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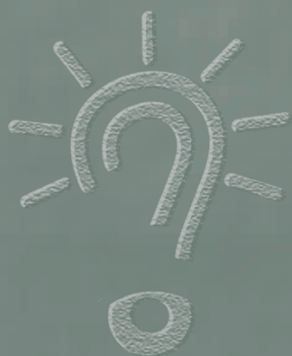
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In Search of Security:
The Roles of Public Police
and Private Agencies

Discussion Paper



LAW COMMISSION OF CANADA
COMMISSION DU DROIT DU CANADA

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and Private Agencies

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Canada



Preface

Even before September 11, 2001, people were concerned about security. Security is a fundamental need of Canadians. The way in which we should respond to that need is the subject of this Discussion Paper.

Canada, like many other countries, has witnessed an exponential growth of private security firms, which now complement, support or even replace functions of public police forces.

The coexistence and competition at times between publicly funded forces and private firms is not unique to the security field. However, the public-private divide in the world of security presents particular challenges: will the private sector provide security in a way that is compatible with our values of equality and human dignity in a democratic society? How can we be sure? Is the current division of labour between public police and private security the best way to provide policing? These questions must be asked, at a time when we are increasingly concerned about security.

We should not lose sight of the big questions that underlie this debate: What is security? Why do Canadians want so much of it? What values do they want to see respected in the delivery of policing?

The mandate of the Law Commission of Canada is to provide independent advice to government on improvements, modernization and reform of the law of Canada. It seeks to engage Canadians in the renewal of the law to ensure that it is relevant, responsive, equally accessible to all, and just. The Commission is interested in exploring how law has responded to Canadians' changing expectations for security. The way in which our values may have been transformed by the intermingling of public and private actors in the field of security is an ideal focus for a study of changing social relationships.

The present discussion paper aims at informing and promoting discussion. It poses questions, rather than gives answers, and uses examples to provoke reflection. Only through questioning are we going to be able to adequately adapt our legal institutions to the evolving needs of Canadians.



The Commission wishes to extend its gratitude to its first scholar in residence, Dr. George Rigakos, from Saint Mary's University, who held the pen for the drafting of this discussion paper. Nevertheless, the responsibility for this paper rests with the Commission. It encourages all Canadians to get involved in the discussion by writing, e-mailing or calling the Commission with their comments:

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Executive Summary

Modern society is sometimes described as a risk society. The perception is that no matter whether crime rates rise or fall, public unease remains high or climbs. As a result people take steps to minimize their exposure to risk. We assess risk according to our own personal experiences and from the information we gather through the media. In a networked world, people receive news about events in distant communities as they happen. Millions upon millions are made part of an extended family of victimization as they watch another horrific school shooting, another riot, or even the horrendous collapse of the World Trade Center. These episodes make us feel helpless and often lead us to take steps to fortify our own sense of personal safety. Insecurity breeds the purchase of more private security.

Whether public unease with safety and security is indeed ‘new’ or ‘heightened’ in contemporary Canadian society compared to previous decades remains a contested claim. What is clear, however, is that certain segments of society are purchasing security and safety in the form of a commodity. We buy home intruder alarms and bars for our windows. We hire security guards to patrol our communities. We install surveillance cameras in public spaces. We do these things on an individual basis, as collectivities, or as businesses as a means of minimizing risk. Of course, some Canadians are in a better position to manage their risk. Security, like any other commodity that is for sale on the open market, is available to those who can afford it.

The Canadian state has sought to provide security to all its citizens irrespective of class or wealth. However, the social safety net is developing larger and larger holes and management of risk has often shifted from the state to the ‘responsibilized’ citizen.

This Discussion Paper examines changes in the provision of security to Canadians. It begins with a review of security arrangements in Canada. This is followed by a discussion of the growth of networks of policing involving both public and private actors. Following this, the Discussion Paper provides a short review of the history of policing. The next three sections examine governance issues. Section IV looks at the current legal environment. Section V asks what values should inspire democratic policing in Canada. Section VI examines different ways of regulating policing in Canada.



Policing in Canada

The Discussion Paper makes a distinction between police as an institution and policing as an activity. Policing refers to the activities of any individual or organization acting legally to maintain security or social order. Public police forces engage in policing, but so do a range of other actors and agencies.

Policing in Canada is in the process of transformation. The provision of policing services was once presumed to be the exclusive domain of the state. Increasingly in Canada, complex networks of policing are developing. These networks reflect a mix of public and private security providers. Private security firms patrol large tracts of space in urban areas; they make arrests for Criminal Code violations, as well as enforce provincial statutes. Private forensic firms are involved in complex fraud investigations. The private sector is engaged in activities typically associated with public police forces. It is becoming more and more difficult to differentiate between what is a private function and what is a public function: the line between public police and private security has blurred.

The Discussion Paper was written against the backdrop of the events of September 11, 2001. Prior to September 11, the historical trajectory was to rely more and more on private security firms to provide for economic and physical security. Does September 11 and its aftermath signal a movement towards a greater role for government? It is too early to tell how durable this movement will be and it is also easy to get caught up in the energy that these events have produced.

The Regulatory Environment

Private security officers have no more authority to arrest someone for a criminal offence than the average Canadian citizen. The *Criminal Code of Canada* states that any one, including a private security officer, may arrest someone found committing an indictable offence. Also, property owners or their agents may arrest someone they find committing a criminal offence in relation to their property.

In addition, owners of property prescribe conditions upon which persons may be allowed to remain on the owner's property. Security guards enforce these conditions on behalf of owners. It is through



the exercise of property rights, that owners and their private security representatives arrest people for minor offences such as being disorderly.

The *Canadian Charter of Rights and Freedoms* does not apply to interactions between two private individuals. However, the Charter does apply when an individual is acting as an agent of the state when arresting someone, for example. As the networks of public and private policing become more and more dense, the question of when a private security agent is acting as an agent of the state and therefore subject to the Charter will become more and more difficult to answer.

Policing in a Democratic Society

There are four core principles that ought to support democratic policing in Canada: justice, equality, accountability and efficiency. Justice means that all individuals ought to be treated fairly and their ‘rights’ are respected. Equality means, first, that all Canadians ought to receive policing services sufficient to feel safe in their community. Equality also means that there ought to be representation and participation from all members of society in the delivery of policing services, i.e., that it requires an equal and inclusive security force. Accountability means that the actions of a body are subject to review and that there are formal channels that individuals can use to lodge a complaint. Finally, efficiency means that services are provided in a cost-effective manner. To what extent do public police forces and private security agencies reflect these principles of democratic policing?

The *Charter* offers individuals protections against unjust treatment by public police. Because security officers are private citizens, the Charter does not always apply to their interactions with individuals. Given the transformations that are occurring in policing, is this an acceptable distinction? Inclusiveness means that the police should be representative of the community in which they are working. Community policing is one way that public police forces have responded to the challenge of equality of representation. To what extent has community policing been successful? Can private security agencies engage in this type of policing?

Accountability is a critical issue in policing. The effectiveness of accountability measures for the public police is a contentious issue.



Some argue that the public officers are unfairly treated by an inefficient oversight system. Others claim that existing oversight mechanisms are weak and lack broad-based community representation. Some argue that private security officers are much less accountable for their actions than are public police because legislation does not establish independent oversight mechanisms that can be used to hold private security officers accountable. Perhaps the question is not only whether private and public policing bodies are accountable, but to whom. Existing methods of accountability may not reflect the reality that policing is no longer solely provided by the public police. Perhaps it is not simply that private security ought to be brought under the mechanisms of accountability that currently exist for the public police. Rather, it may be the case that law reform efforts should be directed towards the development of innovative oversight mechanisms that reflect the new of reality of networks of public and private policing in Canada.

The Future of Police Governance

The current regulatory environment may not adequately reflect the reality of networks of public and private policing in Canada. Should legislation attempt to shore up the distinction between public police and private security? For example, policy makers could attempt to set out what actions private security agencies and personnel can and cannot perform. Should Canada's policy also be geared toward effective regulation of the new networks of security that have developed? Should we develop policing policy to encompass the activities of both the public sector and the private sector, and one that can manage the relationship between these two service providers?

The professionalization of the private security industry may address some of the issues raised in this Discussion Paper. The development of an effective and representative industry association, the enactment of minimum standards for training and the creation of effective oversight bodies may go a long way in ensuring that policing services are delivered in accordance to democratic values.

Other models also include looking at broader forms of regulation that encompass the policing sector as a whole. The first model would have private security companies regulated by public police forces. The second would see the development of community-driven policing boards that would organize and regulate both public and private policing activities in a community.

Democratic policing require the development of new approaches of managing the relationship between private and public actors in the field of security. It also demands the engagement of Canadians in the discussion of these issues.



I Introduction

Something quite remarkable has been happening to the organization of policing in Canada over the last 30 years. Many functions that were once the exclusive domain of public police forces are now being performed by private agencies. In some instances, this means that private security is doing things that the public police used to do. In other instances, it means that whole new areas of activities – services that did not exist or were not widely available – can now be purchased.

A significant proportion of security activities in Canada are now conducted by agencies operating outside the confines of government. In Vancouver, Toronto and Halifax, business improvement associations hire private security firms to patrol downtown streets. Privately owned consulting firms routinely investigate suspicious financial transactions and prepare briefing material for police fraud squads. In some urban areas, private security companies patrol residential developments. Private companies are now ‘profiling’ individuals boarding airplanes to determine whether they are legitimate passengers or potential terrorists.

Our appetite for security, whether personal safety or economic security, appears to be insatiable. It is fuelled by personal experiences, by media representations of insecurity and by marketing campaigns for home intruder alarms, and also for products such as life insurance, mutual funds, and registered retirement and education savings plans. Canadians are often told that they are responsible for their own security, whether it is rigorous financial planning, life-long learning, street-proofing children or ensuring that their homes are burglarproof.

Our sense of security is also rocked by local and world events that accentuate our vulnerabilities. The reverberations of September 11, 2001 are felt long after the tragic events. In Canada, there were immediate calls for tighter border controls, tighter immigration standards and greater police powers to increase security as a pre-emptive measure against future terrorist acts. While the initial focus was on airports and anti-terrorism, the impact of September 11 may very well trickle down into all aspects of our society, to demands for increased security in schools and universities, at work and in other large, publicly accessible spaces like stadiums, recreation complexes and entertainment districts.

Modern democratic countries like the United States, Britain and Canada have reached a watershed in the evolution of their systems of crime control and law enforcement. Future generations will look back on our era as a time when one system of policing ended and another took its place.

D. Bayley and C. Shearing, “The Future of Policing”, (1996) 30 *Law and Society Review* (3) at 585.



Changes in the delivery of security must be reconciled with our way of thinking about the role of government. One of the hallmarks of a modern state is the idea that government assumes primary responsibility for the provision of security to its citizens. This has traditionally been achieved by the creation of public police forces. In Canada, the Royal Canadian Mounted Police (RCMP) has jurisdiction over federal policing, as well as policing in some provinces and municipalities. There are also other public police forces like the Ontario Provincial Police, la Sûreté du Québec and the Royal Newfoundland Constabulary; many municipalities and Aboriginal communities across the country have their own police forces.

In a democracy, the public police are the guarantor of citizens' safety and security. They provide assurances that they can conduct their affairs without fear of harm, and without reliance on protection rackets. Public police forces are charged with providing for the safety of all members of society equally, representing the rule of law impartially and apprehending those who violate it.

