

**FOR THE NONCE: POLICING AND ABORIGINAL
OCCUPATIONS AND PROTESTS**

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FOR THE NONCE: POLICING AND ABORIGINAL OCCUPATIONS

“By 1990 some Aboriginal groups were becoming increasingly impatient. Court decisions in the late 1980's increased the feelings of empowerment ... The rest of Canada was still not understanding the gravity of what was going on and things boiled over in many different places like Red Squirrel Road, Oka, Gustafson Lake, Ipperwash and Burnt Church. These incidents are all examples of Aboriginal rights issues that were brought to a head after negotiations broke down. Sadly, in many ways, it has been the most effective way to bring change in government policy. Lives have been lost in the effort on occasion. At the same time, the court processes have been expanded and the Supreme Court has more clearly defined certain Aboriginal rights and entitlements”. Glenn Trivett, Inspector, OPP, unpublished paper, 2003

INTRODUCTION

The Trivett quote highlights the tumultuous fifteen years for aboriginal communities in Canada since the Oka protest in 1990. While the early 1970s were crucial years for the mobilization on behalf of native rights (Ramos, forthcoming), there was a major spike in social action and social policy changes subsequent to Oka. Not only were there significant occupations and protests, and major courts decisions acknowledging aboriginal rights and claims, but these years also witnessed major developments among the aboriginal societies. These latter changes occurred at the nation or community level in regards, for example, to band councils controlling their budgets, setting their own priorities and negotiating complex agreements across the range of institutional areas, with other levels of government and private industry. At the individual level there has been, too, a profound change in human capital, as for example in the educational field where college graduates went from a handful Canada-wide to thousands annually. Other major societal changes impacted too on aboriginal communities, such as major media access, roads in Northern Ontario and of course the internet revolution facilitating up-to-the-minute awareness and mobilization. As Trivett observes, these major developments have not been associated with a decline in occupations and protests. Indeed, they may have engendered more occupations and protest as well-educated, well-connected, more resourced and aware aboriginal peoples seek to more fully realize their rights and validated claims, making the promise of a new arrangement in Canada a reality in the face of mainstream reluctance and inertia. While earlier themes of aboriginal progress might have been articulated largely in terms of fairness and integration, there is a widespread perspective, especially since the Royal Commission on Aboriginal Peoples in the early 1990s, that progress has also to be assessed in terms of the themes, difference and autonomy. So, even while there remain major shortfalls as regards the earlier themes

(economic, health and justice in particular) the standards for an appropriate arrangement within Canada society are changing; the bar was being raised (Burrows, 2005). There is then still a sense that major upheavals and perhaps costly occupations and protests could happen and many well-informed leaders and observers predicting as much, as will be noted below. Clearly, it is timely to assess what has been learned thus far in policing aboriginal occupations and protests (hereafter, O&Ps) in Canada.

The use here of the expression “for the nonce” as a context for discussing the policing of aboriginal O&Ps is meant to underline the essence of the police role in responding to public order and civil disobedience incidents. That essence is seen to be the maintenance or temporary restoration of order with minimal use of confrontation and force. Police are not the military and in responding to O&Ps they are required in the western democratic tradition to respect civil liberties and be as non-partisan as possible in policing political and other non-criminal disputes. Their ability and mandate to resolve the underlying conflict issues are very limited. Of course, one might well hope that excellent police work with respect to O&Ps might have more far-reaching positive results, perhaps facilitating what has been called “a web of mutual support” and a relationship of trust and confidence among police, protestors and those impacted by the incident. By handling O&Ps well, one might further hope that policing thereby assists the dialogue and conflict negotiation that must usually occur if underlying issues are to be addressed by others; clearly, though, such hopes hinge on factor extrinsic to the police role. So the expression, “for the nonce”, refers more to expectations about policing in O&Ps in general. In the case of aboriginal O&Ps these realistic expectations have to be especially underlined. Aboriginals in Canada, constitutionally, have special rights (“citizens plus” to use a popular characterization) which police have to be aware of and acknowledge in their actions. The issues symbolized by many aboriginal O&Ps concern matters (e.g., “contested terrain”, treaty obligations) well beyond the scope of the police role and likely to be recurrent. It is a challenging role, policing aboriginal O&Ps, and all parties, the protestors, the governmental authorities on and off reserve, the surrounding communities impacted, and the police themselves have to be sensitive to the possibilities and limits of police action.

TASK OBJECTIVES AND CENTRAL RESEARCH AREAS

The mandate for this research project highlighted six tasks, namely to contribute to an understanding of: (1) how do aboriginal O&Ps differ from their mainstream counterparts; (2) what are the complexities of such O&Ps with respect to types, dynamics, and outcomes; (3) what are the central policing issues in aboriginal O&Ps with respect to response variation, organizational / infrastructural capacity, strategies and practices, and best practices; (4) what are the policing issues and practices with respect to the non-protesting stakeholders whether these be external governmental agencies, other native people, residents of the surrounding communities and so forth; (5) what are the features of police capacity, policing protocols, limits on the police intervention and the

“best practices” in policing O&Ps; (6) what can be suggested, based on the fieldwork, about desirable future directions in this area in general (i.e., responding to aboriginal O&Ps) and , specifically concerning police practices. Along with the tasks came the mandate “make recommendations directed to the avoidance of violence in similar circumstance”.

In effecting the research mandate, five broad research areas were taken as the central foci, namely:

(A) **The aboriginal context** for the occupations and protests: what are the types, the patterns and outcomes of aboriginal O&Ps? What are the causal factors (better, models) and what are the trends in aboriginal communities with respect to these causal factors? What are the nuances in the relationships among native protestors and the elected and traditional leadership in these communities? How have developments such as increasing off-reserve migration, internal socio-economic differentiation, and the growth of band council administration and negotiated agreements with external bodies impacted on O&Ps? What capacity exists in aboriginal communities to deal effectively with internal disputes and to channel conflicts that involve the larger Canadian society?

(B) **The policing context** for the native O&Ps: how do the different police services (OPP, RCMP, FNPS) respond to aboriginal O&Ps, whether reactively or proactively? What resources, training, intelligence, and programs constitute the policing capacity and how adequate is it? What protocols (with what different organizations or agencies) and standard operational procedures (SOPs) are in place and how effective are they? How does the police service facilitate or hinder police response to O&Ps at the field level? Is there a Canadian police approach to aboriginal O&Ps?

(C) **Field level policing** of aboriginal O&Ps: What are the commonalities and variations in policing practices and strategies for responding to different types of O&Ps, whether reactively or proactively or as “aftermath”? What resources, internal and external, police can draw upon? What relationships and knowledge do local police have vis-à-vis the FN communities? What are the pressures on local police in responding to O&Ps or threats thereof? (Lack of operational flexibility? Mandate conflict and “the Law”? Demands from FN formal governors? Demands from other governmental agencies?)

(D) **The other stakeholders** in aboriginal O&Ps: other than police and aboriginal protestors and FN leaders, there are usually protest collaborators, surrounding communities / people affected directly by the occupations or protests, and government agencies directly implicated such as the Department of Fisheries and Oceans (DFO) and the Ministry of Natural Resources (MNR); how do the police respond to them and their demands and expectations? (e.g., issues of prioritization, of communication and socialization).

(E) **best practices and future directions:** Can some best practices in policing aboriginal O&Ps be identified and analyzed? Explore the considered experience from police, protestors and FN leaders with respect to what worked well and what might be done in the future. Based on these reflections, and other findings of the research, recommend some feasible and positive future directions for policing aboriginal O&Ps in Ontario.

THE APPROACH

PREMISES

Several main premises have characterized our approach to this project, specifically

- 1) ACCEPTING THAT O&Ps IN THEMSELVES ARE BASIC IN DEMOCRACY AND A WAY FOR A SMALL DECENTRALIZED POPULATION TO BRING ATTENTION TO THEIR RIGHTS AND CONCERNS, ESPECIALLY IN FN COMMUNITIES WHERE THERE HAS BEEN A LONG HISTORY OF OPPRESSION, AND WHERE MANY ISSUES REMAIN OUTSTANDING (eg, treaties and other issues).
- 2) AGREEING WITH URY WHO WROTE THAT “CONFLICT MAY BE INEVITABLE BUT FIGHTING, VIOLENCE AND WAR ARE NOT”.
- 3) PLACING EMPHASIS ON EXPLORING AND CONVEYING THE CONTEXT AND DYNAMICS OF O&Ps IN FN COMMUNITIES AND REGIONS
- 4) DISTINGUISHING AMONG CRUCIAL TYPES OF O&Ps (e.g., "contested terrain" / land and resource claims versus more community-based or intra-band conflict) AND CAPTURING THE UNIQUENESS OF O&Ps IN THE ABORIGINAL CASE.
- 5) IDENTIFYING TRENDS WITH RESPECT TO O&Ps (e.g., the types, the issues, the participants, the character of the police response, the focus of media attention).
- 6) ADOPTING A MULTI-FACETED METHODOLOGY (e.g., scanning secondary sources, site visits, individual and group interviews / discussions).
- 7) IDENTIFYING AND ENGAGING A SALIENT CROSS-SECTION OF ROLE PLAYERS IN EXPLORING THE ABOVE CONSIDERATIONS. AT A MINIMUM THESE ROLES WOULD INCLUDE POLICE (both FN and OTHERS), GOVERNMENT OFFICIALS, PROTESTORS, FN POLITICAL LEADERS AND INFLUENTIALS (e.g., elders).
- 8) LEARNING FROM THE PAST EXPERIENCES AND ACCUMULATED WISDOM OF ALL ROLE PLAYERS AND DEVELOPING KEY THEMES AND STRATEGIES.

- 9) IDENTIFYING 'BEST PRACTICES' IN RESPONDING TO O&Ps AND THE ASSOCIATED REQUISITES (e.g., policing protocols, “alternative dispute resolution” capacity at both police and community levels).

METHODOLOGY

The methodology adopted entailed a review of literature and other secondary sources. Site visits were made to five areas across Canada, which the personal experience of the researchers and other preliminary information indicated would be most instructive to understanding current issues in policing aboriginal protests. It was deemed desirable to include rural and urban locales and sites where there were on-going O&Ps as well as sites where, on the surface at least, significant O&Ps appeared to have been resolved. In addition, an emphasis was placed on exploring the contexts for O&Ps in southern and northern Ontario.

Some one hundred and four persons were interviewed (see appendix B), a few quite briefly but most in person for several hours and in some cases on repeated occasions. Half of the interviewees were police officers, the majority of whom were native officers. The officers represented the range of ranks but most were non-commissioned officers (NCOs) or above. Apart from a handful of respondents drawn from governmental agencies or other stakeholder interests (e.g., elected officials), all the remaining respondents were native persons who were either persons with experience as protestors or were elected or traditional leaders. The fieldwork was limited and in a number of incidents, events beyond the researchers' control prevented interviews; this was especially the case with protestors and FN leaders. Nevertheless, in each of the five main geographical areas of focus - the Maritimes (NS/NB), Mohawk Territory (Akwesasne, Six Nations of the Grand River), Southern Ontario (Hamilton and Toronto), Northern Ontario and Manitoba, and British Columbia - interviews were held at least with appropriate police officers, FN leaders, activists and protestors. On the basis of the research mandate and areas of focus, interview guides were developed; these guides are available upon request.

The relevant literature was reviewed over three broad areas, namely policing civil disobedience and public order incidents in modern society, developments in the aboriginal communities salient for understanding O&Ps and policing aboriginal O&Ps. Basic materials on aboriginal society and history and on policing in aboriginal communities can be accessed in the researcher's own published works. The focus, by research mandate, was on post-Ipperwash developments and this Part 2 research project was expressly directed not to focus on the 1995 Ipperwash incident since that was being thoroughly examined in the main Ipperwash inquiry. Web sites were also accessed, especially that for Wind Speaker, the native monthly newspaper based in Alberta. Reports and documents dealing with any aspect of our research focus (e.g., protocols) were sought and usually obtained.

ABORIGINAL OCCUPATIONS AND PROTESTS: THE CONTEXT

In this section there is a brief overview of the literature dealing with (a) policing occupations and protests (O&Ps) in contemporary modern society, and (b) salient developments and issues concerning aboriginal O&Ps and their policing. Throughout, the focus is on the intersection of the challenges to society and to policing posed by modern O&Ps, and the special challenges to the status quo by an increasingly demanding, organized and committed FN community (McMillan and Yellowhorn, 2004)

POLICING OCCUPATIONS AND PROTESTS IN MODERN SOCIETY

Amatai Etzioni (1968) advanced the concept of an “active society” to refer to how modern society and its institutional subsystems increasingly emphasize the standpoint of proactivity and problem solving. The focus has become one of scanning the environment and shaping forces and problems challenging the society or its sub-parts rather than simply reacting, however sophisticatedly, to them. Such a perspective would be increasingly expected in the official response to and policing of O&Ps since protest is a valid activity in the environment with which the police service has to contend. Modern society also has often been characterized – perhaps too much so – as having great diversity of beliefs, values and lifestyles. It is said that in contemporary society consensus is a mile wide and a yard deep – extensive but shallow. Certainly, scholars such as Ignatieff (*The Rights Revolution*, 2000, p.2) have underlined how the diversity is institutionalized if not celebrated. A major implication drawn by Ignatieff is that “Respect actually means listening to something you’d rather not hear and listening must include the possibility of recognizing that there may be right on the other side”. Fudge and Glasbeek (2003, p.168) have extended this line of thought to O&Ps. They contend that recent developments in civil disobedience and patterns in extra-legal challenges to authority have pushed the issues of civil liberties vis-à-vis civil disobedience to the forefront of the societal agenda, especially since the “9/11” enhancement of security concerns. Many scholars, they say, including themselves it would appear, call for the need for some elasticity when faced with lawlessness. They, and others in this edited volume, suggest that “judges are not sanguine that the principles on which the law or policy (concerning civil disobedience) is based is justifiable” and that “it is possible for judges to find some flexibility in applying the law especially if the intent is laudable and there is a challenge to the law or policy that might advance liberal democratic practices”. Their overall conclusion is that “In Capitalist democracies, the state, its law and its functionaries have only a contestable claim to legitimacy ... coercion and repression on narrow legalistic grounds is not wise”. Throughout this Fudge and Glasbeek collection, references are made especially to aboriginal O&Ps and the “colour of right” principle (see below), clearly indicating the authors’ viewpoint that aboriginal O&Ps may have a special claim to a problem-solving, “elastic” application of the law and of policing.

There is a large body of literature, theoretical and normative, that deals with the role of police in handling contemporary O&Ps. Baker (2005) in discussing labour disputes and aboriginal O&Ps in Australia, posits that “a defining challenge for modern day police is to achieve an appropriate balance between maintaining safety and order while avoiding excessive applications of force ... the primary source of improved public order policing is to advance formal cooperation between the parties”. Developing a philosophy (e.g., “the measured response”) and strategy (e.g., conflict resolution) of appropriate policing are priorities for Baker, especially with respect to aboriginal O&Ps; he cites a 2004 clash between aboriginal youth and police in Sydney as “the worst in Australian history”. At the same time, Baker acknowledges that the approach he advocates is not without its critics and that there is an uneasiness on the issue of the appropriate police response to O&Ps. Pue (2000 p.14) in criticizing the police response to protest at the 1997 Apex Summit at Vancouver for kowtowing to political pressures, observes that “buffering police from political control is the first and primary objective of the rule of law, the crowning achievement of Canadian –Anglo constitutional development ... in a democracy the police are there to enforce the law, a task that should never be confused with simply doing the bidding of politicians”. In a subsequent paper (Pue, 2005 p.69) extends his argument to police strategy and characterization of civil disobedience arguing that, “none of the ancillary police powers, the law of trespass or the law of injunctions, provides an easy end-run around the need for state authorities to respect both common law liberties and constitutionally protected rights”. Pue advances a philosophy and strategy for policing O&Ps similar to that of Baker and, like him, highlights the special case of aboriginal O&Ps, including an assessment of the “colour of right” defense against charges of civil disobedience.

The literature on the police role in modern society has generally focused on “rights” in one sense or another. Indeed, a common postulate has been that police and military use of force involve radically different mindsets, police force occurring in a context of dealing with citizens who have rights whereas military action implying that citizenship is being denied or revoked (e.g., Waddington, n.d., homepage accessed 6/08/2005)*. Willem de Lint (2004) suggests that a theoretical and normative conceptualization of the role of police in O&Ps, congruent with that proposed by Baker and Pue, has emerged in Canada over the past fifteen years and through this “announces the strength of Canadian democracy to the Canadian polity and a world audience”. In his view, “the public police carry a great burden of making democracy a living reality”. Interestingly, he observes that public order has been at the forefront of public and governmental conceptions of the police function since the very beginnings of the modern police service but he does not discuss the nature of that police-government collaboration. Murphy (2004 p.3) argues that the spirit of Robert Peel, whom many consider the founder of modern policing, was associated with the concept of “a politically accountable but operationally independent public police service which “mediates” between citizens and their governments, rather than simply acts on behalf of governmental authority”. Such a conception of the police role fell far short of full realization until recent years. Stenning (2004) notes that there remains significant diversity among common-law societies with respect to police accountability and independence vis-a-vis government authorities. He cites the

emergence of “the Blackburn doctrine” in the early 1960s in England as crucial to the modern conception of the police service as being quite independent from governing authorities and serving first and foremost the law, even while “having regard” to governmental objectives and priorities in discharging police duties. There seems to have been a definite trend over the past fifteen years for the police role to be considered more like the judiciary in terms of being cast as servants solely of the law and exercising independence vis-à-vis government authorities, but how much further this particular trend should proceed remains debatable in a liberal democratic society (see Roach (2004) for a discussion of various models of police-governmental relations and the requisites for a model of “democratic policing” which preserves a proper balance among rights, laws, and accountable government).

While it is clear that police, routinely and without reflection, doing the bidding of the government of the day with respect to responding to O&Ps, has long characterized the Canadian scene (Pue, 2000, Stenning, 2000, 2005 on-line accessed), there were plenty of exceptions (see for example, de Lint, 2004). The empirical trends in the modern policing of O&Ps indicate a significant change has occurred. Citing recent research, de Lint contends “the bulk of protest research indicates that more advanced police and more established protest groups increasingly avoid open violence by enlisting liaison and consultation, event planning and preparedness training”. Waddington (1994, 2005, on-line accessed), one of the most perceptive researchers on police and modern O&Ps and steeped in participant-observation of the policing of O&Ps in metropolitan London England, has reported several important themes subsequently widely acknowledged in the “policing O&Ps” literature. He refers to the institutionalization of such incidents which puts the police and the protestors on the same wave length, confrontation and disorder giving way to police and protestors “becoming enmeshed in a web of mutual support”. Here the protestors’ concerns to symbolically express their dissent and appeal to a wider audience are facilitated by the police in return for the protestors adhering to an agreed-upon plan of action (e.g., no violence, some restrictions on movement). Such institutionalization is commonly found where organized labour has been engaged in protest. Waddington also has found that in “uninstitutionalized” O&P policing incidents, where violence and disorder are more common, the protestors typically are young people, minorities and political “extremists” (e.g., neo-fascists, certain environmental activists) whose main objective is to stop something, not merely to communicate their own dissent. It is unclear in the literature whether the future is thought to hold more or less institutionalization in O&Ps. Moreover, even where the relationships and strategies have been well developed, Waddington acknowledges that there can be “cock-ups” related especially to cultural differences and inadequate training/preparation on either side. It is interesting to note that both the uninstitutionalized incidents (based on “stopping something” from happening and “radical” environmental activism) and the “cock-ups” (based on cultural differences and poor training in a broad sense) may well be more common in the case of aboriginal O&Ps in Canada.

Of course as Waddington, de Lint and others have argued, there may always be, in O&Ps, “lines in the sand” or “ditches worth dying in” from a policing perspective. The strategy in contemporary policing appears to be to clearly communicate with

protestors about these “ditches” while maximizing the opportunities for them to communicate and get exposure. De Lint (2004) notes the several lessons that have been learned in policing O&Ps (e.g., embedding uniformed but unarmed officers to facilitate communication) and these have been reiterated by recent inquiries into the policing of O&Ps in Canada and elsewhere. De Lint emphasizes the need for a more integrationist policing effort, creative problem solving as opposed doctrinaire readings of law and authority, and recognizing the politics of O&Ps. These suggestions are quite congruent with the modern practices and trends in policing. The Goldstone Commission in South Africa (2005, on-line accessed), for example, identified police shortcomings in responding to an O&P in Cape Town as rooted in the perception that the police were not seen as neutral but as an enemy of the community; the Commission advanced the lesson learned as “the police should have done more to counter this perception and had they done so enforcement would have been more effective”. Wawyrk (2005) advances similar recommendations and refers to “the measured approach” (defined as “a strategy that is layered as long as possible at the less forceful end of the scale”) that has become well known at least, if not always effectively applied, in RCMP circles. Municipal police services in Canada increasingly have also emphasized good communications, embeddedness, and some implementation of a “measured approach” in their response to O&Ps (see, for example, Halifax Regional Municipality Integrated Police Team, 2004 for a specification of that police service’s approach which included the distribution of brochures prepared for both officers and protestors, outlining rights of protestors, specifying the “lines in the sand” and so forth, on the occasion of President Bush visiting Halifax in 2004). These recommendations and lessons learned would appear to apply strongly to aboriginal protests in Canada which are frequently recurrent incidents and where the factors of deep political divide, cultural differences and different visions of development among the parties (Noble, 2004) have to be taken into account by the police.

SALIENT DEVELOPMENTS IN ABORIGINAL SOCIETY

In 1990, Steven Point, an FN activist and band chief who later became a judge in British Columbia, warned of the growing tension and O&Ps in British Columbia and the associated prospect of significant violence. He emphasized the importance of both First Nation leaders and federal and provincial government officials, willingly and with open minds, sitting down and engaging in meaningful negotiation (Point, 1991). Fifteen years later, according to the relevant literature, there remains much frustration and suspicion among the parties. Miller (2004 p.2004), writing about current native controversies in Canada, observed, “Recent years have not improved the climate of relations between aboriginal groups, especially First Nations, and government, to any extent”. He referred to a legacy of fear and suspicion (manifested, in his view, in the AFN’s response to Ottawa’s recent attempt to revise the Indian Act in areas of governance and financial accountability) and called for consultation and negotiation in a cooperative climate.

Cairns (1997, 2000), a leading advocate of the “citizens plus” model of the aboriginal status in Canada – a model that was advanced by the Hawthorne Commission

in the 1960s and which is advocated by most scholars, such as Miller, who support an anti-assimilation approach – has observed that the trust and relationships necessary for a frank exchange between aboriginals and mainstream Canadians remains problematic. In Cairns' view, the “sides” have and employ different narratives or stories about the historical circumstances and evolution of mainstream-aboriginal relations; the different narratives polarize rather than facilitate dialogue. Indeed, a good illustration of this very point is that while Cairns discusses, largely in negative overtones, the aboriginal savvy in emphasizing the “politics of embarrassment” in their narratives (e.g., using historical and other examples to embarrass government for falling well short of cherished ideals), Borrows, an FN scholar, stresses the importance of historical consciousness (Burrows, 2005) in advancing the aboriginal agenda.

There has been some reference by other writers to a “Canadian Way”, a more accommodating and violence-eschewing style of getting along with one another, reflected for example in the contrast between American and Canadian settlement styles (Vickers, 2004) but others have sharply criticized such a premise (see Orkin, 2003) citing a litany of violence, oppression and dispossession as well as social warfare and the mischaracterization of native resistance. Clearly, while there have been many profound changes over the last fifteen years in terms of favorable court decisions (basically Supreme Court of Canada decisions), federal government acknowledgement of some implications of aboriginal constitutional rights, and substantial increases in funding for education, housing and the like, and while a large number of separate sets of salient negotiations are underway, the scope of the aboriginal right to self-government remains largely unanswered (Smart, 2002). Woolford (2004) in researching treaty negotiations in British Columbia highlights the quite different perspectives that native and mainstream negotiators bring to the table. Coyle (2005 p.1) suggests that “current federal and provincial policies are not capable of resolving the majority of claims in a timely way” and the record as reflected in a paper prepared by the Ontario Native affairs Secretariat (2005) provides much support for Coyle's position. Harris (2002) contends that the deeply different narratives between mainstream and aboriginals have made it necessary for natives to turn to rights-based arguments and the courts (hence the great significance of section 35 of the constitution) and he predicts that O&Ps, some physical violence, endless court cases and appeals to the international community will continue. Of course it is not only the “different narratives” factor that limits progress as substantial material considerations are at stake as well as different conceptions of the constitutional issues (e.g., native leaders prefer to talk on the basis of section 35 not section 91/92 which describes provincial constitutional rights regarding land and resources).

In the paper cited at the beginning of this section, Point also stressed the need for significant change in FN communities if alternatives to violent O&Ps were to develop. In his view, “native leaders have to first meet with their own people and define their own goals and objectives before getting involved in formal negotiations with other parties” (Point, 1990 p.128). There are many challenges to this imperative as well. There is little doubt that progressive change in recent years has been FN-driven so it is important to appreciate developments in the FN communities that impact on this Point imperative and strengthen or weaken its effectiveness. Many scholars have reported deep

frustration among the aboriginal leadership and even more among aboriginal youth. Orkin (2003), and indeed most scholars, have contended that social alienation and anger across Canada runs deep and that, while native peoples have shown remarkable restraint, the price of that approach has been heavy in terms of suicide, alcoholism and violence within aboriginal communities, whether First Nations or Inuit (Clairmont, 2002). The depth of frustration can be seen in the following comments of one chief attending an AFN meetings in Ottawa in 2003, “I am not a social activist or a proponent of violence but if the chiefs in this room can’t get up and occupy something – I don’t care if it’s MacDonald’s but it should probably be the Governor General’s place – then we’re all just a bunch of conference Indians” (Wind Speaker, March, 2003)

Such frustration with non-aggressive recourse to dealing with on-going issues and problems perhaps was a major factor in the rise of the modern warrior’s movement. Alfred (2005) contends that the latter was associated with the rise of the American Indian Movement (AIM) in the tumultuous 1960s, the launching pad for so many powerful challenges to mainstream values and lifestyles, such as the Women’s Movement, Black Power Movement and Gay Liberation Movement. The warriors have come to symbolize the modern aboriginal O&P even though protestors self-designated as such have been engaged in less than 15% of those aboriginal O&Ps which have garnered significant media attention over the last forty plus years (Ramos, forthcoming) and it is reasonable to presume their involvement in other aboriginal O&Ps would be much less since the latter would be more of the intra-band variety. Of course even when the warriors as an organized grouping are not involved in a protest, the warrior flag may be flown as a symbol of protest – something that might lead police to anticipate a more serious threat of violence. Alfred has provided a useful description of the philosophy, principles and loose network organizational structure of the warrior society in Canada though there is still little known concerning membership, protest strategies and tactics, preparedness and training, and the continuing viability of warrior societies in First Nations communities. The Oka O&P in 1990 of course was a defining moment for the warrior movement in Canada and much attention has been directed to that incident via books, articles, poetry and film. Perhaps the lack of literature on the warrior society outside the Oka-Mohawk context attests to its limited development since 1991. Nelson (1997) has written about Ojibway warriors, indicating that they were an important part of several successful O&Ps in Manitoba a decade or so ago but adding that the warrior society has been but weakly existent there.

Just as there is little literature available concerning the contemporary warriors movement in Canada, so too there has been little written about the internal workings of First Nations, and how these internal forces may weaken or advance the Point imperative noted above. Borrows (2005) refers to a spate of recent studies concerning the relationship between traditional and elected leaders, gender issues, increasing socio-economic differentiation on reserve, and the changing role of elders, but little heuristic information is available with respect to appreciating the likelihood or dynamics of O&P (e.g., how effective is the recourse to elders as peacemakers in O&Ps?). Not only is there little in-depth descriptive or analytical literature on these ‘classic’ social categorizations but it is clear that significant economic development has occurred in many FN societies

and that the pace of change has accelerated but the correlates and implications of these latter developments have scarcely been touched upon.

Chief Fontaine of the AFN (2004) noted that in 1952 there were only two native university graduates in Canada whereas now there are thousands; he added, “for our youth the world is theirs to conquer”. Newspaper accounts (and the research findings reported below) have reported major economic growth in FN communities such as Akwesasne, Six Nations, Membertou and so on. Significant entrepreneurial activity has occurred across Canada in a variety of resource, tourism / hospitality and light manufacturing sectors. Developments in Fisheries, whether in Ontario (Coyle 2005), British Columbia (DFO, 2005) or Atlantic Canada have apparently produced significant social change. In the latter case, for example, – Atlantic Canada – reports from both governmental and FN organizations have attested to the major development. Recently (Mail Star, February 27, 2006) a DFO spokesperson reported that since 2000 (the Supreme Court Marshall decision of 1999) “more than 1000 FN people are employed in an orderly fishery and hundreds more fisheries-related jobs have been created. Unemployment has dropped 4% (in absolute terms) from 2000 and fishing licenses held by FN people have generated an economic return of 300% compared to FN licenses held in 2000”. A spokesperson for the Atlantic Policy Congress of FN Chiefs noted, “the money has had a positive effect on aboriginal communities. Our communities have a new sense of hope. It’s not a money thing. It’s a whole mindset. And it has fundamentally changed our communities forever and that is really good”.

There are several possibly profound social implications bearing on O&Ps associated with the above developments. While in many FN communities there is some indication that the benefits of economic development and governmental acknowledgement of aboriginal claims and rights have been well distributed, it seems also the case that significant economic disparities have set in as well. Social change may be uneven and create internal divisions. Thiessen and Looker (2005), for example, have noted that access to sophisticated information technology may have increased socio-economic disparities within the aboriginal community as a whole while sustaining the gap between aboriginal society and the mainstream. Growing socio-economic differentiation coupled with a decline of communitarian sentiments (a strong correlate of modernization) can generate social problems and conflict issuing in O&Ps, especially where there is no formal mechanism such as a taxation policy to attenuate the inequalities (it would appear unlikely that informal sharing and ceremonial type sharing would be sufficient). Protests on behalf of the less advantaged could take many forms, including that of challenges in terms of individual versus collective aboriginal rights, a matter which federal and provincial governments presume has been settled (Ontario Native Secretariat, 2005), or be manifested perhaps in the growth of organized crime on reserves cloaking itself in the guise of native rights symbolism and rhetoric (Dickson-Gilmore, 2003).

