional (Ontario)	\$220,401,701
Halifax Regional (Nova Scotia)	\$43,681,551
St. John's (Newfoundland and Labrador)	\$26,327,277
Brandon (Manitoba)	\$8,000,000
Charlottetown (Prince Edward Island)	\$5,660,449
Port Moody (British Columbia)	\$5,006,077
Weyburn (Saskatchewan)	\$1,659,274
Banff, RCMP (Alberta)	\$1,196,494
Qualicum Beach, RCMP (British Columbia)	\$360,035
Laird, OPP (Ontario)	\$84,163

Canadian Centre for Justice Statistics, *Police Resources in Canada, 2005* (Ottawa: Statistics Canada, Canadian Centre for Justice Statistics, 2005) at 20–21, 29 and 38–69.



Public police services are established by federal and provincial legislation that spells out the duties of their officers. These duties are broadly framed and include preserving the peace, maintaining order, detecting and investigating offences, apprehending offenders, preventing crime, assisting victims and others who seek their assistance, and providing assistance in prosecuting offenders⁷—the full range of policing functions. Typically, recruits are required to go through screening processes before being appointed and then complete substantial training requirements to ensure that they are suitable and fit for the job.⁸ Public police services have tended to be highly regimented organizations in which discipline, loyalty, service and conformity are highly valued. However, with changing concepts of public policing, some of the more traditional militaristic features of these organizations have begun to evolve towards more organic management frameworks.⁹

2.2.1 Changing Demographics

Beginning in the 1960s, immigration patterns started to transform the ethnic, racial, cultural and religious face of Canada's communities. Canada's population in the early 1960s was almost entirely (97 percent) based upon immigration from Europe. By 1991, this had dropped to 60 percent. During this time, the number of self-identified visible minorities increased steadily, a trend that is particularly significant in Canada's large urban centres. Today, the visible minority populations in cities such as Toronto and Vancouver are approaching one-half of the total population. Contemporary Canadian society is clearly a diverse population with a mix of traditions, values and cultures.¹⁰

Public police in Canada have responded to these changing demographics by implementing various diversity-inspired programs and initiatives such as revamped hiring policies to attract visible minority candidates, anti-racism and race-relations policies and efforts to include minorities on police governance boards. However, critics express skepticism regarding the effectiveness of these efforts in changing police attitudes and raise questions regarding the lack of organizational commitment to visible-minority-related initiatives.¹¹



For example, in spite of concerted efforts to increase diversity in police services in Canada, women, members of visible and ethnic minority groups, as well as Aboriginal peoples, remain significantly under-represented, compared to their representation in the communities being policed.¹²

...police occupations continue to be male-dominated. The proportion of females in police occupations still lags well behind the more general trend in female participation in the workforce. As the data from the 1996 Census of Canada ... show, females constituted 46 percent of both the national labour force and that of governments at all levels. Among sworn police officers, however, females constitute 8.7 percent of commissioned officers and 12.8 percent of non-commissioned, for a combined percentage of 12.5 percent of all sworn officers.

Human Resources Development Canada, *Strategic Human Resources Analysis of Public Policing in Canada* (Ottawa: Human Resources and Development Canada, December 2001) at 46.

In recent years, public police services have started to attract somewhat older, more mature and better-educated recruits, many of whom have held other jobs prior to becoming police officers.¹³ Due to economic constraints during the 1970s and 1980s, which limited the ability of police services to maintain hiring levels, many services now face quite critical shortages of experienced personnel for promotion to middle and senior management positions. Another factor contributing to this situation has been the long-standing resistance within public policing circles to lateral entry into police services (the appointment at a rank other than constable). This resistance, however, has been somewhat mitigated by the increasing “civilianization” of jobs that previously had to be filled by sworn officers.¹⁴



Policing demographics suggest that since the 1950s, there has been an overall decrease in the number of uniformed public police officers, relative to the Canadian population. The count of state-sponsored police, however, is a bit misleading, for there is a host of other public servants who undertake public policing in a broader sense than the term traditionally implies: railway and other transit police, customs officers, hydro police, provincial offences officers, wildlife officers and game and park wardens, to name but a few.

Approximately 400 federal park wardens protect Canada's national parks and historic sites. Park wardens are responsible for implementing resource management such as fire or vegetation management, environmental assessments, as well as law enforcement and public safety programs.¹⁵ A related example is the provincial and territorial conservation officers who enforce a wide range of provincial statutes (for example, legislation pertaining to wildlife, environmental protection, forests, gaming and liquor, and highway and off-road traffic).¹⁶ Likewise, the Canada Revenue Agency is mandated to use responsible enforcement to promote awareness of, and compliance with, the laws it administers, such as Canada's *Income Tax Act*.¹⁷ In addition, there are some government "protective services" (such as the one that protects the Ontario Legislature in Toronto), which also perform policing functions. Overall, we do not have any clear estimates of the numbers of these other public police personnel in Canada (even if they are not commonly associated with public police), but it is safe to say that they number in the thousands.

2.3 Non-state or Private Policing

In addition to a range of public police agencies, there is a burgeoning private security industry that operates parallel to, and in cooperation with, public police. Beginning in the 1960s and 1970s, there was an emergence and dramatic growth of private security organizations, which began to assume more and more policing responsibilities. As numerous studies indicate, private security personnel now outnumber police officers employed by the state in Canada by at least a two-to-one ratio.¹⁸



**Table 1 Private Security in Canada, 1991–2001
Security Employees Per Capita**

		Year		
		1991	1996	2001
Canada	Population	27,296,859	28,846,761	30,007,094
	Security	46,651	50,164	78,919
	Rate per 100K	171	174	263
Newfoundland and Labrador	Population	568,474	551,792	512,930
	Security	865	846	1,428
	Rate per 100K	152	153	278
Quebec	Population	6,895,963	7,138,795	7,237,479
	Security	13,725	12,421	17,102
	Rate per 100K	199	174	236
Ontario	Population	10,084,885	10,753,573	11,410,046
	Security	16,975	18,845	29,470
	Rate per 100K	168	175	258
Manitoba	Population	1,091,942	1,113,898	1,119,583
	Security	1,450	1,847	2,256
	Rate per 100K	133	166	202
Saskatchewan	Population	988,928	990,237	978,933
	Security	1,829	1,724	2,807
	Rate per 100K	185	174	287
British Columbia	Population	3,282,061	3,724,500	3,907,738
	Security	4,804	6,830	11,580
	Rate per 100K	146	183	296

Statistics Canada, *Annual Estimates of Employment, Earnings and Hours, 1991–2001* (Ottawa: Statistics Canada, 2002). As cited in Trevor Sanders, “Rise of the Rent-A-Cop: Private Security in Canada, 1991–2001” (January 2005) 47:1 *Canadian Journal of Criminology and Criminal Justice* at 182.

A wide range of policing functions is undertaken by personnel employed by private corporate entities—a sector that is often referred to as “private security” or “private policing.”¹⁹ These terms embrace a diverse array of organizations and enterprises. On one hand, there



is a large, growing and diverse security industry that is comprised of companies that sell various security and policing services to clients under contract—the so-called “contract security industry.” This industry includes guarding companies, private investigators, alarm and other hardware manufacturers, installers and services, computer security experts, personal protection specialists, guard dog services, armoured car cash-in-transit services, forensic accountants and security consultants.

In addition to the contract security industry, however, there is another similarly burgeoning side to the private security sector that is usually referred to as “in-house security.” This term is applied to all company employees providing policing services on behalf of their direct employers; that is, corporate entities protecting their *own* assets and interests. Most of these in-house security services are similar to those that are being sold by the contract security industry. Whether a corporation buys such services from a contractor or organizes them in-house is typically determined by economic cost-benefit calculations, concerns about the degree of control that can be exercised over the services, and/or concerns about corporate image or reputation, rather than by differences between the services themselves or implications for employees, customers and members of the general public.

Structurally, private security organizations tend to be very different from their public policing counterparts. Unlike the case with public police services, lateral entry into private security organizations is normal. There is thus a much greater variation of experience, education levels, maturity, training and skills. In addition, there is greater occupational specialization within most of these organizations than within most public police services. Unlike public policing organizations, private sector policing organizations tend not to define their missions and objectives so exclusively in terms of crime prevention and control, and law enforcement. Nor are they institutionally connected with the criminal justice system. Rather, as their job titles and descriptions often reflect, they tend to define policing more in terms of loss prevention, property protection, personal security and risk management. The law and the criminal



Some Private Security Policing Activities

Mobile foot patrol	Security surveillance
Property protection	Personal protection
Calls for service	Public order policing
Medical/emergency response	Traffic policing
Arrest (citizen's arrest powers)	Law enforcement (bylaw, CCC [<i>Criminal Code</i>])
Criminal investigations	Court and case preparation
Crime prevention consulting	Armed force (armoured car service)

C. Murphy and C. Clarke, "A Study of Policing and Security in Two Canadian Communities" in D. Cooley, ed., *Re-imagining Policing in Canada* (Toronto: University of Toronto Press, 2005) at 224.

justice system are seen as but two among many different resources available to them—and by no means always the preferred ones—to achieve their goals. Private security organizations more commonly specialize in particular kinds of policing functions (such as cash carrying, guarding, investigation work, alarm response and servicing, executive protection and security consulting), although the recent trend has been towards larger, more diversified, multi-service organizations.

Another important feature of private security, particularly from a public policy perspective, is its increasingly global and corporate character.²⁰ Not only do multi-national corporations dominate the contract security industry, but the in-house sector is, for the most part, also in the service of such corporations. This means that, first, unlike public police, private security operates primarily on a for-profit basis. While the public police are increasingly being run under a business model, private security enters into the policing realm with profit-making motivations. Second, the emergence of multi-national private security companies poses particular challenges for the domestic regulation of private security when the relevant parent



companies are so often foreign-owned and beyond the reach of Canadian law and regulators.²¹

In only 2000 and 2001, to date, Group 4 Falck has announced ten takeovers in Germany (ADS Sicherheit Group, Top Control Group), Hungary (Bantech Security Rt.), Austria (SOS), Finland (SPAC), Czech Republic (BOS: Bankovi Ochranna Sluzba, a.s.), France (OGS, EuroGuard), Poland (BRE Services), and Norway (Unikey AS). And these are by no means small enterprises. EuroGuard employs 4,200 employees, ADS 1,200 employees and BOS 1,200 employees. In 1999, Securitas AB, already employing over 210,000 people worldwide, purchased Pinkerton, which increased the employee pool by another 117,000 in the U.S.A. Immediately after the takeover, two regional market leaders were acquired in the U.S.: First Security Corp. and American Protective Services Inc. This was followed by the purchase of Smith Security Inc., Doyle Protective Service Inc., and APG Security (Securitas AB Annual Report 2000). In 2000, Securitas acquired Burns, thus making it a major player in the largest security market in the world overnight. In 2001, Securitas bought Loomis Armored Car, a company with over 220 offices across the United States, employing another 2,200 officers.

G.S. Rigakos, "Privatizing Policing: The Commodification of (In)Security" (2003) 41, *New Socialist* at 32.

2.3.1 Private Policing Demographics

Compared to public police, women seem to be better represented in the private security industry, but this depends on the type of work and company. One study found that from 1991 to 2000, approximately 20 percent of security employees in Canada were female.²² In 1993, another study found that 34 percent of security guards in Toronto were women.²³ In yet another study of a private "law enforcement



company” that engaged in high-risk “parapolicing,” women comprised only 8 percent of the workforce.²⁴

Estimates on diversity vary, depending on the sector of the private security industry. For example, using the percentage of Canadian-born security officers employed by contract firms as a partial indication of diversity levels, research indicates that in Ontario in 1980, 57 percent of security officers were Canadian-born;²⁵ in Toronto for 1993, 44 percent;²⁶ and for parapolice in 2002, 77 percent.²⁷ Comparative research indicates that in 1998, 7.6 percent of uniformed Metropolitan Toronto Police officers were members of visible minority groups, as opposed to 23.9 percent of “parapolice” in Toronto.²⁸

2.3.2 Challenges Counting Private Security and Comparing to Public Police

Measuring the size and growth of the private security sector is fraught with difficulty. First, for reasons of economy and efficiency, much private security is “embedded” in functions and occupations that are not primarily concerned with security.²⁹ Such multi-functionality means that simply counting the number of people with an occupational specialization in security—similar to counting police officers in the public sector—will likely lead to a substantial underestimation of the extent of private security.³⁰ Largely for economic reasons, the trend in the private sector for at least 20 years has been towards achieving security goals through design and the use of technology, rather than primarily through deployment of personnel. Measuring the extent, scope and potential social impact of private security in terms of the number of private security employees, therefore, would be seriously misleading.

Additional difficulties emerge when comparing private security with public police. Some observers suggest that there is a tendency to define private security fairly broadly, and public police too narrowly, creating the appearance of dramatic ratios between public police and private security. However, this can be misleading in two ways. First, it assumes that public police officers are the only public officials who are responsible for policing when, in fact, policing functions are performed by a whole host of other publicly employed officials: customs officers,



revenue agents, fish and wildlife officers, postal inspectors and others. If we were to broaden the definition of public policing to include all those agencies and individuals involved in performing policing functions, the ratio between public police and private security may even out or swing back in favour of the public police. By the same token, if we move beyond the number of individuals who are simply in-house or contracted security personnel, whether wearing a uniform or not, and begin to include the myriad of operatives working as bouncers, ushers or corporate surveillance personnel who vet people through databases, etc., the number of persons counted as employed in the private security industry would also bulge.³¹

In addition to difficulties comparing the number of public and private police, there are also difficulties in assuming that they engage in qualitatively similar activities. As some observers suggest, assuming that we can accurately measure the *amount of policing* in society by *counting the number of people* doing it ignores the fact that much of private security is of a different nature than public policing. For example, the quantum growth in the use of security cameras in the private sector provides a much different policing function than, for example, traditional public police patrolling activities. Moreover, security features are now embedded into the physical architecture of spaces that are monitored by private security.³² In both instances, the work of private security is much different than traditional public policing.³³

Having said this, we do know from market studies and the Canadian census that the private security sector has grown enormously. All indications suggest that it will likely continue to grow for the foreseeable future. Private security is now an established feature of Canadian society, one that is unlikely to diminish or disappear and one that any coherent policing policy must address.

2.4 Hybrid Policing Institutions

Between the broad categories of public police and private security lies a range of hybrid policing institutions. In addition to the aforementioned public servants who provide policing-related functions throughout Canada, there are many policing organizations



that are sponsored by corporate bodies that are, for all intents and purposes, “private” (or at least different in important ways from government departments), but which nonetheless exhibit some “public” or “governmental” characteristics or accountability. These hybrid forms of policing begin to reveal that the traditional distinction between state-sponsored policing institutions and non-state-sponsored (“private”) policing institutions is not as clear-cut as the public-private dichotomy suggests.

State-funded universities are a good example of such institutions, as are Crown corporations, enterprise agencies and corporations that contract to provide public services and facilities, such as airports and prisons. In the university context, special constables, in-house security or contract guards often provide campus security. Special constables, who are granted such legal status by the government, have increased authority to arrest compared to security guards, but are not considered to be public police officers. “Typically, special constables enforce particular government statutes or bylaws, and their status as peace officers grants them limited powers of arrest and power to issue a court summons.”³⁴ University special constables derive their authority from the Criminal Code and particular provincial statutes, such as liquor, highway traffic and trespass acts.³⁵

In addition to special constables, many Canadian universities employ in-house or contract security. Canadian in-house university security guards need not be licensed, and they follow university policy only. On the other hand, contract security guards must be licensed. Both in-house and contract security have Criminal Code authority to arrest as agents of landowners and, where applicable, may also arrest through trespass acts. The types of security arrangements used by Canadian universities vary widely.³⁶

At the municipal level, special constables often undertake “low-level regulatory and enforcement tasks” that, in the past, would have fallen solely to the public police. For example, research reveals that, in 2002, there were 1,476 special constables in Nova Scotia, performing a “variety of restricted policing functions.” Bylaw enforcement officers are empowered to enforce municipal bylaws, including parking, noise, animal control, and smoking, to name a few. For many city



Between 334 and 890 criminal offences are reported on [university] campuses each year, including theft, sexual assault and robbery. The method of service delivery, although for similar purposes, varies from campus to campus. The absence of formalized standards renders it difficult to ensure proper levels of authority and qualification to constituents. Hiring, screening, training and equipment standards for special constables and security guards also vary across campuses.

E.J. Carroll, *A Report on University Campus Policing and Security in Canada* (Ottawa: Law Commission of Canada, 2004).

governments, this represents a more efficient and cost-effective means of enforcing bylaws, in comparison to employing only the services of public police.³⁷ In Edmonton, the Caritas Health Group, which oversees the operation of three city hospitals (Grey Nuns, Misericordia and the General), is responsible for governing special constables with the power to enforce a range of statutes (for example, the *Highway Traffic Act*, the *Mental Health Act* and the *Public Health Act*) on Caritas property.³⁸

Following the September 2001 terrorist attacks, all nuclear power plants must have an armed “nuclear response force.” In some instances, these forces consist of members from local police forces, but they may also include armed private security officers who are empowered through their status as “special constables” or through the authority of the Nuclear Safety Commission. Approximately 320 officers provide policing services at Canada’s nuclear power facilities.³⁹

The Corps of Commissionaires is another example of hybrid policing. The Corps was founded in England in 1859. Today, it is an international organization with divisions in Britain, Australia and Canada. In Canada, the Corps operates as a private not-for-profit organization, employing over 18 000 former members of the Canadian Armed Forces, RCMP and other organizations.⁴⁰



The Corps provides full- and part-time employment to its members, primarily by filling federal government security contracts. The Corps also offers security services to businesses, industries, homeowners and the provincial government in the form of patrolling, access control and monitoring.⁴¹

The Canadian Air Transport Security Authority (CATSA) was established on April 1, 2002, in response to the terrorist attacks of September 11, 2001. CATSA is part of a comprehensive \$2.2 billion package for aviation security initiatives. The not-for-profit Crown corporation is responsible for several key aviation security services pursuant to the *Canadian Air Transport Security Authority Act*. CATSA's mandate makes it responsible for a wide range of services, including screening passengers and their carry-on bags, checked baggage and non-passengers in restricted areas (for example, flight crew, caterers, maintenance and baggage handlers); enhancing the airport pass system for restricted areas; overseeing the program of RCMP officers onboard aircrafts; and airport funding agreements.⁴²

This is only a brief overview of the various hybrid policing organizations in Canada. The many different forms of policing personnel working for such organizations can be considered to have some public status by virtue of the fact that many are appointed as “special constables,” which gives them limited “peace officer” status and powers that are similar in many respects to the authority of the more conventional public police officers. A further consideration is that evidence has long indicated that governments are major clients of the private contract security sector, and that such government contracts are an increasingly significant element of the contract security market.⁴³ In an era in which government and public services are increasingly contracted out, rather than provided directly by government employees, the distinction between public and private police and policing, is becoming increasingly difficult to maintain.



2.5 Conclusion

This chapter has provided a brief and partial understanding of the range of policing institutions and services in contemporary Canadian society. In addition to revealing a complex range of private, public and hybrid policing institutions, we can begin to appreciate that it is increasingly difficult to differentiate between the policing functions of different organizations, particularly in relation to hybrid forms of policing that exist between the broad dichotomies of public police and private security institutions. At the same time, however, we can also see that there are important differences between public police and private security. For example, in addition to differing levels of personnel training and education, private security differs from public police in that the former has emerged within the increasing marketization and privatization of security, while the latter (although increasingly operated under a business model) is a non-profit public agency. These differences raise important questions concerning the motivations of the various agencies providing policing services. They also raise important questions in terms of accountability and what constitutes the public good—who is accountable for new and emerging policing services? Are changes in policing necessarily for the public good? We will revisit these important questions in our chapter 6 recommendations.

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- ¹ This is undoubtedly the reason for the common belief that policing is a function that can and should only be done by the public police, who are endowed with special powers for the enforcement of law. Law enforcement thus comes to be regarded as the end of policing, rather than a means to policing objectives such as safety, security (of person and property), order (predictability in the conduct of one's life) and justice. See R. Roberg and J. Kuykendall, *Police Organization and Management* (Pacific Grove, California: Brooks Cole Publishing Co., 1990).
 - ² Although the Royal Newfoundland Constabulary is technically a provincial police service, in fact, its operations are almost exclusively confined to the City of St. John's.



- ³ Canadian Centre for Justice Statistics, *Police Resources in Canada, 2005* (Ottawa: Statistics Canada, Canadian Centre for Justice Statistics, 2005) at 11.
- ⁴ *Ibid.* at 18.
- ⁵ “Federal expenditures on policing can be expected to increase in the next five years due to the Government of Canada’s commitment to enhance the security of Canadians following the terrorism activities which occurred in the United States on September 11, 2001.” Canadian Centre for Justice Statistics, *Police Resources in Canada, 2002* (Ottawa: Statistics Canada, Canadian Centre for Justice Statistics, 2002) at 21.
- ⁶ See D. Cooley, “Introduction: Re-imagining Policing in Canada” in D. Cooley, ed., *Re-imagining Policing in Canada* (Toronto: University of Toronto Press, 2005) at 8.
- ⁷ See, for example, *Ontario Police Services Act*, R.S.O. 1990, c. P-15, s. 42.
- ⁸ See, for example, Royal Canadian Mounted Police, “RCMP Recruiting,” online: <http://www.rcmp-grc.gc.ca/recruiting/index_e.htm> (Date accessed: 9 December 2005).
- ⁹ W. de Lint, *Shaping the Subject of Policing Autonomy: Regulation and the Police Constable*, Ph.D. dissertation (Toronto: University of Toronto, 1997); J. Deukmedjian, “Reshaping Organizational Subjectivities in Canada’s National Police Force: The Development of RCMP Alternative Dispute Resolution” (2003) 13:4 *Policing and Society* at 331–348.
- ¹⁰ Canada’s aging population also poses unique challenges for public police and private security. Currently, 12 percent of Canada’s population is over 65, and this is expected to increase to 24 percent by 2031. In addition to replacing an aging police force, policing agencies will have to respond to fear of crime among older people (traditionally higher than younger people) and the possibility that policing budgets will be constrained as governments struggle to provide increased services (such as healthcare) to an aging population. See R. Linden, “The Impact of Demographic Change on Crime and Security” in J. Richardson, ed., *Police and Private Security: What the Future Holds* (Ottawa: Canadian Association of Chiefs of Police, 2000) at 166–168.
- ¹¹ See P. Stenning, “Policing the Cultural Kaleidoscope: Recent Canadian Experience” (2003) 7 *Police and Society* at 17–30.
- ¹² *Ibid.* at 17–19.



- 13 R. Johnson, “You say Recruit, I say Cadet” *Pony Express* (Ottawa: Royal Canadian Mounted Police, Public Affairs and Information Directorate, 1995) 20(7):15.
- 14 See, for example, The Conference Board of Canada, “Repositioning for the Future: Case Study on the RCMP Change Experience” (Ottawa: The Conference Board of Canada, 2000).
- 15 As of 2001, park wardens no longer investigate breaches of the *Criminal Code of Canada* or provincial highway traffic acts, responsibilities that are now undertaken by the RCMP.
- 16 See C. Murphy and C. Clarke, “A Study of Policing and Security in Two Canadian Communities” in D. Cooley, ed., *Re-imagining Policing in Canada* (Toronto: University of Toronto Press, 2005) at 240.
- 17 Three investigative programs are operated by the Canada Revenue Agency to deal with suspected cases of tax evasion, fraud and other tax offences. First, the Leads and Assistance Program follows up on leads provided by concerned citizens. Second, the Criminal Investigations Program investigates suspected tax evasion, fraud, smuggling and other serious tax law violations. Third, the Special Enforcement Program undertakes enforcement activities, such as audits, related to suspected organized-crime operations. For more information, see Canada Revenue Agency, online: <<http://www.cra-arc.gc.ca>> (Date accessed: 9 December 2005).
- 18 See K. Swol, “Private Security and Public Policing in Canada” (1998) 18:13 *Juristat*, catalogue #85-002XPE (Ottawa: Statistics Canada, Canadian Centre for Justice Statistics). The reliability of such estimates, however, depends very much on who is included in the two categories. See M. Nalla and G. Newman, “Public Versus Private Control: A Reassessment” (1991) 19 *Journal of Criminal Justice* at 537–547.
- 19 For a summary of this sector in Canada, see R. Gerden, *Private Security: A Canadian Perspective* (Scarborough: Prentice Hall Canada, 1998).
- 20 This has two important aspects: foreign ownership and control of private security organizations operating in Canada, and transnational operations of private security organizations. With respect to the latter, see L. Johnston, “Transnational Private Policing: The Impact of Global Commercial Security” in J.W.E. Sheptycki, ed., *Issues in Transnational Policing* (London: Routledge, 2000) at 21–42.



- 21 This problem, for instance, was faced by Mr. Justice Krever as Chair of the Ontario Royal Commission of Inquiry into the Confidentiality of Health Information in the late 1970s. His efforts to inquire into the activities of private investigators in allegedly breaching confidentiality protections were effectively thwarted by the fact that the companies employing many of them were not based in Canada and declined to respond to requests to attend hearings in this country. See the Commission's report, 3 vols. (Toronto: Queen's Printer, 1980).
- 22 T. Sanders, "Rise of the Rent-a-Cop: Private Security in Canada, 1991–2001" (January 2005) 47:1 *Canadian Journal of Criminology and Criminal Justice* at 182.
- 23 B.H. Erickson, *People Working in the Toronto Private Contract Security Industry* (Ottawa: Police Policy and Research Division, Solicitor General of Canada, 1993).
- 24 G. Rigakos, *The New Parapolice: Risk Markets and Commodified Social Control* (Toronto: University of Toronto Press, 2002) at 85.
- 25 C. Shearing, M. Farnell and P. Stenning, *Contract Security in Ontario* (Toronto: Centre of Criminology, University of Toronto, 1980) at 141.
- 26 Erickson, *supra* note 23 at 15.
- 27 Rigakos, *supra* note 24 at 85.
- 29 *Ibid.* at 94.
- 29 For instance, while a retail store clerk is typically employed primarily as a sales person, he or she may well also have responsibilities as a first line of defence against shoplifting. See C. Shearing and P. Stenning, "Say 'Cheese!': The Disney Order That Is Not So Mickey Mouse" in C. Shearing and P. Stenning, eds., *Private Policing* (Newbury Park, CA: Sage Publications, 1987) at 317–323.
- 30 We should note, however, that such "embedding" of policing is by no means unknown in the public sector. See Nalla and Newman, *supra* note 18.
- 31 Stenning, *supra* note 11.
- 32 *Ibid.*
- 33 In his study of Toronto's parapolice, Rigakos catalogues how one private security company even used public road signs, railings, etc., to digitally map the city using checkpoint devices. Security guards used these checkpoints and digitally precoded occurrences in portfolios that they carried to describe their patrol runs in a preformatted fashion. The reports produced from this practice



would then be given back to clients as proof of policing activity. In effect, the physical architecture of the city was being used as a mechanism by which constant surveillance could be implemented and then sold back to the client as consumer. See Rigakos, *supra* note 24.

- ³⁴ Murphy and Clarke, *supra* note 16 at 222.
- ³⁵ See E.J. Carroll, *A Report on University Campus Policing and Security in Canada* (Ottawa: Law Commission of Canada, 2004).
- ³⁶ For example, the universities of Alberta, Saskatchewan, Toronto and Waterloo all use special constables, whereas British Columbia, Winnipeg, York, Bishop's, New Brunswick, Dalhousie and Memorial all use in-house, and McGill contracts security. See Carroll, *Ibid*.
- ³⁷ Murphy and Clarke, *supra* note 16 at 222.
- ³⁸ *Ibid.* at 241.
- ³⁹ B.W. Robertson, *The Training of Private Security Protective Services Personnel in Canada, 2004: Overview and Analysis* (Ottawa: Law Commission of Canada, 2004).
- ⁴⁰ Some divisions of the Corps also recruit those with related experience and graduates of a recognized law and security course.
- ⁴¹ In 1945, the Canadian Corps of Commissionaires approached the Secretary of the Treasury Board of Canada for special dispensation. As a result, the Treasury Board requested that all federal public service departments, boards and commissions give first consideration to the Corps for all security service contracts. This is known as the right of first refusal, which means that all federal government security contracts are offered first to the Corps of Commissionaires. Based on the availability of personnel, the Corps may accept or reject the contract. Currently, 20 percent of federal contracts are subsequently offered to other security organizations. The Treasury Board of Canada examined the right of first refusal in 1996 and re-instated it for the next five years. In 2000, after a review by the Auditor General of Canada, this right was renewed for an additional five years. The Treasury Board once again renewed this principle in 2004. There is some disagreement about the Corps' position in the marketplace. The Corps believes the right of first refusal is sound policy because it provides some veterans with a sustainable income, offers high-quality services at competitive rates, and maintains the unwritten covenant whereby the military and the RCMP support and care for their own. Private sector security firms argue that the right of first refusal amounts to unfair



competition. An additional problem is that the Corps' status as a quasi-public policing agency raises questions about its lack of accountability to governments and the public, particularly since the Corps is exempt from provincial regulations. See Murphy and Clarke, *supra* note 16.