We often take for granted the neutrality of the police. The ideals of impartiality, representativeness and public accountability that define the police as a public institution were developed over time and reflect democratic principles. Indeed, the current system of checks and balances that hold police accountable and protect citizens from abuses of power was achieved through a prolonged process of public deliberation and legislative reform.

While the state remains a significant player in the delivery and regulation of policing, it is no longer the only institution involved in offering guarantees of security to citizens. There is now a range of private policing organizations that include, for example, private security firms, insurance companies, forensic accountants and private 'in-house' corporate security. These private policing agencies have moved beyond simply protecting private property. They are often engaged in maintaining order, investigating crimes and making arrests in public spaces. In other words, they are performing many activities that were once exclusively performed by public police forces.

The line between what is public and private property – and who is responsible for policing public and private space – is becoming blurred. This is not a new development, nor is it restricted to Canada. What is new, however, is the degree to which the state's monopoly on policing may have been eroded.



The ramifications of these changes for government, citizens and democracy remain unclear. To what extent is security a ‘public good’ or something that is valuable in a communal sense? Is the provision of security a ‘public good’ that might be privatized? Are there limits on how much authority over policing can be devolved to the private sector? Is private security necessarily less democratic and less equitable than public security? Are our current regulatory regimes suitable for the current policing environment? How might these regimes be re-imagined to reflect the blurring of the relationship between public and private police?

Police and Policing

We make a distinction between the *police* as institutions, and *policing* as an activity. The police as institutions – the RCMP, Le Service de police de la communauté urbaine de Montréal, the Edmonton Police Service – are creations of government. They are created by statute and have more or less clearly defined powers and authority structures. The police as institutions engage in the activity of *policing*, but so do a range of other institutions and agencies.

‘*Police*’ too often signifies public institutions, for example, city, provincial or federal uniformed peace officers, without taking into account the multiplicity of private and public agencies engaging in policing or general regulatory activity. In other words, the specific legal designation of different organizations tells us very little about what they actually do. ‘*Policing*’ as an activity takes into account a wide range of organizations and personnel because it focuses on tasks.

There are important differences between the legal designation of ‘peace officer’ and that of private ‘security guard’. At a symbolic level, and especially in terms of citizens’ perceptions, ‘public’ and ‘private’ evoke quite specific meanings. Also, in terms of the law, the powers of police officers are different from the powers of private security officers, as are the mechanisms to hold them accountable in the exercise of those powers.

But it is increasingly difficult to differentiate between public and private *policing*. The two areas of activity overlap extensively. For example, mall security guards in shopping centres engage in surveillance, make arrests, conduct searches and engage in other functions traditionally associated with the public police, but they are private agents. On the other hand, in cities across the country,



municipal police are hired by owners of private businesses to restrict access, check identification and remove troublemakers from private property, but they are, of course, still public agents.

For the purpose of this paper we consider policing to be:

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.

The activity of policing encompasses many tasks that, while traditionally associated with the public police, may also be performed by private security: arrests, detentions, investigations, routine foot patrols, fraud investigations and forensic accounting, security surveillance, investigations for insurance, crime prevention consulting, property protection and medical and emergency response.

The visible face of public police forces and private security agencies are the front-line officers who patrol beats, but both public and private policing agencies are involved in many more activities than making arrests. Both public police forces and private security agencies are involved in highly professional, technologically sophisticated policing activities on a worldwide scale. In Canada, the RCMP develops and markets sophisticated policing technologies and services for sale around the world. This includes both hard technology, like bomb disposal units, electronic surveillance equipment and biotechnology products and services, and soft technology in the form of education and training. Canadian police agencies, and particularly the RCMP, are active members of international initiatives such as INTERPOL and foreign peacekeeping and policing missions.

Private security firms are also developing and implementing sophisticated security technology. Biometric scanning, for example, was introduced by the private sector for use in casinos and at large sporting events like the Super Bowl and the Olympics. It is now being used by public police forces to augment airport security.



Private security companies are also involved in a number of other highly sophisticated activities including intelligence and counter-terrorism, industrial defence, covert operations, espionage, forensic auditing and computer surveillance.

“The new face of airport security; Biometrics zeroes in on passengers' biological traits,” by Anne Dimon, *Toronto Star*, January 10, 2002, p. W00.

SOON, YOU MAY NO longer be just another face in a crowded airport, thanks to the latest trend in aviation security, biometrics.

Biometrics makes it possible to identify individuals based on physical characteristics or personal traits, such as voice, signature or fingerprints.

Facial recognition technology, which mathematically maps the features of one face and compares it to those in a database of faces, is used by about 150 casinos around the world (including those in Ontario), but is relatively new to airport security.

At the Fresno airport, the system is set up for passengers walking through security after passengers pass through the metal detectors, they face two six-foot metal towers housing high-resolution digital video cameras, along with indicator lights that help control traffic.

As each passenger approaches, a red sign flashes, an automated voice instructs the traveller to stop and look ahead, and the cameras capture images of the passenger's face from various angles. A security official watches a monitor as the live images are run through the computer.

The Visage system takes 128 measurements of a face -such as the distance between the eyes, the thickness of lips, slope of the nose or angle of the cheek bones -and compares them to those in the database.

If there is no match, the tower flashes a "walk" sign and the passenger moves on to the departure lounge. For the most part, says Cadle, "it's no more than a quick stop and go."

If there's an exact match, however, the system provides an audible alert. In the case of a "marginal match," the security official compares both images, studies a numerical score calculated by the computer, and decides whether or not to alert security.

Here at home, Transport Canada is investing \$750,000 to research advanced security practices and technologies and how best to apply them. At Pearson International, the RCMP has biometric technology in place, but it's only being used to process suspects or persons charged with crimes such as drug trafficking.

The Growth in Private Security

For the last three decades, private policing organizations (including 'in-house' and private contract security) have grown while the actual number of police officers in Canada has steadily declined relative to the population. Reliable data on the growth of private security in Canada does not exist. However, it is generally agreed that sometime in the late 1960s or early 1970s the number of individuals employed in the private security sector appears to have overtaken the number of public police officers. Statistics Canada



When we look at the size of the industry it is obvious that it has grown tremendously over the past 20 years. At the end of 1996 ... almost 600,000 employees worked in the industry in the 15 [European Union] countries ... The private security industry in Europe is the secondary source of protection, while it is the primary source ... for Canada ... for the USA and ... for 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.

reports that in 1996 there were 59,090 police officers in Canada, compared to 82,010 private security officers and private investigators. According to this data, roughly two-thirds of security providers in Canada are employed in the private sector. This figure underestimates the actual number of private security employees because it only includes private security officers and investigators and does not include forensic accountants, insurance investigators or private 'in-house' security officers.

It is difficult to compare security arrangements in different countries because of the lack of reliable data. In general, however, most western nations have seen a growth in private security over the past 30 years. Compared to European countries, Canada, the United States, South Africa and Australia all have more private security officers than they do public police officers. In European countries, public police tend to outnumber private security.

In 1997, Statistics Canada conducted a survey of private investigation and security services companies in Canada. Based on a random sample, the survey estimated that the private investigation and security services industry generated over \$2 billion in revenue that year and comprised some 2,746 establishments.

Since the survey only included investigation and security services companies, this figure likely underestimates the total revenue generated by private security activities in Canada. The amount of revenue would be higher if the survey included, for example, forensic accountants, security consultants, and internally provided corporate and institutional security services.

(Source: Annual Survey of Investigation and Security Service, 1997, Statistics Canada)

Beyond the sheer growth in the number of private security personnel in comparison to public police officers, what is most noteworthy are the types of activities that private security firms are now performing. Private security personnel are now employed in ports, airports (although this may soon change), retail shopping centres, commercial complexes and even residential spaces ranging from exclusive gated communities to social housing. All are places that are publicly accessible.

Alongside street patrols and security guards in shopping centres, there also exists a less visible side of the security industry. More and more, private agents handle high-stakes investigations such as corporate forensic accounting and insurance fraud detection. In some cases, private businesses prefer to handle infractions internally. This means that infractions are now being dealt with largely outside the purview of the public police and



without public scrutiny. In other cases, it is the public police themselves who refer business owners to private firms. As a result, financial mismanagement and fraud that was once dealt with criminally and in public is now more likely to be handled privately.

While these statistics are presented as national data, it is important to keep in mind that much of the discussion around these trends largely arises from developments in urban areas. Rural communities, out of economic necessity and/or tradition, tend toward a more voluntarist approach to augmenting local public policing.

Policing and Governance

It was once assumed that public property was policed by public police because there was a *public* interest. On the other hand, *private* security was responsible for policing *private* property and securing *private* interests. In the next section, we suggest that what is emerging in Canada are *networks of policing* composed often of a mix of public police and private security providers. To what extent does the current law reflect the reality of policing in Canada? Given the evolving nature of private and public policing, does the public/private distinction which exists in our laws make sense any longer?

These questions raise fundamental issues about the relationship between security and freedom, policing and democracy. In our society, one of the greatest powers available is the power to restrict an individual's liberty. The public police are granted the power to arrest, search and detain individuals suspected of committing an offence. They do so, however, within the constraints of the 'rule of law,' which means that they must operate in a fair and unbiased manner.

Private security officers also have ostensibly considerable authority to deprive individuals of their liberty. Like the public police, private security officers arrest, detain and search individuals on a regular basis. But, for the most part, private security officers do not operate under the same constraints as the public police. As we will discuss in Section V, in many facets of their work private security officers are not subject to the *Canadian Charter of Rights and Freedoms*.

Are principles of democratic accountability eroded as more and more policing is undertaken by private security organizations?



[The] Canadian judiciary is two decades behind developments in private security... The assumption remains that... state and private interest can be disentangled, and that the requisite constraints to be placed on an arresting person can be ascertained in an unproblematic fashion... these binary legal distinctions will amount to little more than a mere circumlocution of the actual overlap in mandate, legitimacy, and authority of these now inextricably linked spheres of governance.

G.S. Rigakos and D.R. Greener, "Bubbles of Governance: Private Policing and the Law in Canada" (2000) 15 *Canadian Journal of Law and Society* 1 at 184.

The transformation in how policing services are delivered will have serious implications for how Canadians interact with one another in their communities. Throughout the western world, the demand for security has altered the urban landscape. In Canada, we have seen a rise in the number of 'gated communities' – residential communities built behind security fences. Business associations are hiring security companies to patrol public streets in downtown shopping districts. Private security companies regularly patrol low-income housing complexes in Toronto.

The emergence of fortified communities suggests that a gap exists between expectations of security and the services that the public police can provide. They call into question some fundamental assumptions of our society: if residents of a gated community or members of a downtown business association pay for their own policing services rather than relying on the public police, whose law is being enforced? If some businesses and communities pay for their own service, how will they support publicly funded services?

Given this new configuration in citizen safety and security, a discussion of policing in Canada is thus of great contemporary importance. A new policing climate may necessitate changes in the way we organize and govern the institutions and organizations that we rely on for protection – be they public or private. These new strategies of governance will need to reflect changes in the provision of policing services, as well as the changing face of Canadian citizenship and political involvement.

* * *

The purpose of this Discussion Paper is to engage Canadians in discussions about policing by describing the social, historical and legal context in which policing occurs today. It is important to keep in mind that changes to the delivery of policing are not altogether new. We can learn from this history. It can help inform the choices we make today.

This Discussion Paper is comprised of six sections, including this introduction. We begin the next section by exploring transformations that have occurred in policing over the past 30 years. We review some new policing networks and consider the effect of political and economic trends on the ordering of security and safety. In Section III, we provide a brief history of policing.