Closely related to the above developments has been the considerable expansion of FN government over the past fifteen years. Not only has there been devolution of budgeting and regulation making from INAC but also many FNs have entered into numerous

agreements with other governmental agencies (DFO, MNR) as well as with private businesses. Here, too, a significant acceleration in the pace and the scope of FN regulatory governance can be noted (Avio, 1994; Coyle, 2005). There appears to be as well, much “downloading” (better, perhaps, co-management) by federal and provincial agencies to the FNs with respect to monitoring and enforcement in areas such as fisheries, forestry, parklands, and moose (and other game) hunting. This major social evolution in governance places the elected FN governments front and center in O&Ps and, seen in the context of increasing social differentiation within FNs, would appear to bring to the fore issues such as the capacity at the band level to deal with disputes, and challenges to band policies from a variety of standpoints (e.g., native rights, equity). It is increasingly difficult to envisage an FN O&P that does not directly engage the band councils. As Coyle (2005) notes, with respect to commercial fishing in Ontario, “MNR has implemented a number of initiatives to allocate commercial fishing opportunities to FNs in various parts of the province, including virtually all the commercial fishing on the Northern lakes”. While the issue of individual versus collective rights may be settled from some vantage points (Ontario Native Secretariat contend (2005), “the Aboriginal interest is communal in nature and it is the community as a whole and not its individual members that hold and may assert aboriginal and treaty rights to land”), O&Ps challenging band agreements and regulatory policies still operate in a context where there are many specific and general treaty claims unresolved, thereby creating ambiguity in terms of rights and the law (recall the ‘colour of right’ principle), and ambivalence on the part of the elected band officials. As Brophy has noted with respect to the O&P at Grassy Narrows (Environmental Devastation at Grassy Narrows First Nation, on-line accessed 6/8/2005) “when authorities negotiated they did it with the elected council not the protestors even though the former had nothing to do with initiating the blockade and had largely remained aloof from it during the first year”; in this and other situations, the elected officials get “the opportunity to negotiate with leverage”. The complexity of interests among the various groupings, the fast pace of the uneven social development and the continuing uncertainty concerning rights and claims mean, as Millan (2003 p112) observes in an Oka context, that there are legitimate issues on all sides concerning how the FN governs itself and “it does not mean that you should bring down the whole system”.

As noted above, social development can also have a downside in the growth of organized crime and it is not at all uncommon for police and government officials to cite such interests in discussing some aboriginal O&Ps. As in the mainstream society in the case of bootlegging in the first half of the 20th century, social development in FNs appears to be increasingly de-linking certain activities from any sense of legitimacy as, for example, regarding tobacco, alcohol and drug smuggling. Dickson-Gilmore (2003) contends that aboriginal organized crime has evolved from a nationalist activist activity (where native rights and FN economic interests were major considerations and hence the concept ‘crime’ was ambiguous at the least) to an activity where more selfish conventional opportunistic crime motivations prevail. The parties engaged may still employ the rhetoric of native activism and aboriginal rights but with little wider legitimacy. Insofar as this theory is valid, then the issues for governance would be two-fold, namely pursuing social development and treaty negotiation (i.e., reducing the

opportunity for manipulation by criminal interests) and building FN capacity to deal with crime and crime-sponsored disputes.

Another major consideration in discussing the internal dynamics of the FN community in Canada has become the reserve-off-reserve distinction. There has been without doubt a major migration among FN peoples from the reserves to the urban milieu in recent decades, an overall trend that is congruent with the mobility patterns in the larger society. This congruence (between mainstream and FN patterns) itself is evident too in many other areas of social life, such as growth of single parent households, percentage divorced and separated, reduction in family size, increased inter-marriage rates, percentage with post-secondary educational experience, percentage employed in the tertiary sector and so on (Clairmont, 2006). Determining the exact proportion of the FN people living off-reserve and in urban areas can be quite daunting. One has to taken into account the definitions employed (i.e., aboriginal, status or non-status North American Indian, Metis, Inuit), the precise question taken into account (e.g., an aboriginal “genetic” heritage in the Census vs band membership and/or primacy of the aboriginal identity as in the Aboriginal Peoples Survey) and the unit being considered (e.g., metropolitan area, urban size, off-reserve). The meaning of the urban / non-urban distinction can also be problematic among many FN peoples where frequent movement by individuals from and back to the reserve is commonplace. In addition, the demographics clearly have a political dimension as can be seen in the claims advanced by different aboriginal interest groups; recently, for example, (Globe and Mail, March 10, 2006), the urban-based Association of Friendship Centers reported 49% of the aboriginal population lived in urban areas while the off-reserve oriented Congress of Aboriginal peoples claimed 79% living off-reserve; AFN, representing the bands, claimed only 40% lived off-reserve and added that a reverse trend of returning to the reserve has set in.

Research reports have helped somewhat to sort out the demographic debates. One recent study (Human Sector Resources, 2005) has noted that whereas only 6% of the aboriginal population lived in cities in Canada in 1951, over 25% lived in just ten cities alone in 2001. A recent Statistics Canada report (National Post, June 25, 2005) also indicated the latter figure, referring to 28% in eleven metropolitan areas. Using a similar referent of Census counts of people claiming aboriginal identity, Dickson-Gilmore (2003) report that roughly 70% lived in urban areas in 1996. Reid (2004), focusing just on Status Indians, indicated that roughly 50% lived off reserve in 2001. Since ‘off-reserve’ is slightly more inclusive than ‘urban’ and since ‘status’ is less inclusive than the category “consider my aboriginal identity to be my primary identity”**, it seems safe to conclude that approximately 50% of the FN people who, with some basis, identify themselves as such, live in urban areas of different scale (e.g. Metropolitan Toronto with its three million plus residents and small centers like Kenora with its twenty thousand). Of course there is also considerable variation by region. In Atlantic Canada for instance, the proportion of registered band members (i.e., status Indians) living off reserve is less than the Canadian average; in Nova Scotia, only roughly 30% of the 13,250 registered FN people lived off reserve in 2005 (INAC, 2006).

The reserve / off-reserve (conflating here urban and off-reserve) differentiation has deep implications. Research has usually shown that the off-reserve native people have better income, higher education and less unemployment than their reserve counterparts (Clairmont, 2006). Thiessen and Looker (2005), analyzing Statistics Canada's Aboriginal Peoples Survey for 2001, find that the non-reserve population has more high school graduates (64% to 45%), less unemployment (9.4 to 13.3) and much less aboriginal language retention (33% to 79%). The differentiation would be greater if only off-reserve persons living in large metropolitan areas were considered since between 1991 and 2001 the gap between native and non-natives in large metropolitan centers has diminished significantly across a wide range of socio-economic variables (Statistics Canada, 2005). Still, there is considerable social and economic disadvantage for the off-reserve / urban natives as a whole. Reid (2004) highlights the poverty, unemployment and high percentage of single parent families among them. The Thiessen and Looker study (2005) indicates that the reserve population is much more likely than the off-reserve to report, as a problem in their community, suicide (60% to 37%), unemployment (93% to 75%), family violence (78% to 59%), sexual abuse (68% to 48%), and drug abuse and/or alcohol abuse (91% to 72%); clearly, though, the off-reserve numbers suggest a serious social problem in their communities as well and it is likely that these numbers would be higher in certain urban locations such as Vancouver, Winnipeg, Saskatoon, and urban Northern Ontario. It could be presumed also that relative deprivation would be greater among the off-reserve or urban native population given their greater exposure to and engagement in the mainstream society. Certainly, as Reid and others (Dickson-Gilmore and LaPrairie (2005)) have noted, the urban aboriginals are in limbo with respect to rights and benefits and have limited access to most aboriginal-specific programs administered by the First Nation governments even while recent federal policy and court decisions have compelled band councils to facilitate their electoral participation and take their concerns into consideration. Reid (2004) has discussed the difficulty of mounting and sustaining political action among urban aboriginals (e.g., the rise and decline of the aboriginal rights movement in Southern Ontario and in Vancouver) but contends that "urban aboriginals communities are beginning to mount successful court challenges (e.g., access to the Pathways program) and also beginning to develop grassroots political movements giving them a voice".

FIRST NATION O&Ps and POLICING

Despite their frequent aggressive external features, aboriginal O&Ps over the past 50 years in Canada have been characterized by researchers as being unusual in their low levels of actual violence (Wilkes, 2004). The essential pragmatism of aboriginal O&Ps, that is evident in the emphasis on partnership and sharing in the management and benefits of resource exploitation, has been much more pronounced (Trivett, 2003) than O&Ps aimed at stopping development or providing a radically different vision of development

(for an example of the latter, see O'Connor, 2004). Discussing the many protests in British Columbia, a Wind Speaker article (May, 2005) commented "protests represent frustrated natives trying for leverage to get more amenable government at the table". As a practical matter it would be useful to know how effective the different types of O&Ps have been. The literature is ambiguous on this score (Borrows, 2005). The recurrent nature of certain O&Ps and the fall-out of major O&Ps such as Oka, Gustafsen, Grassy Narrows and Sun Peaks suggest a limited success. Some writers, however, have indicated much success in O&Ps aimed at generating an "amenable government". Muckle (1998 p32), commenting on blockades of railroads or roads in British Columbia, noted, "in many instances success has been observed (pressuring government or private companies to negotiate issues and claims) and in most instances violence did not result". Nelson (1997 p.41), an Ojibway Okiljida warrior, cites several examples of blockades and other O&Ps "successfully using economic pressure" in Manitoba and elsewhere. In the case of urban aboriginal O&Ps, basically protest marches (such as the 1990s' Toronto demonstration that shut down the busy Gardiner Expressway during rush-hour traffic) or occupation of government offices (such as the 45 day occupation of Revenue Canada offices in Toronto in 1995) more abstract issues and basic policies are targeted by the O&Ps and success is more difficult to determine.

There is a widespread view, then, reflected in the literature, that aboriginal-friendly change has to be aboriginally driven and O&Ps of a non-violent type represent a major stratagem that has to be employed. Not surprisingly, then, another feature reported by researchers (Ramos, forthcoming) is that, at least in the past two decades, a significant number of aboriginal protests reported in the media (in some years almost one quarter) have been in support of another aboriginal group's protests, an indication both of aboriginal solidarity and of accessible modern communication systems, and, perhaps, the widespread unemployment among FN peoples which makes such protesting feasible.

Apart from the Ipperwash incident, substantial works – that is, accounts that go beyond brief reference in short articles - on aboriginal O&Ps have primarily focused on the Mohawk (especially the Oka incident but also more recent incidents in Akwesasne, Kahnawake and Kanasatake) and the James Bay Cree (Kaliant, 2004; Ramos, forthcoming; also see bibliography attached to this paper). There has been no comprehensive analysis of even a clutch of major O&Ps where common patterns and special features have been highlighted. Borrows (2005) has provided an historical overview and identified several unsettled underlying issues as commonplace in the handful of O&Ps he described. The major issue he cites is competition over the same resources, and here he reports that treaty negotiations and litigation regarding land claims have "dramatically reduced recourse to physical occupations ... and [resulted in] fewer blockades". An opportunity to provide an analytical overview appears to have been missed by the RCMP in their review of major incidents in the late 1990s (Canada, RCMP, 1999). The review was occasioned specifically – but not exclusively - by RCMP concerns about how major aboriginal O&Ps had been policed and sought key lessons and best practices. However the examination became focused on international security issues with the result that little of any substance was generated concerning aboriginal O&Ps. Still, two RCMP officers have provided useful short, analytical pieces. Vickers (2004) compared the

policing response to the Oka and Burnt Church O&Ps and noted how a change in police practice in Burnt Church, towards better day to day communication with all parties and the adoption of more neutral position (the essential components of the measured approach although he did not use that concept) resulted in a less violent O&P there in 2000. Purcell (2000) discussed the police response to the South West Nova O&P in 1999 (this case is highlighted below in the section on best practices) in the context of the measured approach strategy honed earlier in the Nova Scotia RCMP responses in labour disputes.

Quantitatively, several recent studies have tried to identify the key factors causally related to aboriginal O&Ps. Wilkes (2004) examined well over 100 such incidents which involved at least two individuals and were not simply recurring institutional events such as a pow wow, and were reported in mainstream or FN newspapers during the period 1968 to 2000. The O&Ps were related statistically then to the known characteristics of some 500 plus FNs. It was found that deprivation (the % unemployed) and resource mobilization capacity (% with post-secondary education, population size and previous experience in collective action) were the main factors positively correlated with an FN having an O&P. The author considered the findings to fit a general theoretical position about O&Ps, namely ‘that groups must be disadvantaged enough to be dissatisfied but also resource-rich enough to be able to challenge the dominant group’(ibid, p. 585). Ramos’ (forthcoming) research tried to identify the key factors that caused yearly fluctuations in aboriginal O&Ps in Canada over the fifty-year period from 1951 to 1999. He noted that there was an increase in O&Ps (as publicized in national newspapers) beginning in the late 1960s, peaking in the early 1970s then skyrocketing in the 1987-90 period, falling back subsequently but then experiencing a modest upsurge in the late 1990s. More than a third of all O&Ps in the sample occurred in Ontario. Ramos had expected that variables such as collective identity or pan-aboriginal solidarity (reflected in the founding of advocacy organizations) and Supreme Court of Canada decisions would have impacted on the frequency of O&Ps but he found that the key factor was the number of land claims settled. The settlement of land claims was strongly and negatively associated with the number of yearly aboriginal protests, a finding that supports Borrows’ analysis and the views of many aboriginal leaders. The quantitative works by these scholars complement one another and represent a modest beginning in understanding aboriginal O&Ps as a social category. The conclusions that land claims being settled reduces the likelihood of O&Ps and, on the other hand, that deprivation and resource capacity constitute a combustible combination among FNs are quite congruent with the individual case studies.

The history and evolution of policing in aboriginal communities is discussed at length elsewhere in this paper and also in a companion paper (Clairmont, 2006) that focuses directly on such themes. Here a brief overview will be sketched out relevant to aboriginal O&Ps and the reader is referred to these other sites for detailed bibliographical references. The 1970s witnessed a number of significant changes in the policing of aboriginal communities in Canada, including the elaboration of the band constable system where the officers, authorized with very limited policing powers, were directly managed by the band council, and the hiring of band members as special constables (again with limited training and police authority) with the senior police services, namely

the RCMP, OPP and SQ. These latter arrangements differed in terms of degree of oversight by the band councils and in the case of RCMP's 3B model, involved no significant band council co-management. These policing programs represented an effort to improve the quality of policing on the reserves, connect it better to aboriginal needs and wishes and do this in the context of Canadian law and enforcement styles. Independent assessments usually found that the programs were well-received but short of what FN leaders deemed to be fully adequate either in terms of the quality of policing they desired or the influence they believed band councils should be able to exert on the priorities and style of the policing available to the community.

Between 1986 and 1992 there was an explosion of inquiries across Canada. These inquiries typically focused on issues of inadequate policing of aboriginal citizens through neglect, mistreatment or cultural insensitivity. And, for the most part, they all called for greater cultural awareness training, recruitment of aboriginal officers, culturally sensitive policing and community-based policing, generally considering such a policing style as a more problem-solving type of policing on the part of officers engaged in the aboriginal communities. The reforms were largely seen as oriented to "fairness and integration" motifs rather than any special aboriginal type of policing or form of police organization. The Manitoba Commission of Inquiry went furthest along these latter lines in recommending a province-wide aboriginal policing commission and encouraging FN self-administered policing. A 1989 report by assistant commissioner Head on the RCMP's policing in aboriginal communities also called for significant change not only in the quality of the policing but more so in creation of a strong sense of ownership and partnership between the RCMP and the FNs; to paraphrase the way Head put it, the RCMP would have to dramatically change the way it polices aboriginal communities or it would soon find itself out of business there.

The inquiries coincided with a major review of policing in aboriginal societies that the federal government under DIAND had begun a few years earlier. The upshot of both developments was the federal government's launching of the First Nations Policing Policy in 1991. It reiterated the three main foci of previous federal position papers on policing (e.g., DIAND policy papers in the 1960s followed by its famous Circular 55 in 1971), namely policing more related to FN needs and concerns, policing that entails more ownership and participation by the FN communities, and policing quality that is on par with that provided to mainstream communities. But the FNPP went well beyond the earlier directives in spelling out the key principles to be implemented, encouraging the possible development of self-administered FN police services, and setting up a new organizational context for implementing, facilitating and monitoring the FNPP (e.g., the tripartite contract involving federal, provincial and local FN authorities, the Aboriginal Policing Directorate within the Solicitor General Canada).

There have been many very significant developments in aboriginal policing since the FNPP. These include the proliferation of self-administered FN police services primarily in Ontario and Quebec where provincial policing is provided by the OPP and SQ respectively, and the many community tripartite agreements elsewhere where the RCMP provides the contracted policing. In both arrangements, especially of course the

former, there has been extensive recruitment of FN people into the police service. In 1996 the Royal Commission on Aboriginal Peoples released its major document on justice issues, reinforcing the importance of aboriginal ownership and direction over policing in FN communities and “placing” policing in the context of core areas for aboriginal culture and identity. The various systems of policing currently extant in FN communities are discussed below. Despite some claims to the contrary (e.g., Human Resources, 2005) much is known about effectiveness in the policing of FNs (Clairmont, 2006). What is scarce is literature on the policing of aboriginal O&Ps beyond the Oka, Ipperwash and Gustafsen Lake incidents.

In general, there remains much concern among FN leadership and media about the policing of O&Ps. Articles in *Wind Speaker*, for example, typically have been critical of the alleged cozy relationship between the RCMP and governmental interests (e.g., *Wind Speaker* March, 2001). It has been commonplace for native leaders to challenge the neutrality of the RCMP and other police services; at a recent conference (2006), for example, one prominent chief commented “In the late 1890s when the NWMP arrived to bring law and order to the territory, was the beginning of the collapse of law and order for the Yukon Indians”. Rudin (2005) has argued that merely recruiting more aboriginals and having more aboriginal awareness programming does not get to the heart of the problem of police-native distrust which lies in the colonialist legacy and the fundamental downgrading of native interests and perspectives. Hay (2004) makes a somewhat similar point in arguing that FN police officers face a dilemma in policing O&Ps; on the one hand, “if the aboriginal peace carrier officer is to be respected by his or her community, and thus effective, they cannot be compromised to act as the long arm of the non-aboriginal government ... they must be observed in an expanded role of social peacekeeper and not simply as an enforcer of the rule of Canadian law”; such a position, he suggests, may render them suspect to the mainstream police officers.

Nevertheless, significant positive developments continue to occur and there are some grounds for optimism with respect to both the changing police styles in dealing with aboriginal O&Ps and the native leaders’ assessments of the same. It has already been noted that among the RCMP, for example, there appears to be increased adoption of the measured approach which, at the least, cautions the police to draw the line in the sand at serious harm and violence rather than at injunctions (Purcell, 2000). Vickers (2004 p.2), in drawing on the lessons of Oka and Burnt Church, has commented, “Respecting the dignity of FN people and indeed all people has to be the foundation upon which we build our actions”. The potential salience of the colour of right defense, in the face of so many unresolved treaty claims, is generally acknowledged by police leaders even if perceived through a glass darkly, as it were.

Building on previous policy positions in responding to disputes and forging better relationships with FN peoples, both the RCMP (2004; PRA, 2005) and the OPP (2006) have recently issued documents elaborating on their goals and intentions in policing aboriginal communities and responding to incidents emphasizing conflict negotiation techniques. In an RCMP 2004 statement on strategic priorities and associated outcomes, a central place was given to achieving safer and healthier aboriginal communities – “we

will work toward safer and healthier aboriginal communities by being involved in initiatives surrounding education, employment, health and cultural development. At the same time we will find ways to prevent/resolve conflict by focusing on crime prevention partnerships, restorative justice processes, and a holistic, culturally sensitive approach to problem solving” (p.3). Another key concept advanced by the RCMP in recent years has been “integrated policing” (p.4) and the same 2004 RCMP source stated that it means, “working collaboratively with and in communities at all levels” (p.5). The 2006 document prepared by the OPP for presentation at the Ipperwash Inquiry articulates basically similar goals and strategies.

ENDNOTES

* This police / military differentiation may also explain why the military, apart from loaning a few armored carriers, refused to become involved in the Gustafsen Lake O&P.

** Reid (2004) contends that despite passage of bill C-31, re-establishing in theory the rights of women who married non-status men, in 1985, hundreds of thousands remain without status. It can also be noted that regular Census counts of persons reporting multiple ethnic backgrounds including aboriginal, yield much different and higher numbers than counts that are limited to registered or status persons and those who consider the aboriginal heritage to constitute their primary identity. For example, in Metropolitan Halifax, Nova Scotia, in the 2001 Census there were roughly 3500 persons claiming an aboriginal ancestry but only roughly 850 who were band members or at least considered themselves as primarily aboriginal. It may also be noted that status or registration issues can be very problematic for FNs. In some areas the registered population constitutes but 30% of the band members in particular FNs and has declined rapidly over the years, raising many issues for funding the needs of the FN community (since certain INAC funding is based on the number of registered persons in the First Nation).

POLICING STYLES

In this section we discuss, in an overview fashion, the engagement of the different types of police services in aboriginal policing. A companion paper (Clairmont, 2006) focuses on the evolution of aboriginal policing, especially in Ontario, so here the thrust is more to summarily highlight the policing styles focusing on their salience for policing aboriginal occupations and protests, and especially in Ontario.

THE ROYAL CANADIAN MOUNTED POLICE (RCMP)

The RCMP, in its North West Mounted Police predecessor mode, began policing aboriginal peoples in 1873. Until the 1960s, when dramatic changes took hold both in the expansion of government services and agencies in aboriginal communities spearheaded by the Department of Indian Affairs and Northern Development (DIAND), and in the announced withdrawal of the RCMP from routine conventional policing in aboriginal communities in Ontario and Quebec, the RCMP policed aboriginal communities under a broad policing mandate. In modern parlance there was a significant “community-based policing” character to the RCMP’s aboriginal policing style in the sense that officers’ activities focused on providing services well beyond reactive criminal-code oriented policing (Clairmont, 1998). At the same time there was little direct engagement in the policing effort by the local communities. While the informal relationships were reportedly often very meaningful and positive, there was no formal consultative relationship between police and community leaders, and aboriginal persons employed by the RCMP were helpers not credentialized officers in any respect. Not surprisingly, then, when the RCMP pulled out of the conventional policing of aboriginal communities in Ontario and Quebec, the community leaders were not consulted about the transition from federal to provincial police services.

Beginning in the 1960s then, profound changes in policing aboriginal communities began to occur at a quickened pace. Concern about the lack of engagement with and collaboration in their own policing on the part of aboriginal communities led to DIAND’s developing and funding the band constable system throughout Canada in 1965/66. By 1971 when DIAND issued its well-known Circular 55 dealing with principles for policing and possible alternative policing arrangements in aboriginal communities, there were 121 band constables. These Circular 55 principles included more community input concerning the policing program, improved policing service, and more adaptation of the policing service to the needs and preferences of the aboriginal people, the three central thrusts of ownership, equity and cultural sensitivity that were more fully developed twenty years later in federal government’s First Nations Policing Policy (FNPP). The possible policing arrangements varied somewhat, on paper and in

practice, but essentially the band constables were to be hired by the band council, focus more on social order issues and assist the fully credentialized police officers who retained conventional policing jurisdiction. Band constables usually did not carry weapons or lay charges; they usually received some modest training from the senior conventional police service, whether RCMP or provincial, and served under special authorization (warrant) of the latter. Band constable services, in small number, sprang up across Canada. Typically, band constables would “call in” the credentialized police service as necessary. There is very little known about how effective the band constables systems have been – they still exist albeit in much reduced number from the pre-FNPP era - and how they related to the senior police services. Field reports indicate considerable variation in efficiency and effectiveness had been characteristic.

For a variety of reasons, including the desire to enhance the realization of Circular 55 principles and the preferences of FN leaders, by 1975 the Indian Special Constable Program was advanced within the RCMP and provincial police services (OPP and SQ). In the case of the RCMP, these special constables, labeled 3B officers, were, typically, community residents hired and exclusively directed by the RCMP. They were provided modest training by the RCMP (reportedly some six weeks in the earlier days and becoming more significant as years went by), could carry weapons and make arrests but were not full-fledged officers who had received the complete recruit training. In the case of Ontario, the OPP’s Ontario Special Indian Constable (OSIC) program operated on generally the same principles. This initiative presumably reduced the need for FNs to adopt a band constable service and represented the direct engagement of community members as members, albeit not full-status members, of the fully authorized police service. Early evaluation studies indicated that the special constable program was effective in relation to its stated objectives and in the views of FN leaders and RCMP/OPP/SQ officials. Over time, however, rising expectations and demands among FN leaders and the special constables themselves, and an appreciation in government and in policing circles, that the police service so constituted underlined the marginality of aboriginal peoples, made it apparent that a new stage of development would have to be inaugurated. The aboriginal officers clearly had second-class status in the 3B arrangement (symbolically for many years 3Bs were not allowed to don the famous “red serge” formal RCMP attire) and there was, reportedly, significant ambiguity and contention in some areas, such as Ontario, concerning the role of the special constable and the role of the band councils in directing his/her activities.

In the 1980s the federal government – DIAND and the Solicitor General Canada (SGC) – undertook a comprehensive review of policing in aboriginal communities. This Indian Policing Policy Review produced its Task Force Report in 1990 which, in turn, led to the First Nations Policing Policy (FNPP) being adopted in 1991 and, then, a year later, the transfer of funds and federal responsibilities to the newly created Aboriginal Policing Directorate (APD) housed within SGC (this transfer of funds and responsibilities from DIAND to SGC was itself part of a more general federal strategy to house specific aboriginal services in functionally equivalent federal bureaucracies). The FNPP represented a considerable elaboration of Circular 55 principles but the core remained of more aboriginal ownership, more culturally appropriate policing related to specific

aboriginal needs and circumstances, and policing services equal in quality to that provided the mainstream population (See the accompanying report on aboriginal policing in Canada by Clairmont, 2006). Under the APD coordination, tripartite agreements were to be encouraged among federal, provincial and FN authorities. Two chief tripartite policing arrangements were envisaged, namely the self-administered (“stand-alone”) FN police service, (hereafter, SA), whether band –based or regional, and the community tripartite agreement, (hereafter CTA), where the policing was provided by an existing police service and which also could be negotiated on a regional basis.

The late 1980s also saw an important review of RCMP policing in aboriginal communities across Canada undertaken by assistant commissioner Head. The Head Report, published in 1989, was comprehensive and quite critical of the extant policing services and arrangements in aboriginal communities. It called for significant change and had the bottom line message that the RCMP must either make profound changes or lose the privilege and historical mandate of policing FN communities. Head viewed the 3B arrangement as out-dated if not paternalistic, and the cultural awareness programs as valuable but insufficient; these latter programs were launched by the RCMP in the mid 1970s and reportedly encountered initial resistance (‘politically-motivated bullshit” some officers said at the time) but had become accepted and appreciated by most RCMP officers. The Head Report contributed to the momentum for change among governmental authorities and FN leaders. Within but a few years, the RCMP had disbanded its 3B program, incorporating the 3B officers into the regular police complement (usually with additional training), put in place a national aboriginal advisory committee, strengthened its cultural awareness program (e.g., a native spirituality guide was produced and widely distributed) and began to generate new organizational structures and services to advance its policing services in aboriginal communities. The latter included the aboriginal community constable program (ACCP) that assigns fully qualified aboriginal officers to FN communities within a detachment’s jurisdiction, a national level, Aboriginal Policing Services unit with an inspector-level OIC, Aboriginal Policing Services support units in all provinces (often with an OIC of inspector rank), and a number of CTAs where the entire police complement serves and is located in FN communities.

At present the RCMP is the only police service providing CTA policing in Canada and is the provincial and territorial police service everywhere outside Ontario and Quebec. There are 78 CTAs covering 110 communities and entailing 213 officers. The RCMP has also made – and continues to make - a major effort (e.g., a cadet program, pre-selection training) to recruit aboriginal persons. Currently, 7% of the roughly 18,000 RCMP members report some aboriginal ancestry (basically blood ties since most reportedly have not grown up on reserves). Reportedly, there are a score of inspectors who have aboriginal ancestry and a few of the RCMP officers holding the rank of superintendent or above also have reported aboriginal ancestry on their personnel records.

The RCMP have been involved in a sizeable number of aboriginal O&Ps since much of programming and organizational systems noted above has been put into place. Oka (here the Surete du Quebec was the “the lead service”), Gustafson Lake, and Burnt Church have been perhaps the most well known O&Ps but there have been numerous

public incidents in the Lower Mainland and the Upper Fraser Valley of British Columbia, in Northern Manitoba, in the Elsipogtog region of New Brunswick, in South West Nova Scotia and among the Innu in Labrador. In addition, there have been frequent intra-band O&Ps across the country where the RCMP has been called upon to intervene. In 1997 the RCMP set up a major task force to examine its response to major critical incidents and seek “best practices” from all quarters of the policing community. The two-year review resulted in a major report in 1999. Somewhat surprisingly in light of the report’s introduction that identified the major aboriginal O&Ps as the chief stimulus for the task force’s assessment, there was virtually nothing in the report specifically related to policing aboriginal O&Ps (the focus was more on security, terrorism, organized crime and policing strategies to deal with them). The report might well though have contributed to a national review undertaken by the RCMP in 2000 where the objective was to develop a strategic business plan for the delivery of policing services to aboriginal communities, as well as to aboriginal policing becoming an explicit priority of the RCMP since 2001 (Aboriginal Policing Services Proposal, 2005).

The RCMP engagement in policing aboriginal communities is clearly considerable on many levels – personnel, programming, and organizational structure. The CTA policing format is increasingly the main vehicle of the engagement. Since the RCMP is also the provincial police service wherever, at present, there is a CTA, there is a seamless character to the policing which can be quite efficient and effective in terms of responding to critical incidents and providing the CTA unit with ready special services support in areas such as restorative justice. At the same time, as some FN respondents have indicated, the seamless policing may cause a significant draw (for “back-up” and other tasks) on the CTA police resources, giving rise to complaints about insufficient police presence and visibility by community members. The RCMP’s ACCP program would appear to be in its dying throes, to be replaced by CTA policing as the FNs increasingly enter into tripartite policing agreements. Interestingly, though, in some areas the RCMP and the FN leadership have resurrected a version of the band constable approach to supplement the RCMP policing; in this arrangement a community constable with limited responsibilities is employed by the band but provided with some training and on-going oversight by the RCMP. The role of the RCMP’s national level Aboriginal Policing Services (APS) and the kindred units at the divisional level would continue to be very important in CTA policing. These are support services providing linkages among FN leaders and operational police, facilitating recruitment, and advancing cultural awareness; at the provincial level, these officers are directed by the divisional (line) commanders. In some O&Ps (e.g., the South West Nova case described in Best Practices below) the contacts and networks established by these APS officers have been crucial to a peaceful resolution of the protest. The national APS office provides liaison with headquarters and also coordination of the RCMP’s FN programs (including cultural awareness training) but it does not act as a central registry for information on O&Ps or as the center for strategic planning for aboriginal policing. Since 2004/05, the RCMP has had an Aboriginal Priority Strategic Working Group, chaired by a Deputy commissioner and including representatives of all operations and support services programs.