- ⁴² While airports are responsible for contracting with local policing agencies to provide aviation-security-related policing at airports, CATSA provides funding under contribution agreements to airports, as required pursuant to Transport Canada regulations, to maintain an enhanced police presence.
- ⁴³ See J. Hermer *et al.*, "Policing in Canada in the Twenty-first Century" in D. Cooley, ed., *Re-imagining Policing in Canada* (Toronto: University of Toronto Press, 2005) at 47 and footnote 106.



Chapter 3 Networks of Policing

3.1 Introduction

Policing in Canada, and throughout the world, is evolving from a system in which public police provide almost all policing services, to one where a range of public and private agencies share responsibilities for many of these activities. Notions of “privatization” are useful to begin thinking about changes in the nature of contemporary policing, but they are also limiting. Complex *networks* of policing that reflect a mix of public and private security providers make it increasingly difficult to differentiate between public and private realms. In many urban areas, for example, we are witnessing not simply two-tiered policing but a *continuum* of agencies that are responsible for policing. In some instances, the public police contract services to private security; private security firms help fund public police investigations; private security resolve complaints that were once within the exclusive domain of the public police; public police and private security firms cooperate in investigations; and private organizations hire public police to provide security for private functions.¹ In addition, the entire notion of policing (public and private) has increasingly been viewed as a commodity for sale in the marketplace.²

This chapter examines the continuum of policing—the increasing blurring of the public-private divide—in contemporary society. The growth of private security and the pressures the public police have faced in providing more cost-effective services are part of the overall context within which networks of policing have emerged. There are, however, additional factors that have shaped the current context: the emergence of mass private property, communal spaces and changes in governance relationships, including the increasing commodification (marketization) of policing.



3.2 Mass Private Property

Until relatively recently there was a reasonably clear understanding that responsibility for policing in society was shared between the public police and others, on the basis of what property was to be policed. Broadly speaking, the public police were responsible for policing public property and places, while private property owners were responsible for securing their own property. Of course, this was not as neat a division of responsibilities as this statement implies. Where crimes occurred on private property, property owners could call the public police to respond to them, but by no means always did. Furthermore, in certain limited circumstances, if the public police learned of criminal behaviour that was occurring on private property, they could come onto such property to respond, even without the invitation or consent of the property owner.³

These arrangements for policing were premised on the assumption that publicly owned property—streets, parks, highways and marketplaces, for example—is public space and, therefore, most appropriately policed by the public police, while privately owned property is a private space and, therefore, most appropriately policed by the property owner.⁴ From about the 1960s onwards, a new form of property—“mass private property”—began to emerge, particularly in urban areas. This new form of property challenged many of the assumptions on which the usual division of policing responsibilities was based.

Mass private property refers to property that is privately owned but which is nevertheless publicly used in the sense that most, if not all, members of the general public are typically and routinely invited, even encouraged to frequent it, with or without a fee.⁵ The classic example of such property is the large indoor shopping mall that is now such a pervasive feature of the urban landscape.⁶ In some cases such malls have replaced entire blocks of small individual private properties (shops or houses) that had previously fronted onto public streets policed by the public police.⁷ Although conventional wisdom suggested that, because such examples of mass private property are legally private property (that is, they are privately owned), the responsibility for policing them does not belong primarily to state



It is now almost impossible to identify any function or responsibility of the public police, which is not, somewhere, and under some circumstances, assumed and performed by private police in democratic societies. Policing policy-makers are nowadays resigned to the fact that any effective policing is likely to require some combination, collaboration or “networking” between public and private providers, and that the lines between the responsibilities of these various providers are likely to be difficult, if not impossible, to clearly demarcate.

P. Stenning, “Powers and Accountability of Private Police” (August 2000)
European Journal of Criminal Policy and Research, 8:3 at 328.

policing authorities. However, the public character of the use of such property, and the fact that shopping malls resemble public places more than private space, has raised questions about this.⁸ Moreover, there are spill-over effects frequently associated with such places—additional policing problems such as traffic and crowd control that may be generated in neighbouring public places. These circumstances often raise questions as to whether the responsibility and costs of policing should be borne by the state’s policing authorities or by the mass private property owners.⁹

We have witnessed an exponential growth of such mass private property in Canada’s urban centres.¹⁰ There are more and more places of this kind that members of the general public use routinely for shopping, entertainment and services. As the description of policing activities at the West Edmonton Mall on the next page illustrates, this type of property is policed primarily by privately employed security personnel, exercising the legal authority of the property owners who employ them. This has meant, of course, that the policing of more and more public life now falls to private rather than public police, and the question has increasingly been raised as to how to ensure that such policing reflects broad public interests, rather than the narrower, typically commercial interests of the



The West Edmonton Mall ... is the largest mall in Canada, with two indoor amusement parks and a marine mammal park. The composition of the mall gives it the characteristics of a city. It has both liquor-licensed and retail establishments, an average population of 60,000 people per day, increasing to 200,000 on Saturdays, and on any given evening there are 10,000 people consuming alcohol within its environs. Not surprisingly, the security service receives, on average, 40,000 calls for service each year. The security service employs fifty officers with a range of operational tasks, including foot patrol, bike patrol, vehicle patrol, undercover surveillance, gang squad intelligence, communications, and CCTV [closed circuit television] surveillance.

C. Murphy and C. Clarke, "Policing Communities and Communities of Policing: A Comparative Case Study of Policing in Two Urban Communities" in D. Cooley, ed., *Re-imagining Policing in Canada* (Toronto: University of Toronto Press, 2005) 243.

property owners and their tenants. Furthermore, the level of policing in these areas is not determined by any reviewable standard, but is set by the fiscal constraints and priorities of the corporate owner.

Another example that relates to the emergence of mass private property, further illustrating the increasing difficulty of distinguishing between public and private spaces, is the use of private security by business improvement associations (BIAs). BIAs are typically set-up through local governments, providing businesses with the institutional framework to implement improvements for local business, including, for example, new parking spaces, beautifying streets (plants, benches), general maintenance and security.¹¹ In some instances, BIAs have included private security services as part of their function. In Vancouver, for example, several BIAs have contracted private security to provide a sense of safety in the area by deterring "disorderly behaviour" and preventing crime.¹² Complicating the matter is the fact that, although these private security services are contracted by



private businesses, their activities inevitably spill-over to adjacent public streets. Loss prevention officers (LPOs) working for the BIA in the Granville Street area of Vancouver not only undertake traditional “store detective” activities (responding to theft from businesses), but also undercover surveillance of suspected criminals and general crime prevention services related to “bag snatchings” and “theft from autos.” LPOs often cooperate with local public police to conduct “sting operations” (for example, to catch individuals stealing from autos in a local parkade) and even fill out Crown reports for officers attending cases of shoplifting and vandalism.¹³

The idea that the responsibility for policing such property should fall primarily on the shoulders of the private owner (typically, a large development corporation that owns and/or manages the property on behalf of its retail tenants) does not seem to be compatible with the notion that the responsibility for policing public places should rest primarily with the public police and reflect broad public interests. Yet the corporate owners usually have good reasons to want to control the policing of their properties, and they hire private security for that purpose. Furthermore, during the years of the greatest growth of such mass private property, the public police were facing severe fiscal constraints and were often in no position to assume responsibility for policing such places.

3.3 Communal Spaces

Alongside and closely related to the emergence of mass private property, in which members of the general public pursue all manner of activities on privately owned property, other new forms of property have come to pose similar, yet somewhat different, challenges for policing policy. We refer here to the proliferation of various types of communal property, that is, property on which often large collectivities live, work or play. These types of communal property differ from the classic forms of mass private property described above, in that access to them is not available to the public at large, but to much more limited groups on the basis of membership. The classic example of this type of property is the “gated community” in which a



select group of residents live in a compound that is physically fenced-off and guarded against intrusions by uninvited outsiders.¹⁴ There are many other less extreme examples of such properties, such as apartment buildings that can only be accessed through a security system, public housing estates, sports and recreation clubs and complexes, and various educational campuses.

While these forms of property share many of the features of the classic forms of mass private property (that is, they are commonly corporately owned and managed, and policed primarily by private security personnel in the interests of their corporate owners or members), they differ from them in the important respect that, because they are not open to the public at large, they are not as easily thought of as public places. In fact, they are more easily characterized as private, albeit communal, enclaves. Consequently, the arguments for public police involvement in the policing of them are not as strong as is the case with the classic forms of mass private property described earlier. Indeed, these communal spaces can eschew the role of the public police altogether, as illustrated by some private American enclaves that employ their own deputized private police forces.

While something other than “private life” is taking place in these spaces, they are not fully public spaces. They are common or communal spaces.¹⁵ Just as there is a public interest in fostering and protecting the conditions that make private life possible, so too is there a public interest in promoting the conditions that make communal life possible, provided that this life does not undermine the broader public interest. An obvious example of this is the value in providing for the possibility of clubs in which a select group of persons can and do enjoy a communal life.

In the Canadian context, research reveals a broad range of issues related to the policing of these types of spaces. In Toronto, for example, Intelligarde International, a private security company, has had contracts to provide policing services to Cityhome properties, a “publicly funded corporation” that oversees the city’s affordable housing, and the Metropolitan Toronto Housing Association. These



are in addition to contracts with the Toronto Parking Authority, Peel Living and the Toronto Economic and Development Corporation. Together, Intelligarde's contracts have made it responsible for policing a considerable portion of the downtown area—as one observer notes, “...over three square kilometres of high-rise buildings, walkways, and roadways, as well as over 30,000 working-class persons in the heart of Toronto.”¹⁶

In addition to enforcing the *Trespass to Property Act*, Intelligarde is responsible for dealing with various other issues related to public housing, transient and homeless people, drugs and prostitution and gang-related activities.¹⁷ The company also maintains a database of individuals issued Notices Prohibiting Entry. These notices include the individual's name, address and specifics of the offence, as well as detailed information about where the offence occurred and the “offender's gender, height, weight, hair colour, hair style, and even attire.”¹⁸ While this example involves the policing of private space, there is a spill-over effect in that Intelligarde's policing functions include some public spaces and encompass some notion of community interests.

In general, these new spaces have come to constitute institutional bases for new sources of authority for policing.¹⁹ These non-state sites of policing—gated communities, shopping malls, recreational complexes, condominiums, resorts and entertainment centres—constitute the main source of the market for private security companies and agents of both the contract and in-house variety.²⁰ Within these spaces, policing is sometimes pursued according to narrowly defined private interests, but not always. Often the private interest overlaps with public interests, so that the style of policing directly contributes to the public good, for example, when security officers within a gated community or shopping mall promote compliance with state promulgated traffic regulations, such as speed limits.²¹ However, if the public police are not as effective in promoting compliance in the surrounding public areas, this will mean that access to these public goods will be greater within the boundaries of the property than outside it.



3.4 Evolving Governance Relationships

Over the past 20 years, changing mentalities of governance have had profound implications for crime control strategies, including the nature and scope of policing. In particular, state agents were until recently thought to be almost exclusively public servants. That is, state agents were people employed by the state to work within state agencies as employees. This is no longer always true. Today, public servants, like the police, work in partnership with a variety of businesses and not-for-profit organizations that also work under state direction to promote state-defined objectives. This work is sometimes carried out under contract and sometimes on a voluntary basis.

A critical feature of this development, which is captured in the term “governance beyond government,” is that what is being multiplied here is not the auspices under which policing takes place, but the agencies and agents involved in realizing governmental objectives.

It is to these developments, for example, that the term “community policing,” understood very broadly, refers. The emergence of a new philosophy of community-based policing during the 1980s and 1990s stemmed from a growing awareness that policing was a task for which the public police could no longer be expected to take sole responsibility.²² At the same time, arguments surfaced that the public police, patrolling the streets in cars, had become too distanced from the communities they policed and that they needed to reconnect with their communities. In response, many police organizations shifted their resources from mobile patrol back to foot patrol.²³ It became apparent, however, that such redeployments alone would not be sufficient to achieve the desired results, so an emphasis was placed on the importance of developing policing “partnerships” between the public police and other governmental agencies, as well as with private organizations, groups and individuals.²⁴

Attitudes of the public police themselves towards these proposals for reform were mixed. Many officers argued that what was being proposed as community policing was what police had been doing all



The radical innovation of our time is the turn by the state to markets, public as well as private, to deliver public goods. Post-industrial states continue to finance public goods, but they have stepped back from directly delivering these goods to their citizens. Some are quite deliberately stimulating the creation of public markets, where providers of public goods compete directly for public money. The post-industrial state is increasingly a partner and contractor, working jointly with other institutions—private as well as public—to set the terms on which others deliver public goods. The state contracts out the work that it expects can be done more efficiently by others, whether that work is maintaining military bases, providing policing, delivering development assistance, supplying military training, managing prisons, running schools, providing security at airports, or delivering health care. The hope and the promise is that through the logic of markets, competition will increase efficiency. This change in the way the state works—through markets rather than as a manager and operator—is the most significant change since the development of the rational, efficient, bureaucratic state a century ago.

J. G. Stein, "The Cult of Efficiency" in *The 2001 Massey Lectures* (Toronto: House of Anansi Press, Ltd., 2002) at 66.

along. Others argued that community policing—along with the growth of private security—was simply a response to a lack of public police funding that could be eliminated by a better-funded state police. These voices argued that policing should continue to be regarded as a job for the police, requiring their particular expertise and skills, and that policing responsibilities could not safely be shared with private sector organizations or untrained community groups as part of a partnership approach.²⁵

A further obstacle to the effective implementation of a community policing philosophy was the difficulties that were experienced in



achieving substantial and long-term community involvement. Often community representation on consultation and advisory groups was not as representative as it could or should have been, and there was a high turnover and poor turn out at meetings. From the community's perspective, the partnership relationship was often spurious, with the police playing very much the role of the senior partner, prescribing the terms and conditions of the relationship. In some jurisdictions, the dominant community demand was for more police officers and a more pervasive and aggressive police presence, rather than for greater citizen involvement in policing. These difficulties have unfortunately persisted, despite considerable efforts to overcome them.²⁶

Broadly construed, “community policing” draws attention to the fact that public policing—that is, policing that seeks to promote state-defined objectives—today draws on a variety of community-based resources. Having said this, it is necessary to note that the term has acquired a wide variety of meanings. Within public police agencies, the term is often construed much more narrowly, to refer only to those initiatives that the public police undertake to involve citizens in a variety of directly police-focused programs. For our purposes in understanding and responding to general trends in policing, a broader, more inclusive meaning of community policing is required—one that recognizes the networking of a wide range of policing resources under state direction, both direct and indirect, within the changing context of governance relationships.

3.4.1 Formal and Informal Cooperation

The increasing cooperation, including the formal and informal exchange of information and services, between public police and private security is one example of policing in this new and evolving context. Research shows how private security and public police frequently exchange information about local crime and “other problems” such as “troublemakers.”²⁷ For example, LPOs, working for BIAs, collect information about crime and vandalism in the area and then pass it along to local public police.²⁸ In other instances, public police have set-up “police kiosks” or “storefronts” in malls, meaning that public police and private security share responsibility for



the same area.²⁹ In some instances, public police officers note they have established a “good working relationship” with private security.³⁰ The informal exchange of information is also facilitated by the fact that many private security companies are staffed by former and retired public police officers.³¹

At the more formal level, programs such as Vancouver’s Operation Cooperation (see textbox on next page) bring together public police and private security to work together on crime prevention. The program involves both parties subscribing to a pager program in which there is an exchange of information about suspicious activities in the area. Although the public police are not required to respond to a page, and they may rarely do so,³² the program stands as an example of formal links of cooperation being established between the public and private realms.

Edmonton’s police service has also initiated a Cooperative Police Program as part of its efforts to “reduce calls for [public police] service and lower the priority call overflow.” As part of a pilot program, the Edmonton Police Service offered a two-day workshop to LPOs and local retail managers on “...powers of arrest, search and seizure, report writing, evidence collection and retention, court proceedings, and witness preparation.” The program subsequently expanded to include monthly meetings between program partners to share information and “target professional criminals.” While the program initially included representatives from local businesses, it eventually expanded to include special constables from the Caritas Health Group, security from the West Edmonton Mall and local transit inspectors.³³ This program also included an arrangement with the Crown’s office to permit LPOs and security guards to release an individual (that is, someone caught stealing) into an alternative measure program, providing the individual had no prior record (something that the private security officer confirms with the Edmonton Police Service). What makes this initiative unique is that, under these conditions, a public police officer does not have to attend to issue a promise to appear, which an LPO or security guard is prevented from doing since they do not have special constable status.³⁴



Operation Cooperation has taken on the force of an industry buzzword, becoming the program title of choice for private security firms working to develop and extend relationships with local police forces. In Vancouver, ongoing efforts by the Downtown Vancouver Business Improvement Association (DVBIA), local security companies and police have led to a number of shared initiatives under the Operation Cooperation heading. The DVBIA serves a 90-block area that consists of 8000 businesses, property owners and tenants. In 1999 the DVBIA was one of Canada's first Business Improvement Associations to create a full-time Director of Crime Prevention Services position. Resulting programs have included the "Downtown Ambassadors" and the "Loss Prevention Officers," both involving the provision of private security officers operating throughout the downtown core.

Driven by the efforts of local private security companies, Operation Cooperation brings Vancouver police together with private firms and corporate security to discuss ongoing and future security concerns. Past cooperative programs included the Crime Alert Paging Program (CAPP) in which a paging system facilitated the transmission of suspect and incidence reports between police officers, security personnel, and business owners; this program is currently being revamped and updated to meet changing needs. Operation Cooperation has its base at the Vancouver Police Waterfront Community Police Centre. The Centre itself is a joint initiative of local businesses, police and a number of dedicated volunteers.

For further discussion of this program, see, for example, L.J. Huey, R.V. Ericson and K.D. Haggerty, "Policing Fantasy City" in D. Cooley, ed., *Re-imagining Policing in Canada* (Toronto: University of Toronto Press, 2005) at 171.

There are further examples that underscore the growing level of cooperation and exchange of services between public police and private security. The liaison committee of the International



Association of Chiefs of Police has, in the past, committed itself to strengthening links with private security, noting its potential for accessing additional resources to find wanted persons.³⁵ There are also instances where public police contract the services of private security; for example, when the Royal Canadian Mounted Police (RCMP) hire private security to help with limited policing functions at airports, or the Corps of Commissionaires is contracted to hand out parking tickets.³⁶ In general, these different examples signal that the traditional public-private distinction no longer adequately accounts for modern policing arrangements.

3.4.2 Governance and Marketization

Another important aspect of evolving governance relationships is a shift toward providing more cost-effective services, something we first explored in chapter 2 when discussing the business approach of public police and the emergence of private security. It is also reflected in programs such as the Edmonton Police Services pilot project noted above.

In Canada, a mechanism that reflects this changing governance framework, and one that is used extensively, is “contract policing.” Contract policing, a method that is now used by the RCMP and the Ontario Provincial Police (OPP), involves police agencies contracting with municipalities or provinces to provide policing according to an agreed upon template. In Ontario, for example, the OPP is now party to over 300 individual contracts to provide policing services to municipalities. This mechanism is one that has long been part of the RCMP’s mode of operation. While it has not traditionally been considered in market terms, this mechanism has, in effect, led to the development of an institutional style that provides a springboard for implementing a policing market that includes state police agencies.

The conditions that have provided for this springboard are as follows. Responsibility for state policing in Canada is located primarily at the municipal and provincial levels. The law in most provinces requires most municipalities to provide policing within their boundaries and the provinces to take care of policing in rural areas and villages. While some municipalities and provinces have



Calculation of RCMP Costs

The costs of RCMP services are shared by all levels of government in Canada, from municipal to federal. Current contracts between the provinces and federal government were established in 1992 and are valid through 2012, requiring provinces to pay for 70 percent of provincial policing services. The 1992 Municipal Service Agreements include the following elements:

- Cost share ratios are based on population size and historical relationship with the RCMP.
- Municipalities pay 70 percent of policing costs if the population is less than 15 000 and if the RCMP previously serviced them. If the population is more than 15 000, the municipalities must pay 90 percent.
- For new contracts in municipalities with a population under 5 000, the provincial police services would provide policing instead of the RCMP, with the federal government paying 30 percent of the costs.
- However, municipalities with over 5 000 that were policed by the RCMP before 1992 must cover 70 percent of the costs.
- A “New Entrants” policy provided that municipalities seeking new contracts with the RCMP, and whose population exceeded 5 000, must pay for 100 percent of the services.

Source: Human Resources Development Canada, *Strategic Human Resources Analysis of Public Policing in Canada* (December 2001) at 24.

exercised this responsibility directly by establishing police organizations themselves, in most places across the country, the RCMP, under contract, undertake the policing of municipalities and provinces. This arrangement was encouraged through federal subsidies provided to those municipalities and provinces that decided



to use the services of the RCMP—services that were not provided at full-cost to the municipalities and provinces concerned.³⁷

The introduction of market thinking has served as an opportunity to radicalize this contractual system. The RCMP and the OPP, both of which have a history of providing policing services to municipalities under contract, have taken it up. The impetus for this was a decision by many contracting provinces to remedy what they regarded as an inequality, whereby some regional municipalities and small towns received provincial policing services without paying for them, while other municipalities paid. The solution was to threaten withdrawal of these services unless the non-paying areas paid. This budget-cutting device has forced the communities that are now required to pay to reconsider carefully the pros and cons of contracting for policing services, the most obvious alternative being to set-up their own police forces. However, other options have also been considered, for example, privatizing the provision of some policing services by contracting with private security companies.³⁸ The potential advantage of this to municipalities is that they have begun to specify in some detail precisely what they want in terms of policing services, and they can maintain control over service quality through a refusal to pay if the service they have contracted for is not delivered. In short, municipalities have begun to see themselves as customers that require policing services and can acquire them in and through a policing services market.³⁹

Contract policing also emerges in the context of fee-for-service policing provided to particular corporate interests. Examples include the policing of sports events and the surrounding area. One way in which this occurs is through “moonlighting” (also referred to as “secondary employment”); that is, public police officers running, or working for, contract security services during their off-duty hours. This is commonly frowned upon and is formally prohibited by many, but not all, public police services in Canada, either through policy or statute. The other way in which police officers can provide such policing services to private clients for hire is through what is known as “pay duty” work—that is, a client formally contracts with, and pays, the police service or union for the services of police officers



(typically during their off-duty hours).⁴⁰ Some high-end jewellery stores, for instance, hire the services of police officers on this basis, as do sports stadiums and organizers of special events such as the annual Molson Indy 500 car race in Toronto. Even private individuals can hire police officers on this basis to provide protective services for weddings, bar mitzvahs and other large events. Indeed, some of these events are now formally regulated by municipal bylaws that withhold licensing unless the convener hires pay-duty police officers.⁴¹ What is interesting is that, although paid by private interests, the municipality is still potentially responsible should an officer face legal action for “malfeasance while under private contract.”⁴²

Related to this is the increasingly common practice of corporate sponsorship of particular public police programs or equipment, such as helicopters, drug awareness, crime prevention programs or roadside sobriety blitzes.⁴³ For example, on St. Patrick’s Day 2005, Mothers Against Drunk Drivers hired five OPP officers to set-up a Reduce Impaired Driving Everywhere (RIDE) spot check in Ottawa. Similar arrangements had occurred in the past in Toronto, where police charged \$2,000 to set up a RIDE program at a “location requested by the contributor.”⁴⁴ In another example, the Alberta Energy Company gave the RCMP “financial contributions, computers, software, and technical support to assist in the service’s massive undercover investigation of anti-industrial activist Weibo Ludwig.”⁴⁵ The specification of what can be delivered is limited in principle, if not always adequately in practice, by the public interest that police are obliged to uphold.

It is also not uncommon for public police forces to charge for their services to business and the public by, for example, charging fees for responding to false alarms.⁴⁶

This evolving market mentality now pervades many, and perhaps most, state police organizations in Canada, to varying degrees. Police have started to think and talk about themselves as providers of a “product” or service operating within a security market, and to adopt language and management styles and practices such as mission statements, environmental scans and business plans. This changing mentality has required police agencies to re-define their organization,



Pay Duty Rates in Toronto, Special Events and Film Liaison

Paid Duty Officers are hired on an hourly basis. However, they must be paid for a minimum of three (3) hours, i.e., even if required for only one hour, the minimum of three (3) hours pay will be paid. Rates at the time of this printing:

Police Constable: \$55.00 per hour with a 3-hour minimum = \$165.00 (all classifications, i.e., ETF, Marine Unit).

Police Sergeant: \$63.00 per hour with a 3-hour minimum = \$189.00. If four (4) or more police constables are hired, a Sergeant will also be required.

Staff Sergeant: \$70.00 per hour with a 3-hour minimum = \$210.00. If a total of ten to fourteen (10-14) police constables are hired, a Police Sergeant and a Staff Sergeant will also be required.

Staff Sergeant: \$72.00 per hour with a 3-hour minimum = \$216.00. If a total of fifteen (15) or more police constables are hired, a Police Sergeant and a Staff Sergeant will also be required and the Staff Sergeant will be paid at a rate of \$72.00 per hour.

If any equipment is used on a pay duty (i.e., motorcycle, cars, boats, horse, bicycle), the film company will be billed by the Toronto Police Service at the end of the month. Should it become necessary to cancel a Pay Duty Officer, his unit or division must be notified eight (8) hours prior to the scheduled starting time for the pay duty. Failure to give sufficient notification, i.e., less than the eight (8) hours, will result in the film company being required to pay the officer(s) involved the minimum payment of three (3) hours.

Source: City of Toronto, Toronto Film Office:
<<http://www.toronto.ca/tfto/police.htm>> (Date accessed: 2 December 2005).



function and relationships to people. In addition to inviting experimentation of police services, police leaders are also engaged in rethinking what state policing can, and should, mean.⁴⁷ These employment practices also raise questions about the appropriateness of policing activities of both public and private police. How can we be assured that such activities are consistent with (or at least not in direct conflict with) core values and the broader public interest in policing? These are questions that need to be explicitly raised and responded to in a coherent and principled way by those responsible for policing policy in Canada.

The above discussion should not imply that evolving marketization of policing is solely manifested by the actions of the public police. As we documented in chapter 2 and as the examples in this chapter reveal, the ever-growing private security sector has emerged within this changing governance context. In addition to the increasing use of private security by businesses, the fact that the state is one of the “largest employers of both private security guards and private investigators” (for example, for public buildings) stands as an example of the commodification of safety and security. As some observers note, “while citizens may decry the policing services they receive, they often seem strangely unwilling to pay for enhanced services or new programs. Knowing this, many local governments see private security as a cheaper alternative.”⁴⁸

Overall, changing governance relationships in society have contributed to the evolution of public and private policing in contemporary society. At the same time, however, what is being maintained, through a variety of different mechanisms, is general state direction and control over policing. Sometimes this is very direct, for example, when state police agencies hire a second policing tier. At other times, it is much more indirect and subtle, as when cities such as Vancouver support the use of private security “Ambassadors.”⁴⁹ When this happens, what is being pluralized is not so much the control of policing (although it might have become more indirect), but its delivery.⁵⁰ This plural delivery (direct and indirect) system raises new questions about how these services should be regulated.



