



LAW COMMISSION OF CANADA
COMMISSION DU DROIT DU CANADA

In Search of Security:

The Roles of Public Police and Private Security

Law Commission of Canada

The Law Commission of Canada

Mission:

Engage Canadians in the renewal of the law to ensure that it is relevant, responsive, effective, equally accessible to all, and just.

The Law Commission

- Methodology focused on law as lived as opposed to law as written
- Consultations throughout the process

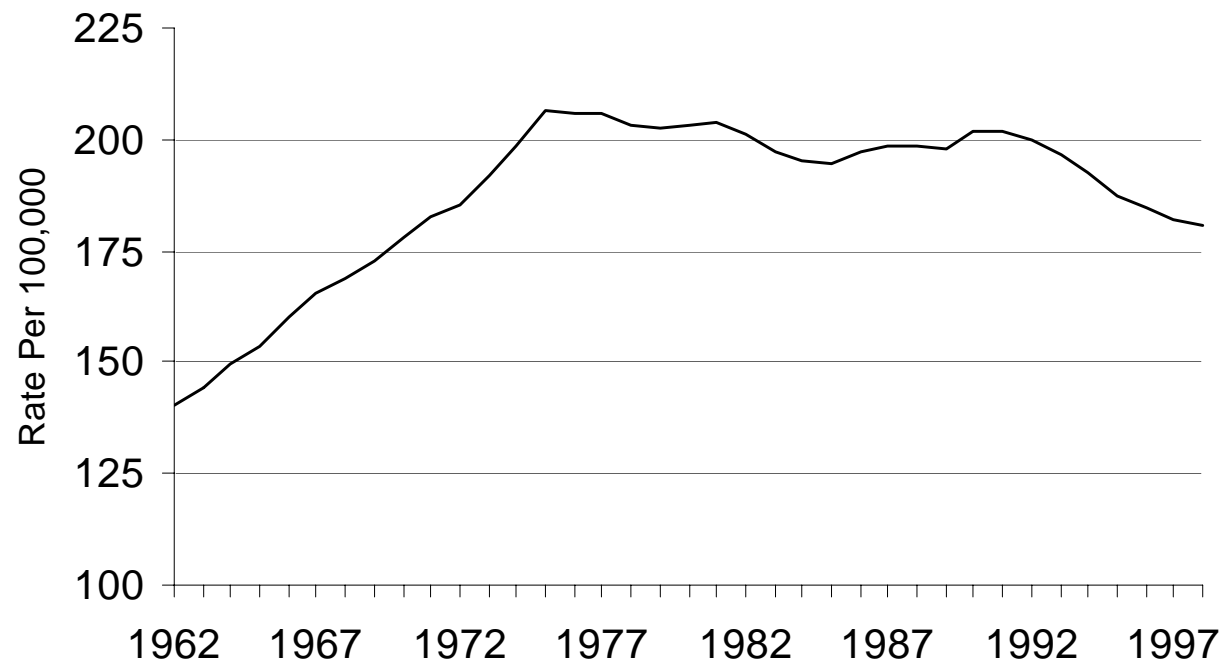
The Risk Society

“The desire for security, orderliness, and control, for the management of risk and the taming of chance is, to be sure, an underlying theme in any culture. But in Britain and America in recent decades that theme has become a more dominant one....”

David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society*, (Chicago: University of Chicago Press, 2001), p.194.

The Reality of Public Policing

Figure 1: Police per 100,000 Population, Canada



Policing 'Mass Private' Spaces

The composition of the West Edmonton Mall gives it the characteristics of a city. It has an average population of 60,000 people per day, increasing to 200,000 on Saturdays. There is little surprise that the security service receives, on average, 40,000 calls for service each year.

Murphy, C. and C. Clarke, *Policing Communities and Communities of Policing: A Comparative Case Study of Policing in Two Urban Communities*, Law Commission of Canada, 2002

The Size of the Private Security Industry

- Statistics Canada estimated that 2,700 private security firms generated over \$2 billion in revenue in 1997
- These estimates are conservative. They do not include, for example, forensic accountants and in-house security

International Developments

It is obvious that the industry has grown over the past 20 years. At the end of 1996 almost 600,000 employees worked in the industry in the 15 EU countries. Private security in Europe is the secondary source of protection, while it is the primary source, for Canada, the USA and Australia. The absolute 'champion' in the security industry is South Africa.

J. de Waard, "The Private Security Industry in International Perspective"
(1999) 7 *European Journal on Criminal Policy and Research* 2 at 168-69.

The Reality of Private Policing

The Omnipresence of the private sector:

- Policing of large urban tracts of lands
 - Malls, low income housing, gated communities
 - Downtown improvement zones
- Frauds and other economic crimes
 - Forensic accountants, insurance investigations
 - Banks, computer security

Blurring the 'Public' and 'Private'

- Pay Duty
- Private contributions to policing
- Formal and informal co-operation arrangements

Networked Policing in Canada

This new era of policing is one in which policing services are provided by a complex network of overlapping public and private policing bodies. Clearly, public police are the primary service providers, but they no longer have a monopoly on the provision of policing services.