Developing better communication networks and relationships of trust and respect with aboriginal peoples entails collaboration and partnerships. As noted above, the RCMP since 1990 has had a national advisory council of some twenty aboriginal leaders drawn from across Canada. It meets once or twice a year to discuss training issues, human relations issues and other general policy matters (not operational issues, the focus of the comparable OPP aboriginal advisory group). The hiving off of this advisory council from the multicultural advisory committee formed by the RCMP in 1988 reflects the emphasis accorded aboriginal concerns and the diversity of aboriginal peoples' issues and interests. In some RCMP divisions there is, also, an aboriginal advisory council that may meet once or twice a year to discuss both policy and operational policing issues. Recently, too, the RCMP has encouraged all its CTA units to develop a community policing plan in consultation with the representatives of the community. In addition, the RCMP has been developing protocols for collaboration with FN leaders at both the federal and provincial or divisional levels (see below).

In the case of Ontario, there has been little visibility of the RCMP in FN communities since the transfer of jurisdictional responsibility to the province some thirty years ago. Field-level interviews with FN police officers and leaders in Ontario indicated that many were especially disappointed that certain RCMP crime prevention programs were not made more available to SA-policed communities programs. Recently, however, the RCMP has teamed up with the OPP to form a small (six RCMP and six OPP officers) Integrated Special Services Unit (ISSU) which according to RCMP and OPP spokespersons, has the objective "to build up the crime prevention and community service capacity through the SA chiefs' of police vision and in that manner contribute to the greater building of a trusting relationship and partnership in areas where the SAs have primary jurisdiction"; in other words what the ISSU officer does depends in large measure on the SA chiefs of police and he/she is subject to their direction while posted there. While the RCMP provides no conventional policing services in Ontario it has an aboriginal policing coordinator there (a staff sergeant whereas in other provinces where the RCMP has provincial policing jurisdiction the equivalent positions are often designated inspector rank). The RCMP, of course, has always maintained policing jurisdiction throughout Canada in some special areas (e.g., drug enforcement, organized crime). In recent years the RCMP has advanced the concept of Integrated Policing Services and through such structures has enhanced collaborative relationships with both the OPP and SAs in Ontario; currently, for example there is a Joint Investigative Team which involves the Akwesasne SA, an Integrated Border Enforcement Team which involves SAs in the Walpole and Nishnawbe Aski Nation (NAN) areas, and an Organized Crime Team which includes the Six Nations SA. While it is argued here that these are positive developments, it should be noted that such engagement might sometimes be seen more as entanglements for SAs, in the sense that ISSU projects could be seen as reducing the need for more direct SA funding or that Integrated Enforcement could run afoul of FN political/constitutional positions (e.g., Customs and Excise issues).

Notwithstanding the above, profound evolution in RCMP policing related to aboriginal peoples, there are some gaps and shortcomings that are significant. The headquarters-encouraged commitment for community policing plans being developed in

consort with community leaders in CTA policing, and hence reflecting possible special cultural imperatives, appears to require more advocacy. While popular it seems where the idea has been implemented, such plans were not found in the few FN communities closely studied. The resources available for the CTA policing units appear inadequate in many instances for the special circumstances of aboriginal communities. Police have to deal with high crime levels and exceptional demands on operational policing occasioned by high community expectations for 24/7 policing as well as the necessity of responding to time/resource consuming incidents much more common in FNs, such as arrests under the Mental Health Act where persons are threatening to harm themselves or intra-band O&Ps. Often, too, the community capacity to deal with disputes and social order issues, apart from depending on the police service, is quite limited. It is not surprising then that country-wide research (PRA, 2005) has found significant dissatisfaction in CTA policing on the part of FN leaders and community members with respect to the issues of presence and visibility, and the style of policing provided (“are we getting the amount and kind of policing contracted for in the CTA” is a common rhetorical question raised by FN leaders). These shortcomings were also cited in a recent review of RCMP policing in aboriginal communities carried out by the office of the Auditor General Canada (2005). It was indicated there that while overall the police service has been successful in relation to FNPP objectives, there are questions especially concerning the provision of the promised service and the accountability to chiefs and councils. Another 2005 report, one produced within the RCMP (Aboriginal Policing Services Proposal), has cited a modest decrease in satisfaction with RCMP policing on the part of FNs in Western Canada. It drew attention to the resource issues noted above, and the challenges of achieving a police-FN relationship solidly rooted in trust, respect for constitutional rights and cultural differences, and understanding. The authors recommended a greater commitment by the RCMP in resources, program coordination, and dedicated high rank positions to meet the challenges and to be more congruent with the priority formally attached to aboriginal policing in the RCMP. Interestingly, a recent survey of officers in CTA (all RCMP) and SA units clearly underlined the greater concern among the former on the issues of communication and trusting relationships with the people they policed (PRA, 2005).

Many police officers interviewed for this project, in different regions and different types of police services, indicated that the best way to deal with the problem of O&Ps in aboriginal communities is to have effective community-based policing in the first place. The latter, it was held, effects an integrated reactive and proactive policing style that can “institutionalize” O&Ps whereby, as noted in the introduction to this report, police and protestors know and trust one another and can collaborate to achieve peaceful yet effective O&Ps from the protestors’ standpoint. Still, O&Ps, in frequency and intensity, depend on many factors well outside the police realm so it is also important to consider the RCMP’s direct response to aboriginal O&Ps. There are three chief strategies or policy areas that are most significant here, namely protocol development, philosophy of intervention and organizational innovation.

The RCMP at the national level negotiated a protocol with the Assembly of First Nations (AFN) in 2004 setting forth their collaboration in responding to aboriginal O&Ps, with the objectives of avoiding escalation and violence and facilitating the

communication and peaceful negotiation of the underlying issues. Subsequently, offshoot protocols have been put in place at the provincial level (e.g., British Columbia, Manitoba) between RCMP divisional authorities, FN leaders and sometimes other federal agencies such as Fisheries. These protocols are discussed in detail below in the sections, “Seven Key Questions” and “Best Practices” so suffice it here to note that the protocols appear to have proven quite valuable not only in responding to O&Ps but in creating an atmosphere of trust and collaboration which can be effectively proactive as well as by “institutionalizing contention” through communication and formal procedures. Occasionally, in the field, both police officers and FN activists suggested that protocols should not be necessary; for example one senior, FN, RCMP officer commented, “if policing is good, with an ear to the ground and so forth, why is it necessary to tell us how to do our job”. Nevertheless, virtually everyone aware of the specific protocols in place acknowledged that they have had a positive impact for the objectives set out; for example, at an Ipperwash Inquiry sponsored in August 2005 conference on aboriginal O&Ps, a senior AFN official reported, “it [the RCMP-AFN protocol] still needs some work but it has been a real gain. Communication is crucial”.

The “measured approach” philosophy or, better perhaps, concept, appears to have emerged as a formally articulated RCMP position on intervention in O&Ps in the late 1990s. It developed in a context of the RCMP responding to labour-management conflicts and drew upon other social movements of the period such as alternative dispute resolution and more generally the Rights Revolution (Purcell, 1999; Ignatieff, 2000). It was quite congruent with the evolving conceptions of the police role in post-industrial society as discussed above. The fit to police response in aboriginal O&Ps was especially appropriate in given the interplay there of different historical and cultural visions, constitutional provisions and, as discussed above, the “colour of right” defence justification in the criminal code. The measured approach also drew on the RCMP’s CAPRA model* for problem-solving (Purcell 1999). Underlying the “measured approach” imperatives of respect, listening and being open to the authenticity of the different interests is both a disinterested approach on the substantive issues and a commitment to upholding peace and order, and avoiding harm within the law. The central requisites were really believing in it and having the capacity to convey that to the parties involved. The measured approach, if implemented, might well be expected to contribute to a legacy of relationships of trust and mutual support between police and protestors and encourage proactive work. It is argued below that the RCMP intervention in the South West Nova fisheries protests in the fall of 1999 was a “best practice” because these conditions were realized. Several months later, violence and arrests broke out in that area, largely because different key players among the interest groups (including the RCMP) were involved in the fisheries protest.

The organizational innovations highlighted here refer basically to the RCMP initiatives in the Lower Mainland of British Columbia (i.e., the Lower Fraser river). These include the implementation of the ACCP program there, the networking and proactive work there of the APS support unit for British Columbia, the dedicated inspector-level liaison officer to Fisheries, and, in embryonic form, the creation of an RCMP conflict negotiation team (CNT). There have been other recent similar RCMP

organizational innovations including MELT (major event liaison team) in the Ottawa area. Both the CNT and MELT were rooted in the RCMP's evolving response to the anti-globalization movement and represent a different response style than crisis intervention or hostage negotiation. The CNT embodies the measured approach concept and advances a team approach that highly emphasizes preparation, proactivity and specialization. The team, which includes both aboriginal and non-aboriginal members, meets regularly and is focused on aboriginal O&Ps. It has been quite active in the Lower Mainland area, a widely recognized "hot spot" where conflict and O&Ps have been frequent and intense over the past two decades, especially but not only concerning fisheries issues. The CNT team appears to be the core of the RCMP's approach in that area which is written up below as a "best practice" but it should be noted that there has been little formal training and in large measure the initiative's success would appear to depend upon the enthusiasm and skills of the individual members.

Clearly the philosophy of intervention and the organizational innovations noted above, and detailed in "best practices" below, are significant in the RCMP approach to policing aboriginal protests. There is however some uncertainty concerning their future evolution and indeed some ambiguity about how entrenched they may be in the organization. Some veteran officers, central to the operationalization of these initiatives expressed concern on both these fronts. Will the next RCMP response to an O&P exemplify the measured approach? Officers indicated that much depends on personalities and on the field commanders. While the developments in the Lower Mainland have been cited publicly and very positively by senior Ottawa RCMP officers (Toronto, 2005), there is little evidence of any special resources being allocated for training in conflict negotiation. And a common complaint among ACCP and APS officers was that little training has been provided aboriginal officers who assume such positions – as officers and community residents often stated, just the fact of aboriginal ancestry is not sufficient to the kind of ability, awareness and disposition required in these positions. The whole thrust of the RCMP engagement in South West Nova and in the Lower Mainland of British Columbia discussed below did not appear to have received much impetus from the major incident review undertaken between 1997 and 1999. It seems fair to conclude that there is a lot of skepticism about the entrenchment both by officers and by native activists.

Section Notes:

*CAPRA is a model of problem-solving and community policing adopted by the RCMP. It emphasizes focusing on clients' needs, demands and expectations, acquiring, analyzing and assessing data and working in partnership with client groupings to generate and implement appropriate solutions to a problem. In CAPRA, C stands for client, A for acquiring and analyzing data, P for partnerships, R for response and A for assessment and continuous improvement.

THE ONTARIO PROVINCIAL POLICE (OPP)

As the RCMP pulled out of policing in aboriginal communities in Ontario, the OPP moved in. Between 1970 and 1974, for example, several detachments were set up for policing in FNs in Northern Ontario and the North West and North East Patrols, each consisting of twelve officers, were created to serve the “fly-in” FN communities. Currently, the OPP has a sophisticated and multi-level engagement with FN communities in Ontario. Interviews with a large number of senior level OPP officers revealed that, in their consensus view, the Ipperwash incident was a watershed for the OPP as far as relating to FNs was concerned and that now a more FN-empathetic orientation has become ingrained in the OPP organization. Prior to “Ipperwash”, there appears to have been not only much less FN-related programming but also less structure and more of an idiosyncratic response; for example, if there was an O&P, key people in the OPP (often native officers with effective communication skills, good FN networks and sometimes able to speak the local native language / dialect) or from among FN leaders would be asked to make inquiries and assist the OPP in finding peaceful solutions. As one very senior, now retired OPP officer, stated. “when these [O&Ps] happened we’d send a liaison person to sort it out, whether X, Y or Z; sometimes we’d use others [nonmembers] such the Anishinabek Police Service’s W, in this type of situation”. Looking at the OPP now though we see major organizational linkages to the FNs and a host of new programming:

1. The Commissioner’s Office: The Commissioner herself had prior extensive OPP experience directing its FN Programs unit. She is held in high regard and seen as a positive ally by virtually all the SA police chiefs and native leaders interviewed. Indeed, a number of FN leaders in and outside policing expressed some concern whether the OPP would continue its recent thrusts under a new commissioner. Associated with the Commissioner’s Office is a well-known FN liaison inspector (also a lawyer) who links the OPP to FN leaders and who has been central to the development of the OPP’s Aboriginal Relations Teams (ART) and, along with those in the FN policing unit, in the cultural sensitivity / native awareness training provided to OPP officers. The office also provides counsel to the other police services upon request and may be engaged in serious O&Ps or barricades.
2. In operational (field) posts, there are three aboriginal superintendents now in the OPP and well over a hundred OPP officers who claim an aboriginal heritage.
3. There are inspector-level liaison officers attached to the regional commands who liaise with aboriginal communities and leaders in their area and who provide oversight for FN policing activities such as ART, a central operational program for the OPP in relating to FN people in its jurisdiction, and other special OPP initiatives which relate specifically

- to the FN Stand Alone (SA) police jurisdictions, such as the Integrated Special Services Unit (ISSU) and the Investigative Support Unit (ISU)).
4. OPP officers receive basic training of a half-day introduction to FN policing prior to attending the Ontario Police College, then two days on aboriginal issues at the OPP academy after OPC. Among the other basic programs delivered to OPP officers are (a) cultural sensitivity / native awareness training, as many as ten one week-long courses per year delivered by veteran OPP aboriginal officers and often done in block format with SA and even municipal police department (MPD) officers; (b) ART which involves primarily FN OPP officers in a given region; (c) the senior FN liaison officer in the Commissioner's office also organizes a three-day conference annually for aboriginal members of the OPP (attendance has increased and the pool of eligible applicants skyrocketed in recent years as a result of new hires and more officers proclaiming their aboriginal identity). In addition, members of the OPP's crisis negotiation unit usually have aboriginal awareness as part of their training.
 5. OPP programs of support for SA police services include the ISU six-person squads in the NorthWest and NorthEast assisting and mentoring Nishnawbe Aski Police Service (APS) officers, and the ISSU where the OPP, in collaboration with the RCMP, provides special, usually proactive, services to SA police organizations and their communities.
 6. OPP officers also provide counsel upon request to municipal police services with respect to aboriginal issues (e.g., as in the case of the Red Hill Valley O&P in Hamilton highlighted in the section on best practices).
 7. Symbolic perhaps of the OPP's post-Ipperwash approach to FNs in Ontario has been the formation of the OPP drum group in the Western Ontario region. This volunteer grouping of twelve officers, mainly ART members, travels all over Ontario, drumming and singing at OPP functions and at the annual pow wow in Toronto's Skydome. Additionally, they are frequently invited by FN leaders to participate at various FN functions and celebrations.
 8. Since 1996, the OPP has had an Aboriginal Advisory Council ("the Commissioners' Select Liaison Council on Aboriginal Affairs") where a small group of OPP senior officers including the Commissioner, provincial government officials and FN elders / leaders meet for approximately a day and a half every seven or eight weeks to discuss a variety of policing issues, including operational issues. Though financed entirely by the OPP, this council was a joint initiative of the RCMP and OPP and the RCMP's "O" Division leadership is frequently in attendance.

Although both the Ontario government and the OPP, subsequent to the federal First Nations Policing Policy in 1991, have encouraged the development of SA police services in FN communities and not supported the CTA model present in the rest of

Canada outside Quebec, the OPP is still directly engaged in front-line policing in many FN communities. Some FN communities in Ontario have yet to opt for either an independent police service or for joining in a regional SA police service. In these instances, they may be policed under the Ontario First Nations Policing Agreement (1991 to 1996 and renewed since) where the band council employs the officers and the OPP provides administrative support and consultation. The OFNPA was expected to represent a transition phase and indeed has functioned as such; as the large regional SA police services came into being, the FN communities and officers under the OFNPA shrunk and at this point in time only some 19 FN communities remain. Clearly, the OPP officers administratively responsible for the OFNPA have been in constant communication with FN leaders and police officers over the past fifteen years, dealing with a variety of issues and smoothing the way for the transition to SA status. Apart from the OFNPA, there are a score of FN communities in Ontario that have not entered into any tripartite agreement as advanced under the FNPP and, accordingly, are policed under regular OPP arrangements in their area. It is anticipated that their numbers will continue to shrink.

The OPP provide back-up and special investigative support for the SA police services in Ontario. The evidence suggests that this is a significant commitment as the OPP is often called in by the SA chiefs of police. It might well be expected that this OPP contribution could diminish over time as the SAs grow in numbers and experience but it is very unlikely that this support role will ever become insignificant given the scale of SA policing in relation to the requisites for autonomous policing. There is strong evidence that at the field level there is generally very good cooperation between OPP and SA officers. This assessment is based on field observation as well as interviews with native leaders, police governance board (PGB) members and SA officers carried out for this project and other interviews done by other researchers (PRA, 2005). In the Manitoulin area for example, there is deep collaboration among the SA police services (Wikwemikong and United Chiefs and Councils of Manitoulin (UCCM)) and the OPP in providing back-up, filling in for one another, transferring one another's prisoners to court and so forth. In the North East NAN area, OPP and NAPS officers patrol the winter roads together in a car marked with both police services' logos. Generally, when the researchers visited SA police facilities, OPP members were seen mixing in friendly fashion with their SA counterparts. Outside Mohawk territory, all but one SA chiefs of police in Ontario have had long careers in the OPP and the exception was previously engaged as a FN officer under the OPP-administered OFNPA.

Senior OPP officers strongly affirmed that they were supportive of, and not in competition with, the First Nation SA police services. There was an appreciation of the latter's needs as is evidenced by the fact that all senior OPP officers interviewed contended that the SAs should be seen as replacements, not enhancements, and should be funded accordingly (i.e., funded for infrastructure and special services, not restricted to front-line funding). Moreover, they were of the view that the CTA model, with either the OPP or the RCMP as the contracted police service, would be destructive of the SA model of policing reserves, if adopted in Ontario. The senior officers, as noted, also believed that the post-Ipperwash OPP approach to FNs and to SA policing was solidly imprinted

and would survive transitions in senior management; as one top official said “we’ve learned how to let go”.

It should be pointed out that some of the initiatives, both in organizational structure and programming, have yet to be fully implemented. This is the state of initiatives such as the ART teams (it appears that all OPP regions have at least taken the first step by establishing an Aboriginal Relations Committee composed of detachment commanders and aboriginal officers from the detachments), the liaison inspector role, and the ISSU initiatives, which hardly exist in some regions of the province and which are evolving in objectives where they do exist. It is premature to assess how effective they will be and what objectives they will best succeed at. Presumably ART and the liaison roles will enable the OPP to provide improved, more FN-appropriate, policing services and will enable it to better –perhaps proactively – respond to O&Ps in their jurisdiction by generating information and contacts. Presumably, too, the ISSU could assist in SA jurisdictions to generate community-based policing initiatives and perhaps alternative justice programs which could impact on social disorders that can develop into O&Ps. At the same time there do appear to be important limitations and gaps.

The OPP certainly has responded to a number of aboriginal O&Ps in recent years. For example, in one region alone, namely the North West region (including Treaty Three, western NAN and a portion of Anishinabek Police Service (APS) territory), there were seventeen incidents over the period January 2003 to May 2005. These seventeen incidents involved thirteen different FNs (four FNs were involved in nine of the incidents). The O&Ps were usually short-lived blockades of roads or highways but also included sit-in at offices and marches. The reported reasons were resource issues, band election disputes and communicating concerns over INAC policies. These O&Ps were commonly peaceful requiring, from the OPP’s perspective, only monitoring, but two required OPP deployment and in one instance arrests were made. In thirteen of these instances the OPP had front-line policing jurisdiction.

As noted elsewhere, many significant O&Ps occur in OPP jurisdictions but involve native persons living on reserve and policed by SA services; consequently the OPP responders could have little knowledge of the protestors or any relationship with them. The ART program for instance is limited to OPP jurisdiction. While OPP officials indicate that, in practice, in such O&Ps, they collaborate well with their SA counterparts it may be desirable to have a more formal acknowledgement of that collaboration (of police resources and knowledge of the players) through an integrated conflict negotiation team constituting OPP and SA officers. The OPP does not have a specially trained conflict negotiation team nor can it be assumed that FN officers in SA police services “naturally” have the appropriate disposition and skills, so some training (and resource allocation) would appear to be required for all members. Also, when the OPP are requested (usually by the SA chief of police) to come into a FN community policed by an SA to assist in dealing with an O&P, a more elaborate protocol for such intervention between the OPP and the SA might well ensure a more satisfactory outcome. Perhaps, too, OPP initiatives such as the ISSU program might offer to assist FNs policed by SAs in developing a capacity for alternative dispute resolution in the community, something

that could be helpful in peaceful resolutions of intra-band disputes. Interestingly, virtually all OPP officers who were interviewed were supportive of these possible developments.

At present, according to a senior OPP regional commander, “There is not any significant difference in the FN protocol agreements but they tend to be more comprehensive than the agreements with the mainstream services. Municipal police forces have been in existence much longer and tend to use some of our services while doing other things on their own. FN services, because they are newer and focused on front-line delivery, have not developed specialty services. There are also protocols on how two police services interact and partner. These would look the same whether a municipal or an FN service was signing with the OPP”. Our research has indicated that the potential significance of cultural differences and the police style preferences of both aboriginal officers and the FN community leaders suggest a need for close examination of such protocol policies. Moreover, notwithstanding the recent OPP initiatives detailed above which appear very well received by FN leaders, it was not uncommon to find, among FN leaders and SA officers, consciousness of a negative legacy and wariness concerning OPP assistance (e.g., one veteran SA chief of police, asked about his experience in requesting OPP assistance, noted that the response varied and depended sometimes on what the OPP senior officer thought of the situation, while several constables in a different SA service referred to their embarrassment at not having a role in the OPP response to an O&P (a barricade crisis situation involving the OPP’s ERT teams) in their community. Of course, protocols can undoubtedly be a double-edged sword, providing an excuse for inaction as much as furthering collaboration and certainty so careful consideration is appropriate.

Finally, there is the question of what leadership role the OPP has and might further assume in proactive and reactive policing related to aboriginal O&Ps, not only in FNs but also in the towns and modest-size urban areas of the province (e.g., Kenora, Thunder Bay) where there are significant numbers (and relatively high proportions) of aboriginal residents and modest-sized municipal police services. In particular, as noted elsewhere, the towns and cities forming the southern rim of Northern Ontario, with their increasingly high proportions of FN young people, many of who reportedly are increasingly alienated by their situation, would appear to constitute a significant challenge for proactive and peacekeeping policing. It is clear that many police services, large and small, look to the OPP for counsel and that the OPP – increasingly - has the expertise and resources to provide leadership in a manner not threatening to the relative autonomy of the other police services. The concept of integrated policing has become popular of late and has been especially conceptualized by the RCMP in relation to their partnering with other security and police services (PRA, 2005). Perhaps a similar conceptualization building upon the initiatives already launched with respect to training and cultural sensitivity would be especially appropriate in relation to the OPP’s leadership in aboriginal policing in the decentralized Ontario policing system.

In January 2006, the OPP unveiled, at a special meeting held in conjunction with the Ipperwash Inquiry, a draft of its plans for aboriginal-salient policing in Ontario. Two documents were released namely “Aboriginal Initiatives Building Respectful Relationships” and “A Framework For Police Preparedness For Aboriginal Critical Incidents”. Both documents significantly extended earlier thrusts of OPP aboriginal policing policy. The former document highlighted more cultural awareness training, recruitment and employment practices, mentoring OPP aboriginal officers and aboriginal liaison at all levels (overall policy, regional and community-oriented) and in all regions of Ontario. It built upon the successful initiatives that have been noted above. The latter document (i.e., A Framework ...) detailed a more innovative OPP approach to critical incidents (i.e., O&Ps to use the discourse of our paper) highlighting a crisis negotiator program and the training of aboriginal crisis negotiators; this initiative, too, had some earlier roots in OPP practice but clearly represented a significant enhancement. Underlying both documents and explicitly stated in the Introduction was “a commitment, to the fullest extent possible, to self-directed First Nations policing, that is First Nations policing themselves”. The OPP’s ART program was a centerpiece in both documents. Since some of these proposed initiatives are more on the books than in the field it is difficult to assess their implications for policing O&Ps. It is however not clear at all whether they will meet the challenges noted in the above analyses. For example, the OPP initiatives focus on the OPP but do not directly tackle issues of OPP leadership in dealing with O&Ps in the smaller Northern Ontario cities and towns nor is it clear how they can successfully challenge the structural gap of major O&Ps occurring in OPP jurisdiction where the protestors live in SA jurisdictions and are largely unknown to the OPP. There is no mention of new protocols with SAs or MPDs nor of integrated conflict negotiation teams and training. It would appear that as far as dealing with O&Ps is concerned, OPP policies and strategies have to be more inclusive.

SELF-ADMINISTERED FN POLICE SERVICES (SA)

The two most significant developments for aboriginal policing in Canada have arguably been DIAND's Circular 55 in 1971 and the FNPP set forth by the federal government in 1991. Not only did they result in major transformations in aboriginal policing delivered by the RCMP and the OPP but they spawned FN controlled policing in the form of band constable services in the 1970s and self-administered (SA) policing after 1991. Here the FN-controlled policing will be discussed in broad strokes and specifically with a view to implications for policing occupations and protests; a more detailed account is provided in the companion piece paper on aboriginal policing (Clairmont, 2006).

As noted earlier, subsequent to Circular 55, band constable services emerged in a small number of FNs across Canada, such as among the Blood tribe in Alberta, the Dakota-Ojibway in Manitoba and the Mohawks in Quebec. The band constables had limited resources and policing jurisdiction, received modest training, usually did not carry weapons and had to call in the senior police service to effect arrests and lay charges under the criminal code. The band police services appear to have varied considerably in their effectiveness and efficiency but FN leaders have frequently commented, even in 2005 and with some justification, that had more adequate resources been allocated to such services they would have been more successful. Indeed, the first band constable service to emerge as a fully empowered, self-administered police service was in the small, oil-rich Louis Bull FN (Alberta) in 1987. Little is known concerning how effective the band constable services were in dealing with social order and intra-band O&Ps. The band constables were a visible presence and presumably reinforced informal community controls so their success in policing would be largely a function of the underlying factors (e.g., community consensus, respect for elders) that account for social order. Where there were major divisions in the larger FN communities and struggles for power, perhaps abetted by organized crime, the band constable service would be out-of-its depth; that seems to have the situation for example with the Akwesasne band constable police service in 1990 when the senior police services had to be called in, in large number, to help deal with serious discord (where automatic weapons and even grenades were utilized) that had resulted in two deaths.

A major evolutionary step in FN-controlled policing occurred with the FNPP. Through tripartite agreements among federal, provincial and FN authorities, there was a significant increase in funding for band-based police services, now referred to as the self-administered or "stand-alone" services (SAs), and the SA officers were to be appropriately trained and as fully authorized as conventional police officers. In the years immediately following the creation of APD, the federal bureaucracy created to coordinate the FNPP and administer its budget, the federal priorities apparently were to get as many FNs as possible into tripartite policing arrangements, to assist in the creation of an infrastructure for SA policing (e.g., a Canadian First Nations Chief of Police Association, some training initiatives), and to facilitate the development of a governance system (i.e.,

police governance boards) for the SAs. Provincial government authorities sometimes have contended (PRA, 2005) that in the years immediately following the FNPP, too much emphasis was placed by APD on encouraging SAs and not as much on negotiating CTAs, which would continue senior level policing of FN communities. Such a position does not appear to ever have been widespread in Ontario where both the provincial government and the OPP have been explicit supporters of SA policing for FN peoples. Currently, in Canada there are 48 SAs representing 197 FN communities and employing 775 officers. Quebec has the largest number of SAs, namely 29, where some 300 officers serve 50 distinct FN communities.

In Ontario, there are 9 self-directed police services representing some 114 FN communities and having roughly 375 officers. One, Mujikaning, which has 20 officers and whose budget is 90% provided by Casino Rama, is technically still under the OFNPA; in the typical OFNPA arrangement certain administrative and coordination responsibilities remain with the OPP, somewhat akin to OPP responsibilities under the earlier Ontario Special Indian Constable band constable program (Trivett, 2004). Table A provides a basic overview of the other 8 SAs. The data, collated over several sources, are advanced as close approximations since precise data have not been obtained on population (the data were not available to APD) and actual staff numbers occasionally diverge from the authorized complement in the basic tripartite agreement (e.g., Akwesasne has several officers engaged under special Joint Investigative Taskforce funding). As indicated in Table A, the Ontario SAs range from the micro Lac Seul police service, which has 7 officers for a population of some 800 band members in three FN communities, to the largest regional FN police service in Canada, namely the Nishnawabe Aski police service (NAPS), which has about 110 officers engaged in 43 communities with a total population of 22,000 (only 4 of the 43 FNs have a population greater than 1000). The 3 smallest SAs and the 3 truly regional SAs share an ostensibly favorable police to population ratio compared to mainstream communities but that may be their only advantage given community expectations (e.g., 24/7 response to the calls for service), high crime and/or social order issues, minimal infrastructure and limited community capacity with which to partner. The Six Nations and Akwesasne SAs have the size and police to population ratio of many small towns and urban areas that they both resemble in that the districts and diverse communities that they police are contiguous. They both had an incubation period in band constable policing; indeed, the Six Nations police service was participating in a pilot project with the OPP, making the transition to stand-alone status, in the 1980s, prior to the FNPP being developed.

Fully 96% of the FN reserve population in Ontario is now covered by a tripartite agreement whether as a SA (regional or “single” community) or in the OPP administered OFNPA. The latter, designed as a transition stage vehicle for Ontario FNs developing some form of self-directed policing, was an umbrella tripartite policing agreement negotiated by federal, provincial and FN authorities for the period 1991-1996. As SAs came into being the number of officers and communities administered by the OPP through the OFNPA shrank. All but one of the 8 SAs, came into existence as a formal SA during that period, and the other, Treaty Three, a regional in the Northwest corner of Ontario, inaugurated in 2002. The OFNPA has been renewed several times and currently

some 60 plus officers and 19 FNs fall under its administrative rubric. The pace of transition from OFNPA to SA status has slowed, partly it appears because of hesitancy on the part of the involved FN leaders to merge into regional services (regional police services usually have been formed from FNs of the same treaty grouping) and partly because the federal and provincial authorities appear reluctant to spawn more small “single” community SAs. Also, a score of FNs in Ontario remain outside any tripartite agreement and there is much uncertainty about what their future preferences will be. The large majority of the 40 or so FNs in the latter grouping or in the OFNPA have a reserve population less than 1000 but four each have roughly 2000 members living on reserve.

In Ontario, all SA officers have the status of provincial peacekeepers. They are formally appointed as officers by the Commissioner of the OPP. The SAs themselves are not governed by the Ontario Police Services Act (OPSA) nor are they subject to the authority of the provincial Special Investigative Unit which investigates all police shootings among other things. The appointment of SA constables outside the OPSA reflects a compromise reached by FN and governmental officials concerning the controversial applicability to FNs of provincial jurisdiction.