3.5 Conclusion: Changing Relationships Between State and Non-state Policing

In this chapter, we illustrated some of the factors that have shaped contemporary forms of policing. Of course, this is not meant to be a complete list of factors. For instance, the emergence of policing problems that transcend state boundaries and are transnational in character has also contributed to the proliferation of networks of policing⁵¹ and has spawned a whole new set of policing institutions, some sponsored by states acting collectively and collaboratively (such as Interpol and Europol). Many others, however, have developed within the private sector and are answerable principally to multinational corporations.⁵²

In general, the evidence suggests that we should think of policing not in terms of a public-private dichotomy, but rather a public-private *continuum*. The public-private divide is no longer accurate when discussing different policing functions. Instead, we are witnessing the emergence of networks of policing. No prescription for policing in contemporary Canada, and for the appropriate laws and policies governing policing, can be considered credible and defensible if it does not take account of these present realities and address the difficult questions that they raise.

Even after 25 years or more of research on private security in Canada, the increasingly complex relationship between public and private policing remains relatively unknown. For understandable reasons, neither public police nor private security executives are enthusiastic about talking about these relationships in any detail. What is clear from this chapter, however, is that there is a very substantial exchange of both information and personnel between the two sectors at all levels. However, at present, it is impossible to say with any degree of confidence how much of this goes on, what benefits there may be for both sides of such transactions, or to what extent such practices are or are not in the broad public interest.

The interchange of personnel, together with the trend towards community policing approaches and the accompanying emphasis on the development of policing partnerships, has led to a growing



interest in, and experimentation with, closer and more cooperative relationships between public and private sector policing organizations and their personnel in recent years. These developments, however, have tended to be primarily informal and idiosyncratic in character, and not organized and coordinated pursuant to any coherent or explicit public policy. They have also spawned an emerging discussion about what are the proper respective roles for public and private sector policing organizations.

The development of networks of policing agencies and agents composed of both public and private actors has produced a disjuncture between the reality of policing in Canada and the legal framework for its regulation. Yet, despite the pervasiveness of such developments as mass private property, and the fact that it has been identified as one of the principal contributing causes for the massive growth of private security and policing, no Canadian government has yet systematically addressed the serious challenges that it poses for policing policy.

An important related point is that the pluralization of policing has unfolded largely beyond public knowledge and, hence, without discussion and debate about the nature and extent of these changes to policing, and whether, and under what conditions, they should be allowed to continue. A hallmark of democratic policing in Canada should be that citizens are kept informed about the type of policing services that are being offered. Moreover, citizens should be given the opportunity to say whether they believe the types of services available best reflect the types of security that they believe should be offered, and by whom. To date, it would appear that no such processes have occurred.

Several important questions remain unanswered regarding how a wider network of providers of state services can, and should, be coordinated to ensure democratic policing, and how policing agents (public servants and others) should be held accountable. These are questions that directly relate to law making. Fortunately, while they are difficult questions to answer, they do not require a complete rethinking of our established legal framework. They can, and are, being addressed through the application of well-developed legal



There is a time, a place, a need, a requirement, for private security services and the important activities they are hired to perform. However, it is not their place to be assuming the authority and responsibilities of the public police. Public interest vs. private interest is the heart of the matter.

The public police are a public service created and provided to enforce the rule of law, to be the front end of the justice system in society. Private security derives from a completely different intent; protecting private interest. Over the last decade, at previous national forums on public policing and private security and reviews of police service delivery, it appears some police managers and local and provincial governing authorities are considering private security as a source of cheap labour to reduce costs.

Costs are escalating; private security is not the solution. We are here to save the occupation [of the public police], to defend the office of constable if you like; save it from actions that would forever blur the distinction between private and public actors and, in our view, have a negative impact on the administration of justice in this country.

D. Kinnear, Canadian Police Association, "The Roles of Public Police and Private Agencies: In Search of Reality." *In Search of Security: An International Conference on Policing and Security*. Montréal, Quebec. February 2003.

principles. The next two chapters begin to explore these legal and policy issues, and how they might be reformed to better reflect the realities of modern policing.

¹ For a general overview, see D. Cooley, ed., *Re-imagining Policing in Canada* (Toronto: University of Toronto Press, 2005). See also G. Rigakos, *The New Parapolice* (Toronto: University of Toronto Press, 2002).



- 2 As Bayley and Shearing note, policing has become “multilateralized.” D. Bayley and C. Shearing, *The New Structure of Policing: Description, Conceptualization and Research Agenda* (Washington: National Institute of Justice, 2001). For a discussion of a continuum of policing services, see D. Cooley, *supra* note 1.
- 3 A. Stinchcombe, “Institutions of Privacy in the Determination of Police Administrative Practices” (1963) 69:2 *American Journal of Sociology* at 150–160.
- 4 Even in the early 19th century, when modern public police forces were first established, there were some notable exceptions to such generalizations—the “company town” being the best known—which posed dilemmas for this distribution of policing responsibility. S. Spitzer and A. Scull, “Privatization and Capitalist Development: The Case of the Private Police” (1977) 25:1 *Social Problems* at 18–29.
- 5 See C. Shearing and P. Stenning, “Modern Private Security: Its Growth and Implications” in M. Tonry and N. Morris, eds., *Crime and Justice: An Annual Review of Research*, vol. 3 (Chicago: Chicago University Press, 1981) at 193–245; M. Kempa, P. Stenning and J. Wood, “Policing Communal Spaces: A Reconfiguration of the Mass Private Property Hypothesis” (2004) 44:4 *British Journal of Criminology* at 562–581.
- 6 M. Ellis, *The Shopping Centre as a Public Place: The Public Use of Private Property* (Montréal: School of Urban Planning, McGill University, 1987).
- 7 One of the most famous of these in Canada, the West Edmonton Mall, was the largest shopping centre in the world when it was built in the early 1980s. It occupies what were previously 24 city blocks (a 110-acre site). Since it is two stories high, it is equivalent in street frontage to 48 city blocks. In addition to 828 stores, it contains a 360-room hotel, the world’s largest indoor water park (with a beach and artificial waves), a mini-golf course, a fairground, an NHL-size ice-hockey rink, 30 aquariums, and a replica Spanish galleon. See *West Edmonton Mall—Official Souvenir Book* (Edmonton: ChrisCam Publications Inc., 1989).
- 8 Ontario, *Report of the Task Force on the Law Concerning Trespass to Publicly-Used Property as it Affects Youth and Minorities* (Toronto: Ministry of the Attorney General of Ontario, 1987). (Raj Anand, Chair).
- 9 For a recent example of such discussions, see “Fantino Wants More Policing Near Woodbine,” *The Globe and Mail* (20 April 2001) at A23. See also W. Walsh and E. Donovan, “Private Security and Community Policing: Evaluation and Comment” (1989) 17:3 *Journal of Criminal Justice* at 187–197. When the Windsor, Ontario, casino was in the planning stages, the Windsor



Police Service requested that the Government of Ontario fund a large number of additional police officers to respond to the “collateral” policing problems that its operation was expected to engender.

- 10 Henry Aubin’s book, *City For Sale* (Montréal: Éditions l’Étincelle, in association with Toronto: James Lorimer & Co., 1977) offers some insight into the global economic conditions that lead to such developments.
- 11 L.J. Huey, R.V. Ericson and K.D. Haggerty, “Policing Fantasy City” in D. Cooley, ed., *Re-imagining Policing in Canada* (Toronto: University of Toronto Press, 2005) at 151–152.
- 12 See M. Mopas, “Policing in Vancouver’s Downtown Eastside” in D. Cooley, ed., *Re-imagining Policing in Canada* (Toronto: University of Toronto Press, 2005) at 106 and 114.
- 13 Huey, Ericson and Haggerty, *supra* note 11 at 162–165.
- 14 E. Blakely and M. Snyder, *Fortress America: Gated Communities in the United States* (Washington: Brookings Institution, 1997).
- 15 They have been referred to in the literature as “common interest communities.” See C. Silverman and S. Barton, *Common Interest Communities and the American Dream*, working paper no. 463 (Berkeley, CA: Institute of Urban and Regional Development, 1987); W. Hyatt, “Common Interest Communities: Evolution and Reinvention” (1998) 31 *John Marshall Law Review* at 303; D. Drewes, “Putting the ‘Community’ Back in Common Interest Communities: A Proposal for Participation–Enhancing Procedural Review” (2001) 101 *Columbia Law Review* at 314. These spaces are also referred to as “the new commons”: see A. von Hirsch and C. Shearing, “Exclusion From Public Space” in A. von Hirsch and A. Wakefield, eds., *Ethical and Social Perspectives on Situational Crime Prevention* (Oxford and Portland: Hart Publishing, 2000) at 77–96.
- 16 G. Rigakos, “Hyperpanoptics as Commodity: The Case of the Parapolic” (1999) 24:3 *Canadian Journal of Sociology* at 388–389.
- 17 *Ibid.* at 389.
- 18 *Ibid.* at 393.
- 19 The American legal scholar Stuart Macaulay recognized these new auspices of governance some time ago when he spoke of the emergence of “private governments.” See S. Macaulay, “Private Government” in L. Lipson and



S. Wheeler, eds., *Law and the Social Sciences* (New York: Russell Sage Foundation, 1986) at 445–518.

- ²⁰ Although a significant proportion of contracts entered into by contract security agencies are with government agencies, such as public housing corporations. C. Shearing, M. Farnell and P. Stenning, *Contract Security in Ontario* (Toronto: Centre of Criminology, University of Toronto, 1980) at 100–101.
- ²¹ In the case of the shopping mall, for instance, the more limited collectivity consists of the merchants, who conduct their businesses in the mall, and their employees, while the broader collectivity consists of the public who shop there. In terms of policing, certain parts of the mall are restricted to persons authorized by the merchants or their management company, while other parts are open to any member of the public who goes there to shop (although some members of the public, such as buskers, people begging for money or soliciting for donations, suspected shoplifters, etc., may be excluded even from these “public” areas by the merchants or their management company). See Ontario Task Force, *supra* note 8.
- ²² The two key advocates for such policing were Herman Goldstein, in his book *Policing A Free Society* (Cambridge, Mass.: Ballinger Books, 1977), and John Alderson, Chief Constable of Devon and Cornwall in the U.K., in his book *Policing Freedom* (Plymouth: Macdonald & Evans, 1979). The theme was quickly taken up in Canada: see, for example, A. Normandeau and B. Leighton, *A Vision of the Future of Policing in Canada: Police-Challenge 2000* (Ottawa: Minister of Supply and Services Canada, 1990). Another model of community-based policing, known as “problem oriented policing,” was advocated by Herman Goldstein, *Problem Oriented Policing* (New York: McGraw-Hill, 1990).
- ²³ See, for example, G. Kelling *et al.*, *The Newark Foot Patrol Experiment* (Washington: Police Foundation, 1981).
- ²⁴ Advocates of this approach to policing frequently harken back to an aphorism attributed to Sir Robert Peel, the founder of the London Metropolitan Police in 1829: “The police are the public and the public are the police.” The aphorism, however, was actually coined by a 20th-century writer, Charles Reith, summarizing the main features of Peel’s reform ideas in his book *The Blind Eye of History* (London: Faber, 1952) at 163. We needed, it was argued, to return to a relationship in which “the community” and the police are “co-producers of order.” A whole program of reform to public police organizations, embracing recruitment, training, organization, leadership and accountability, was proposed as necessary to implement this new philosophy of policing. See Normandeau and Leighton, *supra* note 22.



- ²⁵ All these arguments remain strongly held in some quarters. See, for example, D. Kinnear, “Privatization—A Threat to Public Police and the Public Good” in J. Richardson, ed., *Police and Private Security: What the Future Holds* (Ottawa: Canadian Association of Chiefs of Police, Police Futures Group, 2000) at 108–116.
- ²⁶ See, for example, J. Gandy, *Law Enforcement–Race Relations Committees in Metropolitan Toronto: An Experiment in Police–Citizen Partnership* (Toronto: Social Planning Council, 1979); Weiler Associates Ltd., *Community Consultative Groups and the RCMP* (Ottawa: RCMP, 1992); R. Johnson and D. Dubois *Community Policing and the RCMP: A Status Report* (Ottawa: RCMP, 1994); R. Todd and F. Todd, *Police Community Partnerships in Canada: Bridging Solitudes* (Report to the Canadian High Commission, London, 1997) [unpublished].
- ²⁷ See Mopas, *supra* note 12 at 107.
- ²⁸ See Huey, Ericson and Haggerty, *supra* note 11 at 171.
- ²⁹ See Rigakos, *supra* note 1 at 40–41. As an example, the author notes how the Metropolitan Toronto Police “share office space and even information and photographs about banned individuals with Intelligarde [a private security company].”
- ³⁰ See Mopas, *supra* note 12 at 107. Also see, J. Hermer *et al.*, “Policing in Canada in the Twenty-First Century” in D. Cooley, ed., *Re-imagining Policing in Canada* (Toronto: University of Toronto Press, 2005) at 49.
- ³¹ See Rigakos, *supra* note 1 at 39; also see C. Shearing, M. Farnell and P. Stenning, *Contract Security in Ontario* (Toronto: Centre of Criminology, University of Toronto, 1980).
- ³² See Huey, Ericson and Haggerty, *supra* note 11 at 169–170.
- ³³ C. Murphy and C. Clarke, “A Study of Policing and Security in Two Canadian Cities” in D. Cooley, ed., *Re-imagining Policing in Canada* (Toronto: University of Toronto Press, 2005) at 234–235.
- ³⁴ *Ibid.* at 235.
- ³⁵ See Rigakos, *supra* note 1 at 40.
- ³⁶ *Ibid.* at 38. Also of note is a recent Auditor General of Canada report to the House of Commons, which encourages the RCMP to further explore “tiered policing.” As the Auditor General notes, “one alternative approach not sufficiently explored by the RCMP is that of ‘tiered’ policing—a concept that



allows employees to perform restricted duties at a cost less than for a fully trained peace officer.” From “Royal Canadian Mounted Police—Contract Policing,” *Report of the Auditor General of Canada to the House of Commons* (Ottawa: Office of the Auditor General of Canada, 2005) c.1 at 16.

- ³⁷ See chapter 22 of the 1992 Report to Parliament of the Office of the Auditor General of Canada, for a detailed explanation of this point.
- ³⁸ Rigakos, *supra* note 1 at 157, has described how one contract security firm in Toronto has recently sought (unsuccessfully so far) to compete with the OPP to win contracts for the provision of municipal policing services. He characterizes police association opposition to such bids as “merely the posturing of competing security organizations jockeying for position in potential risk markets.”
- ³⁹ In New Zealand, until very recently, virtually all government services (including policing services provided by the New Zealand Police) have been the subject of “Purchase Agreements” between the responsible minister and the head of the providing agency, which specify in detail the services that are to be provided and the expected outcomes from such provision. The agency head also signed a “Performance Agreement” with the Minister and the State Services Commissioner (the head of the public service). Agency and agency heads’ performance is measured in terms of its compliance with obligations under such agreements. For an account of this model of public management, see J. Boston *et al.*, *Public Management: The New Zealand Model* (Auckland: Oxford University Press, 1996). Recently, the Purchase Agreements and Performance Agreements have been replaced by a Statement of Intent, which has been described as “a document developed after discussion between a department and its minister(s) that identifies and explains for Parliament’s benefit the main features of a department’s strategy, capability and performance intentions in the medium term.” *Report of the Advisory Group on the Review of the Centre* (November 2001). Presented to the Ministers of State Services and Finance (online): <http://www.ssc.govt.nz/upload/downloadable_files/review_of_centre.pdf> (Date accessed: 9 December 2005) at 69.
- ⁴⁰ As Rigakos (*supra* note 1 at 41) notes, “...the officer is being paid privately through a police association or union, and is earning extra income by selling his or her training, expertise, and most importantly, air of authority; but is still a state law enforcement officer.”
- ⁴¹ Examples are myriad but consider that the Vancouver Police will be required on set for movie filming in the city if there is any need for traffic control, weapons escort, or to otherwise ensure public safety.
- ⁴² See Rigakos, *supra* note 1 at 41.



- ⁴³ For a while during the 1990s, the Walt Disney Corporation held exclusive contractual rights to market the RCMP's image. The RCMP's intellectual property is now managed by the Mounted Police Foundation. Its President is a former Vice-President and Managing Director of the Walt Disney Company (Canada) Ltd. See RCMP, *Musical Ride and Equitation* (online): <http://www.rcm-grc.gc.ca/musicalride/mpf_e.htm> (Date accessed: 9 December 2005). See also M. Dawson, *The Mountie: From Dime Novel to Disney* (Toronto: Between The Lines, 1998).
- ⁴⁴ See "Experts Rap Private Hiring of Ontario Police Officers," CBC News (online): <<http://www.cbc.ca/story/canada/national/2005/03/18/police-hire-050318.html>> (Date accessed: 2 December 2005).
- ⁴⁵ See Hermer *et al.*, *supra* note 30 at 45, footnote 93. See also C. Blatchford, "AEC Gave RCMP Computers and Software: Deployed to Track 'Persons of Interest'," *National Post* (23 February 2000) at A1 and A11.
- ⁴⁶ See Hermer *et al.*, *supra* note 30 at 45.
- ⁴⁷ See, for example, The Conference Board of Canada, *Repositioning for the Future: Case Study on the RCMP Change Experience* (Ottawa: The Conference Board of Canada, 2000) at footnote 50. Also, I. Loader, "Consumer Culture and the Commodification of Policing and Security" (1999) 33 *Sociology* at 373–392.
- ⁴⁸ See Huey, Ericson and Haggerty, *supra* note 11 at 145 and footnote 53. The authors note how private security is used to patrol the main branch of the Vancouver library, perform security services at the Vancouver International Airport and patrol the Vancouver waterfront (once done by the Ports Canada Police).
- ⁴⁹ See Downtown Vancouver Business Improvement Association, *Downtown Ambassadors*, (online): <<http://www.downtownvancouver.net/work/ambassadors.html>> (Date accessed: 10 January 2005). Such arrangements have become common in many countries, e.g., the "Walk Wise" program in Wellington, New Zealand (run and staffed by a private security company under contract to the City Council). See Wellington City Council, "Community Safety Officers" online: <http://www.wellington.govt.nz/services/commsafety/citysafety/citysafety.html>. See also the "City Ambassadors" and "Street Activity Officers" programs in Melbourne, Australia (see Melbourne City "City Ambassadors" online: <http://www.thatsmelbourne.com.au/info.cfm?top=264&pg=2315**>). For a website that contains information on such programs around the world, go to *Clean and Safe Worldwide* (online): <<http://www.cleansafeworldwide.com/>> (Date accessed: 10 January 2005).



- ⁵⁰ Although provided by a private security company, Vancouver's Downtown Ambassadors, for instance, are authorized, regulated by and accountable to the Vancouver City Council. For a discussion of different forms of privatization of public policing services, see L. Johnston, *The Rebirth of Private Policing* (London: Routledge, 1992) c.3.
- ⁵¹ Many problems have emerged as a result of, or at least been thought to have been exacerbated by, a series of economic changes that have come to be referred to collectively as "globalization," while some of the problem behaviours have been facilitated by the development of new technologies such as computers and the Internet. Collectively, they have posed enormous challenges for policing systems and practices that have traditionally been based on, and within, nation states. See C. Fijnaut, "Transnational Crime and the Role of the United Nations in its Containment Through International Cooperation: A Challenge for the 21st Century" (2000) 8:2 *European Journal of Crime, Criminal Law and Criminal Justice* at 119–127; A. Sofaer, S. Goodman and C. Mariano-Florentino, eds., *The Transnational Dimension of Cyber Crime and Terrorism* (Stanford, CA: Hoover Institution Press, 2001); P. Norman, "Policing 'Hi-Tech' Crime Within the Global Context: The Role of Transnational Policy Networks," in D. Wall, ed., *Crime and the Internet* (London and New York: Routledge, 2001) at 184–194.
- ⁵² See J. Sheptycki, ed., *Issues in Transnational Policing* (London and New York: Routledge, 2000) for a review of these issues.



Chapter 4 The Existing Legal Environment

4.1 Introduction

Legal and other rules play a key role in defining the order that forms the basis for policing. Although most people think of criminal law first when discussing the legal order of policing, it is in fact only one area through which the order that is maintained through policing is defined and policing itself is shaped.¹ For instance, contract law, labour law, insurance law and building and zoning law have a cumulative impact that can be just as important to policing as constitutional, criminal and property law. For each of these areas of law, judges play as key a role as legislators in establishing and developing the legal environment within which policing is to be undertaken.

This chapter considers some important general features of the legal environment that influence the way policing is shaped. Given the burgeoning role of private security in society, and the fact that it increasingly carries out functions similar to the public police, a particular concern is the extent to which the actions of private security are authorized and constrained by law.

4.2 The Constitutional Context

The responsibility for legislation most directly relating to policing is divided between the federal Parliament and provincial legislatures. Paragraph 91(27) of the *Constitution Act* vests the Parliament of Canada with the exclusive authority to enact criminal law and procedure. Such legislation sets out the criminal law enforcement powers of state police officers (mostly referred to as peace officers in the legislation), as well as those of non-state individuals (including ordinary citizens) who may be engaged in policing activities. While federal legislation makes clear distinctions between the criminal law enforcement powers of peace officers, owners of property and



ordinary citizens, it does not explicitly recognize the existence of specific non-state policing entities. Rather, these latter groups have the same criminal law enforcement powers as ordinary citizens and as agents of the property owners for whom they work.

Paragraph 92(14) of the *Constitution Act* gives provincial legislatures the exclusive authority to legislate with respect to the administration of justice within their respective provinces, and it is pursuant to this legislative authority that most state police services in Canada are established and regulated. In addition, paragraph 92(13) provides provincial legislatures with exclusive authority to legislate in relation to property and civil rights in their respective provinces, and paragraph 92(16) vests similar authority with respect to “all matters of a merely local or private nature in the province.” It is under these legislative authorities that provinces regulate various non-state policing institutions such as private security organizations and their personnel, as well as various activities of property owners and businesses that are relevant to policing. These include, for example, the rights of landlords and property owners with respect to their tenants and invitees. Paragraph 92(15) allows provincial legislators to legislate with respect to the enforcement of provincial laws, thus providing another important source of legal powers for those doing policing, such as trespass statutes² or highway traffic legislation.

4.3 Powers of Arrest

In the Criminal Code, law enforcement powers are granted mostly to public police. However, a few provisions allow for the involvement of non-state individuals in policing-related activities, notably as “an ordinary citizen” or “as an owner or occupier or agent thereof.” Non-state policing institutions or personnel, such as contract and in-house security guards or investigators, have the same criminal law enforcement powers as ordinary citizens and as agents of the property owners or occupiers for whom they work.

4.3.1 Powers of Arrest as an Ordinary Citizen

The concept of a private citizen’s power of arrest originates in common law, dating back nearly a thousand years to a time when



citizens had the power and duty to keep the “King’s Peace.”³ Today, this concept is codified in section 494 of the Criminal Code, authorizing anyone to arrest a person either found committing an indictable offence, or where there are reasonable grounds to believe that that person has committed an indictable offence and is believed to have escaped and is being “freshly pursued” by someone with “lawful authority” to arrest. The section also stipulates that, upon arrest, the suspect must be delivered to a peace officer “forthwith.”⁴

Given the nature of their work, security guards have more opportunities and incentives to proceed to an arrest under this provision than most other citizens. The recent proliferation of private security, suggests that private security are more and more involved in activities that most private citizens would not contemplate, such as arrest in the course of carrying out surveillance and patrol duties.⁵

4.3.2 Powers of Arrest as Agent for an Owner or Occupier and Provincial Trespass Acts

The Criminal Code also recognizes that ejection by necessary force is a defence for the person who owns or is in possession of private property, or for his or her agent such as a private security officer.⁶ In addition, provincial trespass acts constitute a powerful tool in the hands of agents of property owners in Canada, particularly since most provincial trespass statutes empower owners or their agents and police officers to arrest trespassers.⁷

Adept security officials will normally not arrest for engaging in prohibited activity on private property, but rather use this condition as a way to approach persons who they view as problematic and ask them to leave. If the person in question refuses to leave, then the security officer may arrest for failing to leave when directed. One question that is immediately raised is what constitutes prohibited activity?⁸ The answer is up to the private landowner or management. As long as the posted prohibited activities do not ostensibly infringe on human rights, it is up to them to control activity, behaviour and movement on or in relation to the property. The implications of this power can be far-reaching given that shopping malls are considered by most persons to be public spaces, even though they are legally private. The large discretion conferred to agents of owners to police



According to the Supreme Court of Canada, trespass acts are “...the workhorse of private security services in their patrol of the shopping malls, airports, sports stadiums and other private spaces where the public tends to congregate.”

R. v. Asante-Mensah [2003] 2 S.C.R. 3 para. 2.

these spaces as they see fit is to be contrasted with the strict observation of the rights and freedoms of persons in places traditionally regarded as public.

The owner or his or her agent is under a duty to hand over the person arrested to the police.⁹ Although no provincial trespass statute explicitly authorizes the use of force in making an arrest, courts have found that force is implicit in the act of arrest.¹⁰ However, some provinces have rejected the notion of occupier's arrest, preferring to keep arrest (and the potential use of force) in the hands of the police.¹¹

As in the case of the relevant provisions of the Criminal Code, what differentiates the private security officer from the ordinary citizen and the owner or occupier is that, like the police officer, he or she is, by the nature of the job, more likely to have to resort to coercive powers granted by trespass acts.¹²

4.4 The Canadian Charter of Rights and Freedoms

The *Canadian Charter of Rights and Freedoms* protects an individual's fundamental rights and freedoms.¹³ It has significant implications in the context of policing activities. When evidence is obtained in violation of an individual's Charter rights, it is excluded if the court is of the view that its admission at trial would bring the administration of justice into disrepute.¹⁴ Three sections of the Charter are particularly important for the current discussion.

Section 8 of the Charter provides that “everyone has the right to be secure against unreasonable search or seizure.” In performing their work, both public police and private security are often called to conduct searches.¹⁵ Searches by public police, without having



obtained the consent of the person, are subject to many conditions: for instance, save exceptions, the search must be authorized by an impartial person.¹⁶ Non-consensual searches by private security officers are not subject to authorization by an impartial person. The courts have indicated that these searches can be justified for reasons of security or emergency (for instance, a person has on him or her an object that could harm others).¹⁷ Private security officers may also search a person upon arresting him or her.¹⁸

Section 9 of the Charter provides that “everyone has the right not to be arbitrarily detained or imprisoned.” Detention need not be limited to confinement by physical restraint.¹⁹ A person is considered detained even if the period of detention is very short.²⁰ As well, it is well accepted that the detention can last until the arrival of a peace officer.²¹

As noted above, arrest²² can be made by private security officers by virtue of section 494 of the Criminal Code, or under a provincial trespass act. In the case of *R. v. Asante-Mensah*, the court noted that “Intelligarde, one of Ontario’s largest private security firms, estimates that its guards have arrested over 30 000 people in the last 20 years on the basis of *TPA*.”²³ Arrest without warrant by peace officers is governed by section 495, which sets out requirements not found in the preceding section.²⁴

Section 10 of the Charter provides, among other things, that upon arrest or detention, one has the right to be informed promptly of the reasons for the arrest or detention, as well as the right to instruct counsel without delay.²⁵ The Supreme Court of Canada has stated that the right to counsel includes notably providing “(1) information about access to counsel free of charge where an accused meets prescribed financial criteria set by provincial Legal Aid plans (‘Legal Aid’); and (2) information about access to immediate, although temporary, legal advice irrespective of financial status (‘duty counsel’).”²⁶

4.4.1 The Charter’s Limited Applicability to Private Security Officers

Policing, whether of a public or private nature, can potentially encroach on the rights mentioned above. In addition, policing can



have an impact on many other rights expressly or implicitly protected by the Charter, such as the right to privacy or the right of movement. However, a potential problem arises from the fact that Charter rights do not generally apply to actions of private security officers. While it is clear that the policing activities of state authorities (for example, RCMP, federal, provincial and municipal police) are always subject to the Charter, the conformity of actions by private security officers with the Charter will only be reviewed by the courts if these actions are somehow linked to the state's functions. In this respect, the Charter is "essentially an instrument for checking the powers of government over the individual."²⁷ However, if an individual or private entity "exercise delegated governmental powers," is "responsible for the implementation of government policy,"²⁸ or is otherwise acting as an "agent of the State," it will be considered subject to Charter review for all of its actions classified as governmental in nature.