Our review of networks of public and private policing in Canada suggests that the public/private distinction central to the current organization of governance may need to be re-thought.

The Diagnostic

- A risk society in search of the external manifestations of security
- An increasing presence of the private security sector
- Increased overlap between public and private actors in the security field

The Current Legal Order

- The centrality of the distinction between private and public
- But a distinction which is unsatisfying

Provincial Regulations

6(1) A vehicle operated by a security **business licensee** carrying on the business of security patrol or private investigator must not

- (a) be equipped with a siren,
- (b) ... be equipped with a flashing, rotating or similar light other than turn signals and hazard warning flashers that are installed by the manufacturer as standard equipment,
- (c) be equipped with a roof-mounted light bar or interior mounted light that resembles those used on police or other emergency vehicles, or
- (d) have markings that by design or colour cause the vehicle to resemble a police or other emergency vehicle.

8(1) A security employee **must not wear a uniform that, in the opinion of the registrar, so closely resembles the uniform** of a police officer in style, colour, insignia or other marking that it is likely to confuse or mislead the public.

- British Columbia Private Investigators And Security Agencies Regulations

Detention versus Arrest

- The *Charter* applies to **all arrests**, whether undertaken by the police, private security officers, or a private citizen
- The *Charter* does not apply when a private citizen **detains** another private citizen

“Where a private citizen merely detains another, the detention is not affected by the *Charter*, and the detainee is not protected by it.”

- R. v. Lierke

Re-conceptualizing “Policing”

Policing refers to:

activities of any individual or organization acting legally on behalf of public or private organizations or persons to maintain security or social order while empowered by either public or private contract, regulations or policies, written or verbal.

This definition purposefully excludes vigilantism and other forms of illegal protection operations

Policing Activities

Keeping the watch

- RCMP officers guard embassies
- Corps of Commissionaires guard office buildings

Investigative policing

- OPP officer investigates an assault
- KPMG forensic accountant investigates a fraud

Patrolling

- municipal police officer walks a beat
- private security officer patrols a downtown business district

Regulatory activities

- An RCMP officer investigates an immigration violation
- Wackenhut provides ship security and inspection teams

Paramilitary policing

- Public order policing during riots
- Private sector provide temporary labour during strikes

Principles and Solutions

■ Democratic Policing:

- Justice driven
- Equality driven
- Efficiency driven
- Accountability

Justice Driven

- What does justice mean in the context of private security agents?
- How do we ensure that private security guards act fairly and in a non-discriminatory fashion?

Equality Driven

- To what extent do the public police provide equal service to all Canadians? Can private security agencies provide equal service to the communities that they police?
- How might we re-imagine policing in Canada so that all Canadians receive equal service regardless of the agency that provides the service?

Efficiency Criteria

- Are policing services provided in a cost-effective manner?
- Are the services that are provided effective and do they reflect citizens' expectations?

Democratic Accountability

The principle of accountability means that

- the actions of policing individuals/agencies are subject to review
- there are formal channels that individuals can use to lodge complaints against policing bodies

To whom are public and private police accountable?

Accountability mechanisms

■ Public Police

- political accountability
- legal accountability
- internal accountability (SIU, etc.)
- police complaints commissions

■ Private Security

- the market
- provincial regulations
- criminal law
- civil litigation
- labour/employment law

Democratic Policing

- Are there other principles that should be reflected in democratic policing?

Solutions to Ensure Democratic Policing

- Shore up the distinction between private and public
- New regimes for governing networks of policing

Professionalization of the Private Sector

- To what extent does the fragmentation of the industry restrict its organizational development?
- What measures can be taken to assist the private security industry in developing an effective industry association?

Training and Standards

- How can the industry be encouraged to develop industry-wide standards?
- Should standards be applicable to both contract security and 'in-house' security

Oversight and Accountability

- Are current regulatory regimes sufficient to hold private security accountable?
- Should the private security industry be held accountable to the public in the same manner as the public police? What other oversight mechanisms could be effective?
- What are the characteristics of a good oversight mechanism?

Re-imagining the Governance of Policing

Perhaps it is not simply that private security ought to be brought under the mechanisms of accountability that currently exist for the police. Rather, law reform efforts should be directed towards the development of innovative oversight mechanisms that reflect the new reality of networks of public and private policing in Canada.

New Regimes for Governing Networks of Policing

What I am proposing is a position in which the police service puts itself forward, first, as the central point for inter-agency co-operation designed to strengthen communities and, secondly, as the centre-point of a coordinated system of patrol services, carried out by a mixture of police, volunteer, local authority and private sources. It is not abandoning a monopoly of patrol — it is admitting that we haven't had one for years and then moving the discussion on.

- Ian Blair, Surrey Police, UK

New Regimes for Governing Networks of Policing

- Towards the development of policing boards?
- Community-driven control over all policing services
- Democratic accountability of public police and private security

Some of The Big Questions

- Does the private security industry require professional standards of conduct?
- Are there sufficient channels of communication between public police forces and private security agencies?
- What are the best governance mechanisms to ensure that policing is delivered in accordance with the democratic values?