APD officials have indicated in interviews that SAs in Ontario on the whole represent the success of the FNPP. As two such officials stated, “Ontario is our strongest”. The SAs in Ontario have indeed experienced reasonable stability and steady growth in complement. The contrast in these regards to SAs elsewhere in Canada outside Quebec is notable (Clairmont, 2006). Undoubtedly there are many factors that account for this difference but a major factor has been the lack of competition from a senior level police service. Both APD and Ontario government officials have supported the SA thrust as has the OPP, and they have conveyed that position emphatically to various FN leaders who have explored the possibility of returning to the OPP fold or negotiating a CTA with the OPP as the contracted police service. Outside of Ontario and Quebec, as noted above, the RCMP provides provincial and territorial policing and the RCMP has an explicit priority in maintaining and improving its policing in aboriginal communities. Not surprisingly, then, while not instigating the changes, it has taken over when SAs have faltered in areas such as Alberta, Manitoba and Nova Scotia (Clairmont, 2006).

The SAs initiative in Ontario can be described as fairly successful also from the perspectives of community residents and FN leaders according to a host of nation-wide evaluation studies carried out between 1995 and 2005 (Clairmont, 2006). At the same time they remain vulnerable as organizations and there is significant dissatisfaction with the range and quality of the policing services being provided. The Akwesasne and Six Nations police service, for example, have been accorded much praise by colleagues and government officials and in-depth research has emphasized their solid police management, effective police boards, well-trained officers and crafted forays into specialized policing areas (e.g., traffic investigation by Six Nations, organized crime by Akwesasne). Still, both have had to contend – even in 2005 – with serious, explicit challenges to their continuance and monopoly on policing from powerful interests within their communities. Among the regional SAs there remains much perceived divergence of interests among the participating FNs and significant centrifugal pressures on the police

service itself (threats and efforts to break off). SAs in Ontario, and elsewhere in Canada, it appears, have yet to become fully institutionalized in the sense that their continued existence is unquestioned by FN community members. Some FN leaders are also of the view that their “project status”, reflected in the three to five year tripartite agreements, contributes to this air of vulnerability; as one OFNPA FN executive observed, “we have proven that we can do the work but the provinces and the feds still consider this a program”.

Generally the criticisms of SA policing from within FN communities have centered around police presence (visibility), inadequate specialized proactive services (e.g., crime prevention, restorative justice) and the desire for a more problem-solving policing – components which appear to typify what most leaders / residents would characterize as community-based policing. But there is no mistaking in their assessments that they also want solid professional policing. The latter demands alone are considerable given not simply the high level of crime and social disorder problems but also the effort required of police to deal with frequent cases under the Mental Health Act (e.g., attempted suicide) and frequent intra-band O&Ps. The resources available to the SAs, and their accountability to expectations of not only 24/7 policing but also a policing that responds to a wide range of calls for service well outside the mandate of conventional mainstream police services, make these multi-dimensional demands very taxing indeed. Few SAs in Ontario have been able to deliver much community-based policing, at least in the sense of formal projects and programs (PRA, 2005) but there are some such activities, such as restorative justice programs in Akwesasne, Wikwemikong and UCCM. The priority clearly has been answering calls for service; for example, one Ontario SA chief of police commented, “25% of the calls responded to could have been dealt with over the phone by another agency and were not specifically police-related. To continue our culturally appropriate policing we respond rain and shine, as not responding causes issues etc that take more time to resolve than the issue in many instances”.

Field research among the SAs has consistently identified five major themes as central to the social construction of FN policing conveyed by the SA police managers. In each case the theme is captured in a succinct expression used by one or more of the police executives, namely

- 1) “Setting us up for failure”
- 2) “Policing isn’t a make work project”
- 3) “We seem to be the only ones concerned about problems in the community”
- 4) “Aboriginal policing is different from small town policing”.
- 5) “Aboriginal policing and politics are inseparable”

These themes are elaborated elsewhere (Clairmont, 2006) but their essence is (1) a suspicion and sense of vulnerability that SAs have been established with lofty objectives and high community expectations but usually with such inadequate resources that community disillusionment and the SA’s failure to achieve even conventional policing objectives are likely (e.g. meeting governmental standards and mandates and avoiding crushing liability claims), thereby leading to the resumption of policing by the provincial

police organizations; (2) recruiting and maintaining high quality members can be very problematic in small police services where promotion and job specialization are less likely, and especially where, understandably, there is strong pressure to hire local persons; (3) the community capacity for community-based policing may be lacking and apathy and limited civic culture (e.g., volunteering), the products of colonialism and dependency, mean that policing is largely reactive and “keeping the lid on”, pending more macro-level social and economic development; (4) SA policing involves dealing with a much wider range of issues (e.g., social problems, mental health issues), in a much different and more demanding context (e.g., values, traditions, funding source) than mainstream small town policing; (5) the political and constitutional context for SA policing is complex and while some SA police executives might want to wish it away (“we have to deal with the province so let’s get on with it”) the big picture of FN treaty rights and self-government is always prominent. Unraveling and responding to the nuances of politics-police perspectives among traditionalists, “mainstream” band council leaders, warriors and others can be quite demanding and can embroil even the best-managed SAs in challenges to their legitimacy, jurisdiction and monopoly over the use of appropriate force.

While there is significant variation among the SAs, even within the one province of Ontario, the above themes appear applicable across the board. The themes of “setting us up for failure” and “policing and politics are inseparable” are particularly salient for the SAs’ coping with O&Ps. The former highlights the problems of police capacity while the latter points to the complexity of policing O&Ps. Recent research (PRA, 2005) has established that when asked what the central problem is for their policing effort, SA officers stressed “resources” whereas RCMP officers emphasized “communication with the aboriginal people policed”. One SA police chief put it simply, “if they want us to play in the majors, give us the resources”. The lack of resources extends to facilities for the service as indicated in a recent assessment by Public Works Canada (2005) which rated one third of all SA in Ontario facilities as “poor” and another 40% as only “fair”. While the RCMP’s CTA policing, as noted above, also can properly claim to have resource shortfalls (in British Columbia and Saskatchewan, even in facilities according to the above cited Public Works assessment), the RCMP does appear to have been more successful in making their case, through tripartite agreements, for complement increases (Clairmont, 2006). While this may well reflect the greater status and credibility of the RCMP in the negotiators’ eyes, it undoubtedly has much to do with the APD position that SA policing is an enhancement not a replacement of the pre-existing provincial policing for aboriginal people. The enhancement thesis holds that the FNPP-inspired tripartite agreements are essentially to provide more front-line policing for FN communities. Such a position is tenable perhaps where, as with CTAs, the provincial police service is contracted for the FN community, but it is more problematic in the case of SAs. Certainly the SA officers see themselves as having replaced the provincial police in their jurisdiction and, accordingly, requiring more funding for special services and for infrastructure. That view, in Ontario, is widely shared too by the senior OPP leadership as well as the field-level officers; one OPP sergeant commented, “of course it’s a replacement; we need permission and support now to go into those FNs” while another more senior OPP officer, very knowledgeable about the tripartite negotiations, disputed

claims that the enhancement thesis was always presumed to be appropriate, contending “I never heard of the concept, enhancement, until recently”. It is not only the concept that may be controversial but also the factual situation. One could point, on the one hand, to the fact that with the establishment of the NAPS self-administered service, the OPP eliminated its North East Patrol and reduced the complement of the North West Patrol (OPP, 2006 p.21); on the other hand, it is also a fact that the OPP subsequently posted investigative support units in both areas and that the OPP’s budget increased to enable it to respond to the tripartite policing agreements that came into force. At the least, the enhancement thesis needs some clarification, especially as what is defined as “front-line” is ever-changing and also subject to cultural variation.

For the SA police services, of equal if not greater significance than the resolution of the enhancement-replacement controversy, would be the general appreciation of the high expectations occasioned by the FNPP and the tripartite agreements. One SA chief commented, “when these SAs were started they were supposed to be the next coming and would make everything better. That was wrong and with increasing responsibilities in domestic assaults, school visits, just day to day responses, we fall short in the eyes of some”. Senior, veteran OPP officers emphatically agreed that the expectations for policing have dramatically changed in the FN communities; one observed that the OPP would be hard pressed to provide the kind of policing services and programs that the FN communities now want, expect and need. In Northern Ontario, for example, the former OPP style of “flying in and flying out” in response to calls remains commonplace today but such policing alone would, to use a colloquial expression, “no longer cut it”. Indeed, it would be insufficient not only among aboriginal peoples but also by the principles of the FNPP.

A further basic issue bearing on the SAs is whether small police services can survive in the modern era. The trend everywhere has been for small police services to disappear (Clairmont, 2006). Recent research has found that most governmental authorities across Canada considered the SA model unadvisable (PRA, 2005) and of course even the regional SA, as currently constituted, is a small police service. SA police boards – some virtually resource-less - have to struggle with complexities of liability and police governance unlike their advisory group counterpart in the RCMP-policed CTAs. Small wonder then that several SA chiefs would have serious qualms about their police service’s future as indicated in the following exchange at the conclusion of a long set of interviews:

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SA Chief: Can I ask you a question? Where do you see self-administered FN police services going and can they sustain an existence in today’s world or are we a token of politics?

Researcher: That is indeed the big question. There seems little doubt that if the police services were not FN-based, their future would be very problematic. The small police service is increasingly a dinosaur in this era of increasingly high standards and demanding mandates and where

liability issues are scaring the hell out of everybody. But the constitutional arguments and current political perspectives mean that there are reasonable odds, especially in Ontario and Quebec and especially if sufficient protocols can be established with other more resourced police services to satisfy standards and mandates. Outside those provinces I have strong doubts.

There have been significant O&Ps in recent years involving the Ontario SAs. One, the “Day of Rage” at Akwesasne in 2001 is discussed at length below as a “Best Practice” police intervention involving the Akwesasne SA and other police services, especially the OPP. More recently there was the 2004 O&P in the Fort Albany / Attawapiskat area where some members of one FN blockaded the path of trucks engaged in diamond mining in a nearby FN, demanding some compensation for access through their community. And, of course, there is the continuing (though much reduced since the Abitibi company has ceased logging operations there) protest at Grassy Narrows. O&Ps in OPP jurisdiction involving FN persons from contiguous reserves (where the wider area was traditional territory) would appear to be the context for these O&Ps over resource issues. Some of these resource-based O&Ps basically involve short-term blockades where, according to one veteran OPP officer, “really, they just want to get out a message ... twenty minutes of media attention ... communicated .. protest over”; however, other such O&Ps, as in Grassy Narrows and in the Sun Peaks area of British Columbia, may last several years.

Most police and FN leaders interviewed in this research expected that O&Ps akin to those in the Grassy Narrows and Fort Albany regions would flare up in Northern Ontario in the future as the economically depressed and often problem plagued FN communities (e.g., there were 25 completed suicides among the 25,000 NAN residents in 2005 and presumably many more attempts at self-harm) in the North seek to get some benefit (e.g., jobs, royalties) from the extraction of wealth in their traditional territory. Intra-band O&Ps in SA jurisdictions have been frequent – especially at election time - though precise numbers are unavailable in part because of their short duration. Intra-band O&Ps with a potential to expand beyond the FN are also not uncommon in areas where there is on-going challenge to the existing police service (e.g. in Tyendinaga territory which is policed under the OFNPA arrangement). A number of intra-band O&Ps reportedly have been nipped in the bud by strategic police action (e.g., Wikwemikong, 2004). Intra-band O&Ps in drive-in FN communities in Northern Ontario policed by an SA, have often elicited police intervention but, reportedly, for the most part, been resolved by police exercising a calming, monitoring style of response; one regional chief of police, noted, that in responding to an intra-band O&P where the chief and council demanded that the protestors be ejected from the band office, “ I said that maybe they [the protestors] are not breaking any laws and the chief finally agreed”. There apparently have been few intra-band O&Ps in Northern Ontario, in part, it has been suggested, because the FN communities are small, homogenous and isolated; as one knowledgeable observer rhetorically asked, “why have one [in these types of communities] if the primary purpose of such protests is to communicate a message”?

There appears to be quite limited capacity for SA police to respond to O&Ps. The more established SAs (e.g., Akwesasne and Six Nations) which have expertise and experience would possibly have to deal with formidable protestors while the other SAs have little capacity in this area whether organizationally or by individual officer training. Many interviewed police officers and FN community leaders cautioned that it should not be assumed that FN officers are culturally aware or have the disposition or skills for peacekeeping. It was found though – and this pattern is consistent with previous research where large samples were involved - that most interviewed SAs officers articulated the need for more resources and training in the area of peacekeeping and conflict negotiation; their preferences were usually congruent with that view (e.g., leave the crisis intervention such as ERT to the OPP). A social construction that appears common among SA officers is that they could bring something to the policing of O&Ps; as one senior SA officer commented, “some RCMP and OPP may be more of a kick ass type so a liaison-oriented police could really help”. The officers, and others interviewed, frequently called attention to the limited community capacity with which to partner in responding to disputes, feuds and social problems. Socio-economic and cultural changes were deemed to have had a destructive impact on informal social controls (e.g., several informants cited the popularity of “rap music” as an example of a growing divide between elders and youth in values). Knowledgeable informants noted that in Northern Ontario it was the FNs closest to the urban areas – the less isolated, “drive-in” FNs – that were the most dysfunctional whereas many of the other FNs were seen to be adjusting well to the changes (e.g., numbers of youth were achieving post-secondary education). Solid research is sorely lacking but the levels of unemployment, suicides and attempted suicides, and other everyday problems among FNs in Northern Ontario would suggest that community capacity is questionable.

Resources and training aside, as noted in the exchange reported above, it would appear that greater integration with senior police services, and at the community level with other services, holds the key to a secure SA system in Ontario. The SA model is the policing strategy for FN communities preferred by all the major stakeholders so reducing the SAs’ vulnerability while ensuring that they can meet reasonable expectations of FN people and also contribute to the effective policing of O&Ps should be a priority. Almost all interviewees reported that the SAs have quite good relations with the OPP at all levels of the organization. That good relationship provides a solid basis to develop from. The evidence is that the OPP and the SAs have collaborated well in recent years in responding to O&Ps whether the O&P be intra-band or otherwise. The SAs, given their manpower and other resources, and sometimes given their officers’ concern to “remain above the fray”, have to call upon the OPP in many intra-band O&Ps. It is clear, too, that FN O&Ps in OPP jurisdiction usually require the collaboration of the SA officers who know the protestors and can network with them; as one OPP sergeant commented, “you can’t build relationships in times of crisis”. Virtually all interviewees, SA and OPP officers, FN leaders and others, considered that an integrated conflict negotiation team would be a valuable initiative formalizing and resourcing the informal relations that have developed between the OPP and the SAs. Other integrative initiatives could follow upon the ISSU and ART programs noted above. Protocols may be beneficial in detailing integrative links between the OPP and the SAs in other areas of policing as well. Moreover, while

currently most SA chiefs have had extensive OPP policing experience and at the highest level of the OPP, the sympathetic appreciation of SA and FN realities is widely acknowledged, neither of these pillars for the excellent informal ties may exist in the near future.

At the community level there would appear to be a need for more integration as well; otherwise the police service is drowned in high expectations and overwhelming demand. Community-based policing – problem-solving, engaged policing – requires the collaboration of residents and the interagency planning of service providers. In some FN communities across Canada, building capacity in areas such as alternative dispute resolution has become a major focus and interagency councils have been established to get at the underlying causes of substance abuse and other issues of social disorder. The federal government, through APD, has been exploring since 2005 the possibilities for more collaboration in targeted funding on the part of its own agencies. Building community capacity, like facilitating economic development, underscores the premise that policing at its core is concerned with the maintenance and temporary restoration of order; solving serious social problems requires much more than policing even while policing can make a solid contribution to that effort.

The SAs in Ontario exhibit much diversity but they share many commonalities vis-à-vis mainstream police services - constitutionally, culturally, economically and in terms of community expectations / demands for policing. Their relationship as police services to the Ontario government is also unique (i.e., the SAs are not governed by the Police Services Act). There seems to be a need for a more formal organization to effectively represent their common interest and a need for a channel of communication to be formally established with the Ministry of Justice. There could be significant value for both parties then, the SAs and the Ministry, in the establishment of an Ontario FN Chiefs of Police Association (OFNCPA) to complement the national association of FN chiefs of police. In regular consultation, issues of standards, special circumstances and responding to O&Ps could be advanced. An OFNCPA would require but modest funding. It would be a sound investment for Ontario.

TABLE A
ONTARIO SA POLICE SERVICES *

POLICE SERVICE	YEAR SA EST'BLISHED	# COMMUNITIES	POPULATION ON RESERVE (TOTAL)	# OFFICERS	POLICE TO POPULATION
AKWESASNE MOHAWK	1994	3 CONTIGUOUS DISTRICTS, 1 COUNCIL	9,000	27	1 TO 330
SIX NATIONS	(1989) 1997**	6 CONTIGUOUS COMMUNITIES, 1 COUNCIL	10,000	25	1 TO 400
ANISHINABEK	1994	17 COMMUNITIES (3 OVER 1000 POPULATION)	9400	65	1 TO 145
NISHNAWABE-ASKI	1993	43 COMMUNITIES (4 OVER 1000 POPULATION)	22,000	110	1 TO 200
TREATY THREE	2002	27 COMMUNITIES (NONE OVER 1000 POPULATION)	12,000	60+	1 to 200
LAC SEUL	1995	3 COMMUNITIES	800	7	1 to 115
WIKWEMIKONG	1996	1 COMMUNITY	3,000	14	1 TO 215
UNITED CHIEFS AND COUNCILS OF MANITOULIN	1995	6 COMMUNITIES (NONE OVER 1000 POPULATION)	2000	13	1 TO 150

*These data are derived from three sources, namely APD (Ottawa), the OPP (Ontario) and personal research. They should only be viewed close approximations.

** The Six Nations service was in transition to full self-administered prior to being officially labeled an SA by APD (Ottawa)

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THE MUNICIPAL POLICE SERVICES (MPDs)

The MPDs have not been a major focus for this project and thus limited research has been carried out. Ontario policing is more decentralized and has greater variety of policing services among the three chief types (SAs, OPP, MPDs) than other provinces but significant consolidation has occurred and is continuing. For example, the OPP, over the past decade, reportedly has acquired numerous (perhaps as many as 40) municipal policing contracts, several in the North-Central region within the past year. It is important to appreciate how the MPDs, especially outside the large metropolitan contexts, are adapting to new realities that relate to the possible policing of aboriginal O&Ps in Ontario. These realities include changing demographic dynamics (such as the large, continuing movement of FN persons from reserves to the urban areas in the north central regions), the large number of FN people already in these areas and the significant projected population growth, the dramatic changes, over the past two decades, in constitutional understandings and in governmental policies that require profound evolution, if not revolution, in FN-mainstream attitudes and relationships throughout Ontario, and the expectations and demands of FN people for appropriate acknowledgement of their unique situation and greater participation in political and economic decision-making and opportunities. In this context it is quite salient to explore how the municipal police services are being affected by these developments and what adjustments they have been making in responding to FN citizens. Have the MPDs been adjusting their recruitment policies, engaging their members in cultural awareness and aboriginal rights training, proactively networking with the OPP and SAs with respect to aboriginal issues, and responding with effectiveness, efficiency and equity to aboriginal O&Ps in their areas? The two areas briefly discussed here are Toronto-Hamilton in Southern Ontario and the urban rim of Northern Ontario. In two other urban areas, namely Sarnia and Durham, an MPD police service provides the policing for a contiguous FN community.

The two urban areas researched for the project were Hamilton and Toronto. Hamilton, since the Second World War at the least, has been characterized by much ethnic diversity and that diversity in population has continued to grow in recent decades with immigrants from Asia and new lifestyle options. The Hamilton police service has much experience serving that diversity and its networking was further elaborated in its push to establish an extensive community-based policing approach in the 1990s. The police service has an ethnicity and lifestyle diversity office manned by a civilian who relates directly to police management; the mandate of the office includes diversity training, liaison and, to some extent, advocacy on behalf of the diversity stakeholders. Outside Toronto, Hamilton, which is contiguous to the populous Six Nations of the Grand River, had the largest aboriginal urban population in Ontario in 1990 according to the census, but rapid aboriginal growth in places such as Thunder Bay may have challenged that ranking. The Hamilton police service, as far as was reported, does not have much in the way of training programs for responding to O&Ps and does not have a conflict negotiation team or a special FN-focused police unit.

Hamilton had, then, a policing tradition (a sensitivity to and experience in dealing with and respecting diversity) and an organizational structure (diversity office, community-based policing) to fall back onto in the Red Hill Valley O&P in 2002. That O&P involved FN persons and environmentalists occupying the valley site where there were Confederacy claims and a possible burial site. A connector highway was being built through the Red Hill Valley under the authority of the City of Hamilton. The response of the Hamilton police and City officials to the O&P, as well as the engagement of Confederacy leaders and other FN participants, resulted in a peaceful resolution of the O&P for those parties, a resolution satisfactory from all perspectives (save the environmentalists' standpoint). It enmeshed the police, City officials and FN leaders in a web of mutual support and should increase the likelihood of a sophisticated, peaceful and proactive police-FN response in future matters. For these reasons it was considered a best practice and merited close examination. The Red Hill Valley O&P is discussed at length below in the section on best practices. The key emphasis is the effort expended by the Hamilton police and City officials to meet with Confederacy leaders, hear their concerns and negotiate a multipart six point agreement both for the Red Hill Valley project and for future related matters, that was deemed quite satisfactory to all these parties (indeed all these interviewees celebrated the achievement). The key points in the agreement included co-management of aspects of the proposed development, guarantees regarding FN rights such as no toll payment being required of Confederacy people should tolls be put into place, establishment of a special joint committee for archeological findings, and continuing consultation concerning related highway developments that were on the drawing board.

Turning to Toronto, it is by far Canada's largest metropolitan area so it is not surprising that it has the largest aboriginal population too according to Census Canada, namely some 75,000 (Toronto Police Service, 2005). As in other census areas, one must distinguish between those claiming some aboriginal ancestry and band members and/or those who claim aboriginal as their main identity; using those criteria the estimate is that the aboriginal population would be under 20,000, a very small percentage of the three million plus Toronto population (according to the official website the City of Toronto has a population now of roughly 2.5 million while the Greater Toronto Area has a population of some 5 million). In addition, it is, for the most part, an aboriginal population that is widely scattered (there is some visibility among the street population and some FN and other visible support services concentrated in the downtown to serve this quite small segment of the aboriginal population). Also, the Toronto aboriginal population is reportedly not culturally homogenous and indeed, according to some well-informed FN observers, mostly constituted of persons well-established in the mainstream society in terms of both culture / life style and socio-economic status. If not from outside Ontario, "they are mainly from communities in Southern Ontario or larger centers in Northern Ontario where FN people have been exposed to mainstream society for 100 years plus, not from the small communities of Northern Ontario", the small more isolated reserves where people are arguably ill-prepared to live in the city (in terms of education, employment skills etc) and from where the FN people are moving to places such as Dryden, Kenora, Thunder Bay and so on. It may be noted, too, that to-date there is no

sign of aboriginal-based gangs in Toronto; clearly, the Toronto crime scene is dominated by other ethnic-based gangs, just as the O&P activity involves other interests.

In the Toronto police service (TPS) there are reportedly “several pages of aboriginal officers and as many again of some with aboriginal ancestry who do not identify themselves as such”. The TPS has an Aboriginal policing unit consisting of two constables. The latter are designated members of “Aboriginal Peacekeeping”, employed in the Community Liaison Unit of the TPS; the former role was initiated in 1989 and the latter unit in 1992. The aboriginal peacekeepers subunit has its own sergeant, unlike other officers serving the other minorities who report directly to the staff sergeant for the Community Liaison Unit; this suggests an acknowledgement by the TPS of the significance of the aboriginal component. That unit is however quite limited in its mandate, basically focusing on liaison with aboriginal agencies operating in metro Toronto (there is no central umbrella organization though there have been attempts to generate one in the recent past) and providing to fellow officers cultural sensitivity training (aboriginal awareness). There is no monitoring by the aboriginal subunit of departmental arrests or charging of aboriginal persons nor of incidents involving aboriginal persons (unlike for example in domestic violence matters in many Canadian cities where the police service’s victim services unit receives a copy of all such incident reports daily) nor is there much advocacy according to the few, well-positioned FN activists interviewed. The aboriginal peacekeepers have not been trained in or have any special conflict negotiation team (CNT) role; however, they, and perhaps some of the regular TPS aboriginal officers, would be contacted by departmental specialists should an aboriginal O&P develop in Toronto.

The TPS does claim a special competence and significant experience in dealing with protests. It has a one or two person CNT-type led by a detective sergeant who can command resources when needed and that unit has dealt with well-organized and potentially violent O&Ps, involving political and ethnic issues (e.g., Balkan political disputes among Serbians and Muslims). The unit was also activated in the Revenue Canada sit-in by FN persons in 1995. The approach followed there, and elsewhere, is generally in the CNT mode, namely establish ties, avoid violence, encourage negotiations etc. The lead officer in the unit described his approach as “wear civvies, establish personal contact, and convey to the protestors that as long as the protest stays legitimate, we can help you; building a relationship is crucial”. There is much ethnic diversity and many controversial issues in Toronto including threats by major terrorists so aboriginal O&Ps are “not high on the radar”, especially as there has been “nothing much in past decade”. If there was an aboriginal O&P, he noted, “Intelligence is crucial and we would depend on the aboriginal unit and aboriginal officers on the force”.

The types of aboriginal O&Ps that one could anticipate in the Toronto area would be sympathy protests (e.g., the Ipperwash Walk in 1995), protests specifically targeted at off-reserve FN issues (e.g. federal tax policy) and protests aimed at calling attention to allegations of police mistreatment of either aboriginal offenders or aboriginal victims. As noted, in the mid-90s the first two types of O&Ps did occur in Toronto. While there have

been rumbling concerning the third type, allegation of police mistreatment, none of the informants could recall an O&P with that motif in the last fifteen years.). Toronto seems not to be a hot bed for aboriginal O&Ps, presumably for all the reasons cited above (e.g., a small scattered population in a sprawling busy metropolis). As several activists have commented, the mechanics of a sustained occupation are not a good fit to the realities of life in Toronto. There are environmental, anti-poverty and anti-globalization protestors with whom some aboriginal protestors ally themselves and in these protests the aboriginal dimension is often highlighted by the media. Since Toronto is the media capital of Canada that attention can be considerable and it is usually highly valued by the non-aboriginal protest groups (a reflection perhaps of the widespread appreciation of the “colour of right” theme discussed earlier). Overall, then, the two most well-known aboriginal O&Ps in Toronto, namely the “ Ipperwash Walk” and the Revenue Canada sit-in both took place in the mid 90s and some aboriginals have been prominent in recent anti-poverty and other O&Ps. Whether off-reserve issues will become significant in the near future or whether aboriginal O&Ps elsewhere will spark sympathy protests in the nation’s media capital cannot be predicted nor can one predict, should these occur, whether there is sufficient capacity and enough of a finely-tuned conflict negotiation approach in the TPS for responding to such aboriginal O&Ps in an appropriate manner.

The aboriginal population in the small, modestly populated urban areas of the southern rim of Northern Ontario has increased significantly over the past decade. In Sioux Lookout reportedly more than 50% of the 6000 residents are FN people. In Kenora the proportion officially is about 15% of the 20,000 residents but informed observers say that it is significantly higher for a number of reasons (e.g., continued in-migration, movement between the reserve and the urban area, and not being counted in the census); indeed, FN people constitute over 33% of the 65,000 residents in the greater Kenora region. In Thunder Bay the official 2001 census percentage is roughly 10% of the population of 110,000 but, again, and for similar reasons, informed observers suggest that it is more like 25%. In Dryden, to the northwest, where two reserves virtually abut the city of 9000, and Sudbury in the northeast, the aboriginal proportions are reportedly single digit but growing. The evidence suggests that the aboriginal population has indeed become the main engine of population growth in urban Northern Ontario, both as a result of high birth rates and through off-reserve migration. There is evidence, too, that the aboriginal population in these urban areas has had significant problems in terms of educational and occupational achievement. For example, in Kenora the drop-out rate in high school, according to an FN educator there, is over 80%. The aboriginal population growth in these urban areas appears to be occurring at a time when the resource-based economies in the region are stagnating rather than witnessing a boom, a context that would aggravate the aboriginal disadvantage.

It is not clear how extensive social problems such as substance abuse, family breakdown and housing issues, are among the aboriginal people in these urban areas but the few informants interviewed suggested that they were extensive. There appear to be many frustrated and alienated young adults, reportedly so-so educated and frequently unemployed, angry at their situation and the limited opportunities where they are, and also at their own band councils for lack of support. This combination of ill-prepared,

poorly educated, low status (in their own eyes and the eyes of others) young adults with high expectations and conventional success goals (it should be noted that it may take some ambition and “moxie” to leave the reserve in the first place) represent the classic combustible factors noted earlier in discussion of the causes of O&Ps. Veteran OPP officers in the area commented that conditions had improved much for aboriginal young people in these urban areas compared to twenty or thirty years ago; this might well be true but expectations and demands have perhaps changed even more drastically so now one would expect widespread perceptions of relative deprivation and injustice.

O&Ps in the urban areas of Northern Ontario have taken many forms in recent years, including sit-ins at government offices, mass rallies, blockades and protests against alleged police mistreatment; Kenora in particular is seen as a hot spot according to the people interviewed, namely OPP and SA officers and FN leaders. The information on hand indicates that there are few aboriginal members in the police services in these urban areas; reportedly, these few are among the 200 person police service in Thunder Bay (indeed, an SA chief of police noted that his police service and Thunder Bay’s have reached an understanding on any recruitment of one another’s officers). It is not known what level of training the police services have had in aboriginal awareness or conflict negotiation but presumably a little in the former and none in the latter. The OPP has had a joint anti-racism program in the Kenora area and makes some seats available in its aboriginal awareness program to MPD officers. The small and modest size police services reportedly are usually understaffed in relation to their identified workload. They cannot be expected to solve major problems but, hopefully, policing for the nonce, they can avoid making the situation worse in responding (e.g., in arrests, and confrontations). The city governments themselves have limited resources – the largest in the area, Thunder Bay, has begun an assessment of demographic and social conditions and hired a consultant to look into a strategic plan to respond to demographic and social conditions, including the increasing aboriginal population and the new realities of northern urban life.

Small incidents, not handled well, could generate significant O&Ps. The officers and leaders interviewed in the northern urban area generally held that there are serious problems with regard to policing and aboriginal people now and that they are likely to get worse in the future. Indeed, recently, police intelligence in the area has identified organized crime in the drug trade (e.g., methamphetamine) as an increasing issue on the reserves as well as trafficking between reserves and the northern urban areas; the crime factor could well be expected to enhance the already serious problems concerning policing and aboriginal peoples. These urban areas clearly have few resources, especially in the current economic climate, to expend on policing and indeed, given the consolidation pattern noted earlier, demanding police services might well find themselves replaced by the OPP. OPP leadership in terms of integrated services regarding aboriginal awareness and conflict negotiation and other responses to O&Ps is clearly a necessity. Even on their own, or with modest funding from the provincial government, these urban police services could and should enhance their relationship with aboriginal peoples through a variety of strategies such as ride-alongs, two-way-street programs (i.e., officers spend some time in native contexts and learn about native issues while native young

people spend some time in police contexts and learn about police practices), establishing police auxiliaries, a police cadet program (a promising program along these lines recently has been set up on the Hobbema reserve in Alberta) and so forth. Still, more integrated delivery of police services is crucial. In the face of a well-based anxiety over their vulnerability on the part of the MPD officers – which OPP officers can appreciate – the OPP and the MPDs have to work together especially in these northern urban areas.