In *R. v. Buhay*, the Supreme Court examined whether private security officers who conducted an initial search of a locker, which eventually resulted in drug-related charges being laid, could be either considered as "performing a specific government function" or as "agents of the State" and, therefore, subject to the Charter. The court did not find a sufficient link between the private security guards' and state activities under either test.

The Court reached this conclusion because there had been no contact between the private security officers and the public police prior to the initial search. However, other cases can prove more complex. The Supreme Court of Canada has stated that to determine if a private security officer is or is not an agent of the state, "a case-by-case analysis which focuses on the actions which have given rise to the alleged Charter breach by the security guards and the relationship between them and the state" is required.²⁹ An overriding question is whether a private security guard would have acted as he or she did but for the intervention of the public police. For instance:

- is there evidence of an agreement or police instructions,³⁰
- what was the time of the private security officer's involvement in the event in question (was it prior to or during the involvement of the police?),³¹



Nothing in the evidence allows a conclusion that the security guards or the agency by which they were employed can be assimilated to the government itself; nor can their activities be ascribed to those of the government. Private security guards are neither government agents nor employees, and apart from a loose framework of statutory regulation, they are not subject to government control. Their work may overlap with the government's interest in preventing and investigating crime, but it cannot be said that the security guards were acting as delegates of the government carrying out its policies or programs. Even if one concedes that the protection of the public is a public purpose which is the responsibility of the state, this is not sufficient to qualify the functions of the security guards as governmental in nature....The security guards cannot either be considered state agents. The proper question is whether the security guards would have searched the contents of locker 135 but for the intervention of the police. On the facts here, it is clear that the security guards acted totally independently of the police in their initial search.

R. v. Buhay [2003] 1 S.C.R. 631 at para. 28–29.

- were the public police and the private security officer actively working together on the case in question,³²
- what was the purpose of the contact that the private security officer had with the person that was subsequently arrested?³³

Mere cooperation between the public police and private security officers will not lead to a conclusion that the latter are agents of the former.³⁴

Whether a private security officer is “performing a specific government function” has been a key question in determining whether a private security officer making a citizen’s arrest under section 494 of the Criminal Code or under trespass acts is subject to the Charter. According to the Alberta Court of Appeal, “the arrest of a citizen is a governmental function whether the person making the



arrest is a peace officer or a private citizen.”³⁵ For example, as a result of the Charter application, the evidence found during a search of an individual by a tavern employee was ruled inadmissible. However, the opposite conclusion has been reached by the appellate courts of British Columbia,³⁶ Nova Scotia³⁷ and Ontario.³⁸ The Supreme Court of Canada has yet to express an opinion regarding the applicability of the Charter in situations where a private security guard has made an arrest under section 494 of the Criminal Code.³⁹ On the other hand, courts have found that a brief investigative detention by a private security officer is not a specific government function.⁴⁰

4.4.2 Issues Arising from the Charter’s Limited Applicability

The above analysis raises the following observations:

- It is not always easy to determine, in a given case, if a private security officer is an agent of the state and, therefore, subject to the Charter.
- This determination is made *ex post facto* by the courts, usually in the context of a criminal trial where the issue is ultimately whether evidence obtained in violation of a Charter right should be ruled inadmissible because its admissibility would bring the administration of justice into disrepute.
- There is an unresolved issue as to whether a private security officer making a citizen’s arrest under section 494 of the Criminal Code or under trespass acts is subject to the Charter on the basis that he or she is fulfilling a state function.
- The scope of coercive and intrusive actions that a private security officer is authorized to take is more restricted than that of a public police officer. On the other hand, a private security officer is, within the type of actions he or she is authorized to take, much less likely to be subject to the Charter.
- A consequence of the divergent approach taken toward the public police and private security officers is that an act performed by a security officer without any request by the police



could lead to the conviction of a person, while the same act performed at the request of the police could lead to the exclusion of evidence.⁴¹ A person accused and/or convicted on the basis of evidence illegally obtained by a private security officer not acting for the state, could consider initiating a civil action against the latter. However, as some observers note, this is small comfort when measured against the stigma attached to criminal proceedings.⁴²

- There is not a straightforward legal dichotomy between public police and private security. Rather, there exists in law a continuum of legal status and authority, with public police at one end and private security at the other. For those in the middle of the continuum, there is some legal uncertainty as to the extent to which they would be considered as agents of the state or as performing state functions and, therefore, subject to Charter review.

4.5 Tort Law

Another tool used to question the propriety of policing activities, both public and private, is civil liability. The case of *Doe v. Metropolitan Toronto Board of Commissioners of Police* underscores the use of tort law in relation to policing.⁴³ The plaintiff, Jane Doe, was sexually assaulted in the midst of a police investigation into a series of sexual assaults in her Toronto neighbourhood. She launched a civil action against the Toronto police for failure to warn about the assaults. The court found that the police owed a duty to prevent crime and protect life and that they were negligent in these duties when they failed to warn Doe.⁴⁴

In addition to negligence, the court also found that the police breached Doe's Charter rights. Specifically, the police deprived Doe of her right to security and her right to equal protection and benefit of the law when they "adopted a policy not to warn her because of a stereotypical discriminatory belief that as a woman she and others like her would become hysterical and panic and scare off an attacker"⁴⁵



More commonly, however, tort actions against the public police are based on having acted improperly, as opposed to a failure to act. The most common causes of actions are false imprisonment, false arrest⁴⁶ or battery,⁴⁷ torts for which one does not need to prove damage. More recently, tort actions alleging negligent investigation and negligent training⁴⁸ or malicious prosecution have been successful.

There are also many reported tort cases against private security officers. Not surprisingly, they also deal mostly with false imprisonment, false arrest or battery.⁴⁹ For instance, in the case of *Chopra v. T. Eaton Co.*,⁵⁰ the claim was for false imprisonment. The court concluded that the security officers were justified in arresting the plaintiff and that, because the arrest was lawful, the imprisonment was also initially lawful. Nevertheless, the court found the defendant liable because the security officers, in failing to contact the police as soon as reasonably possible, rendered the imprisonment unlawful.⁵¹

4.6 Conclusion: Issues for Law Reform

The Supreme Court of Canada has noted that exclusion of private acts from the Charter was a deliberate choice.⁵² Carving out some exceptions, for instance for private security officers, would have proven very difficult, both legally and politically, and it was probably not contemplated at the time. However, we have seen that the trend is for areas frequented by Canadians to shift from public spaces to private and semi-public spaces, “so that the territories of public policing have shrunk in relation to private policing.”⁵³ In the process, there have been increasing similarities between the functions performed by private security officers and the public police.

Given the still-evolving networks of policing, legislators should consider whether the time is ripe to introduce, through legislation, Charter-like rules or obligations for private security officers, in criminal and civil law matters. Legislators could, for example, explicitly spell out the roles and responsibilities of private security guards when it comes to detention, arrest and right to counsel, with particular attention to how these powers differ from those of the



public police, as well as private citizens. Legislators could also consider norms or codes of conduct specifically crafted for the private security sector. In Quebec, private agents are already expected to respect the rights enshrined in the *Québec Charter of Human Rights and Freedoms*, which are similar to those in the *Canadian Charter of Rights and Freedoms*.⁵⁴ Likewise, legislators could ensure that the acceptance of private functions by public police does not diminish the Charter's applicability.

In the past, some courts have expressed concern as to the wisdom of Charter obligations for non-state actors.⁵⁵ However, to impose such a requirement on private security personnel is not difficult to contemplate.⁵⁶ As long as legislators continue to lump private security officers with all other non-state actors, and fail to account for the pluralization of policing, as they currently do, many courts will resist imposing obligations on private security officers that will also apply automatically to other actors whose work is not primarily related to order and security. Clearly, much work remains to clarify the legal environment in an increasingly complex policing environment.

¹ See, for example, P. Stenning, "Accountability for Private Security" in S. Einstein and M. Amir, eds., *Police Security and Democracy: Special Aspects of Democratic Policing* (Huntsville, TX: Office of International Criminal Justice, 2001) at 201–219.

² G. Rigakos and D. Greener, "Bubbles of Governance: Private Policing and the Law in Canada." (2000) 15 *Canadian Journal of Law and Society* at 145–85.

³ See *R. v. Asante-Mensah* [2003] 2 S.C.R. 3 para. 36.

⁴ Section 494 of the Criminal Code, R.S.C. 1985, c.C-46. In *R. v. Dean* [1991] 5 C.R. (4th) at 176 (Ont. Ct. Gen. Div.), the court explained that the obligation of the arrestor to deliver meant "...turning over the custody of the person and not to transport the person" to the nearest police station.

⁵ As the Supreme Court of Canada has noted "...private security officers arrest, detain and search individuals on a regular basis." *R. v. Buhay* [2003] 1 S.C.R. 631 at para. 31.



- 6 Section 41 of the Criminal Code, R.S.C. 1985, c. C-46.
- 7 See, for example, *Trespass to Premises Act*, R.S.A. 2000, c. T-7, s. 5 (1) (Alberta); *Petty Trespasses Act*, R.S.M. 1987, c. P50, s. 2 (Manitoba); *Petty Trespass Act*, R.S.N.L. 1990, c. P-11, s. 4 (Newfoundland and Labrador); *Trespass Act*, S.N.B. 1983, c. T-11.2, s. 7 (New Brunswick). In Ontario, for example, security personnel have the authority, without the need for a judicial warrant, to arrest persons on private property under three general conditions: on entry where entry is prohibited; failing to leave when directed; and engaging in prohibited activities (*Trespass to Property Act*, R.S.O., 1990, c. T. 21 s. 2 and s. 9). Similar conditions are evident in trespass legislation throughout North America.
- 8 See Rigakos and Greener, *supra* note 2 at 156–159.
- 9 See, for instance, s. 9(2) of the *Trespass to Property Act*, R.S.O., 1990, c. T.21, s. 9(2): “Where the person who makes the arrest under subsection (1) is not a police officer, he or she shall promptly call for the assistance of a police officer and give the person arrested into the custody of the police officer.”
- 10 *R. v. Asante-Mensah*, *supra* note 3. Recognizing that the power to use force was implicit to the act of arrest, the Court acknowledged the seriousness of its finding at para. 24: “...the implications of recognizing a power to use force in effecting an arrest under the *TPA* go far beyond the present context. Countryside ramblers come face to face with farmers. Teenagers occasionally upset mall owners who think adolescents ‘hanging out’ deter business. Drifters seek shelter in railway stations. Protesters march their placards onto the private property of a target business. The list of potential confrontations goes on.” In *Tucker v. Cadillac Fairview Corporation Ltd.* [2005] O.J. No. 2921, the Court of Appeal of Ontario listed 13 non-exhaustive factors for the court to consider in determining whether the physical force used by a security guard in making an arrest was justified.
- 11 British Columbia’s *Trespass Act* allows owners to question trespassers for their identity, but not to arrest them. Only police officers may undertake an arrest (*Trespass Act*, R.S.B.C. 1996, c. 462, ss. 8–10). Similarly, Nova Scotia and Prince Edward Island’s trespass statutes only authorize police officers to arrest trespassers (*Trespass to Property Act*, R.S.P.E.I. 1988, c. T-6, s. 5; *Protection of Property Act*, R.S.N.S. 1989, c. 363, s. 6).
- 12 Of course it is open to the legislator to confer coercive powers to non-state actors by including specific provisions to that effect in a law or granting power to do so by regulations. In *R. v. Asante-Mensah*, *supra* note 3 at para. 66, the Court noted, “Over 20 federal statutes authorize some form of ‘citizen’s arrest’...”



- ¹³ Section 1 of the Charter, however, allows for limited exceptions to this requirement when such exceptions can be “demonstrably justified in a free and democratic society.” *The Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act* 1982, being schedule B to the *Canada Act* 1982, (U.K.), 1982, c.11.
- ¹⁴ Section 24(2) of the Charter. See also L. Lemonde and G. Hébert-Tétrault, *Private Security and Fundamental Rights* (background paper prepared for the Law Commission of Canada, November 2005) at 4. The Supreme Court noted in *Buhay* that the discretion to exclude evidence also exists in common law. *R. v. Buhay*, supra note 5 at para. 40.
- ¹⁵ See J. Fontana, *The Law of Search and Seizure*, 6th Edition (LexisNexis Canada, 2005). In many cases, an individual will consent to the search as a condition of access to premises. For instance, persons wishing to attend a concert will willingly consent to security guards searching their bags. Submission to these procedures can be written into the terms of a contract and, thereby, made a condition of access to services, property or other facilities.
- ¹⁶ See, for example, *R. v. Collins* [1987] 1 S.C.R. 265. Other conditions include that the authorization must be based on the existence of reasonable and probable grounds, established under oath, to believe that an offence has been committed and that evidence may be found at the site of the search; and the search must be conducted in a manner that is not unreasonable. The courts have held on a number of occasions that a search was unreasonable either because it represented an unwarranted intrusion into a person’s privacy, or because it was conducted in an unreasonable manner.
- ¹⁷ In the case of *Buhay*, involving the search of a rented locker in a bus depot, the court mentioned that “A reasonable person would expect that his or her private belongings, when secured in a locker that he or she has paid money to rent, will be left alone, unless the content appeared to pose a threat to the security of the bus depot.” *R. v. Buhay*, supra note 5 at para. 21. See also para. 23 for a discussion of emergency or other exigent circumstances. See *R. v. M. (M.R.)* [1998] 3 S.C.R. 393 for search of a student by a principal in the school setting.
- ¹⁸ *R. v. Lerke* [1986] 24 C.C.C. (3d) 129 (Alta.C.A.): “...the powers of search of the private citizen making a valid arrest are the same as those of a police officer making a valid arrest....In both cases the search is needed for protection of the person making the arrest against later attack by the person arrested who might use a concealed weapon. It is also needed to obtain and preserve evidence related to the offence for which the arrest is being made....”



- 19 “The element of psychological compulsion, in the form of a reasonable perception of suspension of freedom of choice, is enough to make the restraint of liberty involuntary. Detention may be effected without the application or threat of application of physical restraint if the person concerned submits or acquiesces in the deprivation of liberty and reasonably believes that the choice to do otherwise does not exist.” *R. v. Therens* [1985] 1 S.C.R. 613 at 644.
- 20 Lemonde and Hébert-Tétrault, *supra* note 14 at 9.
- 21 *Ibid.* at 10. Also, a person suspected of a criminal offence can be detained, prior to arrest, for investigation purposes, in defined circumstances. *R. v. Dell* [2005] A.J. No. 867 (Alta. C.A.). Also see P. Ceyskens, *Legal Aspects of Policing*, vol. 1 (Saltspring Island, B.C.: Earls court Legal Press, Inc., 2002) at 3–119 and 3–120.
- 22 In *R. v. Asante-Mensah*, the court noted: “Arrest consists of the actual seizure or touching of a person’s body with a view to his [sic] detention. The mere pronouncing of words of arrest is not an arrest unless the person sought to be arrested submits to the process and goes with the arresting officer.” *R. v. Asante-Mensah*, *supra* note 3 at para. 42.
- 23 See *R. v. Asante-Mensah*, *supra* note 3 at para. 25.
- 24 See *R. v. Dean*, *supra* note 4, where the court commented on the differences between sections 494 and 495: “In my opinion Parliament has chosen to set out different requirements for citizens arresting without a warrant and for police officers doing the same. It is clear from s. 495 that police officers are more limited and it is expected that they will have definitive knowledge of categories of offences unlike the private citizen acting in a state of urgency or emergency.
- 25 Section 10 reads as follows: “Everyone has the right on arrest or detention a) to be informed promptly of the reasons therefore; b) to retain and instruct counsel without delay and to be informed of that right; and c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.” *Canadian Charter of Rights and Freedoms*, *supra* note 13.
- 26 *R. v. Bartle* [1994], 3 S.C.R.173 at 195.
- 27 *McKinney v. University of Guelph* [1990] 3 S.C.R. 229 at 261.
- 28 *Eldridge v. British Columbia (Attorney General)* [1997] 3 S.C.R. 624. at para. 36.
- 29 See *R. v. Buhay*, *supra* note 5 at para. 31.



- ³⁰ See *R. v. Buhay*, *supra* note 5 at para. 26; *R. v. Snow* [2005] N.J. No. 294 (Nfld. and Labrador S.C.T.D.) where the court found that there was no agreement between a company and the RCMP that, when a suspicious package was discovered, the RCMP must be alerted before any action is taken. See also *R. v. Wallis* [2004] B.C.J. No. 2951 (B.C. Prov. Ct.) (QL), and the critique of this decision by Lemonde and Hébert-Tétrault, *supra* note 14.
- ³¹ In *Buhay*, the initial search took place without the public police. *R. v. Buhay*, *supra* note 5 at para. 29; see also *R. v. Dell*, *supra* note 21, where a detention and search happened prior to the involvement of the public police.
- ³² See *R. v. M. (M.R.)*, *supra* note 17 at para.60.
- ³³ For instance in *R. v. M. (M.R.)*, *supra* note 17, where a student was charged with a drug offence following a search of his person by the school principal in the presence of a police officer, the court concluded that the primary purpose of the search was to enforce school discipline and not to assist in a criminal investigation. See also *R. v. Dell*, *supra* note 21, where the court concluded that the purpose of a search of a person in a bar was for reason of safety and not in pursuance of a criminal investigation. See also *R. v. Snow*, *supra* note 30.
- ³⁴ See *R. v. Buhay*, *supra* note 5 at para. 29; *R. v. M.(M.R.)*, *supra* note 17 at para. 28.
- ³⁵ See *R. v. Lerke*, *supra* note 18. See also *R. v. Dell*, *supra* note 21.
- ³⁶ See *R. v. J. (A.M.)*, (1999), 137 C.C.C. (3d) 213 (B.C.C.A). However, as noted by the Alberta Court of Queen’s Bench in the case of *R. v. Parsons*, (2001), 284 A.R. 345, the British Columbia Court of Appeal did not rely on any cases to determine the matter.
- ³⁷ *R. v. Skeir*, N.S.J. No. 384 (QL) (application for leave to appeal to the Supreme Court of Canada denied on November 17, 2005). The Court was of the view that the issue was settled by the decision of the Supreme Court of Canada in *R. v Buhay*, *supra* note 5. However, as pointed out by the counsel for the accused and in *R. v. Dell*, *supra* note 21 at para. 17, this decision does not deal directly with section 494, as it involves a search and not an arrest. At para. 31 of *Buhay*, the Supreme Court stated, “While there has been a growing use of private security in Canada and while private security officers arrest, detain and search individuals on a regular basis, ...the exclusion of private activity from the Charter was not a result of happenstance. It was a deliberate choice which must be respected.” (*McKinney v. University of Guelph*, [1990] 3 S.C.R. 229). However, this statement was not key to its decision in this case.



- ³⁸ See *R. v. N.S.*, [2004] O.J. No. 290 (Ont. C.A.). In its very brief judgment, the court stated that the issue was settled by the decision of the Supreme Court of Canada in *R. v. Buhay*, *supra* note 5. As noted in *R. v. Dell*, *supra* note 21 at para. 12, “...the specific government function relied on in *Lerke*, and recognized in *Buhay*, was not canvassed.”
- ³⁹ See *Lemonde and Hébert-Tétrault*, *supra* note 14 at 7.
- ⁴⁰ See *R. v. Dell*, *supra* note 21 at para. 24: “Arguably, citizen’s arrest involves not only a broad public purpose of maintaining the peace, but the delegation of a specific government function to private persons. The latter characteristic is absent from investigative detention, and, as such, detention by private persons cannot be considered a specific government function attracting Charter protection.”
- ⁴¹ As explained by *Lemonde and Hébert-Tétrault*, the Supreme Court of Canada in the *Buhay* case “upheld the trial judge’s decision to exclude the evidence obtained without a warrant by the police on the sole ground that the employee of the bus depot had opened the locker at the express request of the police....It is highly likely that the Supreme Court would have refused to apply the Charter if, instead of returning the drugs to the locker, the security guards had handed them directly to the police. Assuming that security guards do not usually act on the orders of the police services but rather tend to seek police involvement after conducting a search or a seizure, it is possible to conclude that, in these circumstances, the courts would not consider the unreasonable nature of the actions of the security guards in light of the *Charter*.” *Lemonde and Hébert-Tétrault*, *supra* note 14.
- ⁴² See *Lemonde and Hébert-Tétrault*, *supra* note 14 at 26.
- ⁴³ [1998] 39 O.R. 3d (487) (O.N. Ct. Gen. Div.)
- ⁴⁴ *Ibid.* p. 27. The police knew, or should have known, of the danger that existed to the women in Doe’s neighborhood and that they “failed utterly in their duty to protect these women and the plaintiff in particular from the serial rapist the police knew to be in their midst by failing to warn so that they may have had the opportunity to take steps to protect themselves.”
- ⁴⁵ *Ibid.* p. 32.
- ⁴⁶ “Detention and arrest are among the most common situations giving rise to civil actions against police officers.” P. Ceyskens, *Legal Aspects of Policing*, vol. 1 (Saltspring Island, B.C.: Earls court Legal Press Inc, 2002) at 3–101.



- ⁴⁷ Battery is the intentional causing of harm to another person. See the following cases, all tort actions against public police: *MacCormack v. Halifax (City) Police Department* [1999] N.S.J. No. 463 (S.C.); *Bainard v. Toronto Police Services Board* [2002] O.J. No. 2765; *Hill v. Hamilton-Wentworth Regional Police Services Board* [2003] O.J. No. 3487; *Collis v. Toronto (City) Police Services Board* [2004] O.J. No. 4037; *Webster v. Wasylyshen* [2005] A.J. No. 225 (Q.B.).
- ⁴⁸ Some courts have signalled, however, that a tort action alleging negligent investigation will not easily succeed given that “...the overriding public policy considerations, such as the effective functioning of the criminal justice system, granting immunity to police officers and other investigators from liability for negligent investigation should prevail in all but the most egregious circumstances.” *Wiche v. Ontario* [2001] O.J. No. 1850.
- ⁴⁹ In *Parlee (Guardian ad litem of) v. Port of Call Holdings Ltd* [2000] B.C.J. No. 698., the Court explained that the burden of proof to determine whether an arrest is lawful is the civil standard of “balance of probabilities” and not the criminal standard of “reasonable and probable” grounds. The court concluded that, in order for an arresting party to successfully defend an arrest, he or she must prove on a *balance of probabilities* that someone committed an indictable offence, the arresting party believed that the person he arrested had committed that offence and that the belief held by the arresting party was reasonable. For other actions based on alleged torts by private security officers, see the following: *Butt v. Dominion Stores Limited* [1978] N.J. No. 133; *Sharpe et al. v. Woolco Department Store* [1978] N.J. No. 134; *Kendall and Kendall v. Gambles Canada Ltd., Graham Bowering and Landru* [1981] S.J. No. 1280; *Psathas and Psathas v. F.W. Woolworth Company Limited, Tuff Control Systems Limited, Stanford and Collins* [1981] N.J. No. 114; *Maher v. K Mart Canada Ltd.* [1990] N.J. No. 146; *Sangha v. Home Depot of Canada Inc.* [2005] B.C.J. No. 1602 (2005 BCPC 3000); *Tucker v. Cadillac Fairview Corporation Ltd., supra* note 10.
- ⁵⁰ *Chopra v. T. Eaton Co.* [1999] A.J. No. 277 (Q.B.)
- ⁵¹ While there were no claims for breach of the Charter, the court nevertheless made the following comments: “It is clear that once a person is lawfully detained, that a person’s Charter rights must be respected. This is established in the line of authority found in *R. v. Lerke* (1986), 67 A.R. 390 (C.A.)...which outlines that when a private citizen makes an arrest they are performing a governmental function to which the Charter applies. This raises an interesting question: if one’s Charter rights are infringed during an otherwise lawful detention, does this vitiate the lawful imprisonment, or does it merely provide the person arrested with a remedy under the Charter? Given my findings, I do not need to answer this question in this case, and I leave it for a future court to



decide. I note, however, that the Defendants' conduct that Chopra alleges breached the Charter, such as the unauthorized taking of his wallet constituting a breach of his right to silence and an unlawful search, will be relevant aggravation factors that can be taken into account when I assess the appropriate damages." *Chopra v. T. Eaton Co.*, *supra* note 50.

- ⁵² See *R. v. Buhay*, *supra* note 5 at para. 31.
- ⁵³ G. Rigakos, *The New Parapolice: Risk Markets and Commodified Social Control* (Toronto: University of Toronto Press, 2000) at 3.
- ⁵⁴ As noted by Lemonde and Hébert-Tétrault, *supra* note 14 at 29. The Quebec Charter, contrary to the Canadian Charter, applies to private relationships. See *Chevrier v. VSC Investigation and Zellers*, Cour du Québec [2000] J.Q. No 5956, Gosselin J., where the Quebec Charter was applied in a case of detention by a private security guard. As noted by Lemonde and Hébert-Tétrault, *supra* note 14 at 29 while there is no provision in the Quebec Charter equivalent to section 24(2) of the Canadian Charter for the exclusion of evidence, section 2858 of the *Civil Code of Québec* confers this discretion to courts in civil matters.
- ⁵⁵ For instance, in *R. v. Shafie* [1989] 47 C.C.C.(3d) 27, the court wrote, "The requirement that advice about the right to counsel must be given by a school teacher to a pupil, by an employer to an employee or a parent to a child, to mention only a few relationships, is difficult to contemplate."
- ⁵⁶ Reported cases point to some practice within the private security industry to inform a person of his or her right to legal assistance. Not surprisingly, the reported cases deal with situations where the information was challenged as deficient. *R. v. Skeir*, *supra* note 37.



Chapter 5 Direct Regulation and Accountability of Policing

5.1 Introduction

The role of policing in a liberal democracy is often characterized as a social contract between citizens and the state, in which each individual surrenders certain liberties to the state for the greater good of public security. In turn, the state guarantees that such powers will be exercised equitably and impartially. We give police powers of arrest, to use force and to restrict our freedom in the name of social order and the public good. In exchange, the police must act within the clear parameters of their authority and the laws, which give them their authority, and must not encroach on our civil liberties and human rights.¹

The state-legislated accountability mechanisms that govern the public police form the system of checks and balances that enforces the social contract and guarantees accountability of the police function to the citizenry. In the private policing realm, the nature of the social contract between the private police and the public is less well-defined. It is tempting to argue that the relationship is entirely a private one in which the state has no role. But because of the blurring of distinctions between the state and non-state police, particularly in terms of how their activities may affect our fundamental freedoms, it is necessary to examine whether and to what extent there must be state-legislated accountability mechanisms to regulate or govern private policing.

In this chapter, we consider the regulation of both state and non-state policing institutions and personnel. We begin by outlining how governance and accountability of state police institutions and personnel have been conceived over the past several decades. We then discuss the regulation of non-state policing. We conclude by suggesting that gaps exist between the current realities of policing in Canada and existing governance and accountability mechanisms. Of particular interest is that current forms of regulation may not adequately cover all forms of policing.



5.2 Regulating Public Police

Direct regulation may usefully be thought about in terms of governance and accountability. Governance refers to the activities of institutions with authority to give directions to police. Direct regulation may be internal and include such functions as command and supervision structures, discipline codes, internal affairs departments or external regulatory mechanisms. Accountability here refers to obligations of individuals and agencies to provide information to various people or bodies. Some institutions, such as police services boards and commissions, serve both functions. Others, such as some police complaints commissions, ombudsmen and auditors, serve as accountability mechanisms, but may have no direct governing functions.²

5.2.1 Governance Bodies

There are two basic models of governance of public police services in Canada—one that applies to the federal and provincial policing services, and the other to regional and municipal services.³

The Royal Canadian Mounted Police (RCMP), the Ontario Provincial Police (OPP), the *Sûreté du Québec* (SQ) and the Royal Newfoundland Constabulary (RNC) are governed by the relevant federal or provincial ministry. For example, the Minister of Public Safety and Emergency Preparedness Canada (formerly the Solicitor General of Canada) is directly responsible for the governance of the RCMP,⁴ the Ontario Minister of Community Safety and Correctional Services for the OPP, the Public Security Minister of Quebec for the SQ and the Minister of Justice of Newfoundland for the RNC.