In Section IV, we provide an overview of the legal and governance framework, examining the state of affairs from a legislative and regulatory perspective. Given the trends that we identified, Section V asks the fundamental question: what should policing be about? In other words, what is the ideal for policing in a democratic society? Finally, we consider the future of policing by examining where we are and where we could be heading.

We hope this discussion will trigger Canadians' participation and interest in developments in policing. We invite your feedback and dialogue.



II Networks of Public and Private Policing

In the downtown core of Canadian cities, uniformed officers patrol the beat, check in with storeowners, respond to calls for help and, generally, maintain order. They are not public police officers, they are private security guards. When an employee is suspected of embezzling funds, the police may suggest the company call in the services of a private forensic accountant. Customs agents in Toronto's Pearson Airport suspect a traveller is using a forged passport. The individual is placed in handcuffs and transported by an officer to a secure facility surrounded by a chain link fence with barbed wire. The officer is a private security officer and the facility is a privately run hotel.

Policing in Canada, and throughout the world, is in the process of changing from a system in which public police forces provided almost all of our policing services, to one in which policing services are provided by a range of public and private agencies. The idea of 'privatization' is a useful concept to begin thinking about changes in the nature of policing, but it is also limiting. It is progressively more difficult to differentiate between public and private: the line between public police and private security has blurred. It is becoming increasingly apparent that the issue may not be simply redrawing the line between what is and what is not a public or private policing responsibility, as if they were two distinct and separate entities.

Complex *networks* of policing that reflect a mix of public and private security providers are emerging. In many urban areas, we are witnessing not simply two-tiered policing but *multi-level* policing: the public police contract out patrol services to private security firms; in some instances, private security firms help fund public police investigations; private police resolve complaints that were once within the exclusive domain of the public police; public police and private security firms co-operate in investigations; and private organizations hire public police to provide security for private functions.

There exists in Canada a regulatory system for monitoring the performance of the public police. The problem, however, is that there is little effective oversight of private security. Suppose, for example, that a private security officer abuses her power during the

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

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



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

P. Stenning, "Powers and Accountability of Private Police," (2000) 8 *European Journal of Criminal Policy and Research* 3 at 328.

course of an arrest. What recourse does an individual have? Suppose that a forensic accountant is overly aggressive in his investigation techniques. To whom does the employee lodge a complaint? Similarly, there are very few guidelines for regulating the relationship between public police and private security officers. To what extent should joint investigations be permitted? Can a private security company fund a police investigation? What if the aggressive investigation by the forensic accountant uncovers evidence of criminal misconduct? Should that evidence be admissible in court?

In this section we explore some key factors that suggest that a transformation in policing is underway in Canada. Throughout this section, we will reflect on a number of issues: Who provides policing services to Canadians? Does it matter if the provider is a public institution or a private body? What types of relationships are developing between public and private security? We first provide an overview of some of the more traditional networks of relationships that have developed between public police and private security agencies. We then consider some of the more innovative arrangements that have developed recently. Finally, we discuss the development of policing networks within the context of other changes that are occurring in Canadian society.

Traditional Security Relationships

There is an overlap between the functions of private security organizations and public police. Similar policing services are offered in one instance by private security guards and in another instance by public police. This is not a reflection of the type of work, or the magnitude of work, that is being performed. For example, the West Edmonton Mall security service employs 50 private security officers – with an average of 60,000 people visiting the centre each day, increasing to 200,000 on Saturdays – the service responds to 40,000 calls each year. The West Edmonton Mall security service engages in more arrests and order maintenance than many suburban or rural Canadian police forces.

The blurring of the relationship between public police and private security in many urban areas is further amplified because some private security agencies look and act like public police. In some cities, private security guards wear uniforms and drive cars that, on first glance, are almost identical to those of the public police.



Police associations have been critical of this tendency, arguing that citizens often think they are dealing with a police officer when a security guard approaches them.

Some private security executives counter that their officers should look like the public police and need handcuffs, body armour, batons and utility belts because, just like public police officers, they are engaged in proactive policing.

Canadians are also concerned when some security firms engage in tactics usually reserved for the public police force. For example, some private security agencies use dogs on patrol, conduct secret surveillance, follow drug dealers and map their behaviours, keep detailed databases on suspects, and even conduct forensic investigations. Moreover, some private security firms engage in practices that go beyond what the public police routinely do. In Vancouver, downtown security officers working on behalf of business improvement districts frequently distribute photographs of individuals caught shoplifting.

One of the reasons we're starting to look more like police officers is because we're doing more work like they do ... The push from private security for blended policing is another reform movement in the history of policing.

R. McLeod, "Is the public interest served when potentially criminal matters are settled privately?" J. Richardson, ed., *Police and Private Security: What the Future Holds* (Ottawa: Canadian Association of Chiefs of Police, 2000) at 155.

"Windsor's other force; They've got dogs, uniforms, power. But who polices the unofficial police?" by Chris Thompson, *Windsor Star*, Saturday, December 2, 2000, A1.

Clad in blue shirts and badges, they roam the city responding to burglar alarms, guarding property, conducting patrols and fighting crime.

The patch on their uniform sleeve features an intricate emblem displaying a beaver, a maple leaf and a crown. Their vehicles bear stripes on the side and banks of flashing lights on the roof.

They're backed by a team of trained dogs.

If you're thinking it's the Windsor Police Service, think again. They won't have a canine unit until next year.

In June the company received Ministry of the Solicitor General approval to employ guard and tracking dogs, the 28th security company in the province to have such a designation.

But Windsor police Chief Glenn Stannard bristles when asked about the rapid growth of private security companies and their encroachment into areas he views as police responsibility, including the use of trained dogs.

"We're going to have a canine patrol and there are lots of rules and regulations," said Stannard. "There is no way private security can use dogs for anything but intimidation. Where do they have the right to intimidate people?"

The issue of trained dogs is just one area Stannard sees as problematic with the private security industry.

"They dress like police, for obvious reasons, they have police-like vehicles, but they are not held to the same high standards as police," Stannard said. "There are very few occupations that have the kind of accountability that police officers have and now we have groups that want to dress and act like police and they can."

The similarity between the uniforms of public police officers and private security officers often leads to confusion on the part of citizens. Often, individuals react to a uniform and fail to appreciate



that the private security officer does not have the same level of authority as a public police officer. Most provinces have regulations that stipulate that private security officers' uniforms and vehicles must be clearly distinguishable from those of the public police. In practice, however, this distinction is not always maintained.

The use of 'pay duty' officers presents another interesting example of the blurring of the relationship between public police and private security. In many municipalities, private clients such as sports clubs, bars and movie companies pay municipal police forces to have police officers provide security for their events. The municipal police force then pays the officer to work at the event. 'Pay duty' policing can be lucrative for police officers. In Vancouver, an officer can make an additional \$15,000 per year by requesting extra duty postings. Some departments, such as the Ottawa Police Service, place caps on the number of hours a day that an officer may work a private site.

The police often conduct a risk assessment and inform the private petitioner of how many police will be required. In Hamilton, for example, if an elementary school holds a dance it is required to have one municipal police officer on duty; for high school dances two officers are required. One sergeant and 11 constables are required to be present at a National Hockey League game at the Corel Centre in Ottawa.

Police must usually dress in full uniform and they retain their peace officer status. Although they may act in the public interest, they also support the private interests of the owner of the premises: they may deny entry to non-paying customers, and arrest people who refuse to comply with the owner's signs such as 'no alcohol beyond this point'. If someone is arrested, denied entry or has force used against them, they may want to sue the agency they perceive to have mistreated them. In this case, however, the agency is the public police. In a sense, taxpayers are subsidizing the insurance and liability costs of securing an event on behalf of a private person or corporation. For some private security executives, this represents unfair competition from the public sector, since private security companies must pay their own insurance costs while the police rely on public funds.



DISCUSSION POINTS

- *Does ‘pay duty’ policing mean that public tax dollars subsidize the costs of securing a private event? If so, is this appropriate?*
- *Is the similarity of weapons and enforcement tools of private security firms and public police misleading? If so, how can it be remedied?*

At the same time as police departments are engaging in ‘pay duty’, private security agencies are being hired to perform some of the functions that the police used to perform. For example, guarding bridges, providing access control at police stations, maintaining court security, and issuing parking tickets have been contracted out to specialized public, private or even quasi-public bodies such as the Corps of Commissionaires. In almost all urban municipalities, private security officers are licensed as municipal by-law enforcement officers and are able to issue tickets on both public and private property. The money raised in fines goes to the municipality. When the federal government disbanded the Ports Canada Police, a number of different policing arrangements were negotiated depending on the site. In some instances, private security was hired while in others the local police were contracted to provide special services.

Emerging Security Relationships

Public police and private security agencies often develop co-operative relationships with one another. Co-operation between the two on many levels contributes to the blurring of the relationship between public and private. The movement of retiring police officers to the private security sector often facilitates co-operation. Many executives that head up private security companies, forensic accounting teams or security consulting firms were former public police officers. The Corps of Commissionaires recruits its employees from the military. This provides the Corps with a well-trained workforce compared to other security companies. These networks of relationships provide a mechanism for the exchange of information between agencies.

Public and private policing officers exchange information about people and events in a particular jurisdiction. Informally, police officers and private security guards often share information about



events in a particular area or about wanted persons. Police officers may make local mall or housing security officers aware of wanted persons and sometimes look through site ‘banning books’ that contain photographs of banned individuals and other personal information. Security officers are thus utilized as extra eyes and ears.

In some cases, police and security firms have formed more formal co-operative associations to meet and discuss topics such as bomb threats, executive protection and burglary investigation. The Edmonton police service and private security firms meet on a regular basis to develop policing strategies for particular areas. In Vancouver, under the auspices of a program called Operation Cooperation, members of the Vancouver Police Department and representatives of private security agencies meet to discuss policing priorities in the downtown core. In Amarillo, Texas, the police and Allstate Security have worked out an agreement. Beginning in August 1981, Allstate has assumed responsibility, citywide, for responding to alarm calls. Within the same period, Amarillo police hired private security officers to patrol the downtown core during peak hours in tandem with the police. Today most clients call Allstate for minor emergencies or prowler calls. Similar initiatives are in place in New York City where a police-security liaison program links police precincts with 30 security organizations in a structured anti-crime effort.

In the area of community policing, there may be opportunities for partnerships between public police and private security firms. A large Toronto security firm has negotiated arrangements with two different landowners of over a dozen building complexes in the Cabbagetown area of the city, allowing security officers to assist their partners at adjacent properties. This unique contractual arrangement benefits the clients because it creates a multi-client, multi-tasked, multi-territorial, co-operatively governed policing service that closely mirrors the municipal police service. A similar arrangement is in place in the Borough of Southwark, England. In that council estate, private security is employed to conduct low-level drug enforcement. The security guards report to 20 local councillors, a local community tenants’ representative, a neighbourhood housing office and community safety co-ordinators.

More controversial is co-operation in the financing of investigations. Should private donations or financial contributions to public police forces be accepted? In some cases – the investigation of Weibo Ludwig described in the text box is one



example – private donations to public police services have been accepted. However, there are some concerns that financial contributions could compromise the integrity of the police. Suppose a major financial institution was interested in making a financial contribution to support a police force’s fraud investigation unit. Does this leave the impression that the financial institution is purchasing police services and preferred access to police resources?

“AEC gave RCMP computers and software: Deployed to track 'persons of interest',”
by Christie Blatchford, *National Post*, February 23, 2000, A1/Front.