SUMMARY

This brief overview suggests that, over the past decade and a half and especially since the Ipperwash incident, significant and basically positive changes have occurred in the quality of policing in aboriginal communities and in the police response to aboriginal O&Ps. The senior police services have evolved much along these lines and SAs have become established, though arguably not yet institutionalized. Insufficient research limits what can be said about MPDS, especially the small and modest sized services in the urban areas of Northern Ontario but it is clear that they will increasingly encounter significant challenges in relating to aboriginal people and dealing with O&Ps. Several major concerns can be identified for each type of police service in the two aspects of policing noted. For the RCMP, the key concerns arguably are (1) providing the policing promised and needed in the “seamless” context where the RCMP provides the federal, provincial and CTA policing; the latter requires a lot of resources given the conditions in many FNs and these resource needs should be articulated better (perhaps with the RCMP at the table in the tripartite negotiation process) and the CTA commitment not be weakened or be drawn off in order to sustain other RCMP shortfalls elsewhere in its mandate; (2) there has to be continued improvement in accountability to chief and council so that there is excellent communication and buy-in on the part of the community members; (3) there should be more entrenchment of the “measured approach” philosophy of intervention and the companion organizational innovations (e.g., the conflict negotiation team), as well as the priority accorded FN policing (i.e., the APS dimension); as we have argued, there is much skepticism about the organizational entrenchment of these initiatives across divisions and regions, expressed by many of the key officers operationally associated with these developments.

For the OPP, the major concerns would appear to be (1) the provincial and SA police services are different. There is a “seam” in the policing provided to FN people, a seam more fundamental than that which exists between provincial (OPP) and much municipal policing (MPDs), as it is rooted in constitutional and cultural imperatives. The OPP clearly respects the seam but the challenge is to work more effectively and collaboratively within that context (e.g., integrating special services in conflict negotiation for responding to O&Ps); (2) the OPP to date has limited conflict negotiation training and no CNT team, as opposed to crisis negotiation, the tactical unit or the ERT unit, and needs to develop one and do more in this style of policing in concert with the SAs and MPDs; (3) the OPP has to provide leadership in policing O&Ps, given the modest capacity of the SAs and the smaller MPDs, presumably in a manner that strengthens the viability of these latter types of police services.

The major O&P-related concerns of the SAs, as identified in this research, are (1) they are small and with limited resources operating under an enhancement mandate (i.e., resources are targeted basically for front-line policing) and simply cannot specialize or hone their peacekeeping –O&P sophistication – even while having to deal more and more with intra-band O&Ps; (2) the generally expressed preferences of SA officers (and other FN leaders) appear to be for more training and organization in peacekeeping, recognizing that just because they are FN people does not automatically give them appropriate skills and dispositions but also holding that this is an area of policing where they can “bring something to the table” in their collaboration with the OPP; (3) small police services are a dying breed in the modern era where standards are always increasing, mandated police response frequently promulgated and liability issues an increasing concern. Constitutionally and culturally the SAs have a reasonable basis for survival and a just and responsive society acknowledges that and gets on with the job of facilitating it as much as possible. This requires more networking, integrative links with senior police services, and more integrative relationships at the local level with other agencies in order to get at community problems (what most FN leaders appear to mean when they request a more community-based policing).

With respect to the MPDs, it is clear that the OPP has the experience, expertise, contacts and resources to provide leadership on issues of providing a police service for aboriginal peoples and in responding to aboriginal O&Ps. It would appear to have a special mandate and a special responsibility in these regards even with respect to the large urban communities. In the case of the urban communities that constitute the southern rim of Northern Ontario, that mandate and responsibility would be more far-reaching and perhaps intrusive. At the same time, the vulnerability of some MPDs and the territoriality issues for others, requires a deft hand and the continuing cultivation of a relationship based on partnership not domination.

SEVEN KEY IPPERWASH QUESTIONS

As a contribution to the discussions of the Ipperwash Inquiry's August 19th, 2005 meeting, the researchers provided a detailed response to seven key questions raised by the Inquiry's staff about policing aboriginal O&Ps.

- (1) What are the limits to the police role during O&Ps? Police are obviously in the public order business, not land or treaty claims. Who else has to be involved? What are the reasonable and unreasonable expectations of the police?

The limitations and possibilities of the police role in O&Ps is an issue that is the very heart of our fieldwork and this is reflected in the title adopted for the research paper. It is a major issue in the general sense of policing civil disobedience in all the common-law countries at least and there is a significant and growing literature on it. There appears to have been many lessons learned over the past decade, according to the literature, especially with respect to the ideal of police being as proactive and as impartial as possible. In the case of native civil disobedience there is another dimension rooted in claims regarding treaties (or lack thereof) and the guarantees of section 35 (and other sections) of the constitution; the concept of the "colour of right" speaks to this special native dimension. Many police officers, whether RCMP, OPP or with self-administered FN services, were asked about "limits" in aboriginal O&Ps and we found a widespread holding of the view that native O&Ps involve more issues and somewhat different principles ("civil disobedience plus", as it were, a specification of the citizen-plus model so common in the literature on FN people today) and have to be responded to differently in principled policing. They contended that there has to be a greater realization that police do not just represent governmental authorities and agencies but the constitution and the community. This in turn seems to require more emphasis and training concerning communications among the parties involved and more conflict negotiation. Another dimension of this issue is that even effective conflict negotiation facilitated by the police can be properly seen as temporarily restoring order not yielding a final solution to the underlying conflict factors. The latter was seen as well beyond the police role though the latter may aspire to facilitating such an aftermath. Therefore, one looks to the aftermath, the follow-through of the police intervention, and this involves other players. This limitation to the temporary restoration of order can be very frustrating for the police especially as they may be repeatedly dealing with the same protestors but it is the nature of the job and something all officers have to learn quickly in their career when dealing with conventional calls for service (e.g., repeat calls to fighting). The emphasis, the large majority of all respondents noted, has to be on considered response not quick and overwhelming use of force at the behest of authorities which may not only be inappropriate in principle but also increase the risk of serious violence (e.g., for example, the position taken by the RCMP at Burnt Church in not seizing illegal firearms). As the Oka inquest into the slaying of corporal LeMay concluded, key questions need to be thought through such as "what's the rush?"; "what is the legal way to approach this?"; "Is there another way?" Clearly, for police at the field level in O&Ps, the incident commander has

to understand who the other players are and what roles they will be playing (e.g., INAC, DFO, Elected band officials, traditional leaders, elders, etc) and respond to each party in an impartial manner, nudging them as best he/she can to negotiations. An important consideration too is how the parties understand the criteria for police assessment of violence and property destruction (i.e., the *Waterfield* test) that will lead to their enforcement response..

(2) What do you think of the RCMP/AFN protocol? Is it a step forward? Does it reduce the risk of violence? What is needed to make this kind of protocol work most effectively?

We have spent some time on the matter of the AFN/RCMP protocol, interviewing RCMP personnel in Ottawa and in the field about it and also interviewing protestors and others. The protocol sets out a process whereby in the event of a serious occupation or protest or threat thereof, the AFN and RCMP will strike a special group (drawn from lists advanced by both parties) to meet with local officials and explore peaceful resolutions. In addition, cultural awareness training and other related collaborative programs are envisaged. The protocol certainly has not been a magic wand but apparently it has been successfully utilized at least twice. It was the basis for RCMP, DFO and FN officials to deal with the dispute concerning the Luna whale in Nootka Sound on the coast of British Columbia in 2004, just months after the protocol had been formally signed by RCMP and AFN officials in Saskatchewan. That agreement appears to have been considered a success by all parties although the whale met an accidental death caught up in the propeller of a tugboat in the area in 2006, months after the fall of 2005 when Luna, concomitant with a special traditional native ceremony, was supposed to leave the area. The other use of the protocol occurred in the Norway House area of Manitoba in conjunction with the 2005 slaying of native young man by a native RCMP officer in the course of making an arrest. Its use, inspired by the initiative of a well-known native officer in a liaison role with Manitoba FNs, forestalled impending native protest and resulted in a close involvement of native designates in the RCMP investigation of the incident and led to the development of a special protocol between Manitoba FN leaders and the RCMP's "D" Division officer in charge for dealing with native deaths that occurred, whether in the process of police responding to a call or making an arrest or when the person was in custody. This incident and the resultant protocol are discussed in more detail below in the section on "best practices". The RCMP-AFN protocol also may have been the model for an intervention by the AFN and the S.Q. police in the Kanesatake FN feuding a few months earlier. Here, though, the strategy was not successful as the person selected to approach the disputants was not able to establish a dialogue among the key disputants.

While a case can readily be made for the RCMP-AFN protocol as a best practice (see Wawryk, 2005), surprisingly, though the interviewed RCMP officers welcomed the concept of such a protocol, few on either coast claimed any awareness of it, and those who did typically considered that it was a work in progress. There are other limitations; the protestors often are politically radical and alienated from the elected FN officials who

are represented in the AFN so many of them are not enthusiastic about the protocol. Other groups, such as the Metis seeking acknowledgement of their claims for fishing and hunting rights in Ontario, are not referred to in the AFN/RCMP protocol. Also, it is unclear whether the AFN has trained persons to fill their role in the protocol. Perhaps the most serious limitation is that the protocol advances a "key person" ("selecting interveners") approach whereas conflict negotiators will generally point to the need for a team approach with a collection of roles and foci such as strategizing, negotiating and so forth. At the same time generating such protocols would seem to be a valuable policy even while on the positive side it may be limited. Signed agreements underline commitment and collaboration. Spokespersons for aboriginal justice advocacy in Toronto have noted that protocol entailing the presence of aboriginal representatives at the inquest of an aboriginal person there have been well received by the aboriginal community, ensuring them that the appropriate attention and investigation takes place. The bottom line is that, in the case of O&Ps, protocols at least may bring different players into the action and especially people with a problem-solving mindset oriented to minimizing violence. Protocols may enhance communication among the relevant parties. As respondents indicated, violence is usually triggered by the actions of one or two persons, often because one side misread the intentions of persons on the other side. Protocols, well communicated, may reduce that likelihood. Of course protocols to be effective must be well understood by the signing parties and must be built upon solid pro-active, community-based policing.

On the lower Mainland / Coastal area of British Columbia, as will be discussed below in greater detail, the RCMP has been implementing both an effective aboriginal community constable program (i.e, 80% of the member's time serving FN communities, 30% of that being allocated to proactive policing etc) and another protocol as well, namely one focused on the contentious fisheries and involving the DFO, the British Columbia Aboriginal Fisheries Commission and the RCMP. This protocol also sets in train a process and designated persons to respond to actual or potential crises. It has been in operation for four years and is reported to have, for the nonce at least, successfully dealt with problem situations to the satisfaction of all parties. Given the tinderbox that British Columbia appears to be from the point of view of aboriginal O&Ps, these collaborative initiatives appear to be vital. As far as could be determined in this research there are no specific protocols for responding to O&Ps in Ontario. There are of course standard operational procedures for the police services in responding to strikes, protests and barricades but nothing specifically for aboriginal O&Ps. Respondents in both the OPP and FN police services in Ontario reported that they have an excellent relationship at the field level and understand that the OPP is obliged to provide back-up support as they do for non-aboriginal police services. Generally, the respondents in both types of police services, and civilian authorities, were in favour of there being such protocols for O&Ps, though some respondents considered it "just another piece of paper". The situation in Ontario would appear to require such a protocol since blockades and other such O&Ps are likely to be in areas policed by the OPP, yet the protestors are often FN members residing in contiguous jurisdictions policed by the self-administered FN police service. (e.g., the Grassy Narrows' O&P). Also, in the event of O&Ps in areas policed by the FN service, the latter simply do not have the resources and specialized training to respond sometimes

without assistance. So, for intelligence, communication and other reasons, protocols would appear necessary.

(3) How do police respond/manage the objection that by enforcing one set of laws or another they are effectively choosing sides in a political dispute within a First nation or between a FN and the federal or provincial Crown? How do the police choose?

The conflict that a police response to an aboriginal O&P, especially a quick simple enforcement one, generates for the service and the officers is something we came upon again and again in our fieldwork, from both an "it is inconsistent with community policing" perspective to "we can't take sides between the government and the natives since the latter have ill-defined treaty and constitutional rights". We have interviewed RCMP native corporals and constables who said they would quit before carrying out DFO and other similar governmental requests against protestors. Indeed, it was not uncommon for native officers to argue that they would disobey orders to that effect from their own immediate supervisors, although it was more common for such officers to note, in describing a "best practice", how they had requested a delay in carrying out an enforcement order while they worked on a less confrontational strategy (usually trying to find an appropriate intermediary). We heard similar remarks by OPP native supervisors as well as from FN police leaders who even suggested that the police themselves might have to assume an aggressive warrior type role on behalf of native rights. There are many interesting interviewee comments along these lines. It is significant and intriguing that so many native police officers even in supervisory positions feel so personally "conflicted" on this matter. On the protestors side, it is quite commonplace for them to argue that conventional police response in O&Ps is destructive of respect for policing among FN peoples and diverts the police or diminishes their credibility and effectiveness with respect to dealing with conventional crime and anti-social behaviour (e.g., domestic violence, drug dealing, break and enter etc).

Interestingly, both many police officers and many protestors whom we have interviewed, advanced a model of police response to O&Ps which highlights keeping order but not intervening to eliminate blockades save where people are physically harmed or there has been wanton property destruction. How the police choose (and what their bottom lines are for the appropriate use of force) is interesting but increasingly there is more sophistication and nuance in their response – we highlight that below in the case studies such as the Red Hill Valley occupation and the Southwest Nova Fisheries protest. Certainly, too, this whole issue is especially problematic for native officers and FN self-administered police services. Numerous examples emerged in our fieldwork of officers seriously affected by their roles in dealing with O&Ps; some officers have been apparently permanently disabled psychologically, while some (even the very best now in Canada) self-administered police services' continued existence has been imperiled by their intervention. The former may well require counseling with either or both professionals and elders, while at the police service or organizational level, some recourse to specialized support services would seem to be required. Of course most O&Ps involve intra-band disputes but much the same set of problems remain for both

individual officers (especially native members) and police services (especially the self-administered FN service) and indeed in some cases may well be intensified because of family and related ties plus the lack of community capacity to deal with such disputes and nip them in the bud. An issue emerging from the fieldwork has been the position of police vis-à-vis the FN chief; as one well-informed person put it, “often the police lean to the side of the chief and often the chief is the problem”. Several non-native RCMP OICs indicated, in their interviews, that in factional disputes among chief and councilors, they had to be especially oriented to the chief as head of the community but in the Indian Act and other agreements the obligation is to the chief and council, not to the chief, so there appears to be some confusion regarding their interpretation of formal obligations. Overall, it is interesting to note that police services report various strategies they use to deal with these intra-band conflicts such as having any promised, subsequent investigation into allegations carried out by other detachments or non-local police support units. Still, issues of community capacity to deal with disputes and the resources available to the self-administered FN police services remain problematic.

(4) Concerning police capacity, what do the police need to do these things better, particularly in rural and remote regions like Northern Ontario? Money? Training? Infrastructure?

In Ontario neither the FN police services nor even the OPP have impressive capacity to respond effectively to native O&Ps in their own view and in our view. There are interesting developments, if limited at this point in time, among the OPP, that can be noted, such as the Integrated Special Services Unit (ISSU) formed with the RCMP to liaise and develop special programs (e.g., restorative justice) in communities policed by an FN police service, and the Aboriginal Relations Team (ART) whereby native officers in a given region of Ontario (the London area is where the program initiated and at this point, is most well implemented) get together periodically and attend various FN functions, drumming and participating in FN events. The objectives of ART go well beyond participation in cultural activities and are aimed at establishing relations of trust and mutual regard, something that has potentially significant operational implications for OPP policing. Additionally, the OPP has a significant province-wide native advisory council which meets to discuss policing issues. There is also a four-day cultural awareness training program held several times a year for different OPP members. The RCMP, in most areas such as the Lower Mainland of British Columbia, has similar programs but more of them (e.g., a conflict negotiation team) and, most importantly perhaps, offers seamless policing between FN communities and the regional and provincial units because it provides both the provincial and FN police service. Unlike native officers in the OPP-supervised OFNPA, the RCMP’s native officers dedicated to FN communities – the ACCP program – are full-fledged RCMP members in every way but carry out a specialized role analogous to say highway patrol.

Among the self-administered FN police services – the norm for aboriginal communities in Ontario and Quebec, the only two provinces where the RCMP is not the provincial police service - there are major resource shortfalls. The shortfalls are associated with federal (First Nations Policing Policy) and Ontario policies where the

self-administered police services have been encouraged to develop and take over policing on the reserves but nevertheless have had their policing seen as (and funded as) an enhancement rather than a replacement of the previous OPP policing; as a result the infrastructure and support for anything but basic conventional reactive policing by these FN police services have been minimal. The Ontario policy while commendable for furthering the imperatives of autonomy and difference among FNs is often criticized for not acknowledging that the FN police services are indeed more replacements than enhancements. In any event the FN services not only do not participate in any special public order training but also they do not have any direct consultative connection, as a body, to the Department of Justice, something that would be valuable in an era of O&Ps. In Ontario there also appears to be a significant structural problem where the more serious O&Ps typically occur off-reserve (though perhaps in ceded traditional Indian territory) where the OPP have jurisdiction but usually involve protestors living in contiguous FN territory policed by the self-administered services. The OPP obviously has greater capacity but would not have the ready access to or awareness of key local people that is essential in a non-enforcement oriented response. Clearly, collaboration is essential among these police services, a collaboration that might be furthered through protocols and perhaps an integrated peacekeeping response team.

More generally, there appears to be, throughout the country, inadequate attention and resources available among police services to encourage expertise in conflict negotiation and community-based policing, areas of especially importance when considering the policing of native O&Ps. Several experienced senior OICs, when interviewed, echoed the words of an OPP supervisor at the Ipperwash O&P in 1995, namely “I’ve no training for this kind of thing”. The RCMP experience in the Lower Mainland of British Columbia is instructive with respect to issues of capacity and will be highlighted as a best practice below but in the RCMP as well as in the OPP the special programs relevant to aboriginal O&Ps are both recent and quite modest. It would be easy to exaggerate their effectiveness at this point in time; indeed, among native officers in Ontario, especially in FN police services, it was frequently observed that the best thing about the OPP from a native point of view is not any program or policy but the support and commitment of the current commissioner. Beyond resources and the particular circumstances of Ontario’s FN police services, there are other dimensions of police capacity which can be addressed including programs such as conflict negotiation training, the creation of a special integrated (native and non-native, OPP and FN police service members) peacekeeper team in Ontario, the selection (some evidence suggest that experienced officers may be preferable candidates for conflict negotiation and peacekeeping) and training of designated officers and so on. And, of course it must be noted that police capacity requirements in turn are not independent of community capacity to deal with disputes, especially in the rapidly changing circumstances of FNs in Canada.

(5) There is a need to highlight or showcase policing practices, a key concern of this Inquiry.

Most interviewed police officers, whether native or non-native, emphasized the need to wait, listen and talk in responding to aboriginal O&Ps. Communications with the protestors and other authorities was clearly the number one police practice to which they referred when discussing effective police practices. There were many examples given of how conflict and violence were avoided by patience and good communications. Indeed, it could be said that, analogous to the realtors' mantra of location, location, location, they emphasized "communicate, communicate, communicate". Another common practice advanced was finding the appropriate person (usually an elder or person of respect) to meet with the protestors and act somewhat like a mediator. This is not an easy task since social change has undermined the status of elders and, in the case of intra-band O&Ps, both sides may have their own elders. Often the police described a trial and error approach ultimately ending with the right person or persons becoming involved and facilitating an end to the O&P. Despite the challenge noted above, the practice of engaging elders makes great sense given the symbolic value associated with involvement of elders, especially in circumstances where the protestors apparently espouse tradition as a partial justification for their actions. Many officers well experienced with native O&Ps and enjoying a favorable reputation for "putting out fires" by their colleagues and others, emphasized the importance of being "upfront" and honest in their dealings with protestors; as one said, "bullshit destroys trust". This approach was deemed to be essential to building relationships and many officers simply described good policing practices in O&Ps as "building relationships". Another common police practice that officers highlighted in their accounts of successful, peaceful response to O&Ps was recognizing that O&Ps have elements of theatre about them. It was deemed important to consider face-saving not in a pejorative sense but in the sense that recognized the effort, emotional commitment and broader social implications of the participants' actions and provided them "a way out", a way whereby they could "exit" and still hold their heads up with some satisfaction.

Much effective police practice regarding peacemaking in O&Ps can undoubtedly be formally transmitted through training but much is also an art that is learned through debriefing and sharing experiences with others similarly engaged. In the fieldwork we uncovered excellent individual practitioners but saw little evidence of any systematic organizational building upon their efforts. Clearly, it would be possible to delineate the underpinnings for effective police practices, namely a certain personality type (a low-key type person with good communication skills pertinent to the protest situation), good knowledge of the local scene (of the protestors and of respected influentials such as elders), good access to senior command posts, an evolving strategic plan (e.g., "a way out" for the different parties), and ensuring debriefing and support systems are in place (capturing the experience, making it more than just a shopping list for more manpower and equipment, sharing it among persons similarly engaged and providing support for those affected by this often stressful police role). There are a number of useful guidelines for policing O&Ps that have been developed by experienced officers ("in the "school of hard knocks" as it were) and there should be some collation and analyses of these. Included in the appendix to this paper are the reflections of retired inspector Jim Potts who served as a key liaison person for the RCMP and later the OPP in responding to many O&Ps over the last two decades. In particular he identifies proven conflict

management strategies in relation to the phase at which the police respond to O&Ps. Others' such reflections are cited in the bibliography (e.g., the twelve steps delineated by ex-RCMP commissioner Murray (2005)). One key practice that could be crucial for effective response to aboriginal O&Ps, according to many respondents, is the hiring and promotion of FN officers; here targets would include enough such officers to make a difference at the police sub-culture level and some such officers at the management level to impact on policy issues.

(6) Police work in these circumstances is often influenced by other governmental agencies (such as fisheries, natural resources etc) who, reportedly, sometimes want a more assertive or faster police response. What is the best practice for managing multiple parties on the government "side"?

The issues of how police relate to other governmental agencies and how those relationships are generally seen by the protestors and by the native leaders are both crucial. Protestors have complained generally of police taking sides with such agency officials and in that sense violating their role responsibilities to be impartial and to represent the community. Of course there has been a long history of police providing back-up for agencies such as Fisheries and Natural Resources. Certainly, while police and agency officials appear to meet frequently and enjoy positive relationships, it was common among police officers to contend that agency officials were often pressuring them to take action rather than wait out the O&P and try numerous possible mediator interventions. Police interviewees sometimes manifested empathy with the agency officials' situation, suggesting that cut-backs have pressured them into an emphasis on enforcement. Also, the police, RCMP and those in Ontario, have indicated that Natural Resources (MNR), Fisheries (DFO) and some crown prosecutors are well behind them ('playing catch-up' as one stated it) in their sensitivity to and awareness of the native situation, especially as regards aboriginal rights and appropriate expectations for policing. There was a clear requirement, identified by many officers, to communicate the less partisan nature of the police role and, for some officers the police had a significant socialization role in this respect vis-à-vis other governmental officials. On both coasts The RCMP now have an inspector-level and other members working as liaison with DFO and located in the DFO buildings. The perception of MNR and DFO officials is that their mandate is to protect the resource in question and that the laws are there for the greater good. Perhaps this represents a difficult premise to accept for people who may be living in abject poverty but agency officials counter that the "culprits" are frequently well-known to them and represent a very small number of persons. While those officials interviewed were not insensitive to or unaware of aboriginal issues and rights, they did stress "a level playing field" and people playing by the same set of rules. Such a position, while in general reasonable, has to be robust enough to take into account special rights protected by treaties and the constitution, and from the native perspective, it usually is not (e.g., this controversy is particularly intense in British Columbia). Police interviewees reported that sometimes the other governmental agencies have already acted unwisely and prematurely before calling in the police whether for back-up or to deal with the problems caused by this earlier action. Clearly, there should be special training and

orientation in critical response and cultural issues taken conjointly by police and agency officials and with input from native spokespersons but there are macro-level issues here that have to be resolved and without which O&Ps are inevitable. Special protocols developed by the RCMP in collaboration with Fisheries and native leaders have helped to limit the explosiveness of the O&Ps in the Lower Mainland and will be discussed below.

(7) What about the non-aboriginal community? The OPP was severely criticized by the local non-native population for being pro-native because they moved too slowly etc. What is the role for the police trying to broker all these interests and expectations?

We consider the involvement in native O&Ps of the non-native community in two ways at least; (1) as other protestors, collaborating with natives (typically, but not always, they are more ideological vis-à-vis native pragmatism): it is interesting to know how they see native protestors and how their native collaborators and the police in turn see them. Tentatively, it would appear that in collaborative O&Ps the non-natives protestors (e.g., environmentalists, political radicals, religious-based sympathizers with a peace orientation) get short shrift from the police. Indeed they may bear the brunt of police criticism and hostility perhaps because police (especially non-native of course) may have to stretch their personal views and feelings so much in accommodating to the native protestors, and thus they may compensate by coming down hard on the environmentalists and others (e.g., the Red Hill Valley O&P discussed below). In most native-focused O&Ps that are not of the intra-band character, non-natives are engaged whether it be Grassy Narrows, Oka, Burnt Church and so on, and sometimes they constitute a significant proportion of the committed protestors (e.g., Grassy Narrows). Clearly, too, environmental and political protestors often seek native collaboration in a protest (e.g., the Day of Rage, Red Hill Valley protests discussed below), expecting that their strategic and perhaps moral position would thus be improved vis-à-vis authorities; such protestors seem usually dissatisfied with the outcomes as the native collaborators accept agreements with the authorities who often follow a “divide and conquer” strategy. (2) The other way the non-native community is involved in these O&Ps focuses on how they are impacted by the O&Ps. They may suffer, at the least, inconvenience if not minor property destruction, and also may be puzzled and annoyed by what they deem to be the reluctance of the police to enforce “the law”. Certainly in some O&Ps the non-native neighbours contended that they did not receive adequate protection. This is indeed a major issue and perhaps requires that police have liaison to the affected mainstream groupings and the media savvy to explain their “measured approach” to this larger constituency. Just as the police appreciate that in some ways they are socialization agents to other agencies’ personnel regarding the rights of aboriginals’ “civil disobedience plus”, so too this socialization dimension would seem to be crucial in relation to the mainstream communities impacted by the O&Ps. Some informants have suggested that native and non-native civilian members of police services who reside in the communities around the O&P can be valuable conduits for “getting the police message out”. In any event, it would be appear important as well for police to communicate more what their bottom line might be for a more forceful response (i.e., how they would operationalize the *Waterfield* Test in the specific instance at hand) and their priorities and phases of response. This

general problematic situation when non-natives are impacted directly is why intra-band conflicts are usually less serious for police.

BEST PRACTICES

Best Practices In Police Responses To Aboriginal O&Ps

In background preparation for this paper the authors gathered materials and interviewed over 100 key informants, native and non-native (see appendix B) throughout Canada, from British Columbia to Labrador on aboriginal O&Ps in their regions. In particular, attention was paid to O&Ps in the following places, namely the Upper Fraser Valley in British Columbia (near Lillooet and also the Sun Peaks development near Kamloops), the Lower British Columbia Mainland (around Chilliwack), Northern Manitoba (Norway House), Northern Ontario (the Kenora area), Mohawk Territory (Six Nations in Southern Ontario and Akwesasne in Eastern Ontario), South-Eastern New Brunswick (Elsipogtog), SouthWestern and Central Nova Scotia (St. Mary's Bay and Indian Brook respectively). Throughout the field work we have encountered numerous examples of best practices in how O&Ps were responded to by police officers, in conjunction with protestors, in a way that avoided violence and / or significant property damage or inconvenience, and left a positive legacy for policing future O&Ps. As noted often, O&Ps, particularly, but not only, those taking place on reserve, have been quite common over the last decade since Ipperwash and Gustafsen Lake and most have been resolved at least for the short run apparently without negative implication. Some other protests have been explicitly symbolic in essence (though directed at kick-starting negotiations over land and resource issues) and good relations and communication between police and protest leaders have made for a short-lived and peaceful O&P (e.g., the recent railway blockade in Lillooet British Columbia). In referring to a best practice one must take into consideration the question, "from whose perspective and for whose benefit?" Since policing in O&Ps is focused on the temporary restoration of public order, another criterion for a best practice might well be, have there been positive implications for future O&P in the area, a legacy effect? The large majority of candidates for "best practices" as advanced by police officers have highlighted the following features: (1) significant pressure to use force to end the O&P, directed at police by government officials, band authorities or police supervisors; (2) on-scene officers adopting a "considered casualness", downplaying the "force" component by their dress, being weapon-less and so on; (3) talking with the protestors and determining their complaints and immediate needs; and (4) finding an elder or influential person who can be a lightning rod in diffusing the blow-up potential and channeling the protest along more institutionalized paths. While sharing many of these features, the five best practices highlighted here have been selected because they meet the following criteria, namely (1) the O&P could have had serious implications; (2) the parties, including the police, were reasonably well satisfied with the resolution; (3) there was some evidence for the creation or strengthening of a web of mutual support among police and protestors; (4) there appears to have been a positive legacy effect as defined above.

The following five instances of best practices arguably can be so labeled from the perspectives of both police and protestors in that in each instance – to cite a criterion noted earlier - **they served to enmesh the parties in a web of mutual support.** The highlighted five are the Red Hill Valley occupation in the Hamilton, Ontario area in the years 2002-2004, the Day of Rage protest at Akwesasne, Ontario in 2001, the Norway House Shooting incident in Manitoba in 2005, the South-West Nova Scotia Fishery dispute in 1999/2000 and the RCMP’s Lower Mainland initiative in 2003 to 2005.