Many, but not all, municipal police services are governed by police commissions or police services boards, established by provincial legislation. In eight of the ten provinces—Ontario and Quebec being the exceptions—provincial governments negotiate and administer the contracts through which the federal RCMP provides provincial and municipal policing services within their provinces. In Ontario, the OPP negotiates with municipalities to provide municipal policing



services. In these situations, the effective governance of the police service largely remains with the service provider.⁵

One difference between the two basic models of police governance in Canada is the degree of civilian authority—a minister of the government as opposed to a board of elected and/or appointed citizens. Clearly both are civilians in the sense of not being sworn police officers, but a closer examination of the legislative mandates places the control and management of the national and provincial police services in the hands of the commissioner,⁶ who is a sworn officer subject to (lawful) ministerial direction, whereas that authority comes within the purview of the civilian boards for municipal or regional police services.⁷

5.2.2 Police Independence

Police independence is generally defined as freedom from partisan political influence. While there has been much academic and judicial debate as to the actual and theoretical nature and extent of police independence, and its precise implications for police governance, it is fair to say that it does not imply complete immunity for the police from the normal processes of democratic control.⁸ It is fairly settled that the police chief or commissioner has exclusive jurisdiction over quasi-judicial functions such as arrest, investigation and the laying of charges,⁹ but, “the distinction between ‘operational’ decisions and ‘policy’ decisions...gives rise to some difficulty in distinguishing between the two categories.”¹⁰

Since the mid-19th century, police governance institutions at the regional and municipal level (known originally as boards of commissioners of police or police commissions, and more recently in some jurisdictions as police services boards) were established with the specific intention of insulating the police from direct governance by elected municipal politicians, and guaranteeing a measure of political independence for police services in the performance of their duties.¹¹ The idea has been to further remove the police from direct political control by ensuring that these independent bodies, rather than elected politicians, provide policy direction and approve police budgets.



The distinction between policy and operational matters is captured in the following advice that was provided to members of municipal police boards in British Columbia, by the British Columbia Police Commission in 1980:

“The Chief Constable is accountable to the Board for the overall policy of the force and the level and quality of service provided to the community. It is important to stress, however, that day-to-day professional policing decisions are matters that are reserved to the force itself. The authority of the individual constable to investigate crime, to arrest suspects and to lay information before a justice of the peace comes from the common law and the Criminal Code and must not be interfered with by any political or administrative person or body. Overall policies, objectives and goals, however, are matters that properly belong to civilian authority, and police boards have the duty to see that the force operates within established policy and has the right to hold the Chief Constable accountable for these matters.”

British Columbia Police Commission, *B.C. Police Boards Handbook* (Vancouver: British Columbia Police Commission, 1980) at 13.

The role and composition of these governing authorities has varied greatly over the years, with some composed of a majority of appointed members and others composed of locally elected politicians. In most jurisdictions, the membership of such local police governing authorities includes at least one or more provincial appointees, to reflect provincial interests in policing beyond those of the local region or municipality.

Ontario, for example, initially required a magistrate, and now judges are specifically prohibited from serving on the boards.¹² Until 1997, a majority of board members were appointed by the province; thereafter, there was to be an equal number of members who were municipal councillors and provincial appointees, with an additional member being appointed by the municipality. This change followed



from municipalities arguing against the province having the majority of appointees when provincial funding had diminished to less than 5 percent of the policing budgets.

Police boards and commissions now constitute a relatively well-accepted basis for pursuing governance and political accountability of regional and municipal police in Canada.

5.2.3 Scope of Governance Authority

Public police governance bodies are mandated to ensure that the police services perform their proper role in a liberal democracy.¹³ They have the authority to establish the standards, budgets and human resources of the police service and oversee discipline. Governance bodies have the power to appoint the chief of police, deputies and, in some cases, the senior officers of the police service. While their legislated authority¹⁴ may be extensive, their actual effectiveness has been questioned. Over the years, the precise role and influence of police boards, and indeed their very existence, have been the subject of debate.¹⁵ For example, structurally, there are limitations to their effectiveness: the part-time and short-term nature of their appointments, the notion of police independence and professionalism, the rise of police unionism, the resurgence of provincial influence and the dependence on municipal funding.¹⁶

Provincial governments have responsibility for policing within their provinces, and they also play key roles in the governance of provincial, regional and municipal police services. In most cases, provincial regulation is carried out through a combination of different bodies, including a provincial government department or ministry, usually of the Attorney General, Solicitor General or Ministry of Justice, and some semi-autonomous bodies such as provincial police commissions, police/public complaints authorities and commissions or police arbitration commissions. The functions of these various governance bodies, and the distribution of functions between them, vary from one province to another, but generally include such things as:

- the promulgation of province-wide regulations and standards for police services;



- inspections of, and inquiries into, police services and local police governing authorities to ensure compliance with provincial standards and regulations;
- the approval of changes in the structure of policing services in the province such as amalgamations or the regionalization of police services;
- oversight and disposition of public complaints against the police;
- operating police training colleges and academies;
- appointing provincial representatives on local police governing bodies;
- maintaining provincial services for policing, such as forensic services and criminal intelligence services; and
- the resolution of disputes about local police budgets.

The respective roles of provincial and local police governing authorities, the distribution of governance responsibilities between them, and the relationships between them have varied considerably over the years—and, indeed, vary from one provincial jurisdiction to another. A significant factor accounting for such variation is the structure of state policing in each province: some provinces (such as Prince Edward Island and Manitoba) have few municipal or regional police services, while others (in particular Ontario and Quebec) have many.¹⁷ There is ongoing dialogue and technology transfer between such federal, provincial and local police governance bodies through annual conferences of provincial police commissions, the Canadian Association of Police Boards and the Canadian Association for Civilian Oversight of Law Enforcement.

5.3 External Accountability of Public Police Agencies

The police are held externally accountable through a variety of mechanisms. Broadly, these fall into five categories: (1) political accountability to governing authorities and beyond, through normal political processes;¹⁸ (2) legal accountability or accountability to the



law through the courts and judiciary;¹⁹ (3) accountability to administrative agencies such as complaints commissions, human rights commissions and tribunals, government departments, provincial police commissions, treasury boards, auditors general or ombudsmen; (4) direct public accountability through such mechanisms as freedom of information legislation; and, (5) special *ad hoc* accountability mechanisms such as royal commissions and other public inquiries.²⁰ See Appendix B for examples of public police oversight mechanisms across Canada.

Like other government organizations, police are accountable to different organizations for different aspects of their work. For instance, they are typically accountable to their governing authorities for all aspects of their operations. In addition they are accountable to an external body such as a complaints commission with respect to public complaints of misconduct against their officers; to a human rights commission or tribunal with respect to their compliance with human rights legislation; to some extent, to prosecutors for their preparation of cases for prosecution; and to criminal courts through rules concerning the admissibility of evidence and their compliance with requirements of the *Canadian Charter of Rights and Freedoms*, as well as any criminal law violations.

While the police are, therefore, subject to many accountability requirements—a fact often emphasized by police leaders—the effectiveness of these various accountability mechanisms in ensuring proper conduct and justifiable decision making on the part of police, or even adequate accounting, has been a subject of continuing controversy over the years. Many commentators and critics have questioned the effectiveness of legal and administrative accountability mechanisms: it is often difficult and expensive to hold police accountable through the civil and criminal law, and police complaint commissions are criticized for not being sufficiently independent of the police and/or not being given sufficient resources to effectively hold the police accountable.²¹ For instance, some observers suggest there has been insufficient attention paid to the essential reactive and proactive functions of civilian oversight. First, they point out that many of the key reactive functions—such as



being the primary receiver of complaints from both the public and from police regarding other police acting on “anonymous complaints,” overseeing the investigation of police conduct by other police, appealing disciplinary decisions made by police, and referring “serious matters to an independent tribunal” are often absent from existing oversight models. Second, civilian oversight could be more effective if it included proactive and preventative measures, such as the inclusion of “discrete corruption prevention” functions, as well as the ability to undertake “independent, police-related research.”²² Many have also argued that effective political accountability for police decisions and actions has been unduly limited through an over adherence to the doctrine of police independence.

5.4 Recent Trends in Police Governance and Accountability

5.4.1 Police Complaints Commissions

In recent decades, police leaders and federal, provincial and local police governing authorities across Canada have adopted the concept of police independence to promote a restrictive attitude towards political governance and accountability of the police. The Ontario *Police Services Act* attempts to address ongoing debates about police independence and police governance. Subsections 31(3) and (4) of the Act explicitly prohibit police services boards from giving directions to any members of their police services other than the chief of police, and from giving directions to the police chief “with respect to specific operational decisions or with respect to the day-to-day operation of the police force.”²³ These provisions, that so far are unique to Canada, were designed to give legislative expression to the concept of police independence that has emerged within police and police governance circles in Canada and elsewhere.²⁴

Since the mid-1970s when the Marin Commission²⁵—the first of what proved to be a series of public inquiries into public policing in Canada—explored discipline, complaint and grievance processes within the RCMP, police accountability has been discussed primarily in terms of legal and administrative accountability, and, in particular, with respect to the handling of allegations of misconduct.



For the most part, the emphasis has been on ensuring that police have acted within the law in doing their job. The main debate has been about how to promote this, especially with respect to their most fundamental means, namely the use of physical force. In short, the principal concern has been about police abuse of power. Associated with this focus has been an emphasis on complaints and complaint processes. The concern here has been with ensuring that people whose rights have been violated, because the police have not acted legally, can, and will, be heard and receive some form of remedy.

The net effect of these concerns on the accountability debate has been twofold. First, attention has been focused on how to develop complaint systems that permit citizens to report abuses and ensure that justice is served. Second, concern has been focused on ensuring that police discipline systems (both internal and through law) will punish those responsible for abuses of power. Complaint systems in place across Canada reflect these concerns and two features are central to their operation:

- their independence from the police; and
- their ability to undertake or order independent investigations limited to public interest.

The principal points of disagreement, both of which remain contentious today, have been about (a) whether and to what extent the police should continue to have the responsibility for investigating complaints against their own officers, and (b) whether an independent complaints authority should be able to intervene in police management directly. That is, should a complaints authority be able to go beyond making recommendations and insist that some form of action, in particular, disciplinary action, be taken?²⁶

Furthermore, recent events in British Columbia call into question whether it is possible for the complaint oversight authority to work with the police force in anything other than a strictly adjudicative manner. The British Columbia model, developed in accordance with the recommendations of Justice W. O'Ppal in his Commission of Inquiry into Policing in British Columbia,²⁷ suggests a complaints



process in which the Police Complaints Commissioner must assist departments in dealing with complaints.

5.4.2 The Special Investigations Unit in Ontario

Another response to concerns about the police investigating themselves has been the creation of the Special Investigations Unit (SIU) in Ontario. The SIU has several unique features. First, its mandate is limited to investigating “the circumstances of serious injuries and deaths that may have resulted from criminal offences committed by police officers.”²⁸ Second, unlike police complaint commissions, the SIU’s jurisdiction is not triggered by public complaints; the police are obliged to report to the SIU any incident that might fall within its jurisdiction. The Director of the SIU can instigate an investigation on his or her own initiative, or may be required to do so at the request of the Solicitor General or Attorney General. It is thus potentially a proactive rather than purely reactive investigative mandate. Third, the SIU investigators must be entirely independent of the police service whose officers’ conduct is the subject of their investigation. Fourth, because the SIU investigation is essentially a criminal investigation, the Director has the authority to lay criminal charges against police officers as a result of an SIU investigation and refer these to a Crown Attorney for prosecution. For the same reason, the Director reports the results of SIU investigations to the Attorney General of the province, rather than to the police service or police services board concerned. The *Police Services Act* requires police officers in the province to “co-operate fully” with members of the SIU in the conduct of their investigations.²⁹ So far, the Ontario SIU has no counterpart in any other province, largely because in most provinces the numbers of municipal and regional police services and officers are too small to justify the expense of such a body.³⁰

The independent investigative authority of the SIU provides an important oversight mechanism to ensure accountability to the public and the respect of the police. However, there was considerable tension between the police and the SIU, which led to the first review of that relationship by Mr. Justice George Adams³¹ in the specific areas of:



- timely notification of incidents to the SIU by the police;
- control of the incident scene, pending arrival and investigation by the SIU; and
- timely cooperation of police officers involved in the incidents being investigated.

As a result of the first Adams Report, a standard operating protocol was established, setting out the conduct and duties of police officers involved in SIU investigations.³² A second review was conducted in 2003, by Mr. Justice Adams, to determine whether the recommendations arising from the 1998 Adams Report were implemented. In finding that the recommendations were largely implemented, Mr. Justice Adams commented that “the results of the implemented recommendations have been to better institutionalize the SIU within a racially diverse Ontarian society....Having carried out this review function, I have come to see this report as more in the nature of an audit for all of the affected parties as well as for the Ministry of the Attorney General.”³³

5.4.3 Auditing of Police Services

More recently, a concern has developed in Canada with transparency as a way of both uncovering and preventing police abuse of power. This concern has led to the development of audits as an emerging feature of police accountability systems. This trend started with a series of comprehensive “value for money” audits of the RCMP by the Office of the Auditor General of Canada, as part of its general auditing cycle of federal government departments and agencies.³⁴ Audits of this kind have not been undertaken yet in many other Canadian jurisdictions, but in 1992, the Metropolitan Toronto Auditor, at the request of the Metropolitan Toronto Police Services Board, undertook an audit of the race relations policies and practices of the Metropolitan Toronto Police Service.³⁵ This focus on audits has moved the debate concerning police governance and accountability away from an almost exclusively reactive focus to a much more proactive one.



A system of independent audits whereby the Police Complaints Commissioner or some other independent agency would be able to initiate audits of police practices and policies, without having to wait for complaints to be filed and with ongoing access to police personnel, places, records and files, as well as to accused people, might unearth problems that would otherwise not come to light. For such purpose, the office of the Police Complaints Commissioner, or some other independent agency, must be empowered and equipped, on its own initiative, to examine records, places and witnesses.³⁶

5.4.4 From Individual Punishment to Organizational Remedy

The emergence of proactive audits has been associated with another development that seeks to move accountability in a proactive direction, namely, a concern with *remedial measures at the organizational level*, rather than simply with individually focused justice. The argument advanced is that, in responding to complaints or audits, it is not enough to identify and discipline individual wrongdoers within police organizations. It is also important to scrutinize and remedy the managerial deficiencies that lie behind police wrongdoing. This focus on organizational remedy found expression in programs to revamp policy, re-train managers and transform the occupational culture. The concern with institutional remedy shifted the focus of accountability from the past to the future—that is, not simply responding to past wrongs, but reducing the likelihood of future wrongdoing.³⁷

The work of police governing authorities has further emphasized the institutional remedial focus that has emerged within the context of legal and administrative accountability. This has occurred particularly as a result of the interest of these authorities in finding ways to assess police performance. This interest has led to the development of performance indicators that measure police effectiveness and efficiency, focusing attention on institutional rather than individual performance.³⁸



5.5 Summary: Public Police Governance and Accountability

From this brief overview, we can see what is considered the established and formal governance and accountability paradigm for public police in Canada. The central feature of this regulatory framework is that it operates through mechanisms that fit with established notions of representative government. Within this frame, police accountability means holding the police responsible for obeying the laws and policies promulgated by governments through legislation and through statutory police governing authorities. The legislative mandate and resources of federal, provincial and municipal governance bodies to ensure that democratic policing is comprehensive permits prospective, rather than reactive, decision making, and allows the governance body to determine budgets, policies, standards, executives and personnel of the police services. All aspects of the police operation may be governed except those quasi-judicial activities or day-to-day operations that remain within the purview of the police chief. Also central to this paradigm is the fact that it operates within a command and control mentality that relies on experts, and expert knowledge, to manage the processes of government.³⁹

5.6 Regulating Private Security

Historically, governance of the private security sector has been primarily a matter for its private sponsors. This is not to suggest that government has had no role in regulating parts of the contract security industry, but that this role is not as prominent as it has been with public police.

As the duties of private security become increasingly indistinguishable from those that were formerly the exclusive purview of the public police, there may be a need for democratic values to govern those activities. If both the public and the private police are said “to be serving the public good by providing safety and security in accordance with democratically established principles, then the examination must concentrate on whether and to what



degree all public or all private policing would ensure equality of access, impartiality and protection of civil rights and liberties.”⁴⁰

The responsibility of private security personnel is first to the employer, who is accountable under contract to the client. Together with some industry associations, they might be said to constitute the governance of private security. These are the agencies that would determine the budget (through a contract) and enforce standards. Provincial legislation governing the industry primarily regulates the private policing firms as a business, for example, by requiring licences and insurance. More recent legislation addresses standards by requiring training and, to some extent, protection for members of the public who will be subject to their activities.⁴¹ For example, most provinces regulate uniforms and vehicles that are used by private policing agencies to minimize the risk of public confusion between public police and private security personnel.

5.7 Governance and Regulation of Private Security

Government regulation of private contract policing agencies and their employees is undertaken at the provincial level. It consists of statutes that set up licensing and registration regimes. The first, most-apparent observation is the lack of uniformity in provincial requirements and standards. At the same time, however, there are some common features to be found.

The basic regulatory philosophy of Canadian governments, as well as governments in most other Western countries, has been to impose government regulation only on the contract security sector of private security—that is, on companies that provide policing services to clients, often including governments themselves, under contract, and their employees, leaving the in-house side of private security basically free from formal regulation. However, there is evidence that this approach is now beginning to change, as several provincial governments are proposing to include in-house security personnel in revised legislation.⁴²

Most regulatory schemes cover only security guard and private investigation businesses and their employees, although the types of



occupations that are included in these categories vary somewhat from province to province.⁴³ Alarm companies, armoured car companies, locksmiths, and security consultants and their employees are regulated in some provinces, but not in most. Typically, those who own and operate businesses that are subject to regulation are also required to be licensed, usually after quite extensive background checks. Their employees are required to be registered, although these requirements also vary from one province to another. In most jurisdictions, businesses are required to be bonded, and, in about half of the jurisdictions, they are also required to hold liability insurance.

Background checks on employees typically include criminal records checks (although a criminal record is not always a bar to registration or a licence), character references, proof of citizenship and evidence of a minimum period of residence in the country. In most jurisdictions, neither pre-hire nor post-hire training is a requirement for a licence or registration. Regulations cover details about permissible uniforms, weaponry,⁴⁴ and equipment and identification requirements. However, there is a need to harmonize, or recognize, through the respective legislation, weapons, training standards, uniforms and portability between firms and across provinces.

In some jurisdictions regulators are attached to government departments, while in others, the public police perform the regulatory role. In either case, however, the police undertake background checks. Given the increasing market competition between some public police and private security organizations, there is now some question about possible conflicts of interest, or appearances of a conflict, when the public police directly regulate private security agencies, which may be their competitors in the marketplace.⁴⁵

In most jurisdictions, licensees and registrants are not subject to routine inspections or audits by the regulator that responds only in the event of a complaint. Most of these regulatory regimes have been in place for less than 30 years and have been largely reactive, rather than proactive, in their regulatory approaches and practices.



5.7.1 Contract Compliance

Apart from such direct regulation, however, governments are often in a position to impose standards on the contract security industry as its clients, through the contracting process. In most cases, governments adopted the minimum standards developed by industry associations. Beginning in the late 1970s through to the early 1990s, for instance, the Underwriters Laboratory of Canada and the Canadian General Standards Board (CGSB) convened working groups of industry, clients, police and government representatives, as well as some academics, to develop minimum standards for contract security guards and security guard supervisors. These included education and training requirements that are not specified in provincial regulation schemes. In addition, procurement departments of some governments have developed their own minimum requirements for private security contracts. Since governments are major clients of the contract security industry in most jurisdictions, this form of regulation can have a significant influence on standards and practices within the industry.

5.7.2 Legislative Reform

Recently, several provinces have begun to review their legislation governing private security, increasing the likelihood of creating uniform standards and requirements and, in some cases, adding a focus on a mechanism to deal with conduct and complaints. The pressure for reform arose both from the increasing presence of private policing and high-profile incidents that led to public pressure for better standards and public accountability of the private police.

In 1992, following a much publicized incident in which a citizen was shot by an armoured car guard, the Government of British Columbia set-up an inquiry into policing in the province, headed by Mr. Justice Oppal. His extensive report (issued in 1994) included a detailed consideration of the adequacy of provincial regulation of private security and made recommendations for overhauling this legislation.⁴⁶ Legislation was proposed in 2002, to address the recommendations that would have provided for a form of state-supervised self-regulation of the private investigation and security



industry, including a complaint process.⁴⁷ The Bill proposed a self-regulatory council comprising industry members, which would appoint a complaints board of its members to “investigate a complaint in a manner it deems appropriate.” The council would have been obliged to maintain a compensation fund to address losses from misappropriation or complaints. There was no legislated requirement or statement of standards of conduct. In 2004, the B.C. government announced that it would not be going forward with the new legislation and would “continue to work with industry to improve the regulation of private investigators and security agencies within the present legislative framework.”⁴⁸

The Government of Quebec recently established a consultative committee to study and make recommendations with respect to the industry and the relevant provincial legislation. The Committee’s report in February 2000 led to changes reflected in Bill 88, the Private Security Act, introduced on December 16, 2004.

Bill 88 applies to specified private security activities, but excludes such activities when carried out by the public police—possibly the first legislative focus on policing activities, rather than on which agency is performing them. Standards for training and equipment are to be set by regulation. Of primary interest here is the creation of the *Bureau de la sécurité privée*, which is mandated to “protect the public”⁴⁹ and has the authority to issue and suspend licences, and to issue directives to licensees regarding their activities (presumably to ensure compliance with legislated standards and deal with public complaints). The Bureau has the authority to investigate the licensees following a complaint or on its own initiative.⁵⁰ It is composed of four provincial appointees and seven members appointed by the private security industry. The Bureau has both a reactive complaints-receiving role and a proactive standard-setting role. Its authority to require compliance is supported by its licensing power.⁵¹

In 2001, the Alberta Legislature established a committee to review policing in the province. Its report, released in July 2002, included a recommendation for the creation of “supplemental law enforcement” through the appointment of “Deputy Constables,” who would work under the direction of local police services and “supplement police by



providing peace officers to perform specific duties for which they are specially trained.”⁵² In addition, the Committee recommended, “the Solicitor General initiate a comprehensive review of the private security industry in order to modernize legislation and to determine how the industry can be integrated into the overall strategy for public safety.”⁵³ In May 2005, the Alberta Solicitor General appointed MLA Len Webber to review the private security industry, “in order to modernize the legislation and determine how the industry will be integrated into the overall strategy for public safety.”⁵⁴

A similar reconsideration of the regulatory regime with respect to private security has recently been initiated in Ontario.⁵⁵ A Discussion Paper on this subject, released by the Ministry of Public Safety and Security⁵⁶ in June 2003, focused on three key areas:

- Training—mandatory and consistent basic training for all security personnel;
- Licensing—mandatory licensing for all security personnel, including in-house security personnel, portable licences, more comprehensive background checks and the introduction of a licensing classification system; and
- Clarity in Public/Private Status—standards for uniforms, vehicles and equipment used by security personnel.⁵⁷

In response to consultations, in December 2004, the Ontario government introduced new legislation aimed at strengthening the “professional requirements for private investigators and security practitioners.” Key features of the proposed *Private Security and Investigative Services Act*⁵⁸ include:

- “mandatory licensing for all security personnel,” including private security working for “retailers, bars, hotels and the Corps of Commissionaires”;
- allowing “licence portability” within the private security industry;
- training standards; and



- “standards for uniforms, equipment and vehicles used by security personnel.”⁵⁹

An important impetus for this new legislation was the result of a coroner’s inquest into the death of Patrick Shand, who died following an altercation with private security guards and grocery store employees. The inquiry verdict made 22 recommendations regarding the “training, licensing and standards for security practitioners.”⁶⁰ Of particular concern for the inquiry report was the large number of unregulated and under-trained private security personnel in the province.

The Shand Inquest jury also recommended “an independent oversight body ... to deal with complaints by members of the public ... [and] access to this body should be readily available and widely publicized.”⁶¹ The new law provides for a government-appointed Registrar to issue licences and deal with complaints. The Minister may, by regulation, establish a code of conduct.⁶² A complaint relating to a breach of the code is referred by the Registrar to a facilitator. The Registrar may accept the facilitator’s recommendations to impose remedial instruction as a condition of the licence. The Registrar may appoint an investigator based on a complaint alleging a contravention of the Act or a condition of the licence or initiate an investigation, even if no complaint has been made.

5.8 Accountability

The market approach to accountability that now exists alongside the more conventional framework for government accountability has, not surprisingly, been the framework that has dominated accountability within the private security sector.⁶³ Here, what is a relatively recent phenomenon within public police has long been the norm for private security.

In addition to this accountability through market mechanisms, five other potential mechanisms of accountability for private security can be identified:



- First, for those elements of the sector that are subject to direct government regulation, there is at least some accountability to the regulators (particularly for conduct that is the subject of formal complaints), who have the authority to withdraw or suspend licences or registration in response to misconduct or non-compliance with regulatory requirements;
- Second, some potential for accountability arises through industry self-regulation and through organizations such as the Better Business Bureau and consumer associations, although it cannot be said that any of these currently have much authority;
- Third, there is the potential for accountability through the general criminal and civil law, as well as human rights legislation. While criminal prosecutions of private security personnel are not common in Canada, civil lawsuits that allege torts or breaches of contracts against private security companies, as well as against the employers of in-house security, are by no means uncommon;
- Fourth, in the case of private security in the workplace, mechanisms for collective bargaining, grievance processing and arbitration, and, more broadly, labour legislation concerning such matters as procedures for union certification, strikes and lockouts all provide vehicles through which private security activities can be held accountable to management, workers and unions;
- Fifth, the law of contract plays a significant accountability role when a client, be it a shopping mall, residential community centre or business association, specifies the services expected, both in terms of efficiency and effectiveness. An individual private security guard is an agent of the private security company that is in the contractual relationship. Even if the individual officer lacks proper training, he or she still binds his employer to the terms of the contract and is thus accountable.

As is the case for the public police, concerns have been expressed regarding the effectiveness of these various (potential) mechanisms



for accountability of private security. For example, the enforcement of government regulation is often severely under-resourced and, consequently, not as effective as might be hoped. In addition, it is sometimes hobbled by economic considerations, since withdrawing the licence of a large contract security provider can put hundreds of people out of work and leave clients unable to contract for the security services they need. Criminal prosecutions are rare, and civil lawsuits are often protracted and expensive, with uncertain outcomes. Finally, industry self-regulation tends to be weak and marginally effective as a mechanism for accountability.

5.9 Training

An important element of regulating private policing in Canada is the need for minimum training standards. As private security becomes more involved in public patrols, interaction with citizens, securing sensitive installations, and engaging in more frequent detentions and arrests, it becomes paramount that the industry be required to train their security personnel in an appropriate manner. As noted above, there are already trends toward this in Quebec and Ontario. Other jurisdictions, such as British Columbia, Newfoundland and Labrador and Saskatchewan have had minimum training standards in effect for some time.

It is difficult to characterize the nature of private security training given the lack of a widely accepted and coherent classification system that adequately organizes and recognizes the different relationships of occupations within the security industry. In Canada, the contrast between professional police and inadequately trained security guards has led to the polarization of classification, which fails to recognize the large area of occupations lying between these two extremes in the security industry.⁶⁴ It is important to illustrate the character of training practices at a basic level, and then subsequently consider training at a more specialized level for the security industry. The type of employer and provincial jurisdiction largely determine the level of training available for security guards.⁶⁵ Generally, however, there are four mechanisms that determine the form, specifically the level and content, that security training takes: the Canadian General Standards



Board (CGSB); provincial regulatory training requirements; security industry associations; and industry practices.

5.9.1 Influence of the Canadian General Standards Board

Conventions of committees of representatives by the CGSB determine, by consensus, voluntary standards for goods and services in Canada. Beginning in 1987,⁶⁶ with reforms in 1992⁶⁷ and 1997,⁶⁸ the CGSB established recommended standards for security guards and supervisors, with the last revision culminating in the inclusive and complete standard that currently remains in use.⁶⁹ Because the standards proposed by the CGSB act as procurement guidelines for the federal government, contract security companies that bid for contracts to guard federal facilities are required to provide guards who have completed training programs that are based on the guidelines proposed by the CGSB. As a result, several security providers, including the Canadian Corps of Commissionaires,⁷⁰ have adopted the recommendations provided in the CGSB standards.

Increasingly, provinces are adopting training programs consistent with the recommendations of the CGSB standard. Newfoundland and Labrador, British Columbia and Saskatchewan have already established regulatory requirements for the training of licensed security guards. British Columbia and Saskatchewan have both imposed demands that security guards complete programs based on the CGSB standard. Ontario, Quebec and Manitoba have explored foundations for compulsory training programs.