EDMONTON - The giant Alberta Energy Co. (AEC) provided the Royal Canadian Mounted Police with a computer, software and technical support in the force's massive undercover operation two years ago against the renegade preacher Wiebo Ludwig.

The stunning revelation – coupled with an admission from an oil company official that a private security firm working for AEC and headed by a former Mountie may also have supplied the RCMP with names of "persons of interest" whose movements the police ought to track – came yesterday at the criminal trial of Mr. Ludwig and his friend Richard Boonstra.

Last week at the judge-alone trial, Mr. Justice Sterling Sanderman heard that the national police force and AEC were working cheek-by-jowl in Project Kabriole, the \$750,000 surveillance operation directed at the 58 year-old head of the Our Shepherd King church, the 54 year-old Mr. Boonstra and their families, and that AEC and other Alberta oil companies had offered to pick up as much of the tab as the force would allow.

But yesterday, with Al Johnston, an AEC project manager in the witness stand, the trial learned that an arm of AEC called AEC West also donated the computer, appropriate software and technical support, to the RCMP detachment at Beaverlodge, the closest RCMP office to Mr. Ludwig's Trickle Creek Farm in the northwestern part of the province.

Security Management Consulting, Mr. Johnston said, is headed by Howard Cox, a former Mountie who retired at the rank of inspector, and is basically staffed by former RCMP members. (...)

A sleepy community organization called the South Peace Crime Prevention Society was chosen as a vehicle – essentially, it seems, as a money-laundering third party – for funds from the oil firms.

With a direct gift of \$25,000 from AEC, the other oil companies, pulp and paper industries and other businesses quickly raised \$188,000, which was in turn funnelled to the Grande Prairie municipality – the biggest town in the north-western oil patch area - and then to local RCMP offices for what was euphemistically called "enhanced policing."

These types of issues are likely to become more and more common throughout the next decade. Police forces are being called upon to provide more services with fewer resources. Private corporations are becoming more security conscious and generally have at their disposal technologically sophisticated and well financed ‘in-house’ or for hire security services. The combination of factors may lead to joint public-private investigations.



In the new municipality of Quinte West, Intelligarde was invited to enter a bid for policing services alongside the Trenton and Ontario Provincial Police. During his presentation, Intelligarde president Ross McLeod held up ... a baton that would replace the aging DOS-driven deister system. Throughout, he used the prop to punctuate his central message: financial and quality control over your local police service. If only five of the six officers assigned to a shift in a given night report for duty, then the municipality will be refunded the cost of the missing officer. Squarely within the dictums of neo-liberal risk eradication, consumers pay for only the immediate surveillance they receive. "Can the public police promise you that?" he asked.

G.S. Rigakos, *The New Parapolice: Risk Markets and Commodified Social Control*. (Toronto: University of Toronto Press, 2002) at 115.

Some police boards have limited the amounts of donations and sponsorships that can be solicited or accepted. Unless specifically authorized, the Ottawa Police Services Board prohibits donations, loans or sponsorships in excess of \$20,000 so as not to "compromise or bring into question police impartiality or objectivity". In addition, no donation can be accepted for the purpose of assisting with criminal investigations and the Service must receive any donation, loan or sponsorship without the donor placing conditions or preferences as to its use.

Some public police forces may lack the capacity to investigate complex fraud cases. In the private sector, there exist forensic accounting firms that have a wealth of expertise in conducting highly sophisticated financial audits. In the future, will governments be more willing to enter into a contract with a private firm to handle all fraud cases on a cost-recovery basis? An analogous situation could exist with respect to investigations of serious violent crimes, such as murder. Currently many small jurisdictions do not have the capacity to handle these types of investigations, so they call in the services of a larger police force. Suppose a private firm assembled a team of highly trained investigators. The municipality could hire the private investigation team on a retainer. When a serious violent incident happens the municipality could bring in the investigation team on a fee-for-service basis.

Finally, public police services now actively compete for both mature and newly emerging markets. In some cases, the public sector must 'win' the contract and charge 100 percent of the costs to the municipality. The *Police Services Act* of Ontario stipulates that a municipality may establish its own police force, enter into an agreement with other municipalities to establish a joint police force, or it may have the Ontario Provincial Police provide policing services. Section 5 of the Act was amended to allow municipal councils to "adopt a different method of providing police services". Some private security executives have argued that this amendment allows them to bid on municipal policing contracts.

Within the next decade, innovative proposals to develop new policing arrangements such as the ones described above will no doubt further blur the line between public and private policing services.



DISCUSSION POINTS

- *Should the public police be allowed to accept private funds to facilitate investigations? In what circumstances?*
- *Are the restrictions on financial contributions to public police forces appropriate?*
- *Is it possible to imagine other ways of controlling donations and financial contributions?*
- *Should private security companies be entitled to bid to offer municipal services? In what circumstances?*

The research evidence suggests that public police in urban Halifax can no longer satisfactorily respond to community and business requests for more patrol presence, policing at public events, minor property and person protection, and complex theft and fraud investigations ... In other words the growing market for private security in Halifax is in part a function of the rationalization of public policing.

C. Murphy and C. Clarke, *Policing Communities and Communities of Policing: A Comparative Case Study of Policing in Two Urban Communities*, (Ottawa: Law Commission of Canada, 2002) at 26.

Security Relationships in Context

It is important to place the transformations that are occurring in policing in the context of broader changes in Canadian society. Similar to the situation in most western nations, fiscal pressures and mounting debt in Canada over the last few decades has led to a reconsideration of the role of government. Whereas governments used to provide a wide assortment of state-run programs, including corrections, policing and education, these initiatives are now being contracted out to the private sector or have simply been taken up by private interests who run parallel institutions.

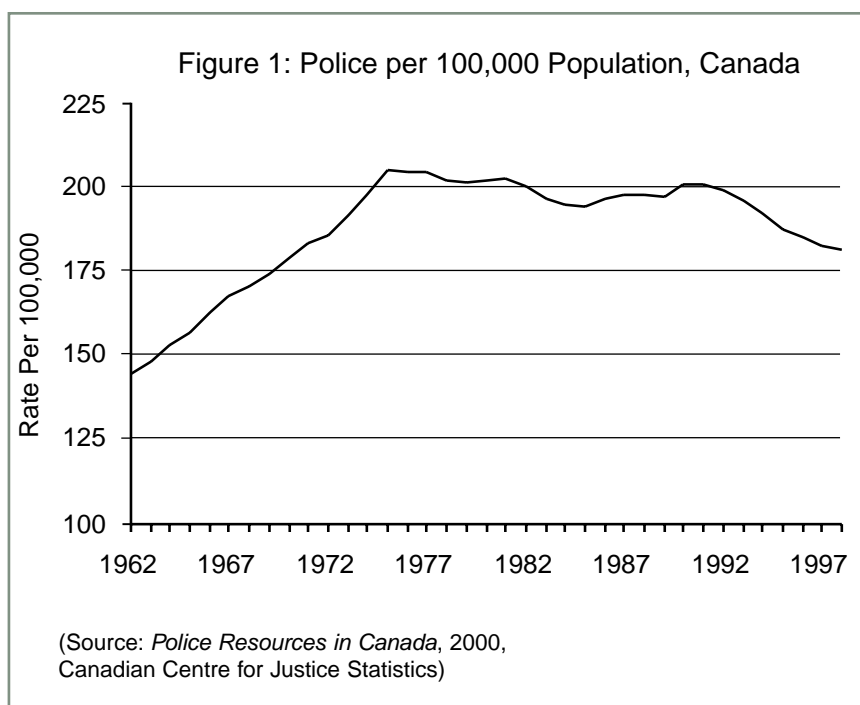
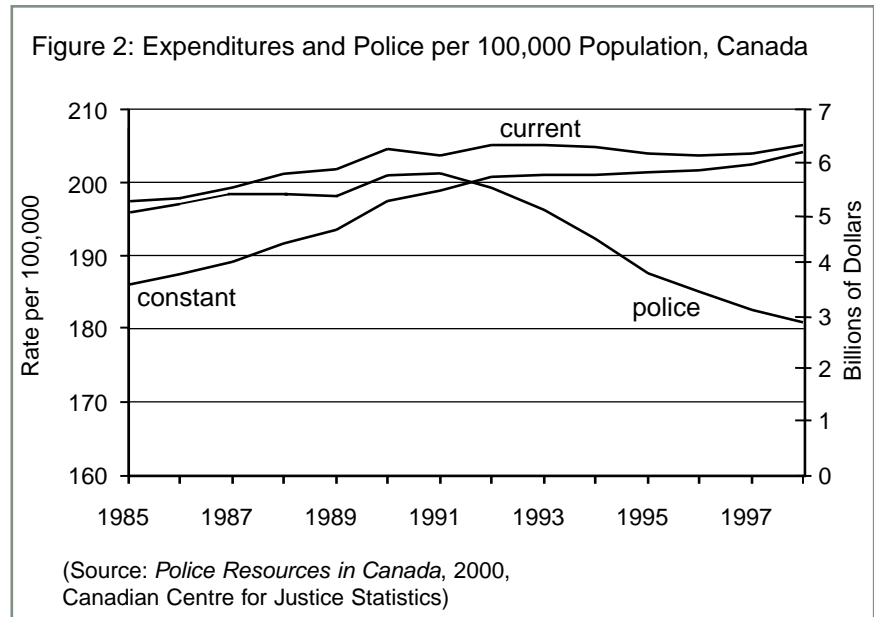




Figure 1 shows the number of sworn police officers in Canada per 100,000 population between 1962 and 1997. Between the early 1960s and the early 1970s, the number of police officers (excluding civilian personnel) increased, peaking at 205 per 100,000 population in 1975. Between 1975 and 1990, the number of police officers per 100,000 population remained relatively constant. Since 1990, the number of police officers per 100,000 population has fallen each year.

In accommodating the development of the private security sector with whatever mixed degrees of caution or enthusiasm, the state is not simply 'saving money'. It is not reducing its commitment to more social control intervention — economically or politically. It is, at one level, acceding to a new (or at least renewed) dimension of capital's assertion of its relative autonomy from the state.

N. South, "Private security, the Division of Policing Labor and the Commercial Compromise of the State" (1984) 6 *Research in Law, Deviance and Social Control* at 190.



During the 1980s and 1990s, most public services in Canada have felt the pinch of tightening budgets. As Figure 2 shows, the amount spent on public police has remained relatively constant since 1990. But, even though police budgets have remained stable, the demands on the police seem to be increasing. In recent years, public police forces have been asked to respond to international and domestic organized crime and computer crime that require highly skilled officers with specialized investigative skills and sophisticated technology. Furthermore, with the shift to community policing, the police have taken on additional social support duties, such as delivering drug awareness programs, working with schools and implementing restorative justice programs.

Faced with these additional pressures, many public police organizations have been forced to rationalize their services. One reason why private security has increased, then, may be in response to the 'expectation gap' – that is, the gap between what people



expect from the police and what the police can deliver. In the United States, this has resulted in a dramatic increase in ‘gated residential communities’ – residential neighbourhoods that are enclosed within a perimeter fence. Private security guards patrol the neighbourhoods and access is controlled through a central gate. Gated communities are a response to perceptions that crime is rising and public police forces cannot adequately protect individuals. The extent to which these perceptions are accurate is debatable. So too is the assumption that living behind a gate will provide protection from crime. Nevertheless, gated communities are now starting to appear in Canada.