The Red Hill Valley Occupation brought together environmentalists, distressed city residents bordering the Red Hill Valley in Hamilton, Ontario, and a small number of native protestors “authorized” by the tradition-based clan organization, Haudenosaunee, rooted at Six Nations of the Grand River. The issues, beyond treaty issues, concerned ecological priorities, intrusion on possible burial grounds and archaeological sites and other disturbances occasioned by the long-proposed highway construction aimed at providing both a by-pass and an access to already laid-out industrial parks. It is especially interesting since there were so many parties involved, and in that even more extensive, similar highway construction is on the drawing board for the immediate future in the area (i.e., the Ontario mid-peninsular corridor). The Red Hill Valley highway project had been on the books for over forty years and in recent decades had been a matter of protest (e.g., land assembly, land use) especially between environmentalists, other stakeholders and city planning staff. Indeed, it had been described as a “political football”, involving powerful politicians at the municipal, provincial and federal levels. The project actually began in 1994 and road construction in the Valley area started in 2002. Other contextual factors of importance to appreciate were three-fold. First, Hamilton as a city has had a long tradition of ethnic pluralism (it may be hard to believe but Hamiltonians up to the 1960s used to refer to Toronto as a white Anglo-Saxon enclave in contrast to their own mosaic) and until the past decade its residents included the largest concentration of native persons (North American Indian) in urban Ontario, with the exception of Toronto. The populous Six Nations FN was on the edge of Hamilton and undoubtedly contributed significantly to its native population. At the time of the Red Hill Valley protest there was a “Regional Indian Centre” in Hamilton with deep roots. Secondly, the Hamilton Police Service (HRPS) clearly had long identified itself as a leader in community-based policing and was especially active in liaising with the different ethnic groups; a full-time civilian ethnic liaison person directly answerable to the chief of police was in place. Thirdly, The Haudenosaunee Confederacy had treaty issues (related to the treaties of 1701 and 1784 according to Confederacy spokespersons) it was advancing in the Hamilton-Brantford area and, also, the existence of burial sites and other significant archaeological items throughout the area would not be unexpected.

It appears that in 2002 the environmentalists protesting the Red Hill Valley development called special attention to potential native issues (e.g., burial grounds and other archaeological potential) and brought into play a native leader whose interests included both native rights and environmental issues; subsequently, this person obtained the support of traditional leadership centered at Six Nations, and a small number of native protestors joined the occupation that had already been established, forming their own grouping around “the sacred fire” of Confederacy tradition. The goal of the Confederacy

involvement, according to a spokesperson interviewed, was pragmatic, namely “to preserve the integrity of a 1784 land grant treaty by gaining a seat at the negotiation table”. Apparently, Confederacy people had an awareness of the Red Hill Valley project (“kept an eye on it”) but did not become involved in the O&P until the 2002 actual road construction. The City and the HRPS responded quite quickly and apparently quite amicably to the native protest. A senior HRPS officer contacted the senior aboriginal liaison officer in the OPP’s Commissioner’s office to seek information and advice. The HRPS civilian ethnic programs director, through an intermediary, visited the Red Hill Valley site quite frequently to talk with the native protestors there. The deputy chief attended meetings on the Six Nations reserve with traditional leaders. The City entered into direct negotiations with native representatives (at least one of who was an experienced lawyer) and negotiations were conducted regularly between two City representatives and two native representatives. At the same time, it is clear that the Red Hill Valley project was deemed a very major development for the city of Hamilton. City officials in fact had earlier hired an ex-deputy chief of HRPS, reportedly “to assist us in readying ourselves for the negotiations and to avoid an escalation of the situation with the native protestors”. A different view was advanced by other informants suggesting that the hiring was to encourage some, perhaps enforcement-oriented, police response to the O&P in 2002 but, according to HRPS officials, the police refused to take enforcement action and instead urged negotiations between City staff and the native protest leaders. While the views of City officials and HRPS interviewees did not concur in all respects regarding who among them did what with what intent, all emphasized that they themselves sought a negotiated solution.

Ultimately, an agreement was signed between the City and the Confederacy and the elected band council chief of Six Nations detailing collaboration and joint stewardship / oversight of the Red Hill Valley’s direct economic opportunities and future development. The terms of the agreement were quite varied, dealing with six main themes, ranging from a guarantee that Confederacy and Six Nations peoples would not be required to pay “toll charges” should these be implemented, to the commitment that “burial grounds cannot be relocated without the approval of the Confederacy Council”. The native protest at Red Hill was subsequently abandoned. Police authorities celebrated their culturally sensitive involvement, the city planners pointed to the value of the native input for the City’s achieving in 2003/2004 an award-winning post-construction ecological restoration of the Valley*, and the native participants held that the occupation yielded benefits both for the immediate Red Hill issues and for respect of treaties and land-claims. Subsequently, the area’s police services (HRPS, OPP and RCMP) have formed a working committee with the FN representatives in the area to pro-actively collaborate on dealing with similar future challenges occasioned by highway and other developments. There was no violence, no arrests of native protestors, and most participants (police, city officials, native leaders) offered it as an example of a best practice. Not all though. Environmentalist protestors have faced court action and were dispirited by the outcome. Those individuals charged have thus far refused an undertaking to avoid such protest in return for the charges being dropped.

The O&P did clearly enmesh police and native protest leaders in a web of mutual support. Since the agreement, there has been an annual meeting arranged between HRPS and the Hamilton's native community "to ensure we are on the same page", reported an HRPS official. Another HRPS spokesperson noted that since the agreement HRPS, OPP and RCMP representatives and native spokespersons have met several times concerning the proposed mid-peninsular corridor project with the goal of getting engaged "earlier in the process". (According to Confederacy spokespersons, the Ontario Ministry of Transportation in 2000 had advised the Six Nations FN of the corridor project and said it was prepared to discuss implications for the 1701 treaty but no meetings had taken place). The Confederacy officials also indicated there have been a few meetings on the agreement signed with City officials but it is too early to tell how matters will turn out.

The Red Hill Valley O&P appears then to have been a "best practice". The quick enforcement response was eschewed and the police, despite some perceived initial pressure from governmental authorities, encouraged a conflict negotiation approach among some of the parties. Police representatives, at different rank levels, mixed with the protestors and protest leaders, casually and on their turf, respecting Confederacy traditions as they understood them. City officials bargained in apparent good faith with Confederacy representatives. Police, City officials and Confederacy and band council leaders appeared satisfied, if not enthused, about the outcome. The evidence suggests that a web of mutual support has been effected. At the same time, it must be noted that HRPS and City officials gave short shrift to the environmentalists and other non-aboriginal protestors. Here arrests were made and charges laid (still pending at this writing). The environmental / ecological protestors have been excluded from police-native mid-peninsula meetings. These protestors on the whole appeared to have had a more instrumental than symbolic approach to the O&P, namely a "stop the development" approach, and in that sense were on a collision course with the project. From the environmentalists' perspective the City is "hooked on" development and future conflict over the mid-peninsula corridor is likely; one leader commented, "the City will sell the farm if needed to get it [the corridor and economic growth]". There has been, too, a rather bizarre ending to the O&P incident. In July 2005, the HRPS issued a formal apology to a native woman, a protestor at the construction site, who complained that in 2003 a member of the HRPS Intelligence Unit, working undercover, had tried to incite a more violent protest by cursing police and encouraging protestors to riot. She noted in her complaint filed with the OPSA that was settled through mediation eighteen months later, that "fortunately, because the occupiers adopted a strict code of non-violent conduct, his counsel was treated with suspicion and ignored". This episode taints the best practice characterization perhaps but the agreement, satisfactions, and legacy trump it. As Coyle has observed (Coyle, 2005) it represented "innovative municipal negotiation" between the City of Hamilton and the Six Nation / Haudenosaunee leadership".

Day of Rage at Akwesasne - This large protest incident took place in April, 2001, in concert with the Summit of the Americas which was being hosted by Canada in Quebec City. It involved a number of different protest groupings, including anti-globalization

protestors, anti-poverty allies such the Ontario Coalition Against Poverty (OCAP) and certain native protestors. The protest demonstration and intended mass march across the border at Akwesasne and, then on to Quebec City by bus, car and other transport, was being coordinated by a coalition calling itself “Traditional Mohawks and Anarchists”. It invited other protestors, via its website and otherwise, to assemble at Akwesasne from whence, under the “blessing and credential” of Mohawk sovereignty, the protestors would march across International Bridge in disregard of immigration and custom checks. The protest leaders informed potential protestors that once a year the International Bridge was seized for one day to underscore Mohawk sovereignty assertions in the area and this Day of Rage would be such a day. The organizers also noted that not all Mohawk and Akwesasne residents would support the O&P and that the Akwesasne Mohawk Police Service (AMPS) would probably not, but potential protestors were assured that organizers could deal with these matters in an effective and peaceful fashion.

An important context for police and Akwesasne response to this O&P was the legacy of major community in-fighting in 1990. Then the fighting factions were those organized around the casino and gaming interests versus other community members aligned with some warriors. Heavy fighting took place, automatic weapons were used, a few grenades were thrown, and two deaths and much property damage occurred. The small, fifteen member AMPS was overwhelmed and order was only restored with the eventual involvement of large numbers of provincial and RCMP police officers. This armed struggle has been well etched in the collective memory of Akwesasne residents. Another crucial contextual consideration was the continual if mostly muted local challenges to the legitimacy and monopoly on policing exercised by the AMPS. Despite its excellent reputation and documented competence, the police service has always had to deal with challenges from legitimate bodies advocating either RCMP or alternate “traditional / tribal policing, and from highly sophisticated and powerful organized criminal elements with a vested interest in a weak police service. Given this situation, and the diversity (in terms of beliefs, ideology and interests) of this FN, the largest in Canada in terms of population, policing has never been an easy; indeed, it would be hard to find another police force in Canada of AMPS’ size and resources which has to contend with as many challenges. Clearly when the Day of Rage protestors announced that they would take care of any policing problem at Akwesasne, “red flags would fly” and many alternative scenarios loomed (e.g., would the warriors in the Akwesasne area support the plans of the self-described “Traditional Mohawks”?). These two contexts underlined that the Day of Rage would indeed have to be taken very seriously by the police service and the community in general. A third context was that Akwesasne was a sophisticated FN, known for its entrepreneurs and institutional developments (e.g., its own Mohawk court on reserve, its Department of Justice, its Health Services), and its able chief of police, very skilled at negotiation and quite comfortable in the role of socialization agent explaining policing realities for First Nations to the different community interests and to the several senior police services on both sides of the border with whom the AMPS was involved on a routine basis.

As noted, while the expression of rage may have been a common denominator, the motivations and objectives of protestors varied considerably. The key elements were

presumably the usual anti-globalization protestors, OCAP members and the “Traditional Mohawks” whose main leaders were from outside Akwesasne, though with some allies there (basically one large family grouping). The plan was apparently for Canadian and American protestors to hook up on the American side of the International Bridge and, under the Mohawk flag, to walk across the bridge disregarding regular border checks. The march then had multiple objectives such as aggressively affirming native treaty rights and land claims, collaborative protest with respect to the Summit of Americas meeting (presumably its policies and the lack of participation offered to its critics) and so forth. Akwesasne police and band officials were unwilling to see their community used as a staging area for protest. The police service communicated in a variety of forums, including the internet, that the “Day of Rage” was not welcomed by either the police or most other band leaders and community groupings. Communications were also established with the area’s Mohawk warriors whose collaboration was sought in conveying the imperative of a peaceful, lawful march. Other police services, notably the OPP and RCMP but also the New York State Police and Customs and Immigration, were also engaged in the proactive planning especially since the impetus for the Akwesasne phase of the O&P was coming from the Canadian side of the border and these protestors would be assembling at Cornwall.

On the day in question busloads of American and Canadian converged on the area where they were confronted by many police officers drawn from the large variety of police jurisdictions in the area. The chief Canadian native organizer of the protest, a Mohawk from Tyendinaga, was rebuffed by police in his attempt to lead several hundred Canadians over the bridge to the USA and then Akwesasne. His threats of a violent counter-response were dealt with by a clear communication on the part of OPP police that they would respond to any violence but also by their talking directly to the protestors and conveying an empathy with their protests; one OPP officer addressed a busload of protestors noting that “there’s probably not one of the officers over there who doesn’t share your views about poverty and oppression but they also have a job to do”. A particularly dramatic moment occurred when a meeting was arranged between militant protest leaders, insistent on the busloads of Canadians crossing the Confederation Bridge en masse to link up and lead on their American allies, and a handful of Akwesasne leaders including council chiefs, elders and the senior OPP liaison officer on the scene. The meeting took place in a Wal-Mart parking lot in Cornwall. The Akwesasne representatives brought gifts of tobacco (somewhat disarming the protestors who emphasized their traditional identities) and reiterated their wish not to be embroiled in the protest (“don’t do this to our community” one pleaded). The O&P tension was diffused. Eventually a number of American protestors were allowed into Canada via the normal Customs and Immigration procedures and the Akwesasne police and the warriors walked among them and talked with them as they traversed the bridge in an orderly fashion. The protestors, Canadian and American, continued then on to the site of the Summit of Americas meeting in Quebec City where there was significant violence. Police thanked the Akwesasne area’s warriors for their helpful collaboration and subsequently, one of the central Canadian native leaders of the protest apologized to a senior OPP liaison officer for earlier intemperate remarks.

Police response to the Day of Rage at Akwesasne could be deemed a best practice for a number of reasons. First, it was an important incident, generating community fears and anger at the possible upheaval it could cause and rekindling memories of the bitter community fighting in 1990. It was also important because the O&P was seen to be a direct challenge to the legitimacy of the excellent, self-administered AMPS, which, despite that excellence, continued to experience local threats to its monopoly over policing in the large First Nation (FN). The huge scale of the protest and the great diversity of the protestors were certainly extraordinary. Hundreds, even thousands in some estimates, of protestors had been anticipated and many of them would be well-experienced in confrontation with policing authorities much more resourced than the AMPS and the collaboration it could muster. The police response led by the chief of the AMPS service put together an impressive strategy. He forged a strong community consensus and a sound game plan, seeking collaboration in all quarters among council chiefs, traditional leaders and the warriors. He utilized the internet and modern technology to get out to all potential protestors the strong feelings in Akwesasne against it being the site of such an O&P and did it in an authoritative yet friendly fashion, appealing to their sense of fairness. "A way out" was presented to the protestors crossing the International Bridge from the U.S.A., one that respected the lawful procedures and saw police and warriors walk among the protestors in friendly, casual fashion. Police collaborators (especially the OPP but also the RCMP, the Cornwall municipal police and other Mohawk police services in the area) on the Canadian side of the bridge at Cornwall also adopted an understanding yet firm approach to the protestors, and thus throughout the area the protest was channeled along peaceful and legal lines. The police response was proactive, strategic and basically non-confrontational. In the wake of the Day of Rage incident there was a sense of satisfaction among the police services, especially of course the AMPS, a sense of relief among community people, and, if not a web of mutual support between police and protestors, at least some respect and little ill-will. The Day of Rage could be classified as a collaborative, symbolic protest. Native issues were ostensibly muted but potentially explosive if there had been a naked challenge to customs and immigration authority on both sides of the border under the rubric of Mohawk sovereignty. The positive legacy of the police response to the Day of Rage protest is more difficult to gauge. Its features of socialization, prevention, communication and partnerships are quite evident. The AMPS has since continued to face some local challenges to its legitimacy and monopoly of policing but there seems little doubt that had the Day of Rage turned out differently and more along the lines envisioned by its organizers, these challenges would have been much worse.

Norway House Shooting - this incident occurred in January 2005. A young native man was shot and killed, presumably in a scuffle resisting arrest, by a native RCMP officer on the Norway House reserve in Manitoba. There was considerable and growing spontaneous unrest in the area among family members and others concerning both the incident and whether it would be properly investigated (i.e., without bias in favour of the police). A native RCMP sergeant, in his role as FN liaison for the RCMP in Manitoba, visited the family of the deceased, offered condolences and traditional material symbols of peace and respect, and arranged for their designates to be part and parcel of

the formal investigation into the incident. The investigation exonerated the officer and these findings were generally accepted by the native community. The incident's resolution was subsequently followed by a noteworthy protocol between FN leaders in the Manitoba and the RCMP's "D" Division OIC to deal with similar incidents in the future.

To appreciate this response to the incident, several contextual factors need to be taken into consideration. First, police response to the violent death of aboriginal persons has been a major issue in Manitoba for a long time. There were of course the well-known and wrongful shooting of J.J. Harper by Winnipeg Police in 1988 and the earlier inadequate investigation of the Betty Osborne murder by a band of "white" youths at The Pas in 1971. *Wind Speaker*, the native monthly newspaper, published a story in 1996 of a protest in Winnipeg aimed at getting the Department of Justice to investigate better the unsolved cases of seven aboriginal violent slayings. This O&P was characterized by an "angry crowd which swarmed the justice minister on the steps of the legislature, waving signs, and hurling insults". The Justice Minister was "visibly shaken" but subsequently she did re-open the investigations. Just two years before the Norway House incident there was another native protest in the Waterhen area. A standoff developed over what the FN residents believed was an inadequate investigation conducted by the RCMP into the death of a family member. People demanded justice and ultimately were offered and accepted third party intervention and assessment. A provincial court judge respected by all sides was named to review the RCMP files and the warriors left the protest site. The judge found subsequently that the RCMP investigation had been detailed and complete and his findings were generally accepted. In this context the slaying of a native person by an RCMP officer clearly could have serious ramifications. Another important contextual consideration was that, roughly six months previous to the shooting, the RCMP and AFN leaders, at the national level, had signed a protocol for a collaborative response to native O&Ps. A mechanism, therefore, was in place to deal with actual or potential O&Ps. Thirdly, a key person in the response was a senior native RCMP sergeant with a well-earned reputation as a peacemaker who had the role of FN liaison to aboriginal communities in Manitoba. He was well respected on all sides and communicated effectively with authorities and with the significant Ojibway warrior grouping in the region (he himself was of Ojibway ancestry and was fluent in the language).

Both the FN leadership and the RCMP D Division leaders saw much value in the specifics of the Norway House police response and immediately worked on institutionalizing the format. Within a few months, a protocol - Public Safety Cooperation Protocol - was formulated and signed between the Southern Chiefs' Organization, Manitoba Keewatinowi Okimakanak, Assembly of Manitoba Chiefs, and the RCMP's "D" (Manitoba) Division, setting forth policies and procedures in the event of similar deaths in the future. The protocol is to be activated by any one of the signing parties upon the death of an FN citizen while under or during arrest or while in the custody of the RCMP "D" Division. The FN organizations will advance contact and resource persons available to collaborate in the ensuing RCMP-led investigation, and to assure good communications and discourage parallel or shadow investigations. The RCMP will appoint an aboriginal RCMP member to liaise directly with the affected family members

and, from the contact lists provided, will select a “designated representative” who will be fully involved in the investigation (e.g., witness interviews); in addition, the RCMP will ensure that an independent police agency or another RCMP division, in consultation with the concerned parties, reviews any such incident report involving a member of the RCMP. The protocol is a statement of intent and is not legally binding; it can be terminated upon notice by either party and also contains a specific dispute resolution mechanism. The Norway House incident remains controversial for some family members and may re-surface in criminal or civil court. Still, the episode may be advanced as a best practice with respect to the sensitive and effective police response subsequent to the shooting, the family involvement in the investigative process, and the probably positive precedent it may have established by virtue of the resultant “public safety cooperation protocol”. The protocol (Public Safety Cooperation, 2005) manifests the same basic ideas of the earlier general AFN/RCMP protocol, perhaps representing its operationalization in investigations of deaths during arrest or in custody. All of these features are significant given the legacy of fear and suspicion that characterizes so much the police-native relationship today.

South West Nova Fishing Protest - Subsequent to the Supreme Court of Canada’s Marshall decision in 1999, which indicated that the areas’ native peoples had a treaty and therefore constitutional right to secure a moderate livelihood from the fisheries, there was considerable unrest and great potential for violence on Atlantic Canada’s waters. The first incident occurred at Burnt Church. Despite the well-publicized conflict - the images of boat ramming and open display of weaponry in the Burnt Church in 2000 were forever etched on the Canadian mosaic – the RCMP police response to that O&P was essentially a “measured approach” emphasizing communication with all parties and a non-confrontational style to the resolution of the problem (special communication, 2004). The situation in South West Nova in 1999 was very tense also and in the fall of 1999 there was a significant O&P in that area. Native fishers from the Indian Brook / Shubenacadie FN, supported by a group of Mi’kmaq warriors, put out traps and staked their rights to lobster in the area in realization of the SCC’s acknowledgement of their general position on aboriginal fishing rights. The score of native fishers and warriors was immediately challenged by hundreds of non-native fishers. In one incident during this O&P, more than 450 non-native fishing boats clogged the Yarmouth harbour in protest against the native “intruders”. South West Nova was the major lobster fishery zone in the province and about 1000 fishers had licenses there. It was a lucrative fishery and those lucky enough to have licenses were much envied by their neighbours. There was great anxiety among the fishers, and indeed most persons in the region, concerning the implications for their source of wealth. The fishers feared their livelihood might be at stake (the seasonality factors were as crucial as the actual lobster catch) and did not appreciate claims to lobster in the area by so-called intruders. The fishers from the land-locked Shubenacadie First Nation hundreds of kilometers away went into the St. Mary’s Bay area and while this was a new initiative for them, their ancestral roots in the area were well-established though

not appreciated by the mainstream fishers or Nova Scotians in general. There was confrontation, moments of great tension, and later, in the spring of 2000 some boats seizures and arrests. In the fall of 1999, however, the RCMP response could be deemed a best practice and even while the RCMP response in the spring of 2000 was different and more confrontational, overall, the situation was contained and violence and property damage minimal.

There are three contextual factors to be highlighted in order to appreciate the police response to the South West Nova O&P. First there was the experience of Burnt Church, a New Brunswick Mi'kmaq community. Notwithstanding the sight of violence clashes between DFO officials and the Burnt Church fishers who held that the SCC decision supported the position that they were not bound by DFO regulations, the RCMP policing approach emphasized the avoidance of violence and working closely with, communicating with, and even going on the boats with, all parties, namely the native fishers, the mainstream fishers and the DFO enforcement officers. The RCMP engaged in much community-based policing during the O&P, going into the schools, holding bike rodeos and so forth in an attempt to convey the message that they were concerned about the community's interests and not a simple adjunct of DFO or government officials. They resisted demands and expectations that they immediately disarm native fishers or warrior supporters waiving illegal firearms, preferring not to chance escalating the violence but to wait things out. It was a measured response to a potentially violent O&P, a quickly put together strategy on the part of the RCMP's OIC. Most of these strategies and tactics occurred after the fall 1999 events described here but had been evolving. A second contextual factor was that one of the leading RCMP officers heading up the crisis response support team sent into South West Nova was a member (also a lawyer) who had honed the measured approach concept and practice while leading the RCMP's handling of a handful of major labour-management disputes previously in the 1990s. In the face of considerable pressure by powerful economic interests and even initial criticism from the bench for not acting on an injunction, he had carved out the essence of a measured approach as being even-handed, communicating with all parties, using enforcement strategies only as a last resort backup and only after those seeking injunctions and the crown/ judge in favour of them had established the need for the injunction and later determined the appropriateness of charging those in violation of the injunction. His concept of the measured approach was rooted in communication and encouraging negotiation. The officer was part of an RCMP team that had been put in place by provincial commanding officer, a team that prided itself on being in the vanguard of the measured approach to handling O&Ps (acknowledging too the influence that certain RCMP officers in British Columbia, with whom they were in contact, had pioneered). The third contextual factor was that a native RCMP officer, engaged in the CCAP liaison role (Community Contract and Aboriginal Policing) had been quite effective in meeting with the chiefs and others and establishing a relationship of trust with them. His activity helped to create the conditions whereby a "measured approach" would have credibility among the native protestors. He, too, was assisted in this liaison role by the presence of other FN RCMP officers who became involved in the policing effort.

In fall 1999, the RCMP response to the conflict occasioned by the native fishers asserting their rights, encouraged by the SCC ruling, and the threat posed by a much larger contingent of mainstream fishers initially opposed to the change, could be characterized as a strong commitment to a non-partisan, measured approach orchestrated by Support Services expertise. The RCMP inspector, who earlier had championed and written about the strategy of “a measured response” where alternatives to the use of force were highlighted, put his approach to the test, successfully. In an article he subsequently wrote about the South West Nova incident, he noted that the measured approach was grounded in the principles of CAPRA, the acronym for the well-known RCMP approach to community based policing. It emphasized developing problem-solving partnerships, communicating with all parties and understanding their concerns and encouraging a peaceful resolution. He noted too “while this is taxing on our resources, it is our commitment to our communities to ensure safe, peaceful resolutions to our problems”

The RCMP during the O&P resisted pressure from harbour authorities to help them regain control by moving against either party (actually mostly the non-native fishers) but they did attempt to keep access to wharfs open. When several hundred trucks and cars loaded with non-native fishers and their supporters, thwarted from traveling by boat from Yarmouth to St. Mary’s Bay where the native persons were engaged, descended upon the score of native fishers and warriors there, the RCMP established a barrier and told them that they would have to come right over the twelve RCMP officers’ bodies. The non-natives backed down, but realizing their need for an appropriate face saving exit strategy, the RCMP offered to escort them back to Yarmouth with sirens blazing. Similar ‘face saving’ exit strategies were suggested to the native fishers when there was an impasse (“okay you won’t let DFO officials inspect your boat and all your traps, but what about for some of your traps?”). The communication with both native and non-native fishers, the sensitivity to the concerns of both parties, the establishment of expectations about policing with fishers and DFO authorities, and the considered search for alternative paths enabling all parties to dig themselves out of awkward ‘cul de sacs’, mark off this police response as a best practice. The relationship and trust established by the native liaison officer cemented the “web of mutual support” that was being established. The liaison officer reported that it was crucial that he could give accurate indication of the possible police response to the natives and the communication and understanding emphasized in the overall “measured approach” made that the case. He met regularly with the war chief of the warriors as well as with regional FN leaders, attempting to reduce surprises or misunderstandings, random shocks that often precipitate violence in such O&Ps. The confidence of the war chief in the RCMP’s policing commitment was evident in his response to the crisis team inspector’s query as to why his group did not leave when hundred of angry non-natives were descending upon them at St. Mary’s Bay, namely “I trusted that the Mounties would protect us”. A major healing ceremony conducted in the fall of 1999 on the Bear River reserve in the area and attended by a large number of mainstream and native people appears also to have been instrumental in assuaging the non-native fishers’ concerns.

In the spring of 2000 the situation in the St. Mary’ Bay region of South West Nova again became tense as Indian Brook fishers resumed their lobstering without DFO

authorization. No agreement had been negotiated with DFO and that agency's officials continued to emphasize their priority of conserving the stock, not accommodating to native fishers emboldened by the SCC decision and not considering themselves subservient to DFO regulations and directions. During this period there was however more evidence of an enforcement orientation in the police response to this action. There were minor scuffles apparently and some native boats were seized and/or damaged while some of the native fishers were arrested and charged. It is unclear why this change in approach happened but there appears to have been three factors. First, the warrior group on site appears to have fragmented leaving only those with a clear interest in and capacity for catching lobster and not as much interested in merely symbolic conflict where negotiations may be more acceptable. Secondly, reportedly, the RCMP detachment OIC for the area made less use of the headquarters-based RCMP support team which had emphasized the "measured approach" and negotiation model in the fall of 1999, with the result that the enforcement orientation came more to the fore. As one senior RCMP officer reported, "the protest in the spring of 2000 appeared to be of a much smaller scale and we were caught off-guard". Thirdly, there was more pressure on DFO to rein in the Indian Brook fishers and thus more pressure directed at the local RCMP to resort to enforcement since small scale local truckers were purchasing the "illegal" lobster (i.e., lobster caught without DFO authorization) to the chagrin of the regular wholesale buyers, the mainstream fishers and reportedly some of the local area FN fishers operating within the existing DFO framework**. In essence, then by the summer of 2000, enforcement actions essentially shut down the contentious native O&P. It is interesting that a leading RCMP advocate of the "measured approach" in the 1999 phase was asked to prepare an affidavit for the crown which was seeing an injunction against the native fishers in the summer of 2000. The affidavit prepared advanced the case that any action should be directed as much against the mainstream fishers as against the Indian Brook-based group. His affidavit was not used and no injunction was sought at that time.

Since 2000 there has been each season a small group of Indian Brook-based fishers lobstering in the region. Until 2005/2006, no agreement was reached between DFO and the Indian Brook / Shubenacadie FN (a community plebiscite supported the chief's view and rejected a \$20 million package from DFO in 2004), and the community was the only FN in Atlantic Canada which had not signed such a fisheries agreement with DFO; there was an informal accommodation by DFO, tolerating five boats and a quota of 40,000 lbs for the community's fishers. That informal understanding was without fanfare and the good relationship between the RCMP native liaison officer and the community's fishers helped maintain the peace. In 2005-2006 a new band council voted to negotiate an agreement with DFO but divisions remain in council and in June 2005 a handful of self-identified warriors occupied the band administration offices in protest of the expected negotiations. If a more elaborate agreement is reached, it may not prevent similar O&Ps in the fisheries since there remain major differences in the interpretation of the SCC fisheries rulings, and, in any event, there could well be intra-band disputes over quota as well as O&Ps premised on individual aboriginal rights as opposed to aboriginal communal rights.

The police response in South West Nova in the fall of 1999 fits the best practices criteria in many ways. The “measured response”, emphasizing negotiation over strict enforcement in civil disputes or conflict and stressing the impartial stance of the police, was honed, prior to this O&P, in labour disputes, and in the face of threats and powerful opposition, even, initially, criticism from the bench. It appears to have been implemented well in the South West Nova O&P. in 1999. The police resisted pressures from governmental agencies (e.g., the harbour / wharf authorities), communicated clearly the options and their “bottom lines” to all parties, treated all sides with apparent sensitivity and had the strategic sense to provide a “way out” when it appeared that either side was in a corner. The native liaison officer working within such an approach could maintain the good relationships and trust that he had established with the chiefs and the warriors. The RCMP officers were satisfied with the process and outcome and there was evidence for a web of mutual support having been established between the police and both the Indian Brook and local area disputants. Subsequent events in 2000 indicated that legacy effects can never be guaranteed when the underlying conflict factors are not addressed and there did seem to be some decided movement back to a confrontation / enforcement approach for the reasons detailed mentioned above. Additionally, perhaps, the apparent drift in the police approach may well exemplify what many respondents reported, namely that in the field much police response is personality-driven not policy-driven. Still, the violence was modest and since 2000 quite muted even while the situation remained quite unsatisfactory from the point of view of the Indian Brook FN.

RCMP Policing in the Lower Mainland, British Columbia - The legacy of conflict and disregard of aboriginal rights continues to impact on O&Ps in the Lower Mainland of British Columbia. It is a legacy of violence and oppression that would challenge any simple concept of a peaceful, paternalistic Canadian Way of responding to aboriginal peoples in contrast to the Indian wars of the U.S.A. The absence of treaties and the glacial progress of the treaty process in the region mean that protests and implementation issues springing from court decisions continue to shape the parameters of resource utilization and impact profoundly on the relationships between the native and mainstream communities. A recent (2004) DFO report referred to 20 years of serious conflict in Cheam and other FN communities while the native-based B.C. Aboriginal Fisheries Commission in 2003 contended that mainstream fishers, and occasionally, in more passive ways, even DFO officials, continue to disregard aboriginal inherent rights and even SCC decisions. O&Ps have been common on the Lower Mainland, taking a variety of forms such as railway blockades, highway blockades, “protection camps” in wilderness areas, and so on. The Chilliwack region is generally regarded by RCMP officers focused on aboriginal issues as a major “hot spot”. There have been frequent references over the past decade in the native monthly Wind Speaker to O&Ps in the nearby Cheam territory (the Cheam band is part of the Sto:lo Nation). Fisheries issues have been the paramount bone of contention (e.g., railway blockades in 1993 were protests largely about fisheries as have been other such protests in the past two years) but land use in unceded traditional territory has also spawned O&Ps (e.g. in 2000 road

blockades were set up and threats made to block the only major highway in the region in protest of provincial plans for “wilderness areas”).