5.9.2 Provincial Regulatory Training Requirements

There are wide variations regarding training in provincial regulatory regimes.⁷¹ Some provinces have comprehensive minimum training standards spelled out by legislation, while others make no mention of training.

In December 2003, the Government of Quebec released the *White Paper: Private Security Partner in Internal Security*, in an attempt to address issues relating to reform of the private security industry. The paper noted that legislation only addressed the guarding and investigative sectors of private security, resulting in



fragmentation and potential disparity in terms of quality of service and necessary expertise requirements. As well, the legislation did not control or regulate supervision of the private security profession, lacked measures to control integrity within the industry and did not require training to ensure the professionalization of the industry.

In response, the government put forth several principles for reform. Chief among these was that the public police should remain responsible for traditional police roles, such as crime investigation and repression, while private security should be oriented towards crime and situation prevention. Furthermore, private security should be adequately trained to be professional and respectful of the law and fundamental individual rights. Finally, private security should demonstrate financial and moral integrity and should be recognized as a partner in the maintenance of public security.⁷²

5.9.3 Security Industry Associations

In the security industry, professional certification standards play an inconsequential role. However, two organizations are seemingly exerting influence for change in this regard. The Canadian Society for Industrial Security (CSIS) was established in 1954 and is poorly recognized mainly because its demographic scope is limited to southern Ontario. In 1999, CSIS developed a four-level certification program administered by the auxiliary Canadian Security Certification Authority (CSCA), which includes the levels of Certified Security Officer (CSO), Certified Security Supervisor (CSS), Certified Security Professional (CSP) and Accredited Security Professional (ASP). A CSO certification only guarantees that the minimum provincial requirements have been met. The other three types of certification deal with supervisory or management positions or security consulting interests. Within CSIS and the CSCA, the development of a more comprehensive hierarchy of certification surrounding the CSO designation has been proposed. The organizations also enable community colleges to advertise their training as being up to industry standards. Programs that fulfill necessary requirements for CSO, CSS or CSP certifications may be “pre-qualified”⁷³ by CSIS if the colleges apply for evaluation.⁷⁴



5.9.4 Industry Basic Training Practices

Regardless of whether or not mandatory training policies are in place in a given province, training is often provided by a number of different sources, including security employers and private institutions. Generally, three types of training are supplied by security employers: formal courses on the activities of security guards, orientation about the employer and its policies and mandate, and site-specific training about particular locations. The decision to provide pre-assignment training depends on a range of factors from cost effectiveness and size and scope of the company, to the ability of the company to hire individuals who have previously received training. If training is provided, it is usually based on programs developed by the employers themselves. However, with the popular emphasis on standardizing training, companies are increasingly shaping their courses to be in line with the CGSB guidelines. Whereas training by employers is likely to be kept current to industry developments, the quality of instruction is questionable with employer-supplied training. It is usually provided by lower-level staff such as supervisors or managers who are often not trained themselves.

Most security employers supply orientation and site-specific training. Orientation training could include a classroom course or simply being instructed to read an orientation manual. Site-specific training ranges from completing “shadows”⁷⁵ of other guards on shift, to being briefed by site supervisors. Other more intensive training may be provided to guards if a site demands attention to particularly important details such as first aid, CPR and automated external defibrillators.⁷⁶ In provinces that mandate training and those that do not, the private training industry is picking up momentum. Institutions, including “career training”⁷⁷ schools, martial arts schools that have begun to offer security training, and international distance education and online schools, all offer security education. For example, some American companies, such as the International Foundation for Protection Officers⁷⁸ and the Private Security Training Network,⁷⁹ offer Canadian-adapted programs through different distance-learning media.



In addition to basic security training, specialized training is offered to those with duties as guards or “protective services personnel.”⁸⁰ However, across provincial borders, there are different types of classifications of occupations and inconsistent use of terminology within the protective service industry. This “perceptual fragmentation”⁸¹ hinders the development of a comprehensive, standardized national training system. Nevertheless, there is a range of provincial and federal compulsory training provisions, industry practices, roles of public colleges and professional certification standards. See Appendix C for examples of specialized training.

5.10 Role and Identity Issues (Issues for Law Reform)

Overall, important issues emerge with respect to the regulation of private security in Canada. First, the lack of a standard framework from which the public may expect a minimum of competence from security personnel is a potential detriment to public safety and security, as the industry continues to expand and more specialized companies begin to take on vigorous law enforcement responsibilities. To leave such activities in the hands of individual security organizations is not in the public interest and lends itself to a race to the bottom by some security providers. In economic terms, training is an expense, an overhead cost that many security executives could be tempted to compromise to increase profit margins.

Second, the private security industry is seen as stereotypically “homogenous.”⁸² However, some observers differentiate six occupations within the field.⁸³ The multifarious nature of private policing will create challenges in terms of developing a comprehensive classification system that will enable agreement on appropriate training levels for each type of occupation. Yet this much-needed general consensus will be difficult to achieve because of outdated licensing categories and the stereotypes they reinforce.

Third, occupations within the security industry are not perceived as “professions” in the same sense as is public policing. However, given the increasingly specialized duties of security personnel,



professionalization of the industry is important, and training can facilitate this. Given the expense of training and the high rate of employee turnover in the industry, the benefit of professionalization must be considered against the practical realities.

Fourth, after being successfully sued for negligence, many companies are finding it financially beneficial in some circumstances to provide better and more relevant training to their employees. “Negligent security” and “negligent training”⁸⁴ are new sources of liability that are encouraging investment in training. Additionally, managers are becoming concerned with Occupational Health and Safety issues, new laws relating to the criminal liability of organizations⁸⁵ and employer criminal negligence provisions.⁸⁶ This relatively new direction towards risk management will persist and affect the nature of security training. Furthermore, recognized standards for training will be adopted because of the desires to comply with regulations and verify quality of service.

Finally, the recent public interest in reforming the regulation of the private policing industry stems from concern over accountability for misconduct in dealings with the general public. For example, private policing personnel are increasingly required by circumstance or company directives to engage in arrests, with the consequent authority to use force—a situation that threatens the civil liberties of Canadians. In public policing, such activities are subject to oversight mechanisms to ensure that they are carried out with due observance of Charter rights and professional standards. While the application of the Charter to private police is unsettled, the increasing public expectation is that private police be governed by the fundamental principles that underlie the Charter in their dealings with the public.

5.11 Conclusion

Direct regulation of policing in Canada has traditionally involved a sharp distinction between state and non-state policing providers, with very different regulatory regimes applying to each. In both cases, somewhat similar questions and concerns have been raised about the effectiveness of regulatory regimes in ensuring appropriate and lawful



conduct, integrity and compliance with the legal, constitutional and human rights of those who are the objects of policing.

In terms of the public police, confusion over the meaning, content and implications of the concept of police independence for police governance and accountability has provided an added dimension to such concerns. In general, although there are many ways that public police are held accountable, and initiatives have been introduced in recent years aimed at improving governance and accountability mechanisms, suggestions remain around introducing new methods to ensure policing is carried out in the public good. Public police accountability mechanisms are still evolving toward more proactive remedies that not only respond to individual actions, but also contemplate more organizational remedies to prevent future incidents from occurring.

Although governance and accountability of private security already exist to a certain extent, there is a lack of coherence and consistency across jurisdictions. Added to this is a lack of universal training standards for private security personnel. In this regard, there is a need to embrace greater professional standards within the private security sector to ensure that it carries out its responsibilities in ways that reflect the core values of policing in a democratic society. And while some jurisdictions are moving toward the regulation of private policing in a manner that more accurately reflects the continuum of policing and modern policing networks, there continues to be a patchwork of approaches.

Existing policing-related governance and accountability mechanisms still reflect the traditional public-private dichotomy. This framework clearly no longer applies to the reality of policing in Canada. This is particularly concerning given that, for example, public police and private security are increasingly carrying out similar functions, even working alongside or in cooperation with each other to provide policing services. The challenges and opportunities that are presented to legislators and policy makers, therefore, will be to consider governance and accountability mechanisms that deal with policing in all of its manifestations. Such measures will be vital for ensuring that policing in Canadian society, broadly defined, reflects the public good.



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- ¹ S. Eng, “Policing for the Public Good: A Commentary” in D. Cooley, ed., *Re-imagining Policing in Canada* (Toronto: University of Toronto Press, 2005) at 320.
 - ² For a more detailed discussion, see P. Stenning, “Accountability in the Ministry of the Solicitor General” in P. Stenning, ed., *Accountability for Criminal Justice: Selected Essays* (Toronto: University of Toronto Press, 1995), at 44–73, especially at 50–56.
 - ³ For a review of the historical evolution of these police governance arrangements in Canada, see P. Stenning, “The Role of Police Boards and Commissions as Institutions of Municipal Police Governance” in K. McCormick and L. Visano, *Understanding Policing* (Toronto: Canadian Scholars’ Press, 1992) at 433.
 - ⁴ When undertaking provincial or municipal policing under contract, however, the RCMP are subject to some governance by the relevant provincial minister with responsibility for policing.
 - ⁵ See for example, the *Police Services Act*, R.S.O. 1990, c. P.15, s.10(9), which gives the municipal board participation and advisory opportunities but no effective control as compared to the governance authority of a municipal police services board governing its own police service.
 - ⁶ For example, the *Royal Canadian Mounted Police Act*, R.S.C.1985, C. R–10, s.5.
 - ⁷ For example, section 31 of the Ontario *Police Services Act*, *supra* note 5.
 - ⁸ Stenning in McCormick and Visano, *supra* note 3 at 463.
 - ⁹ Canada: McDonald Commission, 1981 at 1013, as cited in Stenning, 1995. See *supra* note 2 at 56.
 - ¹⁰ P. Ceyssens, *Legal Aspects of Policing*, vol. 1 (Saltspring Island, B.C.: Earls court Legal Press, Inc., 2002) at 1–36. These debates are also reviewed in P. Stenning, “Someone to Watch over Me: Government Supervision of the RCMP” in W. Pue, ed., *Pepper in Our Eyes: The APEC Affair* (Vancouver: University of British Columbia Press, 2000) at 87–116.
 - ¹¹ There is some dispute as to the reality of this promise, but that has been the accepted premise. See Stenning in McCormick and Visano, *supra* note 3 at 444 et seq.



- 12 See section 27 of the *Ontario Police Services Act*, *supra* note 5, as amended by 1997, c. 8, s. 19(3). Persons who are ineligible to be members of a board (13): A judge, a justice of the peace, a police officer and a person who practises criminal law as a defence counsel may not be a member of a board.
- 13 These overarching values may be articulated in the enabling legislation. For example, Ontario's *Police Services Act*, *supra* note 5, states that police services be provided in accordance with several principles, such as: ensuring public safety and security; safeguarding fundamental rights; cooperation between police services and communities; respect for victims of crime; be sensitive to the pluralistic, multiracial and multicultural character of society; and ensure that police forces are representative of the communities they serve.
- 14 For example, see s. 31 of the Ontario *Police Services Act*, *supra* note 5, as amended.
- 15 For a review of the history of these boards and commissions and the controversies that have developed around them, see P. Stenning, *Police Boards and Commissions in Canada* (Toronto: Centre of Criminology, University of Toronto, 1981).
- 16 See Stenning in McCormick and Visano, *supra* note 3 at 455.
- 17 See Report of the Royal Commission on the Donald Marshall, Jr., Prosecution, vol. 2, *Public Policing in Nova Scotia* (Part 10: Conclusions and Recommendations) by R. Apostle and P. Stenning (Halifax: Government Printer, 1989).
- 18 For example, through "ministerial responsibility," whereby the responsible minister can be called to account for police activities and decisions in Parliament or a provincial legislature.
- 19 For example, through the criminal process or civil lawsuits. Accountability through coroners' inquests is probably most appropriately included in this category, although it might be included under administrative accountability, since coroners cannot do more than submit reports for consideration by the executive and the police.
- 20 For an elaboration of the different modes of legal, political, administrative and direct accountability, see Stenning 1995, *supra* note 2 at 46–48; and P. Stenning, *Trusting the Chief: Legal Aspects of the Status and Political Accountability of the Police in Canada* (S.J.D. Thesis, Faculty of Law, University of Toronto, 1983) [unpublished] at 51–57.



- ²¹ For a recent review of such issues worldwide, see A. Goldsmith and C. Lewis, eds., *Civilian Oversight of Policing: Governance, Democracy and Human Rights* (Oxford and Portland, OR: Hart Publishing, 2000).
- ²² C. Lewis, *Complaints Against the Police: The Politics of Reform* (Annandale: Hawkins, 1999).
- ²³ *Police Services Act*, *supra* note 5, s. 31(3) and (4).
- ²⁴ After a dozen years on the statute books, however, the implications of the second of these restrictions has still not been in any way determined through a court ruling, although it has occasionally been publicly invoked by police chiefs to fend off what they see as attempts at unacceptable political direction by, or inquiries from, their police services boards. See, for example, M. Grange, “Officers volunteered allegations against chief,” *Globe and Mail* (March 26, 1997) A9, and J. Lakey, “Board wants to know if Boothby broke rules,” *Globe and Mail* (August 23, 1997) at A6.
- ²⁵ Canada, *Report of the Commission of Inquiry Relating to Public Complaints, Internal Discipline and Grievance Procedure within the Royal Canadian Mounted Police* (Ottawa: Information Canada, 1976). (His Honour Judge Rene Marin, Chair.)
- ²⁶ See P. Stenning, “Evaluating Police Complaints Legislation: A Suggested Framework” in Goldsmith and Lewis, *supra* note 21 at 147–163.
- ²⁷ British Columbia, Commission of Inquiry into Policing in British Columbia, “The Recommendations” in *Closing the Gap: Policing and the Community—The Recommendations*, vol. 4 (British Columbia: Office of the Police Complaint Commissioner, 1994) (Commissioner: The Honourable Mr. Justice Wallace T. Oppal) (online): <<http://www.opcc.bc.ca/Reports/1994/ClosingTheGap.pdf>> (Date accessed: 11 January 2006).
- ²⁸ Subsection 113(5), Ontario *Police Services Act*, *supra* note 5. “Serious injury” has been interpreted by the Special Investigations Unit to include injuries requiring medical attention, including sexual assaults.
- ²⁹ See Ontario, Special Investigations Unit, *Annual Report, 2002–2003* (Mississauga, ON: Special Investigations Unit, 2003), and G. Adams, *Review Report on the Special Investigations Unit Reforms Prepared for the Attorney General of Ontario* (Toronto: Hon. George W. Adams, Q.C., 2003).



- ³⁰ In its July 2002 report, the MLA Policing Review Committee in Alberta considered the possibility of establishing a similar body in that province, but rejected it as “unnecessarily bureaucratic and expensive, especially in light of the relative paucity of incidents in Alberta,” and recommended instead a system of oversight of such investigations by a provincial “Chief Commissioner of Policing” and a “Serious Incident Review team made up of a retired judge, prosecutor, and retired police investigator, appointed by the Alberta Policing Secretariat.” See Recommendation 32 in Alberta, *Report of the MLA Policing Review Committee* (2002) (online):<http://www.solgen.gov.ab.ca/initiatives/policing_review_report/policing_review_report.htm>. (Date accessed: 5 December 2005). RCMP officers, when providing provincial and municipal policing services under contract, are not subject to provincial direct regulatory institutions such as public complaints tribunals: *Attorney General of Alberta v. Putnam and Cramer and Attorney General of Canada* [1981] 123 D.L.R. (3d) 257 (S.C.C.).
- ³¹ G.W. Adams, *Consultation Report of the Honourable George W. Adams, Q.C., to the Attorney General and Solicitor General Concerning Police Cooperation with the Special Investigations Unit* (14 May 1998).
- ³² Established by the coming into force on January 1, 1999, Ontario Regulation 673/98 (the Regulation) and Ontario Regulation 674/98. The former sets out the conduct and duties of police officers involved in SIU investigations. The latter amended the Code of Conduct in the *Police Services Act* by adding, as a category of neglect of duty, the failure to comply with a provision of Ontario Regulation 673/98. This made the failure to comply with the Regulation a misconduct offence under the *Police Services Act*. G.W. Adams, *Review Report on the Special Investigations Unit Reforms*, prepared for the Attorney General of Ontario by The Honourable George W. Adams, Q.C. (February 26, 2003).
- ³³ *Ibid.* at 75.
- ³⁴ See, for example, chapters 26 and 27 of the *Report of the Auditor General of Canada to the House of Commons for the Fiscal Year Ended 31 March 1990* (Ottawa: Minister of Supply and Services Canada, 1990). Also, see chapter 1 of the *Report of the Auditor General of Canada to the House of Commons, 2005* (Ottawa: Minister of Public Works and Government Services Canada, 2005).
- ³⁵ A. Andrews, *Review of Race Relations Practices of the Metropolitan Toronto Police Service* (Toronto: Metropolitan Toronto Audit Department, 1992).
- ³⁶ Canadian Civil Liberties Association (CCLA), *RE: Improving Police Accountability* (submission to The Honourable Allan Pilkey, Solicitor General of Ontario) (Toronto: February 24, 1992).



- ³⁷ See C. Shearing, *Post-Complaint Management: The Impact of Complaint Procedures on Police Discipline*, R.C.M.P. External Review Committee, Discussion Paper 4 (Ottawa: Minister of Supply and Services, 1990); and D. Bayley, “Getting Serious about Police Brutality” in P. Stenning, ed., *Accountability For Criminal Justice: Selected Essays* (Toronto: University of Toronto Press, 1995) at 93–109.
- ³⁸ The work of Her Majesty’s Inspector of Constabulary (HMIC) and the Audit Commission in the United Kingdom has been particularly influential in this respect. See S. Savage and S. Charman, “Managing Change” in F. Leishman, et al., eds., *Core Issues in Policing* (London: Longman, 1996) at 39–53.
- ³⁹ R. Ericson, “The Division of Expert Knowledge in Policing and Security” (1994) 45:2 *British Journal of Sociology* at 149–175; and G. Böhme and N. Stehr, eds., *The Knowledge Society: The Growing Impact of Scientific Knowledge on Social Relations* (Dordrecht: Reidel, 1986).
- ⁴⁰ See Eng, *supra* note 1 at 326.
- ⁴¹ See, for example, comments to this effect in the British Columbia Commission of Inquiry into Policing in British Columbia, *Closing the Gap: Policing and the Community—The Report*, vol. 2 (Vancouver: The Commission, 1994) (Commissioner: Mr. Justice Wallace T. Oppal) at F–18–19.
- ⁴² For example, Ontario’s *Private Security and Investigative Services Act* includes “in-house” security, including those working for “retailers, bars and hotels, and the Corps of Commissionaires....” Ontario Government Press Release, Ministry of Community Safety and Correctional Services. “McGuinty Government Introduces New Legislation to Make Ontarians Safer.” (9 December 2004).
- ⁴³ For instance, bodyguards and door security personnel are included as security guards in Ontario, but not in other provinces. Loss prevention officers are included as private investigators in some provinces, but not in others.
- ⁴⁴ Access to firearms, however, is regulated through the federal *Firearms Act and Firearms Regulations*, through provincial firearms registrars and the Federal Firearms Centre. Most contract security personnel are not permitted to carry firearms; armoured car personnel, however, are, as are some in-house bank security employees.



- ⁴⁵ See, for example, G. Rigakos, *The New Parapolice: Risk Markets and Commodified Social Control* (Toronto: University of Toronto Press, 2002) at 153–157.
- ⁴⁶ See *Closing the Gap*, *supra* note 41.
- ⁴⁷ British Columbia, Ministry of Public Safety and Solicitor General, News Release, “Proposed Legislation to Provide Self-Government for Private Investigators Discussion Paper” (24 October 2002).
- ⁴⁸ British Columbia, Ministry of Public Safety and Solicitor General, News Release, “Proposed Changes to the Program: Proposed Legislation is Not Anticipated to be Introduced in Spring 2004” (20 September 2004).
- ⁴⁹ Bill 88, Private Security Act, 1st sess., 37th Leg., Québec, 2004, s. 40.
- ⁵⁰ *Ibid.* s. 72.
- ⁵¹ L. Lemonde and G. Hébert-Tétrault, *Private Security and Fundamental Rights* (background paper prepared for the Law Commission of Canada, November 2005) at 20–21.
- ⁵² *Report of the MLA Policing Review Committee*, *supra* note 30 at 15–18. Suggested tasks for such Deputy Constables include enforcement of traffic violations on secondary roads, traffic control duties, swearing information, document service, handling exhibits such as drugs and firearms, and delivering crime prevention programs.
- ⁵³ *Ibid.* at 19.
- ⁵⁴ Government of Alberta, News Release, “Cenaiko Appoints MLA to Review Private Security Legislation” (5 May 2005) (online): <<http://www.gov.ab.ca/acn/200505/1797080BEB171-E576-4FF5-B0AFEE3DC9C36D9A.html>> (Date accessed: 13 January 2006).
- ⁵⁵ See Ontario, Ministry of Community Safety and Correctional Services, “Private Investigators and Security Guards” (online): <http://www.mpss.jus.gov.on.ca/english/police_serv/PISG/private_inv_sec.html>. (Date accessed: 5 December 2005).
- ⁵⁶ Recently renamed the Ministry of Community Safety and Correctional Services.



- ⁵⁷ *Private Investigators and Security Guards Act—Discussion Paper* (Toronto: Ministry of Public Safety and Security, June 2003).
- ⁵⁸ Bill 159, *Private Security and Investigative Services Act*, 2nd sess., 38th Parl., 2004 (assented to 15 December 2005, S.O. 2005, c-34).
- ⁵⁹ See Ministry of Community Safety and Correctional Services, News Release, “McGuinty Government Introduces New Legislation to Make Ontarians Safer” (9 December 2004) (online): http://ogov.newswire.ca/ontario/GPOE/2004/12/09/c3327.html?lmatch=&lang=_e.html (Date accessed: 1 March 2005).
- ⁶⁰ *Ibid.*
- ⁶¹ *Ibid.*
- ⁶² *Private Security and Investigative Services Act*, *supra* note 58, s. 53.
- ⁶³ For more detailed discussions of private security accountability, see P. Ceyskens, “Accountability, Oversight, and Human Rights in Policing and Private Security” in J. Richardson, ed., *Police and Private Security: What the Future Holds* (Ottawa: Canadian Association of Chiefs of Police, 2000) at 61–69.
- ⁶⁴ B. Robertson, *Private Security Training in Canada, 2004* (Ottawa: Law Commission of Canada, 2004) at 3–4.
- ⁶⁵ S. Hess and B. Robertson, *Private Security in Canada* (Toronto: Nelson Thompson) [in press].
- ⁶⁶ Canadian General Standards Board, *Security Guards*, CAN/CGSB 133.1–87 (Ottawa: 1987) [withdrawn].
- ⁶⁷ Canadian General Standards Board, *Security Guard Supervisors*, CAN/CGSB 133.2–92 (Ottawa: 1992) [withdrawn].
- ⁶⁸ Canadian General Standards Board, *Security Guards and Security Guard Supervisors*, CAN/CGSB 133.1–99 (Ottawa: Canadian General Standards Board, 1999).
- ⁶⁹ Of paramount importance is Appendix A to the Standard for Security Guards and Security Guard Supervisors, which sets out myriad topics to be addressed



in training programs, either web-based or classroom-based, as well as the proposed learning outcomes that students must acquire.

- 70 See “Commissionaires Canada” (online): <http://www.commissionaires.ca/index.html>. (Date accessed: 5 December 2005).
- 71 For a detailed discussion of training, see Robertson, *supra* note 64 at 10–18.
- 72 Québec, Ministry of Public Security, *White Paper: Private Security Partner in Internal Security* (Quebec: 2003) (online): http://www.msp.gouv.qc.ca/police/secprive/livreblanc/livre_blanc_secprive_12-03_en.pdf (Date accessed: 5 December 2005).
- 73 See Robertson, *supra* note 64 at 20.
- 74 Also established in 1954, the American Society for Industrial Security (ASIS) has 33 000 international members, with 1200 Canadian members. Its certification program is aimed exclusively at management and consulting professionals within the security industry, although the ASIS is developing guidelines for Private Security Officer Selection and Training. Considering the large influential Canadian membership in the ASIS, and the fact that many Canadian security companies are branches of American or other international companies, the guidelines that the ASIS develops will undoubtedly influence Canadian security training developments. See ASIS International (online): <http://www.asisonline.org> (Date accessed: 5 December 2005).
- 75 See Robertson, *supra* note 64 at 26.
- 76 *Ibid.*
- 77 *Ibid.* at 27.
- 78 See International Foundation for Protection Officers (online): <http://www.ifpo.org> (Date accessed: 5 December 2005).
- 79 See Trinity Workplace Learning, “Security Services” (online): <http://www.pwpl.com/security/default.asp> (Date accessed: 5 December 2005).
- 80 See Robertson, *supra* note 64 at 28.
- 81 *Ibid.*



- ⁸² *Ibid.* at 56.
- ⁸³ See Hess and Robertson, *supra* note 65.
- ⁸⁴ T. Anderson, “Laying Down the Law: A Review of Trends in Liability Lawsuits” (October 2002) 46:10 *Security Management* at 44–50.
- ⁸⁵ *An Act to Amend the Criminal Code (Criminal Liability of Organizations)*, S.C. 2003, c. 21. Section 22.1 of the Criminal Code outlines offences of negligence for organizations, while s. 22.2 outlines offences that require prosecution to prove fault (other than negligence).
- ⁸⁶ Criminal Code, RSC 1985, c. C–34, ss. 25, 27, 37, 41. The *Criminal Code of Canada* allows legal authority for anyone to use force to prevent assault (s. 37), to protect against trespass (s. 41), to prevent commission of certain types of offences (s. 27), and to make a citizen’s arrest of an individual witnessed committing a federal offence (s. 25).



Chapter 6 Re-imagining Policing in Canada

6.1 Introduction

This Report has examined the changing nature of policing, referring broadly to both public police and private security, and its implications for policing-related law and policy. The first part of the Report (chapters 2 and 3) noted the increasing difficulty of differentiating between the functions of the public police and private security. Today, it is more accurate to speak of networks or pluralization of policing than to rely solely on the traditional public police-private security dichotomy. The second part of the Report (chapters 4 and 5) examined what the changes in policing mean for policing-related law and policy. In addition to the difference in the application of the *Canadian Charter of Rights and Freedoms* to the public police and private security (see chapter 4), we identified the need for a governance and accountability mechanism that addresses the increasing proliferation of networks of policing (see chapter 5). We also noted the need for *professionalization*, particularly in terms of training standards, for the private security industry.

In this chapter, we offer recommendations to reduce the gaps in policing-related law and policy. Two precepts are essential in this regard. Changes are occurring to the landscape of policing in Canada that directly affect citizens, our democracy and our notions of equity and justice. These changes seem to be accelerating and becoming even more ubiquitous within a legislative and policy vacuum. It is part of the Law Commission of Canada's goal to assess the impact of these transformations in policing and suggest an agenda that promotes good public policy and governance.

A key element of this exercise is to recognize and respond to new forms of policing—to introduce a new policing paradigm, while at the same time respect core democratic values.¹ There are four key values that guide our work in this chapter: justice, equality,



accountability and efficiency. These concepts are fluid and, therefore, not easily defined, and at times they may work at cross-purposes, such as when notions of justice conflict with the desire for (economic) efficiency. However, they provide an important framework from which we can begin to evaluate the present and imagine the future of policing in Canada. Briefly, the four values can be expressed as follows:

- Justice is a central feature of democratic society and of democratic policing in particular. Doing justice means that individuals ought to be treated fairly and that decisions about their lives should not be based on narrow instrumental concerns, but rather appeal to greater universal freedoms. The principle of justice presupposes that policing is carried out in a manner that guarantees the peace of the community and the integrity and humanity of the individual;
- Equality means that all Canadians should receive policing services sufficient to feel safe and secure in their daily lives. It has been speculated that one of the reasons for the growth in private security services is the market rationalization of public police services. And while there is nothing inherently problematic with imagining new ways to provide security services to citizens, the notion of equality reminds us that these services must be available to everyone—that is, we do not want to create a two-tier policing context in which certain communities can purchase additional security, or some important services are not provided to some communities due to economic considerations;
- Accountability means that the actions of the police, as an institution and as individuals, are subject to review. Moreover, the principle of accountability means that there are formal channels that individuals can use to lodge complaints against the police. As private security companies expand into areas that were traditionally thought to be the exclusive domain of the public police, we must consider whether the interests of their clients supersede those of the communities they police.