We have also seen the rise of ‘mass private property’ – privately owned property that is publicly accessible. Examples include shopping centres, industrial parks, airports, theme parks, stadiums and other entertainment centres. While we often think of these as public spaces, they remain private property. Owners of private property have the right to regulate the terms of conduct on the property, to control access to the property and to remove individuals from the property, with force if necessary. ‘Mass private property’ turns what would otherwise be considered public space, ordinarily policed by public police, into private property governed by private security. A new collage of control and governance allows private corporations to fortify their territories and produce their own private systems for the maintenance of order.

Owners of publicly accessible private complexes take steps to minimize liability. Any business that deals with the public on a regular basis and provides facilities for them to shop, entertain themselves or engage in recreational activities, must safeguard itself against lawsuits. Insurance companies add incentives for private landowners to hire private security or require businesses to install security alarms as a condition of obtaining insurance.

Most recently, business owners are using private security to augment the policing of public space. Business improvement associations in large urban areas have found that some consumers perceive downtown cores to be riskier than the controlled environment of a shopping centre. To provide a more pleasurable experience, some associations have hired private security to patrol public streets. Private security guards move homeless people along, they watch for vandalism, they respond to emergencies and, more generally, they provide a perception of order. So, while large retail shopping centres are turning public space outside in and privatizing

To understand the locus of private security it is necessary to examine the changes that have taken place, particularly since the early 1950s, in the organization of private property and public space. In North America, many public activities now take place within huge, privately owned facilities, which we call ‘mass private property’. Examples include shopping centres with hundreds of individual retail establishments, enormous residential estates with hundreds, if not thousands, of housing units, equally large office, recreational, industrial, and manufacturing complexes, and many university campuses.

C. Shearing and P. Stenning, “Private Security: Implications for Social Control” (1983) 30 *Social Problems* 5 at 496.

We would argue that the growth of mass private property has been one of a number of related developments which has contributed to the rising profile (and absolute size) of the private security sector in many countries. However, we question the degree to which it should be regarded as the key explanation. As we have suggested, although little concrete evidence is available, it appears that such developments have been much stronger in the USA than in Britain ...

T. Jones and T. Newburn, “Urban Change and Policing: Mass Private Property Re-considered,” (1999) 7 *European Journal on Criminal Policy and Research* 2 at 241.



it, merchants on public roadways are extending their storefronts out onto the sidewalk. This often squeezes out public space and brings private and public policing into an immediate functional and operational relationship.

But whose interests do the private security officers reflect? What happens if some business owners or some residents object to how they carry out their patrols? Who ensures that these officers carry out their duties in accordance with the principles of democratic policing?

There have been other dramatic changes in contemporary society that affect policing. The price of technology has dropped considerably, increasing the market for some security products. For example, home security alarm systems are now much more affordable and easier for companies to market to residences and businesses. Similarly, many municipalities can now afford to install closed circuit television systems. In Britain, for example, there are an estimated 2.5 million surveillance cameras in operation and the average Briton is photographed by 300 cameras in a single day. In the future, low-cost, web-based surveillance technologies will further increase the market for security products.

The rapid rise in public and private surveillance has raised serious concerns about privacy issues. Private security firms may be more likely to conduct intrusive surveillance and publish bans against people in a manner not available to the public police. In Toronto, for example, security guards at one firm keep a detailed database of thousands of persons banned from properties. The database includes information on personal belongings, skin complexion, footwear, clothing, eyewear, exact location of banning, and visible markings. This database goes well beyond the limits of what public police are allowed to keep. Moreover, most public police forces are subject to freedom of information acts that govern how personal information is handled, particularly the conditions under which it may be released to the public. Private security companies do not have the same restrictions governing the uses of the data that they collect.

The proliferation of computers and the explosion in information technology has made it easier for institutions and businesses to watch and record the movements and behaviours of clients, workers and outsiders. Keeping files on people is certainly nothing new. What makes things qualitatively different is the ease of interconnectivity and the ability of computers to talk to one another.



The Impact of September 11?

The events of September 11, 2001 will no doubt have an impact on the security landscape in Canada. In the immediate months following the terrorist attacks on New York City and Washington, there were calls for increased security along the Canada-U.S. border, at airports and around critical transportation, energy and financial infrastructures. The Canadian government responded immediately by increasing public police budgets. There has also been an increase in demand for private security services as businesses reassess their security plans in light of the ‘new reality’.

It is too early to tell what the long-term impact of these events will be. In the aftermath of September 11, many have questioned whether governments have relinquished too much of their responsibility for security to the private sector. Much of this discussion focused on security in airports, which prior to September 11 was the responsibility of the airlines, particularly the practice of contracting out baggage and passenger screening to lower-paid, less-skilled private security agents. In response to this concern, governments in Canada and the United States are now assuming a larger role in airport security. In the December 2001 federal budget, Parliament committed \$7.7 billion in support of measures to improve security, including a major program to overhaul security and facilities at Canada-U.S. border points and to increase airport security, including placing armed RCMP ‘sky marshalls’ on domestic and international flights.

That does not necessarily mean that the role of private security is diminishing. Many of the new technologies that governments are implementing in airports are manufactured, installed and operated by private security firms. The net effect of September 11 may be a growth in both public police and private security services and the development of denser and more complex networks of relationships between the two.

While September 11 will remain a landmark day for those interested in security, the development of networks of policing relationships was well underway prior to September 11. Over the past few decades, private security organizations have increased their presence in shopping centres, downtown cores, entertainment districts, businesses and residential communities. The extent to which the events of September 11 affect the development of these policing networks remains to be seen.



* * *

This section examined the policing landscape in Canada. The line between public police forces and private security agencies is blurring. It is increasingly difficult to tell when the public ends and the private begins. There is an increasing functional jigsaw between public and private policing that is not easily amenable to simple solutions to the public/private dichotomy.

The next section provides a brief history of policing in North America, which shows that the types of policing networks that exist today have also existed in the past.



III Policing in an Historical Context

The advent and rise of private policing is no recent phenomenon. We must avoid the pitfalls of assuming that the expansion of private sector security is somehow only characteristic of post-World War II North America. Private policing has a rich history itself. As soon as members of a given community owned sufficient wealth to hire their own guards or pay someone to act as local constable, private policing was possible.

The history of policing is vast and contentious. This section will provide only a brief overview of some key historical moments in policing. The goal of this section is to draw attention to the general origins and interrelationships between public and private policing.

The historical development of policing in Canada is unique compared to that of the United States and many European countries. Since its inception, Canada has always maintained a relatively strong public police force. The private security sector in Canada is relatively less developed than in the United States. Nevertheless, public police and private security have co-existed for centuries.

It would not be accurate to assume that the public police have always been solely responsible for providing security. While it is true that the last few decades have seen a transition to a heavier reliance on the private sector, the balance between public police and private security appears to have always been rather variable. In fact, it may be argued that our presumptions about prescribed roles for the public and private sector are borne out of rather recent experience and do not reflect the long history of policing.

Our policing configuration has been inherited from the British system. Nineteenth century Britain is traditionally associated with the birth of the British public force.

It is often thought that the turning point in the organization of policing for modern western democracies is often considered to be 1830, the year the first metropolitan London police began their patrols. Nevertheless, it would appear that the first organized, uniformed and professional public police had been patrolling the streets of London for some time prior to 1830. Furthermore, perhaps the first public policing service in the British context had been implemented decades earlier in Ireland.

Until fairly recently all the available accounts of the origins and development of policing in Britain operated within a framework of palpably conservative assumptions. The police were seen as an inevitable and unequivocally beneficent institution, a cornerstone of national pride, which had been developed by English pragmatic genius as a response to fiercesome threats to social order and civilised existence.

R. Reiner, *The Politics of the Police*, 2ed.
(Toronto: University of Toronto Press, 1992)
at 12.



There are differing views on the emergence of the first uniformed public police in London in 1830, as well as on the mix of private and public policing that preceded them. Some argue that the move to a centralized public police merely reflected the fact that existing forms were inefficient and ineffective. Others view their emergence as tied to the needs of a new British elite interested in suppressing labour revolts and fortifying their positions of power. For our purposes, we can leave such debates aside for the moment to consider some of the various policing bodies present in the early nineteenth century so that we might better understand the development of policing in contemporary Canada.

On the continent, the French had developed a centralized, professional police along the lines of a military organization long before. The early *maréchaussée*, later to be amalgamated into the Gendarmerie, had been policing France since the early eighteenth century.

In 1720, while Royal Ordinances in France were exhorting the established *maréchaussée* to be more vigilant against vagabonds, beggars, and vagrants (*gens sans aveu*), a French visitor to London is reported to have exclaimed, “Good Lord! How can one expect order among these People, which have not such a word as Police in their Language.”

Police in this context meant far more than the uniformed brethren of the French tourist, it encapsulated all forms of civic order maintenance and good government. Police meant civic codes, street cleaning and even sewer and water maintenance.

Of course, to do a brief survey of policing by including only public agencies misses the point. Private and quasi-public policing organizations had been in existence for some time in the British context long before the first metropolitan police. The Bow Street Runners patrolled the streets inside and around London, under the direction of the Fielding brothers. They relied on both public grants and private for-hire contracts, retainers and rewards. The Fieldings were rather adept at catching thieves and securing the roads. They even set up the first information service in London, reporting criminals and circulating news and descriptions throughout the region.

Another example of a private police force that pre-dates the London service was Patrick Colquhoun’s Thames River Police. Colquhoun had outlined the extent of pilfering taking place on the river and the cost to the merchants who used it. The West India merchants paid four-fifths of the cost of the river police.



The operation was so successful that in July 1800, the *Thames River Police Act* converted the private force into a public police office, with Colquhoun as its superintending magistrate.

Private police also prospered in a different form in various colonial settings. Large state-sanctioned merchant companies used both the imperial armies of their home country and local indigenous ‘police’ to defend their right to extract raw materials for export. Where reliable local colonial government existed, state police were sometimes mobilized to quiet uprisings and reinforce the sovereignty of the imperial power. These tendencies had tragic consequences for many indigenous populations. In other areas, such as in the Basque region of France, local populations refused to join centralized *Gendarmeries* and the government was forced to permit the existence of indigenous policing bodies. In Canada, Aboriginal policing has begun to replace federal and provincial policing in many communities.

Less than a century after the birth of the London police, private security agencies re-asserted themselves as unrest spread throughout the developing industrial world in the late 1800s to early 1900s. State police, and sometimes government-sanctioned private company police, were sworn in to put down labour strikes. In the United States, politicians were often reluctant to sacrifice their electoral strength on behalf of local industrial elites. In fact, local police forces often frustrated the attempts of industrialists to crush walkouts and riots. For example, militia from Pittsburgh refused to act against their fellow citizens during the Great Railroad Strike of 1877. American industrialists increasingly employed private policing bodies such as the Pinkerton Detective Agency to put down strikes with force. Pinkerton became so large and important to company interests that they were the U.S.’s de facto national detective agency before any comprehensive federal investigative organization had been formed.

Unlike in the United States, the private security sector in Canada was slower to develop. The North-West Mounted Police (later the RCMP) initially handled this type of labour unrest. Reliance on private policing was rare. In some instances, local police proved unreliable for putting down unrest, as in some American cities. The Winnipeg police refused to break the General Strike in 1919 and the Mounties were called in. Instead of turning to a private force, the RCMP hastily rounded up and swore in ‘specials’ to



break the strike. Technically, these officers, some former military personnel, were public agents, but their activities and effect were often similar to the private Pinkerton agents in the United States.