Of course the legacy of the Gustafsen Lake O&P in 1995 is quite fresh in both police and natives’ minds, including the deeply emotional ‘healing’ meeting of RCMP officers and native persons in the area two years after the Gustafsen Lake occupation. The West Coast Warriors, characterized by both themselves and the police as a well-organized regional grouping responding to local FN requests for support in protests on issues of aboriginal rights, can be mobilized quickly to enhance the challenge of the O&Ps. There is a considerable amount of economic development apace in British Columbia and mostly everything from ski trails and railway passages to sport fishing and other resource-based tourism, as well as major commercial fisheries and forestry harvesting and manufacture is done on contested terrain and amid competing claims. Many FNs in B.C. have entered into agreements with government agencies and business enterprises to participate in the economic development without prejudice to their basic claims but even here there are differences concerning this approach among the FNs and conflict among factions (often cast in terms of traditional vs. elected leadership) within an FN, differences that complicate any police response to O&Ps. A good example of this complexity is the Sun Peak Ski Complex O&P which has been extant for several years, spawned several “protection camps” where protestors use contested terrain as a base and as an assertion of claims, and has generated huge publicity in Canada and internationally. There have been regular confrontations between police and protestors, many arrests (over fifty at last count) and jail terms meted out to protestors as late as 2005, though only minor scuffles or property damage. Interestingly, there has been significant investment in the Japanese controlled development, the target of the protest, by some of the area’s band councils, and the relationship between these FN authorities and the protestors claiming traditional authority has been quite nuanced.

Respondents typically considered that virtually the whole of British Columbia has been and will remain for the foreseeable future a “hot spot” for native O&Ps. Three areas though generally top the lists, namely the massive Sun Peaks Ski Development (a major expansion of a long-standing ski enterprise in the area occasioned by large Japanese investment in the 1990s) in upper Fraser Valley near Kamloops, the more recently proposed ski development at Melvin Creek in the Lillooet area, and, perhaps conflating the geographical boundaries a little, the Lower Mainland and coastal area where fisheries has been highlighted. While the conflict appears endemic given the lack of resolution of major underlying conflict factors, there have been interesting developments in the police response especially in the Lower Mainland. These can be taken as a best practice and are discussed as such here in the place of a specific O&P as considered in the other “best practices” cases. RCMP officers both in the area and at headquarters in Ottawa – as well as some RCMP officers located elsewhere in Canada but familiar with the initiatives – have identified the Lower Mainland programs and policies as quite innovative. One senior Lower Mainland native officer in the RCMP’s CCAP division commented, “we are ten years ahead of any other RCMP jurisdiction in terms of engagement with the FN communities” while another senior level officer, previously fully enmeshed in one of the initiatives and now directing support services elsewhere in Canada sharply contrasted the

Lower mainland programs from those available in other RCMP regions. The package of initiatives includes the development and utilization of protocols to deal more effectively with crises or pending ones, special police roles geared to building up trust and relationships between the RCMP and the native peoples served, special secondments to facilitate communication and understanding (including appreciation of the dimensions of appropriate policing) between FN peoples and agencies such as DFO, and the development of a more sophisticated conflict negotiation approach to diffuse O&Ps and channel dialogue to the underlying conflict factors. In total the package of initiatives might well provide breathing space and keep violence muted while the parties involved respond to the macro issues. Despite the fears and dire predictions, O&Ps have been almost “institutionalized” to use Waddington’s phrase (2000), so perhaps something is working.

The Lower Mainland RCMP officers were quick to implement the AFN/RCMP signed in the spring of 2004. Within months, and following the protocol format for striking an intervention committee including RCMP and AFN officials, local FN leaders and DFO officials, a committee was exploring ways to respond to the conflict over the Luna whale in Nootka Sound. The whale’s presence had considerable positive significance from the perspective of native traditions in the area yet was also a major problem for mainstream fishers and DFO. Luna actually had been in the area for several years but as the whale matured its potential for disruption, damage and danger to persons increased considerably. Through discussions among all parties a resolution was reached, somewhat linked to the premise and native belief that subsequent to a potlatch in the fall of 2005, and after a five-year stay in Nootka Sound, Luna will depart on its own. The AFN/RCMP protocol then was implemented first in this area and appears only to have been implemented once elsewhere in Canada. Given the importance of fisheries issues in the Lower Mainland and coastal areas O&P, another protocol was developed among the RCMP, DFO and the B.C. Aboriginal Fisheries Commission representing the interests of native fishers. This protocol can be activated by any of the signing parties and sets in train a process for discussion and resolution involving local interests as well as other major organizational spokespersons. Now in its fourth year, the protocol has been used several times and with success, at least short-run success. No such protocol is in place elsewhere in Canada. Additionally, in 2003, a senior level officer was seconded to liaise full time with DFO and FN leaders in the Lower Mainland / coastal area. The officer role’s description and actual performance placed more emphasis on being an effective conduit between these parties than providing assistance in DFO enforcement, although the latter was also part of the job (e. g., strategic planning on enforcement, securing RCMP resources such as helicopters). The officer, who held the post for almost two years, spent much time in the native communities, listening to their concerns and building relationships; informational and cultural sensitivity programs were established for RCMP and DFO officers with collaboration from native leaders. While there is also a similar secondment on the east coast, the significant engagement with the native community marks off this particular initiative.

The RCMP’s aboriginal community constable program (ACCP) represents an attempt to enhance services provided to FN communities by the area’s detachment. In

this program a full-fledged member, an aboriginal person, is assigned to one or more FNs within the detachment's jurisdiction. He/she is required to spend at least 80% of their time working in the FN and 30% of that time is supposed to be spent in proactive policing duties. The specialized police role is analogous to a specialization, say, in highway patrol where other regular duties, such as handling non-native investigations and calls for service, are scaled back to allow the officers to concentrate on their central task. In addition to directly serving the FN community's reactive and proactive policing needs, the ACCP officer is supposed to be a socialization agent and a bridge, conveying the concerns, interests and viewpoints of native peoples and RCMP detachment officers to one another. In these ways, the officer presumably is establishing trust and the web of mutual support between police and native peoples that is so crucial to successful, non-violent O&Ps. Of course, in this system, much depends on how the officers carry out these responsibilities, his/her initiative and personal style. In the Lower Mainland since 2003 the program has been quite well implemented and reportedly several O&Ps have been responded to, avoiding serious conflict and to the satisfaction of all parties. Given the fact that, unlike in Ontario, the self-administered FN police service is rare in British Columbia (there is only one of any scale, namely the Stl'atl'imx Regional Police Service headquartered in Lillooet) this RCMP initiative is especially crucial in assisting the RCMP in building relationships and achieving trust with FN peoples.

In 2002/2003 the RCMP in the Lower Mainland / Coastal region began assembling a conflict negotiation team. The approach in embryonic form had proven itself to senior RCMP officials a year earlier when the RCMP had to contend with a major O&P largely by non-native environmentalists and G8 type protestors at Whistler. Subsequently the creation of the team by the officer instrumental in communicating with and channeling peacefully the Whistler protestors was encouraged. The team, like ERT and other specialized response units, has no full-time members and, unlike them, very modest resources and little formal training. Nevertheless, it has developed a conflict negotiation approach and has been called in to assist in several crises in the Lower Mainland fisheries. The team includes both native and non-native officers, and is conceptualized around a team model with integrated diverse roles. The conflict negotiation response is a concept very popular, apparently, with native RCMP officers in the area, perhaps not surprisingly since a number seem quite conflicted in their multiple mandates and identities and thus the conflict negotiation approach is a satisfying and potentially productive way to become engaged as a police officer in responding to native O&Ps. Not surprisingly, too, the current co-ordinator of the conflict negotiation team has recently become the liaison officer seconded to DFO. The conflict negotiation approach is in its infancy and given the modest organizational commitment, perhaps more person-driven than program-driven. Still, it is a popular initiative among both RCMP and FN peoples and contributes to the overall "best practice" RCMP initiatives in the Lower Mainland

RCMP policing in the Lower Mainland area of British Columbia could be deemed a best practice in the sense that it has been characterized since 2003 by a host of programs, policies and protocols which appear already to have had a positive impact on native O&Ps in the area. The implementation of the AFN / RCMP protocol concerning

what to do about the Luna whale has proved beneficial according to all parties involved even though, ultimately, from some perspectives, a questionable strategy was adopted leading to Luna's accidental death in 2006. The BCAFC / DFO / RCMP protocol has temporarily resolved a number of crises in the contentious fisheries. The secondment of a full-time inspector-rank RCMP liaison officer to DFO has facilitated a peaceful intervention approach oriented to negotiation rather than simple enforcement. Officers holding that position have reportedly seen their role as facilitating native / DFO collaboration and themselves reached out to obtain native views and empathize with their positions, encouraging appreciation of the aboriginal rights and points of views as well as cultural awareness and partnerships. The recently established conflict negotiation team is presumably the only one of its kind in Canada and it brings to O&Ps and potential crises a peacemaking orientation plus skills and strategies that could move the parties to deal with the underlying sources of conflict. The ACCP program having full-fledged aboriginal detachment members spend 80% of their time serving the FNs in their detachment area and engaged about a third of that time in proactive policing thus far appears to have been a successful program and is building bridges between the FN communities and the RCMP detachment members. Perhaps the underlying commonality in all these initiatives is that the FN leaders and communities have to be acknowledged as true partners in the management of resources and in decision-making across all institutional areas, their views have to be sought and appreciated, and quality, principled, policing involving native people can no longer be paternalistic and respond solely to the demands of governmental authorities and agencies. Notwithstanding the above, it is still not clear how successful these recent policing initiatives will turn out to be. British Columbia, in the Lower Mainland and elsewhere, remains a tinderbox for potential crises in native – mainstream relations and the conflict factors tend to get dealt with but not resolved. RCMP and other respondents expressed much uncertainty and anxiety about the future. In this environment random shocks seem commonplace. For example, a month ago several key RCMP officers engaged in these programs expressed anxiety and dismay about a particular band council funding the West Coast Warrior Society to purchase weapons but now the warrior organization has suddenly announced it is disbanding. Maybe the best practices can at least “hold the peace” while the larger issues receive the required attention.

SUMMARY

Best practices have been discussed with respect to police dealing with O&Ps in terms of temporarily achieving social order, acknowledging civil rights and aboriginal rights and being seen as a valuable intervention by police and the parties involved. In each of the cases cited, there has been some evidence that a web of mutual support has been established or strengthened and that there may be a positive legacy for future O&Ps. Of course not all stakeholders and engaged parties have been satisfied with the intervention and there has been variation in the level of satisfaction. The best practices identified have not been solutions to the underlying conflict in any final sense, whether these be suspicion and lack of trust (Norway House Shooting), contested terrain and co-

management (Red Hill Valley, Day of Rage, RCMP Initiatives in the Lower Mainland), or access to resources (South West Nova, Lower Mainland). These incidents of best practices underline too, then, the limitations of the police response with respect to aboriginal O&Ps. No matter how good it is, policing has its limits. Policing temporarily may restore order and diffuse conflict, allowing for attention to be paid to the underlying conflict factors but as one respondent stated, “police don’t do land claims and treaty negotiations” so, as noted in the title of this paper, policing is always “for the nonce”. Macro factors can override a lot of good work and a lot of goodwill.

Section Notes

- The Red Hill project also won the 2005 Canadian Construction Association’s Environmental Achievement Award for rebuilding the creek area in a manner that reduced erosion and improved fish habitat.
- Concerning the South-West Nova protests, another factor that some informants believe may have influenced the difference between the 1999 and 2000 O&Ps and the police responses to them, was the greater economic implication of the 2000 lobster season for all concerned.

FUTURE DIRECTIONS

In the section “Policing Styles” the authors discussed the key challenges derived from the fieldwork for the RCMP, the OPP, the SAs and the MPDs in policing O&Ps. Since these challenges were detailed in the summary to the chapter, they will not be re-stated here. Instead, some more generalized suggestions for future directions will be advanced.

Building community capacity to deal with disputes - The most common type of aboriginal O&P appears to be the intra-band type, usually involving disputes among band factions. Typically these involve housing and job issues or distribution of band funds (e.g., stumpage revenue) or gaming revenue issues. These may well be couched in a different rhetoric (e.g., native rights) or may evolve into ‘contested terrain’ conflict with mainstream society as when persons dissatisfied for example with quota allotments stake their claim for individual treaty or constitutional aboriginal rights. Such O&Ps were common during the course of the fieldwork. It may well be that some explosive O&Ps could be nipped in the bud were the First Nations involved able to access their own credible alternative dispute resolution (ADR). Currently there appears to be very little ADR available in First Nations. Apart from a few instances where highly organized factions engage in costly litigation against one another (e.g., Kanasatake) there appears to be little recourse to courts for civil matters in FN communities which adds to the problems at the community level and increases the need to build dispute resolution capacity there. Certainly as the First Nations develop economically, accumulate more assets and become more diversified in socio-economic terms, one could expect intra-band conflict to increase and to be expressed sometimes in terms of aboriginal rights and effected with blockades and so forth. Increasing co-management responsibilities will underline the FN’s role in monitoring and enforcing regulations and, given the total lack of success in policing band by-laws through conventional courts, some alternative ADR capacity seems needed as a pre-prosecution intervention. In different parts of Canada (e.g., New Brunswick, Quebec, Prince Edward Island) there are some initiatives underway to develop ADR capacity at regional and community levels. Supporting such initiatives might well repay investment by senior levels of government. In terms of policing there are some possibilities of facilitating such First Nation ADR. The OPP/RCMP ISSU initiative in Ontario assists FNs in developing restorative justice in the criminal field and without any stretch of mandate could provide conflict negotiation and ADR assistance in the civil justice area. Conflict negotiators in the RCMP and some ISSU officers considered such programs feasible and potentially valuable in early intervention.

Institution-building – As noted above, there does not exist at present any direct formal consultative link between the FN police services in Ontario and Ontario’s Justice Ministry. Establishing (modest resources would be required) an Ontario First Nations Chiefs of Police Association (OFNCPA) could fill this void. There would likely be benefits for future prevention and effective intervention concerning O&Ps and the

OFNCPA would be a valuable conduit to provincial Justice authorities. In Ontario the FN police services are here to stay and their recognition and routine consultation are crucial. As noted in the section on Policing Styles, their special needs and circumstances require a direct link to senior government. This requirement is especially so given the nature of aboriginal O&Ps and the structural problem identified in the section on Policing Styles concerning the policing of O&Ps in Ontario (i.e., the jurisdiction issues that can spawn misinformation and ineffective police response). Another kind of institution building would be the creation of a conflict negotiation team at the police level. This fieldwork has found that current activity in this area, whether manifested in the “measured approach” or actual conflict negotiation, is individually-driven and institutional support quite limited especially in the early intervention stage.

Re-examining the mandate of FN police services – As noted in the section on policing styles, there is an enhancement / replacement controversy concerning the place of FN police services, from the perspective of FN chiefs of police and some senior OPP officers as well. While documentation is ambiguous, it appears, in Ontario and elsewhere, that funding for FN police services has been largely restricted to securing front-line officers on the grounds that the OPP retains significant policing responsibilities for FN communities. This is the enhancement thesis, which is rejected by those arguing that the FN service has replaced the OPP in these FN jurisdictions and requires funding for support services and other specialized roles. Under the present definition of the situation and funding decision-making characteristic of the tripartite agreements that provide the funding for self-administered FN policing in Ontario, the capacity of the FN police service to effectively deal or even partner with the OPP in responding to the challenge of O&Ps is very limited. In light of predictions noted above concerning the likelihood of O&Ps in Ontario, particularly Northern Ontario, this shortfall could be quite serious. It would seem that the replacement thesis has merit, especially as the OPP fully respects the jurisdiction of FN services and does not enter the communities formally without request and notice. There could be many benefits for police response to O&Ps if the characterization of FN policing were more appropriate.

Providing an integrated peacekeeper police response to O&Ps- The structural problem of policing aboriginal O&Ps in Ontario has been identified above, namely FN reserve-based protestors blockading etc in ‘ceded’ territory policed under OPP jurisdiction; as well, there is the problem of FN police services not having the capacity to respond effectively to some intra-band disputes played out entirely within the jurisdiction of the FN police services. Under these circumstances a strong case could be made for the establishment of an Ontario, aboriginal-focused, police peacemakers / keepers special team. Such an initiative was strongly supported by most native officers interviewed, whether in the OPP or the self-administered services and by other OPP officers. It was considered not only practical but also more consistent with native preferences than the participation of FN officers in the OPP’s Emergency Response Team (ERT) or Public Order Unit (POU) teams (not necessarily to exclude FN police in these units). It should be an integrated team drawing on both OPP and FN police officers, and both native and non-native officers, for both practical and value-based reasons. Resources would have to be provided for training and so forth as in the case of ERT and POU special teams, and

officers would presumably be selected for their disposition and skill in peacekeeping. Training would include understanding native communities, customs, issues, role of warriors etc as well as conventional dispute resolution awareness (not necessarily or even preferably having police do mediation themselves) and appreciation of the legal and practical issues around policing aboriginal protests (e.g., “the civil disobedience plus” concept cited above). In general an integrated team along the lines suggested would lead to better exchange of information, comparable training among the different police services and an appropriate mechanism for disseminating classified information, circumventing jurisdictional barriers.

Consider changes re the FN services and the Police Services Act - There is agreement among all police officers interviewed in Ontario on the desirability of replacing the current two-track certification or authorization of provincial police officers (self-administered FN police service officers are appointed by the OPP Commissioner) but beyond that there is much divergence with all mainstream police and most FN police officers, but not all, in favour of incorporation of FN police services fully under the OPSA. The benefits are presumed to be that the FN police services would then receive adequate resourcing to meet the provincial standards, readily access the SIU services for special investigation where deaths occurred and police were involved, enhance equality and the respect for FN police officers in the Ontario policing society and so on. The argument against incorporation under the OPSA is largely based on cultural and political grounds (e.g., treaty rights); as many informants noted, the current situation developed as a compromise between these divergent views.

Consider developing protocols – As noted in the text, there is evidence that RCMP protocols with AFN and with DFO and BCAFC have been effective. It has been noted too that in Ontario OPP and FN police services have to collaborate given the nature and location of O&Ps in Ontario. At present there are apparently good field-level and management-level relations between OPP and FN police services but no special protocols exist specifying how they should collaborate in aboriginal O&Ps. Most respondents – and the researchers – believed that such a protocol would be beneficial but some respondents raised concerns that protocols might be inflexible and actually limit effective collaboration and response. The weight of informed opinion would suggest that having signed agreements and strategic plans underline commitment and collaboration and should be pursued.

Generating greater clarity re the police role in O&Ps – Whether it be police officers, the protestors, FN leaders, the impacted citizens, the larger society or other governmental officials, the level and extent of collaboration / communication is a major task for officers responding to aboriginal O&Ps. There are special features, special considerations that are associated with policing aboriginal O&Ps. That was very evident not only in the words of most respondents but also in the actions taken by police as discovered in the fieldwork (e.g., the different response of Hamilton police to aboriginal and environmentalist protestors). Greater clarity of these implications on the part of all stakeholders would be very beneficial. Beyond this particular issue, evidence from Britain, Australia and Canada (e.g., recent G8 meetings and events such as President Bush’s visit to Halifax) shows that

in responding to significant O&Ps, whoever the protesting group, greater effectiveness and less escalation of tension and harm is associated with informing (proactively if possible) the parties about various options they could exercise in peaceful protesting, the expectations that the police have of them and that they might have of police, police obligations and practices with respect to injunctions, and so on. In these ways collaboration becomes possible, O&Ps become “institutionalized” and the basis is laid for enmeshing police and others in webs of mutual support.

The special role of the OPP – in the section on policing styles we discussed the concept of integrated policing advanced by the RCMP and the special leadership role of the OPP in connection with aboriginal O&Ps vis-à-vis the self-administered FN police services and the smaller municipal police services along the southern rim of Northern Ontario. A number of recommendations and possible future directions were detailed with respect to the OPP’s ART program, conflict negotiation training and the like. In a recent document (2006) the OPP laid out its plans for policing aboriginal communities and responded well to many of the issues raised in the earlier draft, especially announcing a “new critical incident response” strategy (rooted in an earlier OPP review of officers’ response to aboriginal protests or crises). One crucial area that was little mentioned and still requires attention concerns the more effective collaboration and leadership required with other police services in Ontario serving concentrations of aboriginal peoples.

The special role of Ottawa’s Aboriginal Policing Directorate – the APD, established in 1991/92 has been very successful in securing tripartite agreements with provincial governments and FNs across Canada. It has as well aided considerably, both in funds and in leadership, in the development of an infra-structure and organizational context for FN governance in self-administered policing and for national-level framework for SA police services. Looking to the future, to what might be the new APD’s objectives, it might well be in improving the capacity of the police services in a variety of ways, such as reconceptualizing the SAs as replacements, not enhancements, and facilitating the integrated response of federal agencies at the FN level. New initiatives in 2006 among APD, INAC and Health Canada – the federal agencies – indicate that this is indeed something that has become a possible agenda. Another area which APD might develop more concerns better realization of an aboriginally-characterized police service. The Royal Commission on Aboriginal Peoples emphasized that justice and policing issues were at the core of aboriginal culture and identity yet little has been done, outside very limited managerial orientation, to explore the needs and possibilities in this regard. Many native informants have recommended that an aboriginal police training center be established as adjunct at the Canadian Police College in Ottawa. While it is unclear whether that particular strategy would be efficient and effective, some consideration has to be given to the underlying issues at stake.

Specific ideas / suggestions re policing practice - There are Inquiry papers on intelligence, commanding critical incidents and so forth which undoubtedly will advance useful ideas concerning policing policy and practice in O&Ps but from this field work research, there have been a number of useful suggestions such as encouraging the

approach of community based policing which can provide a solid initial basis for proactive and reactive police work in O&Ps; and dedication to developing, on all sides, respect, knowledge and trust through more regular interaction and mutual awareness (e.g., one shortfall noted is that police contacts (even those of native and FN police) seem quite limited to elected band officials, neglecting the dissidents who may constitute the source for protestors). There seems to be little doubt that native O&Ps will be frequent over the next decade in Ontario and that culturally and community aware, professionally committed, well-trained and organizationally supported everyday policing will be crucial in contributing to their peaceful channeling.

Many interviewees have claimed it is “hard to built up relationships in crises”; perhaps, but even there debriefing and follow-up can be helpful for responding to future O&Ps as shown in the RCMP’s post-Oka contact with the Mohawk warriors noted in the text (i.e., the contacts proved helpful in preventing the escalation of other conflicts in different areas). A fairly common policing approach, advanced by front-line officers, has been effective in band-level disputes, namely having another detachment or police unit take responsibility for investigating allegations, leaving local police to liaise more disinterestedly with all the parties. Specific, on-the-scene policing conflict management tactics have been formulated from the very in-depth experience in O&Ps by retired Inspector Potts and are included in the appendix to this draft report. From the reflections of ex-RCMP Commissioner Murray (2005) and those of Potts to field-level officers in diverse police services across Canada who have been the “point persons” for their service in responding to O&Ps, an impressive body of considered experience exists for policing aboriginal O&Ps, the Canadian Way as it were. It would be valuable to marshal this valuable knowledge more effectively, whether through periodic meetings or some other means, thereby making it available, explicit and incremental.

The central focus for responding to native O&Ps should be quicker resolution of treaty issues, special claims, residential school claims, facilitating the implications and implementation of extant judicial decisions and so forth. Providing avenues for economic development and employment opportunities is crucial in reducing marginality, the growth of a reserve underclass and deep feelings of estrangement. Providing people with a stake in the social order has always been a key to peaceful negotiation of conflict. As noted in the findings, such gains for Ontario’s natives may well initially generate more O&Ps as expectations and capacity to effectively protest also increase with greater well-being but the O&Ps will likely be much more “institutionalized” and feature less violence and unpredictability. There may well be significant issues of racism to deal with as well. These may be at both individual and institutional levels, especially in Ontario’s northern cities (where the aboriginal population is increasingly dominant while the changes in political and economic power and decision-making have been much slower to take place). The more that these macro level factors are successfully challenged, and the more the above-mentioned future directions are taken into account, the more we can anticipate a positive future despite the legacy of past injustices and despite the real challenges to harmony that we have discussed in this report.

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APPENDICES

APPENDIX A

Appendix “A”

Prepared for Ipperwash Inquiry 2005-06

CONFLICT MANAGEMENT STRATEGIES FOR DISPUTES IN ABORIGINAL COMMUNITIES

Dealing with people can be very demanding. It takes a lot of energy to be calm in the

midst of crises, to be patient in the face of frustration, to be understanding and compassionate when surrounded by fear, pain, anger, or shame. While most people can find the energy to do it occasionally, and some people have the resources to do it often, it is very hard to do all the time. And yet, ‘all of the time’ is the expectation we have of ‘people workers’

Author Unknown

Author's Note:

Why "occupations and protests" in aboriginal communities?

In 1958, I joined the R.C.M.P., at the age of eighteen. One day, four years later, I chanced to see my personnel file. After leafing through the many pages I found my original application and the subsequent applicant investigation report written by an R.C.M.P. staffing officer. One line in that report stood out, and has been stuck in mind ever since. It read, "This applicant's father is an Indian, but he is a hard worker." Thank God my father was a hard worker, otherwise??

My black hair and brown eyes served me well while policing reserves. Among my fellow officers few knew of my heritage. One in fact thought I was Italian or Greek. In 1973, I transferred to the Training Branch in Ottawa, and was assigned the task of developing a native awareness course for members of the Force. In the beginning I canvassed numerous government departments and police forces across Canada, but could find no one providing this type of training. There were no models to follow. I then immersed myself in research papers authored by anthropologists. The more I read the more confused I became. I was about to give up when late one night I received a telephone call from my reserve. One of my cousins had committed suicide. A few days later his two remaining brothers were killed in a car accident. These were fine young men. Knowing this kind of tragedy was all too common on reserves across Canada these three deaths underlined for me, something's wrong. I didn't know what, I didn't know why, but I knew I must do whatever I could to help change this.

Within a year of these tragic deaths Cultural Awareness training became a reality in the R.C.M.P. In the beginning detachment members often thought they were being sent on this course because someone felt they were screwing up. After the three-day course however the most frequently heard comment was "Why didn't someone tell me this before?"

In 1974, ironically, the same year as this awareness training started in the RC.M.P. a group of young natives, upset over an aboriginal rights issue, occupied Anishinabe Park, near Kenora, Ontario. It became an armed camp. Tensions ran high. There were serious threats of violence, fortunately none occurred. Between 1974 and the year 2000, unsettled aboriginal rights issues spawned numerous band office occupations, roadblocks and four major crisis's, namely, Oka, Ipperwash, Gustafsen Lake and Burnt Church. In all of which, I was personally involved. Perhaps because of this involvement, I am often asked why occupations and protests are occurring in aboriginal communities? My answer is as follows.

An elder once told me one of the Creator's laws. He said, "When you are born you are born in your own canoe. Throughout life you must stay in your own canoe. Never let anyone into your canoe and never try to get into anyone else's canoe. Learn to paddle side by side."

As an aboriginal person, I believe my people are now in a period of transition, transition from dependency to self-sufficiency. The fact that aboriginal people lived on this land for thousands of years with sophisticated forms of government, spirituality and social control, is well documented. For the past one hundred years plus, however, others have been paddling our canoes and trying to guide us to their way. Much of this may have been well meaning, but it led to the loss of our stories, our songs, our traditional ways and subsequently our self-sufficiency, identity and self respect.

During this period of transition we ask for your understanding. This is not an easy, short, or painless journey. At times, dissension and disagreement between our peoples have, and no doubt will, lead to further occupations and protest. Please understand, this is all part of the transitional process.

Throughout this time, we ask governments, law enforcement agencies, and social services, to name a few, to continue to adjust and accept this reality. Work with us, know us, as we want to know you, and if by working together we can reach a level of trust and mutual respect, we will avoid the repeat of crises like those previously mentioned. In this way we will enable our children, yours and mine, to stay in their own canoes and travel side by side as the Creator intended.

Mash ki ki maqwa (Medicine Bear)

(Jim Potts)

CONFLICT MANAGEMENT STRATEGIES FOR DISPUTES IN ABORIGINAL COMMUNITIES

The following incidents are true and each was resolved peacefully. Read each carefully and then consider how you would approach these and similar situations.

Incident #1.

It is 1:30 a.m. You have been called to an Aboriginal community of four hundred people that lies in your detachment area. The caller advised that twelve community people have occupied the band office for the past three days over a dispute with the Chief. At least one occupier has a lengthy criminal record, which includes offences related to firearms and assault peace officer. Upon arrival you see the two local native officers sitting in their car near the band office. The office windows are covered with protest signs, some inside lights are on, and doors are locked. The officers advise that even though all is quiet, a community anti-protest rally of possibly 100 people is planned for 10:00 a.m. People are upset with this band office closure because it has stopped all band business. Also the Chief approaches and demands the protestors be arrested immediately and thrown in jail.

What would you do next??

Incident #2.

As a senior officer you have been invited to a community that has expressed concern about a sudden death investigation. A young man died under apparent suspicious circumstances. What you believe to be a thorough police investigation revealed there was no foul play involved. Many are convinced this man was murdered and after several meetings with the local officers they are still not convinced and intend to block the local highway in protest. The phrase has been heard "It was only an Indian so the police don't really care."

How would you address this?

Incident #3.

The residents in one of the native communities within your jurisdiction have concerns about the quality of your department's policing service. You have decided to comply with the Chief's request to accompany the local detachment commander to a public meeting in the community arena. During the early minutes of the meeting four people openly express their dissatisfaction with your office and a lively but controlled discussion develops. After about the forty-five minutes, about twenty native people from western Canada, who are traveling in a protest caravan, enter, listen for a few minutes, and then begin to verbally attack you and the detachment commander. They make several negative statements about your department and police in general. Meanwhile the Chief sits in silence.

What do you feel would be an appropriate response?

Incident #4

As a senior member of a large police service you are serving in the capacity of Native Liaison Officer. You have just received two requests (one from the police and the other from the natives) to attend a “stand-off” which involves two federal enforcement agencies and a native community of approximately six hundred residents. A dispute over an aboriginal rights issue, i.e. fishing rights, has boiled over into a major conflict and a number of people on both sides have received minor injuries. Emotions are running high and communication has broken off between the police and the community. You are asked to come and help restore communication. Upon arrival you find a very tense “stand-off” is in place, and communication between all parties has indeed broken off. A further concern is that the two young native officers, who live in and police the community, have not been seen for the past five days.