Without effective external oversight and accountability mechanisms, the safety and democratic freedoms of the public may be compromised;

- Efficiency means that policing services must, to the greatest extent possible, be cost-effective. Perhaps a policing service could be designed that would attend to all the security needs of Canadians. However, this would most likely require a massive investment in human resources, technology and administration. But if the costs of providing policing services are disproportionate to the benefits received, then the service's overall efficiency is called into question. Certainly, striving for efficiency must be balanced by the values of justice, equality and accountability.

6.2 Redefining Policing

An important theme throughout this Report is that the functions of policing have fundamentally changed in recent decades. This still-evolving environment presents governments with new challenges in regulating state and non-state auspices and providers of policing. In part, this also requires changing a mindset and regulatory framework that traditionally have been premised on the idea that policing is essentially, or exclusively, a state function, to one that considers the provision of policing services in an increasingly plural domain.

In some cases, the concepts and principles themselves have become outdated. Two examples include the related dichotomies that still prevail in the law and policy between public and private, and between the state and the private sector. Institutions and practices have been changing in recent years and such dichotomous thinking no longer reflects reality. Between traditionally conceived private property (property that is both privately owned and is a private place) and public places (places that are not privately owned and that are accessible to citizens as a matter of right), a whole range of places and spaces have evolved in our society (especially in urban areas) that cannot be neatly fitted within either of these two categories. Yet, for the most part, both the law and, to a lesser extent, policy continue to



respond to these developments by employing the traditional public-private dichotomy. This is no longer adequate as a basis for deciding about how, and by whom, policing should best be done.

Similarly, decisions and public policy discussion about policing have tended to be based on outdated ideas about the distinct roles and responsibilities of the state and the private sector or citizens. A rigid demarcation between these roles and responsibilities in governance, including policing, however, has become increasingly difficult to justify and sustain in the face of “hybrid” arrangements and institutions of governance that cannot be neatly accommodated within thinking based on such a simple dichotomy.

An important starting point in the process of changing the ways in which we think about policing is to re-define what is meant by this important activity. If we are going to re-evaluate policing-related law and policy, then we need to introduce a definition that reflects the nature and scope of policing in all of its forms. For many who are accustomed to the traditional public police-private security divide, a new definition of policing represents a fundamental shift. However, it is an important starting point, a place from which we can move forward to address fundamental questions about how policing is governed and accountability realized—it is an important step in re-imagining policing. Consistent with the framework we provided at the outset of this Report, the Law Commission of Canada recommends that:

Recommendation 1

All levels of government (federal, provincial, territorial, Aboriginal and municipal) recognize policing as activities of any individual or organization legally empowered to maintain security or social order on behalf of a community or organization in accordance with a public or private contract, legislation, regulations or policies.

Despite the need to establish new ways of thinking about policing, we must recognize that existing state police institutions have long and proud traditions that deserve respect and that will not be easily, and should not be lightly, relinquished or adapted. Ways of thinking



about such important things do not change overnight, nor should they. Therefore, what is required to respond to the new realities of policing is not a revolution, but a thoughtful evolution that builds on the wisdom of past arrangements and traditions, while focusing on new challenges and needs that confront us now and will continue to in the foreseeable future.

6.3 Protecting Democratic Ideals

Recognizing and respecting key democratic values is important for devising policing-related law and policy. However, what is accepted as just, equal, efficient or accountable is typically resolved through processes of negotiation and compromise, something that requires a balancing of competing interests,² as well as open and inclusive dialogue. Policing, then, is inevitably political in this broad sense. It is about creating an environment that is most conducive to the development of democratic policing—that is to say, processes most likely to produce and promote policing that reflect our core democratic ideals. For the Law Commission of Canada, there are two essential ingredients that are necessary for ensuring that these values are maintained: a prominent role for the state and meaningful citizen participation.

6.3.1 State Responsibility

First, historically, the state has and should continue to have primary responsibility for ensuring that policing takes place in ways that protect core democratic values. This obligation applies to policing that seeks to promote public, common and private interests. This is part of the state's general regulatory responsibilities to ensure that whatever takes place within its jurisdiction is consistent with core values.³ Ensuring that all Canadian policing reflects these values, no matter by whom, where and with respect to whom it is undertaken, constitutes a major challenge in a situation in which policing is provided through a wide plurality of state and non-state actors and agencies. The role of state governments with respect to policing will need to continue to be as robust as ever. The pluralization of policing



does nothing to erode this. The state has an obligation to create an environment that encourages policing in the public good. The Law Commission of Canada therefore recommends that:

Recommendation 2

All levels of government continue to have primary responsibility for the regulation of all policing and to ensure that policing is conducted in a manner consistent with core democratic values.

6.3.2 Citizen Awareness

The importance of the state in the regulation of policing in contemporary society does not suggest that this concept is unproblematic, or that the nature and scope of policing should be decided in a top-down manner. The effectiveness and inclusiveness of state-sponsored public police accountability mechanisms have been the subject of considerable and ongoing discussion and debate. Of particular importance are the challenges associated with ensuring adequate public input into complaints mechanisms, as well as policing policy decisions. The ability to improve upon the public's understanding of and contribution to policing in society is, therefore, of paramount importance in a liberal democracy.

Informed public discourse represents an essential element of democratic policing that reflects the public good. This becomes even more important given the fundamental changes that have occurred in policing in recent years, a transformation that has unfolded with relatively little citizen and community engagement and input. For example, the increasing presence of public police in private scenarios—such as the use of public police at private sporting events, or the hiring of public police by private interests to enforce particular sections of the Criminal Code—has occurred largely without much public debate. Likewise, the increasing use of private security in the public realm—such as the hiring of private security in public spaces—has unfolded with little public consultation. To what extent are Canadians willing to accept these fundamental changes to policing in Canada? Who decides where and when public police can



be hired for private interests, or private police for public interests? Who decides that these changes adequately reflect core democratic values?

What constitutes policing in the public good cannot be determined in a vacuum. One of Sir Robert Peel’s key principles is “to recognize always that the power of the police to fulfil their functions and duties is dependent on public approval of their existence, actions and behaviour, and on their ability to secure and maintain public respect.”⁴ And if one of the founding principles of policing is that the community and police are “co-founders of security,”⁵ then including those who are the consumers of security services in the decision-making process is an integral part of democratic policing. This becomes increasingly important when considering that certain segments of the population, particularly some marginalized groups, are the most likely to be “over-policed.”⁶

Therefore, the public must understand the changing nature of policing, so that they can engage in its future organization. This includes determining the circumstances within which the blurring of the lines between public police and private security should continue to occur—the public must understand, discuss and debate the increasing presence of private, profit-making ventures in the public realm, as well as the increasing use of a business model to direct public policing activities. An informed Canadian public is thus critical to the future of security and policing provision in this country. The Law Commission of Canada therefore recommends that:

Recommendation 3

All levels of government, in collaboration with policing providers, policing authorities and educational institutions, undertake programs of public education about policing services within their jurisdictions and the opportunities for public input into policing policy. Such programs should include information about the governance and accountability of public and private police and their responsibilities within a democratic policing context.



6.4 The Legal Context of Policing in Canada

One of our concerns in this Report is how policing law and policy might best be developed to meet the challenges that arise from the changing nature of policing in contemporary society. There exists in Canada an elaborate legal framework that can be drawn upon and reconfigured in responding to these new challenges. Although this framework is, theoretically, founded on principles of democratic government, the way in which they have been and are applied has become increasingly outdated. What is required, then, is a shift in law and policy that takes into account the burgeoning networks of policing, while at the same time respecting the democratic values and legal principles that have provided the historical backdrop of policing in Canada.

For the most part, the law currently treats public police services and the private security sector as entirely distinct and largely unrelated entities, rather than as alternative providers of often very similar public goods. One of the practical implications of this view of policing in the law has been that uncertainty has arisen as to where the state's policing authority ends and that of non-state policing begins. This is an issue that has been greatly complicated with the emergence of mass private property and other forms of communal spaces. Courts and inquiries have had to wrestle with the question of the appropriateness of the application of non-state policing powers, such as those under trespass laws, on such "publicly used private property."⁷ Only relatively recently have the courts (while not going so far as to reconfigure the public-private distinction so as to recognize common spaces, goods and interests) begun to recognize that these developments in the nature of property call for a more nuanced approach to the legal distinction between private citizens on one hand and the public on the other. This new approach must take into account that not all privately owned property is alike and that the character of some property (as "public" or "private", in terms of access to it by different "publics") can be quite ambiguous.⁸

The challenge is to reframe the legal context in ways that will respond helpfully and progressively to these developments. The



principles of policing, including respect for core democratic values and civic engagement, provide the pillars upon which we believe a revised legal framework for regulating policing should be built. In addition, consistent with our definition of policing, we can no longer view policing as simply the business of state police officers. Rather, it must be understood more broadly as an activity designed to establish and then maintain a defined order within a community. This must be at the heart of this new legal and policy architecture. Just what a defined order should be and how it is provided is something that is, and should be, determined through a variety of entities that include, but are not limited to, the state.

Several provincial jurisdictions have begun to recognize the changing nature of policing in Canada and have taken steps to address the legal and policy gaps that have emerged. However, much work remains to ensure that all forms of policing across Canada aspire to similar democratic principles and that they are developed with an eye to the emergence of pluralized policing.

Within this ever changing context of policing, it will be critical that policing-related laws be kept under continuous review to ensure that they provide an environment that best supports the types of policing that Canadians want and need and should be entitled to in the future. For instance, it has been pointed out by some commentators that conventional legal protections against invasions of privacy and civil rights have been based on the assumption that the principal threat to these derives from the state; as the private security sector grows, this is less and less the case.⁹ We also note that there is no federal legislation that makes specific reference to the roles and responsibilities of private security.

The legal environment within which policing (operating in an increasingly pluralized and networked environment) is undertaken must be carefully reviewed to ensure that current realities are taken into account in protecting fundamental Canadian values.



The Law Commission of Canada therefore recommends that:

Recommendation 4

All levels of government review their laws, regulations and policies to assess their impact for all forms of policing, whether state or non-state, to ensure that they continue to support and foster the best possible arrangements for policing in their communities.

Given the proliferation of private security officers operating in the public and semi-public realm, there is a need to consider legislation that specifically outlines their authority and how it must be exercised when dealing with the public. It is clear from this Report that private security officers are increasingly involved in a wide range of policing-related activities, and that they exercise powers of arrest and detention that may fall beyond Charter scrutiny. This is not to suggest that private security should necessarily have the same level of authority and obligation as public police, but that there is a need to address, through legislation, the limitations of the existing legal framework. The Law Commission of Canada therefore recommends that:

Recommendation 5

All levels of government collaborate to develop legislation that introduces Charter-like rules for private security officers in respect of criminal and civil matters.

6.5 Policing Governance and Accountability

For the Law Commission of Canada, there is a need to consider governance and accountability mechanisms that are commensurate with plural forms of policing—that is, that policing in all of its forms is properly regulated and held to account. As the regulation that concerns us here is state regulation, what will be required is a regulatory framework that is compatible with, and promotes, core democratic values. What this means is that governments should use the regulatory tools at their disposal to ensure policing that promotes the full range of desirable private, common and public interests. At the same time, they must ensure that this is done in ways that



recognize and respect the broad public interest that the state has a special responsibility to protect and promote.

The objective of such a regulatory framework must be to ensure that, while policing entities are enabled to promote these valued outcomes, they do so in ways that are consistent with public order and the public interest more generally. While it is, again, both possible and desirable to rely upon well-established values and principles in responding to this challenge, this issue is not one that has so far received much focused regulatory attention. Today, with so much of policing being for the purpose of promoting common goods and interests, this issue must be explicitly and deliberately addressed in law and policy.

In responding to these challenges, the nature and mandate of governing authorities for policing, and mechanisms for effective accountability, will need to be reconsidered. We have noted the limitations inherent in the institutions that we currently have in place for such purposes. But we have also recognized that, while far from perfect, they have been important in highlighting the need for ensuring some limitations on political direction with respect to certain aspects of operational management. The current situation with respect to policing, however, will require a similar mechanism for oversight (and coordination) not just of state policing agencies but for all providers mobilized to realize state policing objectives.

One set of institutions that has a reasonably well-established track record as a monitoring device over public police services in Canada, comprises mechanisms for receiving and responding to citizen complaints about policing and for proactively auditing policing activities. To date, the major bodies to undertake these activities have been police complaints and ombudsman authorities, although the Special Investigation Unit in Ontario, and federal, provincial and municipal auditors have also begun to play an important role. While there are bodies that can and do respond to complaints concerning private security agencies, they have typically had a much more limited scope and been much less well-resourced. What will be required is an extension of the experience with public police complaint and audit bodies to policing generally.



The principal regulatory challenge here will be to devise ways of appropriately applying this experience to the regulation of those providers of policing services who are employed to undertake policing in the pursuit of more limited collective objectives, as well as of broader public interests, especially on mass private property that the public generally is invited to frequent. Here, reform efforts can benefit from experience in other areas of law and policy (such as anti-discrimination laws) in which the state intervenes to constrain decisions and activities of private property owners in the interest of upholding public objectives. Deciding what kinds of regulatory intervention are appropriate in the case of non-state policing of collective interests in the growing numbers of limited common interest communal spaces, such as shopping malls, housing and condominium estates, recreational facilities and gated communities, will require very careful consideration and wide-ranging consultation.

In the same way as state governments now mobilize a variety of state and non-state resources to provide for policing, so do private entities or what we might now refer to, in light of our comments on communal interests, as forms of governance that combine elements of both the public and private realms. While the major sources of policing resources for these governments are communal and private, they also rely upon, and seek to mobilize, state resources. However, private actors have always drawn upon the police to help protect persons and property. What is novel is the context of new forms of governing within which this is occurring: the fact that state agents and agencies are increasingly being employed under contract to promote communal as well as public interests. An example would be when police are hired at a sporting event to help ensure that people do not break the law, but also that they conform with the rules of conduct laid down by the sponsors of the event. What is particularly challenging here, from a regulatory point of view, is the difficulty in teasing apart public and communal objectives and interests, and determining which should be given priority in policing.

One of the principal concerns of any governance and regulation of policing will be to ensure that policing does not become counter-



productive, promoting the very fears that it is designed to calm and undermining the very values it is supposed to foster. There has been a concern expressed in some quarters that the burgeoning market for policing services reflects a growing public insecurity, which both state and non-state policing providers feed through their efforts to establish their indispensability for a safe and secure life, in order to maintain or increase their share of this market.¹⁰ Furthermore, there has been a concern that demands for security are increasingly being met at the expense of individual privacy.¹¹ Both state and non-state policing representatives reject such claims, arguing that the policing services they provide are in response to genuine public demands for security, rather than artificially creating them. In Canada, such concerns appear to have grown rather than abated in the wake of the tragic events of September 11, 2001.¹²

In looking to how core values should be realized within a world of plural policing, this Report has recognized and confirmed the requirement that governments have a responsibility for ensuring that tax resources are used to maintain public order efficiently and effectively. The distribution of responsibility for doing this across all levels of state government in Canada has provided, and continues to provide, a sound basis for regulating the activities of state police organizations, as well as for the limited regulation of some private security agencies. What must now be factored into this regulatory architecture is the entire plurality of policing auspices and providers.

6.5.1 Policing Boards

Since policing can no longer be considered simply to occur within a strict public-private dichotomy, there is a need to consider governance mechanisms that address policing in all of its manifestations. There is a long history of governance and accountability mechanisms in the context of public policing, although there are concerns with the effectiveness of regulatory regimes in ensuring appropriate and lawful conduct, integrity and compliance with the human rights of those who are the objects of policing. Similar issues apply to the context of private policing. Although some accountability mechanisms currently exist in the private realm, much work remains to realize greater



professional standards. Added to this is the current reality of policing, which makes it increasingly difficult to differentiate between the activities of public police and private security. We are, therefore, presented with a context in which improvements in governance and accountability of public police and private security are ongoing and necessary, as well as the fact that no existing framework addresses the reality that policing can no longer be seen through a simple public-private dichotomy.

Currently, there exists a range of mechanisms to govern the public police. It may be possible to build upon or extend the authority of these bodies to include some oversight of private security. The rationale for expanding such boards is based primarily on our analysis of policing. First, there is a burgeoning private security industry that is increasingly undertaking tertiary policing functions in large outdoor and indoor public access spaces. Second, there is also an increased presence of private security in “communal spaces.” In both instances there are spill-over effects in that the range of policing services that are provided combines both private and public interests. In addition, there is a complex range of formal and informal cooperation between public police and private security. Coupled with a growing appetite for a visible policing presence, the introduction of a governance board that oversees policing policy seems increasingly important.

The Law Commission of Canada believes that such boards would not only have the power to appoint, dismiss and provide oversight to chiefs of police and senior public police officers, they would also act as a hub for fostering cooperation between the public police and other agencies involved in public safety and security, including private security. The intent would be to create partnerships with other governmental and non-governmental agencies that have important roles in maintaining public peace and security under one general umbrella.

Suggestions of creating boards of this variety are certainly not without precedent. For example, in the United Kingdom, a prominent chief constable recommended that the state implement a



public police-led regulatory framework that would oversee both state and non-state policing agencies. In addition, the Independent Commission on Policing in Northern Ireland recommended the introduction of an independent commission to regulate a “range of state and non-state agencies.”¹³ What is important is that these types of recommendations have emerged within the growing recognition that policing services are no longer solely provided by the state—that policing has become pluralized—and that a new approach is necessary to maintain policing as a democratic activity.

In order for such boards to undertake their regulatory responsibilities effectively, the Law Commission of Canada believes that they must include two key elements. First, they must be inclusive of the communities that they serve and, second, be selected through an open and transparent process.¹⁴ What “community” means will vary depending on the context, but at a minimum, the goal should be to create boards that are diverse in terms of the interests and groups that are represented—that they are “representative of the communities” they serve.¹⁵ This will ensure that they are well-equipped to engage their respective communities in important discussion and debate about the nature and scope of policing. In addition, elected officials (those who are responsible for policing services in their respective jurisdictions) should assume responsibility for appointing public security board members through a process that is open to public scrutiny. Citizens should be fully aware of the basis upon which individuals are selected, and appointments should be term-limited.

The Law Commission of Canada therefore recommends that:

Recommendation 6

Public Security Boards or analogous institutions be introduced through legislation to govern public police and set policing policy. These boards would be established at regional or municipal levels and consist of civilians broadly representative of the public to be policed.



6.5.2 Policing Board Budgets

A feature of this proposal is that Public Security Boards (PSBs) could have *policing* budgets that would be allocated to both state and other policing providers. Public policing is becoming increasingly expensive, particularly in relation to providing increased safety and security in public spaces. PSBs would be empowered to use budgeted monies to fund public police, but also to potentially support alternative forms of policing (for example, for the increased presence of uniformed security providers or contracted investigative specialists). At present, considerable private resources are poured into the provision of safety and security, with little public input or opportunity to shape the direction and priorities of this burgeoning industry. Each PSB would set and oversee general policing policy. Recourse to alternative policing services would be conditional on meeting specific standards, priorities and policies that reflect the public interest.

This will require a shift in approach from thinking of police funding solely in terms of budgets for public police forces towards thinking of more broadly based policing budgets, within which both state and non-state providers of public policing can be funded. However, we would argue that this transformation would not only encourage effective and efficient state-directed policing, but would also ensure that the use of state police as providers of policing services is as cost-effective as possible.

PSBs would be responsible for allocating their policing budgets in a way that ensures the best possible policing for their communities provided by the best combination of policing providers, within the constraints of such budgets. This form of funding structure would enable governments to foster the best ways of mobilizing a wide range of state and non-state resources to achieve state-defined policing objectives.

The introduction of policing budgets will stimulate coherence and consistency in terms of ensuring equity of policing services in a particular jurisdiction. PSBs, through consultation with community members, will be in a good position to make decisions about the nature and scope of policing services in their respective jurisdictions. In addition, PSBs will provide safeguards against the emergence of



two-tier policing in that they will make decisions in determining the best use of state resources for determining safety and security needs in the community. Important decisions such as these will no longer be made on an *ad hoc* basis.

PSBs, in controlling the allocation of policing budgets, will also directly address the broader question *concerning the extent to which networks of policing should occur*. It is in this instance that the desire or need for efficiency must be balanced against the public's desire for realizing other core democratic values (for example, justice, equality, accountability), as well as the circumstances under which they are prepared to accept the increasing pluralization of policing as a legitimate public policy decision. It is in the balancing of these different issues that the essence of policing for the public good can be found.

The Law Commission of Canada therefore recommends that:

Recommendation 7

Public Security Boards or analogous institutions should have the ability to allocate their budget to providers of policing, whether public or private, according to their demonstrated capacity and suitability for contributing to the best overall policing of communities.

6.5.3 Accountability

In order to undertake their regulatory responsibilities effectively, PSBs will require extensive powers of scrutiny, to be used both proactively (through audit arrangements) and reactively, in response to complaints. Although proactive elements are still emerging within existing public police governance and accountability mechanisms, the Law Commission of Canada believes they should be a core function of PSBs. Effective regulation of policing across agencies is dependent on satisfactory scrutiny of policing auspices and their agents. PSBs may, depending on the particular characteristics of their jurisdiction, decide to develop their own in-house capacity or delegate the exercise of such scrutiny to others. PSBs would thus act in the public interest to ensure that high-quality policing (whether under public or private



auspices), relative to their jurisdictional authority, be delivered in keeping with general policies and priorities for community safety.

PSBs would, therefore, assume responsibility for overseeing and fostering coordination of all policing within their respective jurisdictions. It would not be necessary for a PSB to fund an agency or organization in order to set policing policies. While it is important that PSBs do not infringe on the right of others to enter into contracts, there is nothing prohibiting such a board from requiring registration of all security organizations that come into regular contact with the public or engage in activities that might impact the public interest, such as patrolling the public streets. PSBs may also choose to set policies with regard to both informal and formal exchanges of services and information between the public police and private security. The Law Commission of Canada therefore recommends that:

Recommendation 8

Public Security Boards or analogous institutions should be granted sufficient powers of, and resources for, proactive and reactive scrutiny and audit of policing providers under its jurisdiction, in order to ensure effective oversight of policing in the public interest in their jurisdictions.

An important aspect of ensuring effective accountability is the capacity to receive and respond to complaints by members of the public against policing providers or their employees. It is a fundamental axiom of democratic policing that the police—both public and private—carry out their duties and responsibilities in ways that respect core democratic values. In situations where this does not happen, mechanisms must be in place to ensure that these circumstances are investigated and, if appropriate, those who abuse their power be held to account. In some instances a PSB or analogous institution will be equipped to receive and respond to policing-related complaints from the public. However, in other instances such boards may not have the capacity to undertake these tasks, or the matter may be beyond a board's jurisdiction (for example, when a complaint involves a policing provider, be it public or private, that does not operate under the board's direction or fall within its



jurisdiction). The Law Commission of Canada therefore recommends that:

Recommendation 9

All levels of government should ensure that there exist in their jurisdictions appropriate institutions and procedures to receive and respond effectively to complaints by members of the public against policing providers or their employees with respect to policing.

6.5.4 From Police Independence to Operational Responsibility

The broad powers associated with PSBs, including their proactive and reactive functions, raise important questions regarding the independence of police from political interference. Providing directions to state police has always been a complicated issue given the danger that governments (which, within existing democratic frameworks, are invariably partisan) might use their ability to direct police agencies to enhance their political and personal interests. In the past, this problem has been addressed through the doctrine of police independence. According to this doctrine, governmental direction of police is legitimate at the level of policy, but police should look to the law for direction at the day-to-day *operational* level.

While the doctrine of police independence has proven broadly serviceable in setting the parameters of police governance and accountability in Canada, it has two shortcomings. First, as many scholars have pointed out, neither the doctrine itself, nor its precise implications for police governance, has ever been very clear. A key distinction that underpins the doctrine—that between *policy* and *operations*—has proven difficult to delineate in practice and has been the subject of much disagreement among those responsible for its implementation.¹⁶

Second, and more importantly, the most popular formulation of the doctrine has unfortunately fostered the belief that the police are not politically accountable for their decisions. As many commentators have pointed out, such a position is at odds with



democratic principles. Indeed, while there is good reason to insulate police from political direction with respect to operational law enforcement decisions, the very fact of such immunity makes it all the more essential that they be fully politically (as well as legally) accountable for such decisions. For if such decisions are not being made responsibly and in the broad public interest, it is the government's responsibility (or a PSB's) to take corrective action—a responsibility that obviously cannot be satisfactorily fulfilled in the absence of effective political accountability. Such corrective action can take a variety of forms without violating the prohibition on political direction with respect to law enforcement decisions in individual cases.¹⁷

In holding policing providers accountable for the way in which they police, the report of the Independent Commission on Policing for Northern Ireland recommended that the doctrine of police independence be replaced by the notion of operational responsibility.¹⁸ The idea here is that what is required (and what the rationale behind the doctrine of operational independence favours) is not simply independence from control but an acceptance of responsibility. The doctrine of operational responsibility envisages that policing providers should have the responsibility for, and autonomy in (that is, free from political direction), implementing policy directions, and to do so in ways that are within the law; however, this should not mean that they are not accountable to state governments for the decisions and actions they take in this regard. In addition to their legal accountability for such matters, they should, like all other public servants responsible for implementing public policy according to law, be accountable, after the fact, to governments to demonstrate that their activities are in compliance with the law and general governmental policy.

The distinction between police independence and operational responsibility is, therefore, important in the context of PSBs. First, since PSBs will be involved in developing policing policies within their respective jurisdictions, it is important to underscore that this does not mean that they should be able to direct a police chief in how to “conduct an operation”—a police chief must be free to exercise his



Operational responsibility means that it is the Chief Constable's right and duty to take operational decisions, and that neither the government nor the Policing Board should have the right to direct the Chief Constable as to how to conduct an operation. It does not mean, however, that the Chief Constable's conduct of an operational matter should be exempted from inquiry or review after the event by anyone. That should never be the case. But the term "operational independence" suggests that it might be, and invocation of the concept by a recalcitrant chief constable could have the effect that it was. It is important to be clear that a chief constable, like any other public official, must be both free to exercise his or her responsibilities but also capable of being held to account afterwards for the manner in which he/she exercises them.

The Report of the Independent Commission on Policing for Northern Ireland. *A New Beginning: Policing in Northern Ireland*. 1999. Available online at: <<http://www.belfast.org.uk/report/fullreport.pdf>> (Date accessed: 20 December 2005).

or her responsibilities. Second, however, this independence should not replace the notion that police chiefs should be held responsible for their decisions and for their interpretation of operational conduct. To uphold democratic principles, and thereby ensure that policing is undertaken in the public good, PSBs will, in certain circumstances, need to examine the functions of a police chief or a police service. In short, independence from political interference should not be confounded with accountability for exercising operational responsibilities, something that has proven problematic with the traditional notion of police independence.



The Law Commission of Canada therefore recommends that:

Recommendation 10

The concept of operational responsibility be codified in legislation and applicable to all jurisdictions in Canada, and to all policing activities, so as to better define the parameters of police independence.

6.6 Private Security and the Public

The above recommendations pertain to regulations for policing, particularly in situations where these activities are carried out under state authority or direction. What remains to be addressed is the variety of primarily private security arrangements that continue to proliferate in Canadian society. While many private security personnel occupy the visible aspects of the industry (such as security at a shopping mall), countless others provide a variety of in-house security services. Private security guards, depending on their mobilization, actively carry out patrol duties and, in the process, enforce a variety of laws, ranging from provincial trespass to property acts to a citizen's Criminal Code powers of arrest.¹⁹

The right of property owners to safeguard their own land and possessions without interference from the state is long established in common law and reaffirmed in provincial statutes concerning trespass. It is not contested that private citizens, property owners, associations and other organizations have the right to contract security personnel for the preservation and safeguarding of their businesses, homes, etc. A phenomenon associated with the development of mass private property has been that large tracts of communal space have become private and citizens routinely interact with each other under the auspices of private agents. Private security personnel, ranging from bouncers to private detectives and security guards, commonly regulate the spaces in which citizens interact and play a fundamental role in the good order and regulation of most urban centres.