* * *

At various times in police history the private sector has re-asserted itself to cope with real or perceived gaps in public security. Today, there is renewed interest in the private sector but we must keep in mind that this hardly means that private policing, itself, is new. It may be argued, depending on the time frame one examines, that what we are witnessing is not the emergence of private policing but rather its re-emergence after 150 years of relative dormancy.

The next section examines the current regulatory environment for policing in Canada. We will consider to what extent the current law reflects the reality of policing in Canada.



IV Governance Framework

Up to now, one way in which the law has shaped the governance of policing has centred around the difference between public police officers and private security agents. In the first part of this section, we give examples of distinctions between public agents of the state and private security agents in statutes and case law. We use examples of two significant policing ‘powers’: the power to arrest and the power to search. We then move on to look at applications of the *Canadian Charter of Rights and Freedoms*. In the last part, we examine the current regulatory framework for private security in contrast to that for public police forces.

The exercise of looking at the regulatory framework does not give a complete picture of governance within both sectors. To fully appreciate how public police forces and private security agencies are governed, one should also look at the ‘culture’ of the organization - at the way in which management tolerates breaches of the rules, implicitly or explicitly, on the one hand, or demands higher standards from employees on the other. Such inquiry will be necessary to provide a more nuanced picture of the needs for reform that we will describe in the next section.

The Power to Arrest

Every citizen in Canada has the legal authority to arrest, without warrant, someone they find committing an indictable (usually more serious) offence or someone who is being chased by someone whom

The *Criminal Code of Canada* reads:

494. (1) Any one may arrest without warrant
- (a) a person whom he finds committing an indictable offence; or
 - (b) a person who, on reasonable grounds, he believes
 - (i) has committed a criminal offence, and
 - (ii) is escaping from and freshly pursued by persons who have lawful authority to arrest that person.
- (2) Any one who is
- (a) the owner or a person in lawful possession of property, or
 - (b) a person authorized by the owner or by a person in lawful possession of property, may arrest without warrant a person whom he finds committing a criminal offence on or in relation to that property.
- (3) Any one other than a peace officer who arrests a person without warrant shall forthwith deliver the person to a peace officer.



they believe has that authority to arrest. Any power afforded to private security personnel simply emanates from the general power all owners have to protect and peacefully enjoy their property.

Therefore, security officers may arrest for summary or minor criminal offences, as long as they find someone committing them on or in relation to the property. For example, if someone causes a disturbance on property guarded by a security officer, the guard may arrest the person, as long as the guard saw the person causing the disturbance.

The primary difference between private citizens' powers to arrest and those afforded public police officers is that police officers may arrest on *reasonable and probable grounds* that an indictable offence has been or will be committed. A private citizen (including a security guard) must actually see an individual committing an indictable offence before an arrest can be made. However, private security guards often arrest people who have not committed an indictable offence, but rather an activity prohibited by an owner or landlord. They do so under the legislative protection given to property rights.

Trespass acts in most provinces allow landowners or their agents to arrest an individual for trespassing. The landowner must then deliver the individual "forthwith" to a peace officer. Individuals found guilty of trespassing can receive a fine. In New Brunswick, for example, an individual may receive a fine of not less than \$25 and not more than \$200 (and imprisonment in default of payment) for a first conviction, and a fine of not less than \$100 and not more than \$1,000 (and imprisonment in default of payment) for each subsequent offence.

Provincial law confers on the owner of property the power to prescribe conditions upon which persons may be allowed to remain on the owner's property. Shopping centres, cinemas, sports complexes and other large 'mass private' places that invite the public to enter often impose conditions. Security guards enforce these conditions on behalf of owners.

It is through the exercise of property rights that owners and their private security representatives arrest people for minor offences such as being disorderly. They also issue notices prohibiting entry under this guise.



“Shopping malls on alert for youth gang trouble,” by Andrew Chung, *Toronto Star*, January 14, 2002, p. B1.

Walk into the Albion Centre's food court after school some day and you'll find a scene typical of any shopping centre: Dozens of teenagers bundled in puffy jackets chatting languidly as they steady straws at their lips.

Malls, which have evolved into playgrounds for socializing, are also attracting a violent element: gangs.

Shopping centres are now fighting back. Malls have taken to developing rules, and in some cases posting them, prohibiting the wearing of gang colours or clothing inside the building, in the hopes of reducing confrontations.

Albion Centre, in north Etobicoke, plainly posts a list of rules at each mall entrance. One rule bans the display of “gang paraphernalia”.

The mall's actions are laudable, police say, since it sits squarely in the middle of an area where gangs have become entrenched, and taken lives.

The recently refurbished Albion Centre already had a gang policy, said Greg Gaudette, operations director for Shoppers World Company, which operates the mall. The mall posted the policy about eight months ago after asking police to enforce less serious, recurring trespass incidents, he said, adding that since it's private property, the mall relies on the Trespass to Property Act “to keep free of troublemakers”.

The Power to Search

Police officers have the right to search and seize property. On occasions, court decisions have allowed private persons and private security to search for weapons or evidence immediately after an arrest. There is no doubt that many people comply with requests for searches irrespective of the legality of such searches. A security officer's uniform and appearance of authority can have a significant impact on eliciting compliance from the public. Individuals may ‘voluntarily’ comply with a request for a search because they think they are dealing with a police officer even if such a request is outside the boundaries of what courts have allowed.

Posted signs and contractual requirements can empower security personnel to conduct searches of persons coming in and out of private sites. For example, a store investigator may stop a shopper after he suspects that the person has stolen goods from a pharmacy he is securing. The suspect in this case does not want to be searched, but the store detective points out that a posted sign – clearly visible at the entranceway to the store – states that persons entering the store consent to having their bags searched. Is this suspected shoplifter really consenting to a search?



Similar latitude is given to private security personnel working in sensitive industries or where workers come into contact with expensive commodities and instruments. Workers sign consent forms as a condition of their employment. Most recently, bar owners have been employing metal detectors and conducting full searches of patrons before entry. Following the events of September 11, searches of people entering sporting facilities have intensified. All of these searches are consensual; one can either consent to the request or be denied entry.

Drawing a principled boundary between private security and public policing is less important than recognizing the boundary as contingent and continually questioning whether rules found on one side could profitably be transported to the other. The most urgent question raised by police privatization may not be whether to treat private security guards as state actors but whether the state has some duty to provide everyone with minimally adequate police protection.

D. Morrison, "The legal status of police and private security" in J. Richardson, ed., *Police and Private Security: What the Future Holds* (Ottawa: Canadian Association of Chiefs of Police, 2000) at 51.

Application of the Charter of Rights and Freedoms

The *Canadian Charter of Rights and Freedoms* does not apply to interactions between private citizens. In relation to policing, a crucial question for the courts is: Is an individual acting privately or as an agent for the state? Private security guards and private investigators are regarded as private agents when they act within the regular boundaries of their jobs. If a private security officer acts for the State, he or she becomes a state agent and hence subject to the prescriptions of the *Charter*. This is called the doctrine of state agency which determines whether the *Charter* applies. The doctrine of state agency is complex. All *arrests* – no matter if they are undertaken by a citizen, a private security officer or a peace officer – are subject to the *Charter*.

This means that the person making the arrest must inform the individual of the reasons for the arrest, and his or her right to counsel.

However, the courts have ruled that the *Charter* does not apply to *detentions* of a private citizen by another private citizen. That means the *Charter* does not apply when, for example a private security officer detains an employee of a company and questions the employee about some missing funds while working on behalf of a private client. A private citizen does not become an agent of the state until he or she contacts, or acts under the direction or supervision of, an agent of the state.

In addition, not all searches by private investigators are subject to the *Charter*, depending on the context in which they were made. When the search is made for a private purpose, such as a civil law suit, the *Charter* does not apply.



There is no doubt that the doctrine of state agency will become more difficult to apply as the networks of public and private agents continue to co-operate in delivering policing. As illustrated in the previous chapter, the conflation between public and private policing has become profound. The state agency doctrine – or the distinction made between private agents acting for an employer and public police acting on behalf of the state – may prove unworkable as we continue to witness the overlap between public and private security. As public and private police co-operation becomes more and more routine, legislators and the judiciary will need to take this into account. Can and should we rely on notions of state agency in examining the conduct of private security personnel today?

Regulation of Security Personnel

Public policing in Canada is regulated by provincial police acts that set standards for employment, and mechanisms for oversight and training. Other provincial statutes also regulate private investigators and security guards. In general, private security and investigation personnel in Canada must undergo a basic criminal background check. In all provinces except New Brunswick a criminal record, in itself, does not deny a person licensing if a security company wishes to make a case for an employee. Only British Columbia sets minimum training standards.

Provincial statutes regulate contract private security, but do not affect ‘in-house’ or proprietary security, ranging from ushers to forensic accountants. For example, large shopping centres, manufacturers, and even bar and club owners employ their own security staff rather than contract with security firms. These security personnel are not required to carry a license. There are however prohibitions against the use of the word ‘police’ on uniforms and vehicles or in any representation of the company or guard.

In addition, the use of enforcement tools by private security agents is controlled. Provincial regulations allow for the carrying of firearms by security guards in cases where they are guarding precious metals, goods or cash. However, armed security guards are only allowed to discharge their firearms in cases of self-defence or to prevent death or serious injury to another person. Provincial regulations may permit the use of batons in certain sites approved by a provincial registrar and/or the local police. There is a sharp



contrast between the way in which public police and private security are regulated in Canada. The effectiveness of the regulatory framework for private security agents must be reviewed.

* * *

In this section, we have reviewed the powers to arrest and search of both private security agents and public police officers. As public and private policing continue to overlap, the current regulatory framework will be insufficient. In particular, the centrality of the distinction between public and private will need to be reviewed to better reflect the network of relationships that takes place in the delivery of policing activities.



V Security and Policing in a Democratic Society

In the previous sections, we illustrated how the delivery of policing is changing in Canada. Policing services are more and more being delivered through networks of private and public actors. We also reflected on how the current legal framework, premised on a distinction between public and private, may no longer reflect the reality of policing in Canada.

In this section, we consider the values and principles that should support policing in a democratic society. We suggest that four principles – justice, equality, accountability and efficiency – must be reflected in policing and analyse how these four principles are currently incorporated in the governance of policing.

Justice

Justice is a central feature of democratic society. Doing justice means that individuals ought to be treated fairly and that decisions about their lives should not be based on narrow instrumental concerns but rather appeal to greater universal freedoms. In other words, the principle of justice presupposes that policing is carried out in a manner that guarantees the peace of the community and the integrity and humanity of the individual.

Should the same principles of justice we employ for the public police apply to private security? Take the example of persons detained or arrested. All citizens, regardless of the circumstances of their arrest, have basic constitutional rights: the right to be informed of the reason for the arrest, the right to a lawyer, and the right to remain silent.

The *Charter* has also been interpreted to impose additional requirements on the police. These requirements clarify basic constitutional safeguards, as follows: the person arrested must be (1) informed of the availability of legal aid; and (2) given a reasonable opportunity to contact and speak with counsel – this means that an accused must also have private access to a telephone. The police also have a duty (3) to cease questioning or refrain from obtaining more evidence from the arrestee until a right to counsel has been exercised; and (4) they must tell the person arrested that he/she has a right to choose another lawyer if the first counsel is unavailable in a reasonable amount of time.