Develop an action plan.

Incident #5

You are the Chief of Police of a twenty-six man First Nations Police department. Your office has warrants to arrest three known Warriors, a father and his two sons who live in a rural part of your area. In total there are six charges, one for rape, two for sexual assault, another for armed robbery and two for illegal use of firearms. Knowing these men you expect these arrests will not be easy. A plan is developed – In an effort to minimize resistance arrests will be made between 3:00 and 4:00 a.m., twenty six officers will be deployed, fourteen from your department and twelve from a neighboring non-native police service. On the night in question you and the other officers arrive at the suspects home as quietly as possible. Vehicles are in the driveway, obviously they are home but no one will answer the door. After a few minutes a woman appears at a window and asks who you are and what you want. You identify yourself and explain why you are there. A few moments later an elderly man appears at the door and says you are on his traditional territory therefore have no jurisdiction. Over the following ten minutes a number of vehicles arrive and soon you are facing twenty-eight “Warriors.” Although you haven’t seen any, you strongly believe they have weapons. They demand that you and the other police leave immediately. Your members are awaiting orders. The senior officer from the non-native police service insists that you not to back down and to take strong enforcement action.

If you were the Chief of Police what would you do???

The foregoing incidents are examples of situations you may be required to address. Although each of these incidents had the potential to become violent, none did, and each were successfully defused by employing many of the strategies and ideas found in this document.

As stated elsewhere in this document, occupation and protest situations are seldom caused by the police, the police are however mandated to maintain law and order, therefore are often expected to attend to ensure the protest is conducted in a peaceful manner. After considering how each of the above situations could/should be addressed, discuss what pro-active measures your department has been or should be taking 1) to help

ensure protests are conducted in a peaceful manner. 2) To properly prepare your officers to deal with aboriginal protest situations similar to the above.

FOREWORD

This reading is not, nor is it meant to be a theoretical “Guide to Conflict Resolution.” It is rather a collection of strategies and ideas for police officers to consider while dealing with various protest situations on First Nations reserves / territories. The information in this appendix came primarily from two sources. 1) My personal notes and recollections from experiences at roadblocks, band office occupations etc., and my direct involvement in the Oka crisis of 1990, Ipperwash 1995 and Burnt Church 2000 and 2) from the research, that now retired Dalhousie University Professor Donald Clairmont and I conducted during 2004-05 while preparing a paper on this topic for the Commissioner of the Ipperwash Inquiry. This research involved interviewing numerous native and non-native Judges, lawyers, academics, police officers and community people across Canada. We thank them all for their time and informed insights. Also included was a literature review of numerous books and readings pertaining to the topic of effectively dealing with conflict. (see bib.)

Most disputes requiring police intervention do not escalate into violence. When they do, the period of actual violence is usually brief, followed by barricades and a “stand-off,” which may last for several days. When a “stand-off” develops, communication usually breaks off and the potential for further violence is high.

If the dispute is criminally motivated, (as in Incident #5, p.2) normal police practices and policies should prevail, all the while ensuring community authorities are kept informed.

Although roadblocks and band office occupations to protest in-house political or Aboriginal Rights issues have the potential to become violent, they are usually initiated as a means of drawing attention to a long standing issue, not to actually cause physical conflict. While there may be a few protestors who will be openly aggressive, remember much of this aggression may simply be bravado, meant to intimidate more than harm. **If enforcement action becomes necessary consider the fact that yet unseen, women and children may become involved 1) By forming a line across the road to block what they may consider to be an invading force, and may be armed only with rocks and sticks, or 2) By laying on the roadway to stop police/military vehicles from entering the protest area.**

If the protest is peaceful and does not interfere with the general public, only monitoring may be required. If it interferes with the travelling public, i.e. a highway or railway blockade, immediate steps should be taken to negotiate either a settlement or alternate form of demonstration, e.g. an information picket/roadblock, where police could assist with traffic control. If and when police do become involved, learn what the protest is all

about, who is involved, and then focus on establishing and maintaining quality communication.

Due to the diversity of issues, communities and individuals involved in any dispute, there is no “one size fits all” formula. There are however basic principles common to all human interactions. These, combined with strategies and ideas that have worked in the past, can be found throughout this reading.

This is not a “cookbook,” but rather a “catalogue of ideas,” each to be considered when and where appropriate. In this sense this document could serve as a “field guide” or “tip sheet.”

“THERE ARE THREE WAYS TO DEAL WITH CONFLICT, IT MAY BE AMPLIFIED, IGNORED or TRANSFORMED”

1. INTRODUCTION:

It has been said the Oka crisis of 1990 was the first time, in recent history, where the voice of native people of Canada was actually heard. The realization of this no doubt influenced three similar crises i.e. Ipperwash and Gustafsen Lake both in 1995, and Burnt Church, summer 2001. Though each was unique, all evolved in the following four phases:

- (1) Protestors Stand Firm – (Disputed territory occupied after protestors claim ignored.)
- (2) Mediation Attempts Fail, Talks Cease.
- (3) Violence erupts, barricades erected, “Stand-off” in place.
- (4) Communication re-established, mediation begins.

Police may become involved at any phase. **Once involved, the objective is clear - if violence is occurring, stop it, using minimal force, or, take steps to avoid violence or a repeat of it and eventually help bring closure.**

The following, “Guiding Considerations,” applies to all four phases. This is followed by a list of ideas and strategies to consider during phases (1), (2), & (4). Hopefully early

intervention will help avoid violence i.e. phase (3), which may require direct enforcement action.

GUIDING CONSIDERATIONS

1. As a police officer (serving in any capacity) your primary goal is safety for all, which includes you. Family members will be worried. Whenever possible contact your family to assure them you are o.k. Especially if there has been violence.
 2. Speak to Chief to determine community's point of view.
 3. If protestors are staging a sit-in in a public place, have occupied a band office, community hall or area of land such as a park, during first contact, **do your best to learn what they actually want** and advise the protestors of your responsibilities and intentions i.e. to maintain peace and order, and that your preference is a peaceful, negotiated settlement. They may intend to passively resist, to ensure they are arrested, gain publicity and be taken before court.
 4. While deciding on a course of action, consider questions like - **“What’s the rush? What is the legal way to approach this? Is direct action the only option? Is there another way?”**
 5. It is estimated that at least 75% of community protests, are politically motivated.
 6. Work to avoid criminalizing a civil dispute.
 7. Avoid stereotyping protestors as either positive or negative and remember, the protestor group may include men, women, children and elders.
 8. Protracted protests like Oka, Ipperwash or Burnt Church involved numerous people, required significant police response and drew extensive media coverage. One consequence was many uninvolved native people, near or even far from the protest site, were labeled by many as “one of them.” Police should do their best to avoid stereotyping all native people as participants in, or in some way connected to, the crises at hand.
 9. Consider involving a Native Liaison officer to help establish communication. In this role they should not be required to wear uniform, a vest or be armed.
 10. Stay positive, this crisis will pass as all crises do. How it ends, and the degree of positive outcome will be strongly influenced by understanding the big picture.
 11. Building positive relationships with the community when all is quiet – very important.
 12. If barricades are erected, negotiate early to allow access of emergency vehicles i.e. ambulance, fire truck or snowplow. Meet with drivers etc. to assure them, for their personal safety they will not be expected to simply drive behind barricades or into the middle of a conflict.
 13. Stay positive. Your attitude will show in body language and if negative could seriously hamper efforts to establish trust
- Be honest and sincere. Better to say nothing than to fabricate information.
14. Be confident, not arrogant – be friendly and respectful, not rigid.
 15. People find it easier to agree with people they like. – Sell yourself.
 16. Focus on “making peace” not on “taking control.”
 17. Place emphasis on conflict management. Be process oriented vs. solution oriented.

18. In every situation there is many sides to the story. Do your best to hear them all.
19. Involving FN Officers may be a key, from own agency first. Remember however, these officers are under added stress as they too are aboriginal, and may have family members living in the community, some of whom may be directly involved in the protest.
20. To determine the possible outcome, know the reasons for, history of, and what actually triggered the protest.
21. Liaison officers serve as a "bridge" between parties. They should remember; "bridges" get walked on from both ends.
22. Never underestimate the role or influence of women in the community.
23. Try to learn what, if any, political pressure is involved and from whom.
24. Emphasize that you are there to maintain peace and order not to take sides.
25. Be respectful whenever you see Native Spirituality being practiced. If you don't already know, learn the basics, the dos and the don'ts - at a sacred fire; during smudge ceremonies, the appropriate use of tobacco, etc. (see "R.C.M.P. Native Spirituality Guide.") Remember however the community may be Christian and any suggestion by you to use Native Spirituality may be rejected, particularly if you are not of Aboriginal descent yourself.
26. When someone wants to speak to you "one on one," remember your oath of office.
27. Resolution will be difficult if one side appears to hold the balance of power.
28. Gathering accurate intelligence is a very difficult task. Information is usually obtained from the target's opponents, thus it may be biased or simply wrong.
29. *Saving face is important to all.* This point cannot be over-emphasized.
30. Throughout Canadian history Aboriginal people have never surrendered when defending what they believe to be an Aboriginal Right. Never underestimate the power of emotion that is tied to history. Aboriginal people in general have a strong sense of history.
31. Inclement weather influences events/outcomes. Protests seldom occur during the winter months. If it is late fall, pending cold weather could bring an end to a standoff. During one recent roadblock situation protestors soon changed their position upon hearing of the Department of Highways refusal to allow their snowplow operators to clear the highway to the community.
32. During mediation remember you cannot take away anyone's position of influence without replacing it with something. Strive to create a perception of "win, win."
33. If a violent conflict occurs, everyone involved, police officers and protestors will be traumatized. At Oka, Ipperwash and Burnt Church, ashen gray complexions were common among all combatants. Immediately after a violent conflict allow time for "cooling off."
34. Consider involving stress counselor for your staff and protestors. Protestors may prefer elders to perform this function.
35. Don't personalize the problem. It is not your problem; you are there to help.
36. Maintain a calm demeanor, others are no doubt far more nervous than you.
37. Usually only a small faction of the community is radical and wants to keep the police out, the majority usually wants and need police services.

38. Media - maintain a positive relationship. Unless specifically authorized, do not provide interviews or press releases. Refer reporters, etc. to your Media Relations Officer.
39. Let timing and appropriateness guide your actions during any phase. People know the police mandate is to enforce the law/maintain peace and order. How you do this, is the question.
40. If the dispute is between families, during the initial response it should be made very clear to all parties, you are not going to take sides, but, for the safety of all, violence and criminal behavior of any kind will not be tolerated. Anyone found committing a criminal offence i.e. assault, threats, damage to property etc. can expect to be arrested and charged.
41. The presence of a “Warrior” flag does not necessarily mean armed or strong resistance. It is usually flown as a sign of unity of action and defiance of authority.
42. Economic disparity – consider the fact that protestors and people negotiating on behalf of protestors seldom have any source of income during the protest period and may have very limited funds to cover expenses while traveling to and from meetings. Meanwhile government representative expenses are covered, are receiving a salary, and have serviceable vehicles, to carry out their duties.

“Action has meaning only in relationship, without understanding relationship action on any level will only breed conflict. The understanding of relationship is infinitely more important than the search for any plan of action.”

J. Krishnamuri

Phase #1. - PROTESTORS STAND FIRM

1. Unless you have information to the contrary, consider addressing this like a labor dispute.
2. Determine who the protestors represent (i.e. Elected Council? Traditional Council? Or are they an independent group?)
3. Work to be an alternative for those at the center.
4. To avoid being targeted by the police, protestors may not identify any one person as leader. Then again there may be no clear leader(s), only spokespersons who speak for the group and cannot agree to anything without going back to the group for direction. If the leader is known, invite him/her to meet with your Incident Command staff to clarify goals, reduce tensions, develop protocols, and to discuss with them concerns re: safety and health of all.
5. Remind protestors, you realize they are frustrated and that they are simply trying to emphasize a point, this must be negotiated with other parties however. You are not

there to take sides but everyone must do whatever they can to avoid violence. In the final analysis people will talk before or after violence, why not before?

6. Determine if non-native activists are present? If yes, determine who they are and why they are there. People representing various peace groups may be among them. Although you may not like their presence they will claim their intent is to help de-escalate tensions.
7. Know the authority structure(s) of the community or communities.
8. Engage in extensive communication. Talk to as many as you can but LISTEN, LISTEN, LISTEN. - Listen with empathy. People often want someone to listen to them more than receive what they say they want. Also remember the principle, "People will listen to what they see." Be professional.
9. While in your vehicle, if you stop to talk to an elder or other community leader(s), get out
And remove sunglasses.
10. Look for the "common ground." Something you can build a relationship on, i.e. the protesters, which may include warriors, want many of the same things you want, a safe and secure community, a future for their children, etc. etc. The majority of the people wearing "camo" gear etc. may claim to be warriors but most are simply local youth and various unemployed locals who became involved because of peer pressure and the fact that this is "the only game in town." Local unemployment rate will dictate the number of protestors.
- 11. Make no assumptions; take nothing for granted, think outside the box.**
12. It is during this period when rumors and innuendo become rampant. Neither the protestors nor the police may have complete information.
13. If verbally attacked by anyone saying your agency "did this" or "did that" Don't be drawn into an argument, avoid being defensive. They are speaking from their perception. A suitable reply may be, "Regardless of who's right, or who's wrong, that shouldn't have happened" and perhaps add, "I'm sorry it did. What do you feel we can do so it doesn't happen again?"
14. When someone challenges you, consider replies like "If you don't hold us accountable, who will?" "How can I help you." and/or "Would you consider helping me with this?"
15. Keep elected officials informed, when and where possible.
16. Determine if protesters are from the community in question and if community elders, leaders and the community at large support their actions.
17. If there are banners, placards and other visible signs of protest, negotiate their removal a.s.a.p.

NOTE: At any stage, police or other enforcement agencies may seek to obtain or be directed by a "Court Order" in the form of "Warrants to Arrest" or "Injunction." Mediators and or Liaison Officers should have input as to, if, when, and how these documents should be sought/served/executed.

➤ Phase #2 – MEDIATION ATTEMPTS FAIL – TALKS CEASE

1. Although mediation has not been successful to this point, maintain contact.
2. If there is a Band Council election soon, this may be contributing to the timing of the protest.
3. The protestors and or community people may only want to talk to one particular officer.
4. Constantly monitor the situation to ensure safety for all.
5. If there are sufficient personnel, consider having officers visit nearby uninvolved residents to answer questions regarding their personal safety.
- 6. Determine the reason for the protest and what actually caused talks to cease or violence to break out. Why did the situation suddenly change?**
7. Learn early which, if any, of the disputants have criminal records and if so for what?
8. Query for unexecuted warrants and nature of same.
9. Depending on the degree of conflict, before entering a given area where you could be taken hostage, consider leaving your notebook, side arm, and vest behind, use an unmarked vehicle and work in plain clothes. If someone actually threatens to take you and/or others hostage, do not over-react. A calm, measured, response will probably cause them to re-think the idea.
10. Make sure community mediators know how to contact you. Recognize, they may not have reliable vehicles or be able to afford the fuel to travel to and from mediation sessions.
11. If using an unmarked vehicle, it may be necessary to mark it in some way e.g. small white flag on aerial, so others will know who you are as you enter or travel through restricted areas.
- 12. If elders or others want to leave, ensure their safety.**
- 13. If there is a nursing station or hospital within the protest area ensure their needs are met.**
14. If arrest action is necessary and you anticipate resistance, try to negotiate an acceptable protocol, i.e. it may be best to have suspects turn themselves in individually over an agreed period of time rather than try to arrest them in front of their peers or all at once. Ensure their safety during this process. This applies particularly during the post-violence phase.
15. People may come to ask for help to contact a relative who may be in custody or who may have been injured during the violence – help where you can.
16. If you encounter people whose first language is not the same as yours, never underestimate their ability to understand your conversations.
17. In one instant elders who could speak only their native language were placed on the so called front line in an effort to delay/confuse, police action.
18. Some may speak an Aboriginal language (local dialect) on cell phones, radios, etc.
- 19. Identify officers who have the appropriate language capability.**
20. If matter complex and/or drawn out, rested mediators may be required.

21. Ensure ERT / TRU members know and understand the level of conflict e.g. on a scale of 1 to 10. Also remind them of the do's & don'ts i.e. no trophies, no mementoes. Be sure they know why this protest and are informed about its history. Be sure all team members know who your liaison officers are, they may be driving unmarked cars and working in plain clothes.
22. If situation is protracted all members should be continually updated through regular briefings.
23. If police roadblocks are set up on a 24 hr. basis, consider having at least one senior officer patrol the area to keep members informed of developments, particularly during hours of darkness.
24. If communication with the protest group breaks off, re-establish a.s.a.p.
25. Be careful with cell phones - save confidential discussions for landline, be careful you do not unintentionally transmit. You may be monitored.
- 26. Avoid inflammatory negative words, emphasize the positive.**
27. Expect to encounter self-proclaimed elders, spokespersons and community leaders.
28. Identify the players - the influential - the power brokers - the rational - the radical - the politicians from within the community and from elsewhere - those with a vested interest – those with hidden agendas- the spokespersons- the actual leaders vs. the self appointed ones. During the Oka crisis the press mistakenly identified two protestors as a War Chief and a Clan mother, they appeared to be, but in fact were not. Be careful about acting on one source information. Verify with community members and fellow officers who know the players. If protracted, some people may come and even wander around the conflict site strictly out of curiosity.
29. If incident has national media coverage expect phone calls and e-mails from almost anywhere.
30. Liaison officers should take particular note of any criminal offences they see or actions they feel are suspicious.
- 31. Watch for logs, old cars, etc. on roadsides ready for easy use as barricades.**
32. Chief and Council members may want to co-operate with police but may have
- 33. relatives directly involved in the protest**
reply in a
clear, concise manner.
33. Keep all involved enforcement agencies informed.
34. Chief and Council members usually only have their finger on the "Pulse" not on the "switch."
35. Nutrition is important. Have juices, coffee, tea, fruit and other nutritious snacks available for officers while on tiring, often boring duties, like roadblocks etc. Get proper rest. Stress may lead to over-eating; exhaustion may lead to inappropriate reaction to negative stimuli.
36. If the "standoff" becomes protracted, ensure medical and nutritional needs of those behind the barricades are met as well, in particular any non-combatants who may be there not my choice.

37. Support local Aboriginal officers who usually work and perhaps live in the community. Seek them out for their advice and support. They may need support, both physical and emotional.
38. **Elder/mentor may prove helpful, especially to young Aboriginal officers.** Do not burden your young native officers without providing support. They too may have relatives in the community. F.N. officers policing in nearby communities may also be under considerable stress.
39. Learn if a "War Chief" is involved. If so, learn the role of a traditional "War Chief." It may be to your mutual advantage to work together.
40. In some instances Elders and/or Clan Mothers may be key people to talk to.
41. **SMILE, SMILE, SMILE - use appropriate humor and stay positive.**
42. Remember, factions within the community that are usually divided will stand together if they see your agency as a common threat. People will forget their differences if they see no alternative. Work to be that alternative.
43. If this protest is protracted and receiving national attention, busloads of people (warriors and others) may come from distant places to offer moral, financial and or physical support. Once you learn where they are coming from, contact the police in their home area to learn who they are. If possible meet their bus, and if appropriate take them to the protest site - be friendly and positive, help where you can but remember many reserve residents may not want them there. Also, the label "Warrior," does not necessarily mean bad news.
44. Spirituality - be careful - use it personally if you practice it, but many may be non-believers. (See note #24, under "Guiding Considerations")
45. Advise all personnel to avoid making "off the cuff" comments about this situation to uninvolved local people.
46. "Marker fires" around the perimeter are not "Sacred Fires," know the difference.
47. Local elders may be helpful but do not burden them with the task of finding a solution.
48. **As tensions escalate use emergency equipment on police vehicles sparingly.**
49. A few, may be mentally unbalanced or substance abusers, exercise caution. They may also be causing the protest organizers headaches as well.
50. You may be monitored - video cameras, camera cell phones, and media with laser microphones. Expect local people to be watching.
51. Barricades are often used as the ultimate bargaining tool.
52. Watch for mood swings caused by misconceptions, e.g. Police are mustering to commence aggressive action, when in fact they are simply changing shift.
53. You may be asked to help obtain legal counsel. Work through your chain of command.
54. **Don't let anyone provoke or intimidate you, and again, remain positive.**
55. Do not take criticism personally. Like it or not you may be viewed simply as an enforcement arm of the government. It is up to you to convince people you are there because you care.
56. Learn traditional names (if any) of key players.
57. Maintain kit, keep vehicles clean, in good working order with sufficient fuel.

58. Think long term. In the months and years to come you will meet these people again under completely different circumstances, they will remember you.
59. Your goal is to restore peace and safety for all. The aftermath of violence is very disconcerting.

“YOU CANNOT CRUSH AN IDEA WITH PHYSICAL FORCE”

Phase 3: VIOLENCE ERUPTS - BARRICADES ERECTED, “STAND-OFF” IN PLACE

(Return to Page 4 - “Guiding Considerations”)

Phase 4: COMMUNICATION RE-ESTABLISHED, MEDIATION BEGINS

1. If you are involved in post conflict negotiations do not expect to settle matters with one or two meetings. Protracted negotiation allows time to build relationships.
2. Agreement is accumulated, not suddenly arrived at.
3. **You cannot just take - you must also give.**
4. During mediation work to establish an environment of trust. Work to establish a relationship where you can say, “I will not lie to you. There are no doubt some things I cannot tell you and some things you cannot tell me but let’s not lie to each other.”
5. Sometimes agreements will be reached one day, fall apart the next. Expect this.
6. There will be some who won’t agree to anything. Their persecution complex is too high.

- Occasionally these feelings are based on activities other agencies are doing, that you in fact may know nothing about.
7. As stated under “Guiding Considerations” expect the unexpected, do your best to stay on track.
 8. During search and clean up of a once occupied site, Spirit Masks or other similar items may be found, if necessary retain them for evidence purposes, if not needed as evidence, return them to the community. If the search is for weapons be sure to search beneath fire pits and high in nearby trees. Allow no trophies or mementoes.
 9. As things gradually return to normal the community may recognize the importance of putting a healing strategy in place, if appropriate, assist and be part of it. Healing may be needed for community people, protestors and your officers as well.
 10. Thank everyone who assisted, including those “on the other side” if appropriate.
 11. **Debriefing sessions- Focus on - What went right/wrong and why? Vs. who did right, who did wrong?** Invite all key participants i.e. specialized squads, F.N. officers, and other enforcement agencies etc., in particular F.N. police departments who may have assisted.
 12. **Reflect on and document what was learned.**
 13. If this goes before the courts, have an experienced officer present who can explain to security what certain items are that some may be carrying, i.e. medicine bundles, Eagle Staffs, etc.
 14. **Court security should maintain an effective, but low profile.** The extent of court security will be based on intelligence reports. If certain officers have developed a positive working relationship with the protestors it may be wise to deploy them as part of court security. Also their intelligence information may be overlooked or viewed as biased, but may very well be the most accurate.
 15. Liaison officers should attend court, as they will recognize the original protestors.
 16. Some may not take an oath by swearing on a bible but rather will use a Wampum belt, eagle feather, medicine bundle or simply make an affirmation.
 17. Some may extend their protest to the area around the court i.e. carrying placards, drumming etc. and may try to provoke young officers, meanwhile recording their re-action on video or camera cell phones. Prepare them for this and if possible have a senior native officer present.
 18. **Maintain a working relationship with the community, and if appropriate, also with the main players in the dispute.**
 19. Ensure this knowledge becomes part of corporate memory and is used for future education and training, with emphasis on prevention
 20. Return to the beginning of the process and review “Guiding Considerations” and “Phase 21. Despite efforts to prove otherwise, there will be those who feel officers who work closely with the protestors, particularly Liaison Officers, have "gone to the other side" and may label them as being “one of them.” This also may be directed at you. Deal with it openly.

PROTEST IN THE URBAN COMMUNITY:

The majority of police officers working in large urban centers across Canada have limited experience with disputes related to Aboriginal Rights. In cities where the Aboriginal population is significant, most contact is “officer/ violator” in nature not one of building relationships. To counter this, various departments, much to their credit, have designated Aboriginal Liaison Officer positions. When aboriginal protest occurs, in any form, these members should be considered to be a key resource.

Protest in an urban environment can manifest itself in many forms, i.e. occupation of government offices, marches on busy thoroughfares, roadblocks or simply peaceful demonstrations in prominent public places. Those involved may become boisterous, but seldom violent. They may however be infiltrated by opportunists i.e. members of radical groups, who may see this as an opportunity to promote their cause. In most instances these demonstrations will parallel labor disputes, and if so, should be policed as such.

SUMMARY:

Perhaps the most effective way to learn this material is to have it delivered in a training environment where the following questions and a host of others could be addressed through lecture, guided discussion, case study and role-play. i.e.;

- Who are the native people of Canada?
- When speaking or referring to anyone of Aboriginal ancestry what term is appropriate, Indian, Aboriginal, First Nation, Treaty, Metis, etc., and what do these terms mean?
- Demographics – population, where do they live, occupations of, average age, etc.
- Define - Aboriginal Rights, Treaties, Land Claims, Self-government?
- What past and present government policies, laws etc. contribute to native unrest today?
- What are the current issues of concern?
- Provide an overview of; the various local, provincial and national aboriginal organizations, and the role they would play during a protest situation.
- Review recent Supreme Court decisions that have implications for policing.
- Why the term “White man’s law.” How do most Aboriginal people feel about non-native police, and why?
- Define the term “Warrior.” Who are Warriors and how can you work with them?
- If a Warrior flag is flying at a protest site what does that mean?
- Who are Elders and what role do they play in the community, particularly during a protest?
- What is the normal community authority structure?
- What is Native Spirituality?
- What is perhaps the most effective way to work with Aboriginal people?

- How can Aboriginal officers assist?
- What can the police do, or what should they be doing, to avoid protest situations?
- What are the key questions to ask?
- What is the role of the Department of Indian Affairs?
- Define role of Chief and Council members.
- What is a possible solution to all this?

For credibility, the resource person(s) asked to deliver a workshop/course on this topic should have extensive experience policing aboriginal communities and working during protest situations. Perhaps 75% of content could be core material, with the remaining 25% drawn directly from class participants.

CONCLUSION:

As previously stated, this information should not be viewed as complete. It is simply a list of ideas and strategies that have worked in the past and should be viewed as a supplement to, not in place of, existing policies and procedures. If you are drawn into and O. & P., read through the above, not all will apply to the situation at hand but you will no doubt find some points describing situations that you haven't surfaced yet and/or ideas you haven't thought of. Finally, remember, "The key is COMMUNICATION, COMMUNICATION."
Good luck.

APPENDIX B

MAJOR MEETINGS AND DATA SOURCES

TWO IPPERWASH INQUIRY MEETINGS, TORONTO, 2004, 2005

CONFERENCE ON POLICING ABORIGINAL COMMUNITIES, OTTAWA, 2004

ABORIGINAL POLICNG DIRECTORATE REPORTS, PRA CONSULTANTS' EVALUATIONS, 2005, RCMP, OPP AND SA REPORTS

PERSONS INTERVIEWED BY ROLE (FORMAL INTERVIEWS, TOPIC IN BRACKETS)

NEWFOUNDLAND AND LABRADOR: *RCMP SERGEANT (INNU O&Ps)

PEI: RCMP CORPORAL, *CONSTABLE , 2 FN COUNCILLORS (RCMP POLICING, COMMUNITY CAPACITY)

NOVA SCOTIA: 2 RCMP SPERINTENDENT, 1 INSPECTORS, 2 SERGEANTS, *CORPORAL, *2 CONSTABLES; HALIFAX POLICE SUPERINTENDENT, SERGEANT; FN CHIEF, FN BAND MGR, FN BUSINESSMAN (SW NOVA O&P, INTRA-BAND O&P, MEASURED APPROACH, POLICE MANDATE & STYLE RE O&PS)

NEW BRUNSWICK: RCMP INSPECTOR, SERGEANT, *2 CORPORALS, FN CHIEF, WAR CHIEF, FN COUNCILLOR, FN POLICE BOARD CHAIR, FN ENTREPRENEUR AND ACTIVIST, DFO OFFICIAL, MNR OFFICIAL (TYPES OF O&Ps, WARRIORS, RCMP POLICING, COMMUNITY CAPACITY)

MANITOBA: 6 RCMP, 2 FN CHIEFS, 2 GRAND CHIEFS, 3 FN ACTIVISTS, FN JUSTICE OFFICIAL.(O&PS, PROTOCOL, ACTIVISTS' APPROACH)

BRITISH COLUMBIA: 3 RCMP INSPECTORS, SERGEANT, *2
CONSTABLES; SA CHIEF OF POLICE, FN CHIEF, 3 WARRIORS /
PROTESTORS (LOWER MAINLAND O&Ps, WARRIORS / ACTIVISTS,
PROTOCOLS AND CONFLICT NEGOTIATION, POLICE-PROTESTORS
PERCEPTIONS, NUANCES)

OTTAWA: RCMP SUPERINTENDENT, *2 INSPECTORS, 3 APD OFFICIALS
(FNPP, POLICING O&PS, RCMP'S APS)

ONTARIO: OPP COMMISSIONER, ASS'T COMMISSIONER, 2
SUPERINTENDENTS, *4 INSPECTORS, *2 SERGEANTS, CONSTABLE,
RCMP STAFF SERGEANT (OPP AND FN-RELATED PROGRAMS AND
POLICIES, POLICING STYLE, O&PS, RELATIONS WITH SAs)

ONTARIO: HAMILTON - DEPUTY CHIEF HAMILTON POLICE, ETHNIC
DIVERSITY COORDINATOR, HAMILTON POLICE, 2 SENIOR HAMILTON
CITY OFFICIALS, PROFESSOR / ENVIRONMENTAL ACTIVIST,
NEWSPAPER REPORTER, FN LAWYER, CONFEDERACY
SPOKESPERSON, CONFEDERACY DISCUSSION GROUP (RED HILL
VALLEY O&P)

ONTARIO: METRO TORONTO DETECTIVE SERGEANT, *2 METRO
TORONTO CONSTABLES, 2 FN PROGRAM DIRECTORS

ONTARIO SAs AND FNs: *6 SA CHIEFS OF POLICE , * 3 SA DEPUTY
CHIEFS, *3 SA CONSTABLES, 4 FN BOARD MEMBERS, 2 FN
COMMUNITY JUSTICE PROGRAMS, FN COUNCILLOR, FN JUSTICE
OFFICIAL, CROWN PROSECUTOR, FN CHIEF, 2 FN WARRIORS /
PROTESTORS, FN ENTREPRENEUR / ACTIVIST (SA POLICING, O&Ps,
BEST PRACTICES, ENHANCEMENT-REPLACEMENT CONTROVERSY,
CAUSES OF O&PS)