Throughout its engagement process, the Law Commission of Canada has found that there is a great consensus among public police



providers, private sector executives, academics, policymakers and others that the current regulatory and oversight system needs attention. Many have recommended the *professionalization* of the security industry to ensure that private security services are delivered in accordance with democratic values. Such professionalization would require governance structures, the enactment and enforcement of minimum standards, and the creation of oversight mechanisms. While PSBs would help to ensure that an important sector of community security is undertaken in the public interest, the provision for such authorities would not specifically cover privately contracted or in-house security organizations and personnel under strictly private arrangements.

Many provinces, including British Columbia, Alberta, Ontario and Quebec, have taken steps to better regulate the private security industry. Quebec's bill includes an oversight mechanism, the *Bureau de la sécurité privée*, which has provincial appointees and representatives of the private security industry, and has the power to issue and suspend licences and directives to licensees regarding their activities. It also has the authority to investigate licensees following a complaint or on its own initiative.²⁰ Ontario's legislation allows for complaints against a security agent or agency to be heard by a "facilitator."²¹ In addition, in recent years, Canadian private security regulators have initiated regular meetings to discuss standardization issues for the private security industry. The Law Commission of Canada supports these initiatives and attempts to build from them by recommending an oversight mechanism that would provide the basis for more consistency, and further encourage the professionalization and standardization of the private security industry.

In the interest of the public good, therefore, in-house and contract security personnel and organizations should be licensed and regulated by provincial and territorial commissions, comprised primarily of civilians, that is, not only members of the private security industry.²² The Law Commission of Canada does not believe that commissions consisting only of private security representatives and public police would necessarily be less competent or effective, but



that citizen involvement is an essential component of policing as a public good. It is, therefore, on the basis of this principle that civilians should occupy the majority of proposed commission seats. In addition, existing registrars may very well become commissioners. The Law Commission of Canada therefore recommends that:

Recommendation 11

Provincial and territorial governments establish Security Complaints and Accreditation Commissions (SCACs) responsible for licensing security organizations and personnel whether in-house or on contract, for setting minimum training and accreditation standards for the various forms of security services and for establishing codes of conduct. Such minimum standards should be set in coordination with SCAC counterparts across the country to foster uniformity.

Currently, registrars of security guards and private investigators in different provinces oversee the contract private security industry by licensing companies and officers. Under the proposed SCAC, in-house security personnel and departments would also need to be licensed, so that department heads and contract security executives can both be held to account. Each SCAC should decide how large an in-house department or unit would have to be before an operational licence would be required.

SCACs could be self-financed through the proceeds of accreditation and licensing. There is already a large and well-developed training system in place throughout Canada for security administrators and practitioners, but there is minimal standardization. The SCAC in each province would ideally take stock of the available college and private institution training programs in security and invite interested parties to set standards for each of the specialized licences it wishes to issue. The SCAC could then recognize completed accredited courses in colleges, or could add additional final examinations after the course requirements were completed.



6.6.1 Oversight Mechanisms

Any oversight mechanism that does not come equipped with an ongoing ability to audit the practices of security organizations and personnel will be fraught with difficulties. In the interest of public safety and security, SCACs should have the authority to conduct ongoing audits, investigate complaints about their licensees and impose sanctions for breaches

SCACs should also have an inspectorate that will be financed by revenues generated from licensing and accreditation. Some SCACs may decide that they wish for security providers to submit an incident report each time a person is arrested or detained. In other cases, some SCACs would be interested in knowing when the use of force was exercised. The SCAC of each province could be empowered to impose all forms of regulations and reporting mechanisms.

We believe such an oversight framework is necessary to ensure that private security companies and personnel comply with their licensing requirements, standards, policies and codes of conduct. The Law Commission of Canada therefore recommends that:

Recommendation 12

Security Complaints and Accreditation Commissions have the authority and resources to conduct ongoing audits and investigate complaints about their licensees, in order that they may undertake a proactive role in the oversight and regulation of the private security industry within their respective jurisdictions.

The ability to identify malfeasance is only part of the successful implementation of an oversight and accountability body for private security organizations. The other is the legislative authority to impose sanctions. Without the ability to either fine or revoke the licences of security personnel and organizations, the establishment of SCACs would be meaningless. In addition, the public will need to be made aware of the implementation of SCACs and their powers of complaint and redress.



The Law Commission of Canada therefore recommends that:

Recommendation 13

Security Complaints and Accreditation Commissions have the authority to sanction security personnel and organizations through fines or the revocation and/or suspension of licences. Moreover, they should foster awareness among the citizenry of the availability of redress through the complaint process.

6.7 Monitoring and Reviewing Change

Adequate and effective policing policy involves long- and short-term considerations. At present in Canada, police governance is undertaken in many instances by municipal and regional police commissions and police services boards, whose members are typically appointed for renewable terms of three (or in some cases five) years. For a variety of reasons, including the part-time nature of most such appointments, the relatively short tenure of some members and often a lack of adequate resources, many commissions and police services boards find it difficult to undertake long-term planning and policy development that is beyond the annual budget cycle.

If communities are to derive the greatest benefit from the myriad of state and non-state resources for effective policing, which they potentially have at their disposal, more substantial forward planning and regular review of the arrangements for policing will be essential. Allocating a policing budget, such as we have recommended, will not simply require assessing the resource needs of a single policing institution (as has been the case for police budgets), but a continuous reassessment of all the available resources for policing, and how best to exploit and fund them to achieve the best possible policing for the community.

In matters of conduct or service quality, independent audits have been used to allow the public to know how a system is performing. A system of audits whereby an independent agency would be able to initiate audits of policing practices and policies, without having to wait for complaints to be filed and with ongoing access to police personnel, places, records and files, as well as to accused people,



might unearth problems that would otherwise not come to light and allegations that might otherwise not be made. The Law Commission of Canada therefore recommends that:

Recommendation 14

Governments should implement mechanisms, procedures and regular multi-year cycles for auditing and reviewing the arrangements for policing of the community or communities with respect to which they have responsibility, and for determining and implementing such adjustments as may appear desirable in light of such audits, after consultation with the community and potential policing providers.

Finally, the federal government can play a leadership role in ensuring the best possible policing for Canada. Such a role is not new for the federal government: with respect to public police in Canada, the federal Ministry of the Solicitor General (now Public Safety and Emergency Preparedness Canada) has claimed such a role since its inception in 1962. Its leadership in this respect has been reflected in a whole range of initiatives over the years, including the establishment of the Canadian Police College,²³ the Canadian Police Information Centre, the Forensic Laboratory Services, Identification Services (through the RCMP),²⁴ and a variety of policy and research initiatives through the Ministry itself.²⁵ The Law Commission of Canada therefore recommends that:

Recommendation 15

A National Policing Centre should be established. The Centre should be independent of any particular police service, with a broad mandate to foster and coordinate research, experimentation, innovation and best practices in policing, policing policy and relevant legislation in Canada. The Centre should foster the widest possible collaboration between state and non-state contributors towards effective policing that reflects Canada's core democratic values. For this purpose, it should have a broadly inclusive Board of Directors and a budget that will allow it to pursue and



commission leading-edge research and educational initiatives, and serve as a clearinghouse for the most up-to-date information about policing in Canada and elsewhere.

6.8 Conclusion

We began this Report by noting that policing plays an important role in guaranteeing the fundamental values of a liberal democracy. Therefore, it is paramount to understand and respond to the changing role of policing in contemporary society. In particular, the challenge for all levels of government, as well as society in general, is to develop a legal and policy framework that not only accommodates change, but also preserves the democratic values and aspirations that Canadians associate with policing. The Law Commission of Canada believes that the recommendations contained in this Report can stimulate agencies and governments with an interest in policing to think creatively about their role within evolving networks of policing.

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- ¹ S. Eng, “Policing for the Public Good: A Commentary” in D. Cooley, ed., *Re-imagining Policing in Canada* (Toronto, University of Toronto Press: 2005).
 - ² M. Mandel, *The Charter of Rights and the Legalisation of Politics in Canada* (Toronto: Thompson Educational Publishing Inc., 1994).
 - ³ A point made in the report of the Hughes Inquiry into the policing of the APEC Summit in Vancouver in 1999; see Commission for Public Complaints Against the RCMP, *Commission Interim Report* (File No.: PC 6910–199801) (Ted Hughes, Q.C., Commissioner) (July 31, 2001) at 446. A similar point is implicit in the interim report of the Chair of the Commission for Public Complaints Against the RCMP, with respect to the events of May 2 to 4, 1997, in the communities of Saint-Sauveur and Saint-Simon in New Brunswick; see RCMP Public Complaints Commission, *Chair’s Interim Report* (March 28, 2000).
 - ⁴ Sir Robert Peel, often referred to as the founder of the modern police force.
 - ⁵ See A. Normandeau and B. Leighton, *A Vision of the Future of Policing in Canada: Police-Challenge 2000* (Ottawa: Minister of Supply and Services Canada, 1990).



- 6 See Eng, *supra* note 1 at 327.
- 7 See, for example, *Harrison v. Carswell* (1976) 25 C.C.C. (2d) 186 [S.C.C.]; Ontario, *Report of the Task Force on the Law Concerning Trespass to Publicly-Used Property as it Affects Youth and Minorities* (Toronto: Ministry of the Attorney General, 1987).
- 8 See, for example, *University of British Columbia v. Berg* [1993] 2 S.C.R. 354, in which the majority of the Supreme Court of Canada proposed a “relational approach” in distinguishing between different “publics” with respect to security arrangements for a particular facility (in this case, the denial of a key to a university building).
- 9 P. Stenning, “Someone to Watch over Me: Government Supervision of the RCMP” in W. Pue, ed., *Pepper in Our Eyes: The APEC Affair* (Vancouver: University of British Columbia Press, 2000) at 332.
- 10 In the Canadian context, this point of view has been most fully elaborated by G. Rigakos, *The New Parapolice: Risk Markets and Commodified Social Control* (Toronto: University of Toronto Press, 2002).
- 11 *Ibid.*
- 12 See, for example, R. Daniels, P. Macklem and K. Roach, eds., *The Security of Freedom: Essays on Canada’s Anti-Terrorism Bill* (Toronto: University of Toronto Press, 2001); and K. Roach, *September 11: Consequences for Canada* (Montréal: McGill-Queen’s University Press, 2003).
- 13 J. Hermer, *et al.*, “Policing in Canada in the Twenty-first Century,” in D. Cooley, ed., *Re-imagining Policing in Canada* (Toronto: University of Toronto Press, 2005) at 71–73.
- 14 *Ibid.*
- 15 *Ibid.*, at 72.
- 16 R. Hann, *et al.*, “Municipal Police Governance and Accountability in Canada: An Empirical Study” (1985) 9:1 *Canadian Police College Journal* at 1–85.
- 17 See our discussion of these issues in chapter 5, section 5.4, Recent Trends in Police Governance and Accountability.
- 18 The Report of the Independent Commission on Policing for Northern Ireland, *A New Beginning: Policing in Northern Ireland*, 1999, paras. 6.20 and 6.21, at 32–33.



- 19 For a review of private security powers of arrest, see Rigakos, *supra* note 10, at 50–52.
- 20 Bill 88, Private Security Act, 1st sess., 37th Leg., Québec, 2004, s. 40, s. 72.
- 21 See L. Lemonde and G. Hébert-Tétrault, *Private Security and Fundamental Rights* (background paper prepared for the Law Commission of Canada, November 2005) at 23.
- 22 It should also be noted that the private security industry is not a homogeneous entity. Therefore, commissions of this nature should attempt to include a broad diversity of private security industry representatives, to avoid over-representation of any particular portion of this sector.
- 23 In addition to training and educating Canadian police officers at various levels and in a variety of specializations, the Canadian Police College also undertook and sponsored important research, and published the *Canadian Police College Journal*, which was the primary outlet for Canadian police research and scholarship until it ceased publication in the mid-1980s.
- 24 For a review of these, see chapter 27 of the *Report of the Auditor General of Canada to the House of Commons* (Ottawa: Office of the Auditor General, 1990).
- 25 For example, the FLEUR (Federal Law Enforcement Under Review) project; see Solicitor General, *Federal Law Enforcement Under Review, Report* (Ottawa: Ministry of the Solicitor General, 1986). In this respect it is particularly noteworthy that the Ministry took the initiative in the early 1970s to fund research on the private security sector, which paved the way for a more inclusive approach to thinking about policing, such as we are recommending in this Report. Indeed, that research has been recognized as ground-breaking well beyond Canada's borders.



Chapter 7 Conclusion

In this Report, we have sought to spell out those critical developments during recent years that have raised questions about the adequacy and appropriateness of current arrangements for policing in Canada. In light of these and likely future developments, we have made recommendations for reforms to laws and policies with respect to policing that, we believe, will:

- ensure the best possible utilization of all available resources for policing our communities in the future, and
- ensure that policing reflects core Canadian democratic values.

Some of the developments that we have described have occurred without a lot of fanfare or explicit public acknowledgement, discussion or debate, and their implications for policing perhaps have not yet been fully appreciated by many Canadians. It is important to recognize, however, that most of these developments are not unique to, or limited to, Canada, but are unfolding across the world. While their implications for policing are obviously affected by the particular characteristics of our society and system of government, most other Western democracies face similar challenges.

Along with some other nations, Canada has for some time had an enviable international reputation for innovation and excellence in policing. It is no coincidence, for instance, that Canadian police services have so often been called upon to provide advice and training to other nations, especially those that have been in transition to democracy. We believe that if our recommendations are adopted, Canadians will continue to benefit from some of the best policing in the world, and Canada's reputation for leadership in the provision of democratic policing will be confirmed.

Overall, we have sought to recommend reforms that will ensure policing that reflects Canadian values and the particular characteristics of Canadian society, including our traditions of democratic government. The proposed organizational changes in



oversight recommended in this Report allow for a breadth of security provision in different contexts, whether public or private. Moreover, they do not violate basic Canadian principles and they reaffirm the public's interest in policing for the public good. Our recommendations have been designed to take all these considerations into account. In turn, we can imagine how policing can remain relevant and democratic well into the 21st century.



List of Recommendations

Recommendation 1

All levels of government (federal, provincial, territorial, Aboriginal and municipal) recognize policing as activities of any individual or organization legally empowered to maintain security or social order on behalf of a community or organization in accordance with a public or private contract, legislation, regulations or policies.

Recommendation 2

All levels of government continue to have primary responsibility for the regulation of all policing and to ensure that policing is conducted in a manner consistent with core democratic values.

Recommendation 3

All levels of government, in collaboration with policing providers, policing authorities and educational institutions, undertake programs of public education about policing services within their jurisdictions and the opportunities for public input into policing policy. Such programs should include information about the governance and accountability of public and private police and their responsibilities within a democratic policing context.

Recommendation 4

All levels of government review their laws, regulations and policies to assess their impact for all forms of policing, whether state or non-state, to ensure that they continue to support and foster the best possible arrangements for policing in their communities.

Recommendation 5

All levels of government collaborate to develop legislation that introduces Charter-like rules for private security officers in respect of criminal and civil matters.



Recommendation 6

Public Security Boards or analogous institutions be introduced through legislation to govern public police and set policing policy. These boards would be established at the regional or municipal levels and consist of civilians broadly representative of the public to be policed.

Recommendation 7

Public Security Boards or analogous institutions should have the ability to allocate their budget to providers of policing, whether public or private, according to their demonstrated capacity and suitability for contributing to the best overall policing of communities.

Recommendation 8

Public Security Boards or analogous institutions should be granted sufficient powers of, and resources for, proactive and reactive scrutiny and audit of policing providers under its jurisdiction, in order to ensure effective oversight of policing in the public interest in their jurisdictions.

Recommendation 9

All levels of government should ensure that there exist in their jurisdictions appropriate institutions and procedures to receive and respond effectively to complaints by members of the public against policing providers or their employees with respect to policing.

Recommendation 10

The concept of operational responsibility be codified in legislation and applicable to all jurisdictions in Canada, and to all policing activities, so as to better define the parameters of police independence.

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A National Policing Centre should be established. The Centre should be independent of any particular police service, with a broad mandate to foster and coordinate research, experimentation, innovation and best practices in policing, policing policy and relevant legislation in Canada. The Centre should foster the widest possible collaboration between state and non-state contributors towards effective policing that reflects Canada's core democratic values. For this purpose, it should have a broadly inclusive Board of Directors and a budget that will allow it to pursue and commission leading-edge research and educational initiatives, and serve as a clearinghouse for the most up-to-date information about policing in Canada and elsewhere.



Appendix A: Private Security and Public Police Acts and Regulations, by Province

British Columbia

Emergency Program Act, R.S.B.C. 1996, c.111.

Compensation and Disaster Financial Assistance Regulation,
B.C. Reg. 124/95.

Emergency Program Management Regulation,
B.C. Reg. 477/944.

Local Authority Emergency Management Regulation,
B.C. Reg. 380/95.

Police Act, R.S.B.C. 1996, c. 367.

Enforcement Officer Discipline and Code of Conduct Regulation, B.C. Reg. 228/2002.

Code of Professional Conduct Regulation, B.C. Reg. 205/98.

Greater Vancouver Transportation Authority Police Service Regulation, B.C. Reg. 454/2004.

Greater Vancouver Transportation Authority Police Service Operations Regulation, B.C. Reg. 484/2004.

Organized Crime Agency of British Columbia Complaints and Operations Regulation, B.C. Reg. 229/2002.

Organized Crime Agency of British Columbia Regulation,
B.C. Reg. 69/99.

Police Firearm Regulation, B.C. Reg. 203/98.

Police Act Forms Regulation, B.C. Reg. 202/98.

Police (Disposal of Property) Regulation, B.C. Reg. 87/91.

Police Oath/Solemn Affirmation Regulation,
B.C. Reg. 204/98.

Police (Uniforms) Regulations, B.C. Reg. 564/76.

Prescribed Entity Regulation, B.C. Reg. 64/99.

Prescribed Police Forces Regulation, B.C. Reg. 70/99.



Rules Regarding Training, Certification and Registration of Municipal Constables, B.C. Reg. 109/81.

Special Provincial Constable Complaint Procedure Regulation, B.C. Reg. 206/98.

Stl'atl'imx Tribal Police Service Operations Regulation, B.C. Reg. 385/99.

Stl'atl'imx Tribal Police Service Regulation, B.C. Reg. 389/99.

Use of Force Regulation, B.C. Reg. 203/98.

Private Investigators and Security Agencies Act, R.S.B.C. 1996, c. 374.

Private Investigators and Security Agencies Act Regulation, B.C. Reg. 3/81.

Private Investigators and Security Agencies (Ministerial) Regulation, B.C. Reg. 4/81.

Security Patrol Regulation, B.C. Reg. 114/96.

Temporary Licence Regulation, B.C. Reg. 294/94.

Alberta

Police Act, R.S.A. 2000, c. P-17.

Exempted Areas Police Service Agreement Regulation, Alta. Reg. 229/2004.

Police Service Regulation, Alta. Reg. 356/1990.

Special Constable Equipment Regulation, Alta. Reg. 322/1990.

Special Constable Regulation, Alta. Reg. 357/1990.

Private Investigators and Security Guards Act, R.S.A. 2000, c. P-23.

Private Investigators and Security Guards Regulation, Alta. Reg. 71/1991.

Police Amendment Act, S.A. 2005, c. 31.

Saskatchewan

Police Act, 1990, S.S. 1990–91, c. P–15.01.



Municipal Police Clothing and Rank Regulations, 1991, R.R.S. c. P-15.01 Reg. 1.

Municipal Police Discipline Regulations, 1991, R.R.S. c. P-15.01 Reg. 4.

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Appendix B: Oversight Mechanisms for Public Policing in Canada

The Commission for Public Complaints Against the Royal Canadian Mounted Police (RCMP):

- The Commission was established by the federal government as an independent body to receive complaints about the conduct of members.
- The Commission refers complaints to the RCMP for investigation and disposition.
- The Commission will review the complaint investigation and disposition at the request of a complainant. It may also initiate investigations and public hearings.

Military Police Complaints Commission of Canada:

- The Military Police Complaints Commission is a civilian oversight authority that is external, autonomous and independent of the Department of National Defence and Canadian Forces.
- The Chair has the exclusive authority to conduct investigations into all interference complaints. He or she may review any complaints of misconduct upon the request of a dissatisfied complainant.
- The Commission can launch investigations and convene a public hearing, overriding any existing investigations pursued by the Provost Marshal into complaints of misconduct.



British Columbia:

- The Police Complaint Commissioner (PCC) oversees complaints against the 12 municipal police forces. Investigations are carried out by the police.
- The PCC can order investigations on his or her own motion, or can order that an investigation be conducted by an external police force.
- The PCC can order a Public Hearing into a complaint when there is a public interest, however, specific officers are not compellable witnesses to such proceedings.
- There is no appeal from a decision made by the PCC.

Alberta:

- Municipal police officers are subject to a public complaint process that includes a review or appeal to the Alberta Law Enforcement Review Board. Complaint investigation and disposition is the responsibility of the police.
- Two of eight municipal police commissions have complaint monitors tasked with receiving and reviewing all public complaints and complaint dispositions.
- The police commissions and complaint monitors are the first-line civilian monitors of police complaints.
- The Board receives and hears requests for review from the public and appeals from disciplinary decisions from police officers.

Saskatchewan:

- The Police Complaints Investigator has broad powers in regard to public complaints, including conducting external investigations.
- Most public complaints, however, are investigated by the police.



Manitoba:

- Since 1985, the Manitoba Law Enforcement Review Agency, a statutory body independent of police, has accepted and investigated public complaints about municipal police conduct.
- Investigations are made by the Agency's investigators under the direction of the Commissioner, who is also empowered to mediate public complaints.

Ontario:

- Ontario Civilian Commission on Police Services is responsible for ensuring the adequacy of policing services and overseeing the handling of public complaints about police conduct, service or policy.
- The Commission also hears complainant's or police officer's appeals from the decision of a chief of police at a discipline hearing.
- The Commission's decision may be further appealed by either the complainant or the police officer to an Ontario Divisional Court.
- The Special Investigations Unit (SIU) is a civilian agency that investigates circumstances involving police and civilians that have resulted in serious injury, sexual assault or death.
- The Director of the SIU determines whether or not charges are warranted based on the findings of a complete investigation.
- The Director's decision is reported to the Attorney General.

Quebec:

- The *Bureau du Commissaire à la déontologie policière* receives, conciliates and investigates public complaints about the municipal and regional police of Quebec.
- Cases are presented to the Ethics Commission for adjudication following investigation by Commission staff.



New Brunswick:

- The New Brunswick Police Commission has the authority to receive and investigate public complaints about police conduct and any aspect of policing.
- The Commission Chair has discretion to refer public complaints to a chief of police to be resolved or investigated.
- The chief of police must submit a report to the Commission, detailing any action taken in response to a complaint. An arbitration board hears appeals from discipline penalties imposed by a chief of police.

Nova Scotia:

- The Nova Scotia Police Commission's primary role is to investigate and conduct hearings into citizens' complaints about municipal police conduct.
- The Commission's Police Review Board hears appeals from disciplinary penalties ordered by chiefs of police and boards.
- The Commission's investigators are retired police officers contracted by the Commission on a case-by-case basis.
- The municipal police departments deal with public complaints at first instance, by informal resolution or investigation.
- The Commission receives review requests from citizens who are dissatisfied with the way a police department has concluded their complaint.

Newfoundland and Labrador:

- The Royal Newfoundland Constabulary Public Complaints Commission receives complaints about the Newfoundland constabulary, monitors the investigation and disposition of public complaints, informally resolves public complaints and hears appeals from complaint dispositions.
- The Commission can conduct independent investigations into the circumstances of complaints when a complainant files an appeal.



Appendix C: Examples of Specialized Training for Private Security

- 1) **Use of Force:** In Canada there are some demands imposed with regards to weaponry or restraint devices, but only very few security service workers use guns, batons or dogs. Most rely solely on the use of handcuffs and “empty hand” techniques for force (see B. Robertson, *Private Security Training in Canada*, 2004 at 46). Nonetheless, except for B.C., where it is part of basic training, the use of force is one of the most popular types of advanced training. Since this type of training is applicable to the nature of many different areas of security provision, it will remain a significant aspect of training programs.

Officers of law enforcement organizations participate in use-of-force training in four ways. First, there is a direct police academy involvement. In B.C., the Police Academy is a division of the Justice Institute of B.C., which is responsible for administering the mandatory training programs for security guards. Quebec is proposing that the *École nationale de police du Québec* be responsible for standards in the use-of-force training. (See Quebec, Ministry of Public Security, *White Paper: Private Security Partner in Internal Security*, 2003). Second, in response to local cooperation initiatives and demands of local retail and bar associations, police departments train private security guards in the use of force. Third, many former law enforcement personnel hold management positions in private security firms and become in-house instructors. Finally, some law enforcement personnel actively contract use-of-force training to private firms.

- 2) **Firearms:** For armed security personnel, the federal *Firearms Act* and its accompanying *Regulations* apply in consideration of the ability to carry guns. Consequently, three types of security personnel may be authorized to carry firearms by law: secure transport officers (armoured car guards), stationary security guards



and bodyguards. Chief Firearms Officers (CFOs), however, are generally unwilling to grant bodyguards authority to carry guns.

Prior to 1998, armoured car guards only had to achieve a passing score on a firing course to qualify for the ability to carry a gun in any given province. Now, CFOs are prohibited from issuing authorizations to armoured car guards unless they have completed training in firearm proficiency and the use of force (*Authorizations to Carry Restricted Firearms and Certain Handguns Regulations*, SOR 98/207, s. 4). In 2002, training guidelines were published by the federal government, covering the topics of legal authority, use of force, firearms handling skills and handgun retention skills (Canadian Firearms Centre, Department of Justice, *Authorization to Carry: Guidelines on Use of Force and Firearms Proficiency*, 2002).

The training for Nuclear Security Officers is developed by licensees but must be approved by the Canadian Nuclear Safety Commission (<<http://www.nuclearsafety.gc.ca>>) and must include coverage of a list of prescribed duties (*Nuclear Safety Regulations*, SOR/2000–209, s. 34). Although the existing licensees employ different training programs, there are ongoing initiatives to develop universal standards across provincial borders. Following September 11, 2001, procedural orders provided that a trained, armed and licensed “nuclear response force” must permanently attend at all nuclear facilities in Canada. Private security workers who are employed by licensees predominantly staff the forces. They are either appointed as “special constables” by the provinces, or as public agents by the Commission, and are consequently given authority to carry firearms. (See B. Robertson, *Private Security Training in Canada*, 2004 at 36).

- 3) **Industry Practices For Specialized Training:** Although the mandatory training requirements of governments exert influence in the field, the private industry also contributes. Basic and orientation training often do not prepare individuals for more specialized guarding duties. For example, patrol duties require specific training, including operating different modes of



transportation and alarm and access control systems, which is usually provided by the employer. There is also site-specific specialized training, such as when construction security guards are trained in safety procedures. Campus and hospital security guards are also commonly viewed in a different class of security providers because of highly specialized duties. Training in these areas often includes verbal communication and law enforcement skills, because of the public character of the sites involved and personal safety and liability issues. Indeed, many Canadian hospitals specify to their contract security services that employees must receive non-violent crisis intervention training. Finally, guard dogs or dogs trained to detect explosives and contraband require specialized training. Most companies that use dogs ensure that training is provided from recognized institutions.

- 4) **Community Colleges:** The Human Resources and Skills Development Canada (HRSD) NOC 2001 classifications only advocate post-secondary education for security personnel at the supervisory level or above. However, there are community college programs offered for lower-level positions in Canada. The Ontario Community College Diploma Programs concerning security training, generally termed Law and Security Administration (LASA) programs, are the benchmark for the training of private security in Canada. LASA programs exist alongside Police Foundations Programs (PFPs), because only a small number of students eventually realize a career in public policing. Many individuals in PFPs end up with LASA diplomas and default to the security industry. Recently, however, Ontario community colleges have developed two forms of security training that are different from LASA programs. The first focuses on supervision and management training, in line with the HRSD classifications, and the second is predominantly one-year certificate programs geared towards private security career preparation and not that of law enforcement. Community colleges in other provinces also offer programs similar to those in Ontario, however, they vary in their duration and applicability to security employment.



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