In a society in which the collective responsibilities are taken seriously, the failure of public organizations and agencies to provide basic security would be the basis for a legitimacy crisis. But when individuals confront the social environment as consumers rather than citizens, the purchase of security represents a far more reliable and profitable choice. It is perhaps the ultimate irony that this choice, despite its short-run virtues, continues to undermine the possibilities for equality and community — two of the most important ingredients in any society which is to be both ‘social’ and ‘secure.’

S. Spitzer, “Security and Control in Capitalist Societies: The Fetishism of Security and the Secret Thereof,” in J. Lowman, R. Menzies and T.S. Palys, eds., *Transcarceration: Essays in the Sociology of Social Control*, (Brookfield, Vt.: Gower, 1987) at 58.



Public police officers and private security personnel are also subject to different standards when they detain an individual. In some cases, private investigators may not be subject to the obligations of informing the accused of his or her right to retain and instruct counsel under section 10(b) of the *Charter*. When working for a private employer, a private investigator may not be subject to the same standards as a public police officer.

The question that must be asked is whether there should continue to be such distinctions? This question becomes more pressing when one considers the expansive public access spaces like shopping centres and massive corporate and commercial office complexes that large private security firms now police, and the number of arrests they routinely make.

The principle of justice also requires some measure of parity between the crime and the punishment. In the context of public police, charges laid are dealt with by the justice system that aims at ensuring that people are not improperly punished for things that they did not do, or punished too harshly for small offences. In the private security context, security guards often exercise powers, such as banning someone from a property, that may or may not be deserved. There is no appeal for such a ‘penalty’, even though it may have serious consequences for people. An Ontario Commission of Inquiry in 1987 explored the practice of some security companies to target young (usually black) teens and ban them from city shopping centres largely without explanation.

DISCUSSION POINTS

- *What does justice mean in the context of private security agents? What are our expectations of justice? What are the best mechanisms to ensure that policing is done in accordance with values of fairness and justice?*
- *Should private security personnel be held up to the standards of peace officers when making detentions, arrests, searches and in other practices that effect the liberty of an individual?*
- *Should private security guards have the power to ban people from entry into private property? Does it matter whether the property is a large public-access space or a condominium? How do we ensure that private security guards act fairly and in a non-discriminatory fashion?*



Equality

Equality is another important value of democratic policing. We will focus on two aspects of equality. First, there must be equality of service and, second, policing must be inclusive of all members of society. Equality of service means that all Canadians should receive policing services sufficient to feel safe and secure in their daily lives. It has been speculated that one of the reasons for the growth in private security services is the rationalization of the services the public police provide. In addition, new demands have been created by, for example, the rise of ‘mass private’ spaces like shopping centres and amusement parks. This has led to a gap between what the public expects in the way of policing and what they actually receive. In response to this expectation gap, some segments of society turn to private policing to fill the void.

Are there limits to relying on the market to fill the expectation gap? Some individuals and businesses may not have the resources to purchase private security, resulting in a lower standard of policing than their neighbours receive. The question of access to security raises difficult issues. First, to what extent is the public police able to provide adequate service to all Canadians? Second, can private security agencies provide adequate service to the communities that they police? We might ask how we could re-imagine policing in Canada so that all Canadians receive equal service regardless of the agency that provides the services.

The police should be representative of the community it is meant to safeguard. Tensions can rise when disadvantaged populations feel unjustly targeted by police (or the justice system). This is an important point because the relationship between citizens and police must take place in a climate of trust. When there is acrimony and discriminatory practices, trust is broken and effective policing cannot occur. A representative and inclusive police service is one solution that has been advocated to maintain trust between a population and its police.

Inclusiveness is a central focus of community-based policing. Community-based policing is premised on the notion that policing ought to be a community endeavour. The shift towards community-based policing has led many public police administrators to reassess their human resources practices to keep pace with the changing face of Canadian society. The private sector has been adept at inclusiveness. The few studies that have been done on private and public security employment show that women and

... this research has established that, in a sample of 326 respondents divided into enclavers [those living in closed communities] and non-enclavers, those who reside in enclaves have a lower level of civic concern than non-enclavers. When controlling for the effects of gender, income, age, education, and career (arts/business) it was found that the absence of residential enclaveness is strongly and consistently associated with higher civic concern.

J. Bayne and D.M. Freeman, *The Effect of Residence in Enclaves on Civic Concern: An Initial Exploration*, (1999) 32 *The Social Science Journal* 4 at 419.

The guard and investigation sector provides some important opportunities for women to get counterstereotypical work ... Women get their largest number of most gender-atypical jobs in investigation, but this is in part to be unobtrusive, so their innovative work is largely hidden.

B. Erickson, P. Albanese and S. Drakulic, “Gender on a Jagged Edge: The Security Industry, Its Clients, and the Reproduction and Revision of Gender” (2000) 27 *Work and Occupations* 3 at 309.

Community Policing rests on the belief that only by working together will people and the police be able to improve the quality of life in the community, with the police not only as enforcers, but also advisors, facilitators, and supporters of new community-based, police-supervised initiatives.

R. Trojanowicz and B. Bucqueroux, *Community Policing: A Contemporary Perspective*. (Cincinnati: Anderson, 1990) at 3.



members of visible minority groups are more likely to find jobs in private security organizations than in public policing. It may be, however, that this inclusiveness reflects broader labour market patterns whereby women and visible minorities are over-represented in lower-paying service sector occupations.

One of the problems facing inclusiveness and community-based policing is the fundamental question: representation of what community? Should the community be the local neighbourhood, police divisional boundary, municipality, province or the entire country? Should community be based on territory at all?

The problems associated with defining community, as well as the dangers associated with having police that are not representative of the community, are illustrated by the experience of Aboriginal peoples. Higher rates of insecurity have long plagued Aboriginal communities. Aboriginal peoples also have disproportionately high arrest rates.

It was the recognition that conventional policing approaches were inconsistent with Aboriginal communities and not representative of community values that prompted the formation of the first Band Constable program in 1969. Subsequently, a number of programs aimed at increasing the eligibility of Aboriginal peoples for police service have been developed. More recently, the federal government has established a policy on First Nations policing that enables Aboriginal people to develop self-designed policing solutions.

DISCUSSION POINTS

- *To what extent do the public police provide equal service to all Canadians? Can private security agencies provide equal service to the communities that it polices?*
- *How might we re-imagine policing in Canada so that all Canadians receive equal service regardless of the agency that provides the service?*
- *How can we better achieve the value of inclusiveness and equality in community policing?*

Accountability

Accountability is central to democratic policing. The principle of accountability means that the actions of the public police, as an institution and as individuals, are subject to review. Moreover, the principle of accountability means that there are formal channels that individuals can use to lodge complaints against the police.



The public police are accountable on several levels. They are politically accountable since elected officials appoint the chiefs of public policing services. The court system also examines the conduct of officers to ensure that they acted within their legal mandate. For example, the courts may refuse to admit certain evidence in a criminal proceeding if the investigation techniques violated the *Charter*. In addition, there are administrative accountability mechanisms that may be internal to the police service (Internal Affairs) or external (Special Investigation Units or Police Commissions). Provincial police complaints commissions are independent civilian agencies that monitor and review public complaints against police forces and provide another accountable mechanism. Finally, at times, citizens take a direct role in police oversight or in seeking redress. This type of accountability is the idea behind community-based policing and experiments with civilian advisory panels.

The effectiveness of accountability measures for the public police is a contentious issue. Some argue that police officers are treated poorly by an unfair and inefficient system of oversight. On the other hand, many citizens' groups maintain that accountability measures may exist but that in practice the measures are ineffective. They claim that police forces resist oversight and that these bodies lack broad-based community representation. Moreover, some argue that mechanisms of police oversight vary across the country; therefore, it would be inaccurate to claim that all public police forces are subject to the same level of oversight.

The oversight of public police has been given much attention by lawmakers and analysts. Much less attention has been paid to the private sector.

Some argue that private security officers are much less accountable for their actions than are public police, especially since private security agencies do not have the equivalent of a public complaints process. Most provincial private security and investigators acts focus on regulating security firms as a business. They stipulate, for example, that security firms must have a licence and they must be insured. These statutes do not, however, establish independent oversight mechanisms that can be used to hold private security officers accountable for their actions. As security companies expand their services into areas that were previously the exclusive domain of the public police, critics have argued that security firms operate in the interest of their clients and not in the interests of the communities they police. Without effective external oversight, the safety of the public may be compromised.

... private police are accountable in a variety of ways which differ from those in which the public police are held accountable, but which may be no less effective in influencing and preventing or reducing abuses. The unfortunate reality, however, is that we have little reliable systematic evidence about the effectiveness of these various accountability mechanisms either for the public police or for private policing.

P. Stenning, "Powers and Accountability of Private Police," (2000) 8 *European Journal on Criminal Policy and Research* 3 at 345.



Some private security executives, however, claim that the market and existing regulatory structures make them far more accountable than the public police. They are subject to i) criminal liability; ii) industry self-regulation; iii) labour legislation; iv) contractual liability; and v) accountability through the marketplace.

Certainly, private security guards can be charged with assault if they use force in carrying out their duties. Criminal charges have been laid against private security guards and are a deterrent to abuse of power. However, because victims must lay a complaint, is criminal liability a sufficient accountability measure? Some individuals may be reluctant to inform police that they have been abused, while others may not lay a complaint because of the cost, time and uncertainty involved in doing so.

There are also concerns that the industry is not well equipped to self-regulate. The private security industry in Canada lacks a professional organization that can develop minimum standards of conduct for workers. Self-regulation has never been seen as sufficient in the case of public policing because of the vulnerability of potential victims to abuse of power; should we expect self-regulation to be sufficient in the case of the private security industry?

Labour legislation and contractual liability are two other mechanisms of accountability. Labour legislation that regulates private security agencies ensures that workers have proper conditions of employment. While useful in this respect, labour legislation does not protect potential victims from abuses of power. Similarly, contractual liability creates a relationship between a security agency and a client. Clients may or may not choose to incorporate standards of conduct within contracts and thus ensure a certain amount of compliance with principles of justice and fairness.

Finally, the market may not provide effective accountability; a private security company that loses a contract may continue its poor performance with its other clients. Accountability through the marketplace works best in a context where information is available to make the appropriate choices and the right incentives are being supported by the market.

Accountability in the context of both the private and the public delivery of policing raises significant issues. The question is not only whether private and public policing bodies are accountable, but to whom. Accountability mechanisms for policing – whether carried out by the public police or by private security agencies – may not be as responsive to local communities as they ought to be.



Moreover, existing methods of accountability do not reflect the reality that policing is no longer solely provided by the public police. 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.

DISCUSSION POINTS

- *To what extent are the marketplace, civil liability, and pressure from unions and consumers sufficient methods of holding private security agencies accountable?*
- *To whom are public police and private security accountable? Do these mechanisms adequately reflect the reality of policing in Canada?*

Efficiency

A final principle to be considered is efficiency. Policing services must be cost-effective. Perhaps a policing service could be designed that would attend to all the security needs of Canadians. This may require, however, a massive investment in human resources, technology and administration. But if the costs of providing policing services are disproportionate to the benefits received, then the service's overall efficiency is called into question. Certainly, striving for efficiency must be balanced by the values of justice and equality.

DISCUSSION POINTS

- *Are there other principles that should be reflected in democratic policing?*
- *Can we achieve a consensus on such principles?*
- *How can we balance the different values and principles?*

* * *



In this section, we reflected on key principles of policing in a democratic society. Policing must be carried out in a fair and just manner, it must be accountable to its citizenry and it must reflect the value of equality both in the delivery of service and its hiring practices. Policing must also be done efficiently. To carry out these values and develop governance mechanisms that best reflect them will be the challenge. In the next section we explore some options for the future of police governance.



VI Governing Policing in the Future

Given that, in Canada, at least two-thirds of security takes place under the rubric of the private sector, the question becomes: Should private security be scrutinized and held up to the same standards as public policing? Or, because of its ‘private’ nature, is private security exempt from discussions of public good? To what extent should the provision of security be regulated? Are current regulatory mechanisms sufficient? Does the private security sector have sufficient powers to fulfil its role? Do they have too many powers? These concerns form the foundation of our need to examine both public policing and private security within the scope of democratic policing.

Debates about regulating public and private policing are marked by diametrically opposed viewpoints. On the one hand, a state-expansionist position focuses on the reassertion of the public side of policing through a strategic re-investment in government spending and increased regulation of the private sector. The assumption here is that the growth of private security in Canada has taken place primarily due to shortfalls in public spending on policing.

On the other hand, a state-retrenchment position focuses on the continued retreat of the public side of policing through divestment of authority and jurisdiction to the private sector. From this perspective, the growth of the private sector has taken place because consumers demand it and because the state may have failed to offer a suitable sense of security to its citizens. The position here is that government should not stifle the free market by imposing regulations and by monopolizing legal designations for the public sector alone. Proponents of this position claim that it is perfectly reasonable to allow for-profit companies the powers of regular or special constables.

Neither of these two scenarios is likely to materialize, nor do they offer much help in reflecting on how to improve the governance of policing. Both a vision that foresees massive re-investment in public policing to the point where the number of public police officers approaches or surpasses the number of private security employees, and a vision that predicts a radical divestment of governmental authority and peace powers to the private sector, seem equally implausible.

Good governance of security cannot be reduced to the imposition or re-imposition of state authority over policing for the simple reason that ‘the state’ ... is becoming a fiction ... What needs to be explored in the future is how, in a market economy, governmental mechanisms can be put in place which ensure that public interests are protected in security networks composed, in part, of commercial elements.

L. Johnston, “Private Policing in Context,” (1999) 7 *European Journal on Criminal Policy and Research* 2 at 192-93.



The current regulatory environment does not adequately reflect the reality of networks of public and private policing in Canada. There are a number of competing choices to respond to the challenges. Should legislation attempt to shore up the distinction between public police and private security? For example, policy makers could attempt to set out what actions private security agencies and personnel can and cannot perform. They could also attempt to regulate the new networks of security that have developed. Should we develop policing policy to encompass the activities of both the public sector and the private sector, and one that can manage the relationship between these two service providers?

This section will review the future of police governance. We begin by considering the ‘professionalization’ of the private security industry. We then move on to discuss a number of different schemes for the future governance of policing.

Professionalization of the Private Security Industry

Many have recommended the ‘professionalization’ of the security industry as a way to better guarantee the delivery of policing in accordance with democratic values. Such professionalization could take many forms: for instance, it could require the development of representative organizational structures, the enactment and enforcement of minimum standards, and the creation of oversight mechanisms.

Organizational Structures

At present, there is no national organization that can reasonably claim to represent the interests of a significant portion of the industry. There are cleavages between those segments of the industry that employ contract security and those that employ ‘in-house’ security. There are few industry-wide standards for training and education of industry members. Indeed, there is very little data about the size of the industry itself – the number of people it employs, the number of establishments in Canada and the amount of revenue it generates.



There are many good reasons why the industry lacks coordination. First, the industry itself is diverse and regroup different occupational groups, forensic accountants as well as security guards or armoured car drivers. Second, the corporate structure of the industry likely militates against developing a unified voice. The industry is dominated by a handful of large, multinational corporations engaged in all aspects of private security. These companies employ tens of thousands of employees worldwide, including in Canada. At the other end, there are hundreds of smaller establishments operating in specialized areas in Canada, with only a few employees. Third, the industry is highly competitive. Small business owners may not wish to share proprietary information with their competitors for fear of losing their competitive advantage.

Such fragmentation is not uncommon in other business sectors but, in the security industry, it can have serious consequences. Lack of communication, a reluctance to co-operate on joint initiatives, and often a race to the lowest possible bid in tender processes creates risks for the delivery of effective and democratic policing.

Government can play a role in the professionalization of the industry. For example, there is little statistical data about the private security industry. Even rudimentary descriptive information on the number of establishments and the number of employees, or basic economic information on revenue and expenditures, are difficult to find. Government agencies have an interest in reliable data about the industry. For example, the current size of the industry as well as its projected growth over the next decade would suggest that federal and provincial human resource and economic development policy would benefit from improved data.

DISCUSSION POINTS

- *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?*
- *To what extent would the collection of systematic data about the private security industry assist the industry in developing a professional orientation?*

The Canadian Police Association ... believes that regulation, standards, and training for the private security industry must be strengthened. We advocate this on behalf of the public to ensure good quality private security *in its current role* ... unless you are prepared to abrogate a portion of public responsibility to private interests, we do not recommend increasing the responsibilities and authority of private security personnel. If you want responsible policing, leave it to the police.

G. Obst, "The Perspective of the General-Duty Police Officer" in Jane Richardson, ed., *Police and Private Security: What the Future Holds* (Ottawa: Canadian Association of Chiefs of Police, 2000) at 82.



Minimum Standards for Training

A second component of professionalization of the private security industry is the development of minimum standards for training. Most proponents of reform seem to agree that, whatever else is done to reform the governance of policing in the future, minimum training standards can only improve the quality of private security services. The reason is obvious: in a highly competitive market, the quickest way to extract profit is to operate with little or no overhead. It is an all too common occurrence in the private security industry to hire applicants one day and have them in uniform and on patrol the next with no training whatsoever except a cursory introduction to a site's standing orders.

Training costs money. Government may be able to diminish this race to the least qualified by imposing tender processes that do not routinely go to the lowest bidder. Some provinces have minimum training standards for security personnel. However, the large 'in-house' security industry remains completely unregulated – criminal record checks are not required and there are no training standards. Some security firms may be completing criminal record checks and maintaining and enforcing minimal standards, but it is unclear whether this practice is applied throughout the entire industry.

The industry must not only encourage minimum standards for training, it must also encourage life-long learning. This approach will keep people in the industry longer, help prevent frequent staff turnover and might change the orientation of workers from seeking 'jobs' to seeking 'careers'. At the same time, basic managerial courses and accreditation (in some cases already provided by security associations) could be professionally recognized by statute.

Given the new reality of networks of public and private policing, we might envision a change from the police colleges to *policing* colleges. These colleges could be jointly funded public and private sector professional training facilities that provide basic and continuing education for all policing personnel. The development of a policing college would assist in the professionalization of the industry. It would ensure that both public and private security executives have access to state-of-the-art training and education facilities.



DISCUSSION POINTS

- *How can the industry be encouraged to develop industry-wide standards?*
- *Should standards be applicable to both contract security and 'in-house' security?*
- *Would the development of a policing college improve policing services in Canada?*

Oversight

Closely associated with minimum standards and the licensing of all security workers is the contentious issue of oversight. Democratic policing must include a process by which those being policed can seek redress and have a voice in the organization of their local security needs. One of the major criticisms of the private security sector has been that it does not have a system of public oversight. Critics have argued that, as security companies expand their services into areas that were previously the exclusive domain of the public police, they operate in the interest of their clients and are uninterested in and unaccountable to the people they police.

DISCUSSION POINTS

- *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?*

New Regulatory Models

Professionalization of the private security industry is a good start in the process of providing a framework for the future governance of policing in Canada. The discussion so far has focused on the private security industry. But, if we accept the assumption that policing includes all activities undertaken by both the public police and private security agencies, then should we not look to broader forms of regulation that encompass the policing sector as a whole?

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.

I. Blair, "Where do the Police Fit into Policing?" Speech to the ACPO Conference, July 16, 1998 at 3.



Chief Ian Blair, formerly of the Surrey Police, United Kingdom, has proposed a form of regulation that would place the private security industry under the watch of the public police. He argues that, because police services can no longer provide the level of visible patrol that citizens demand, the police should look to regulate and monitor the private security patrols that have stepped in to fill the void. He reasoned that, since the police in the United Kingdom have all but surrendered their role in routine patrol to the private sector, the public police would be better off using the private security personnel already on patrol as additional eyes and ears.

Private security companies and personnel who co-operate would have to meet minimum standards and then have their vehicles stamped as ‘Surrey Police Compliant’. The area constable would have direct radio contact to these vehicles and act as a general community safety co-ordinator and peace officer. According to Blair, this solution would respond to the expectations of citizens without having to place highly trained and well-paid professional police on routine patrol.

Another option is to move to ‘*policing* boards’ rather than ‘*police* boards’ to organize and regulate public security. The 1998 Independent Commission on Policing for Northern Ireland put forward the idea that a policing board would regulate both the public police and private security agencies. The Policing Board would not only have the power to appoint, dismiss and provide oversight to chiefs of police and senior public police officers, it would also act as a hub for fostering co-operation between the public police and a host of other agencies, including private security agencies, that could help in protecting public safety and preventing crime. The intent would be to create partnerships with other governmental and non-governmental agencies that have important roles in maintaining public peace and security, under one general umbrella.

At the core of the policing board framework is the notion that safety and security are public concerns that must be managed co-operatively through partnerships. The framework may include:

- civilian oversight power to review both public police and private security misconduct; and
- a budget to be spent on the best mix of public/private policing for a particular area.



DISCUSSION POINTS

- *Should public police forces have the responsibility for regulating private security agencies?*
- *Are policing boards a realistic option for regulating policing in Canada? What should be their mandate?*

Any proposal to regulate investigation and security services in Canada must take into account Canada's commitments under the North American Free Trade Agreement and the General Agreement on Trade in Services. These commitments prohibit measures that would discriminate against and among foreign services and service providers. Canada is committed to granting foreign investigation and security services providers treatment no less favourable than that accorded to similar domestic services. However, these commitments do not prevent Canada from taking restrictive measures related to professional qualifications and requirements, as long as they are implemented in a reasonable, objective and impartial manner, that is no more restrictive to trade than necessary.

* * *

This section reviewed a number of options for the future of police governance and explored some of their implications. However, any number of governance arrangements is possible. It is critical that the public have input into the design of structures that are responsive, accountable and democratic. We encourage your participation.



VII Conclusion

We began this document by making a distinction between the police as an institution and policing as an activity. The public police engage in policing activities but so do a range of other agencies. Our review of the history of policing showed that public police forces and private security agencies have co-existed in the past. What is novel about contemporary policing, however, is that we appear to have reached a turning point. The growth in the absolute number of private security workers and the expansion of private security into all areas of policing suggests that we are entering a new era of policing.

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. This raises a number of key challenges for reforming the law concerning public police and private security.

1. Is it realistic to think of policing only in terms of public police forces given that networks of actors, both public and private, provide policing in Canada?
2. To what extent does the private security industry require professional standards of conduct? Are there sufficient channels of communication between public police forces and private security agencies?
3. Courts may need to re-evaluate whether the public/private distinctions that have animated current applications of the *Charter* continue to make sense.
4. Governments may need to assess whether the current regulatory framework for the governance of policing in Canada adequately reflects the reality of how policing services are delivered and the challenges that it raises.

The new vision of policing is one in which police organizations are willing and able to adapt to their ever-changing environments ... Police organizations in the future will pursue excellence much like private organizations. They will no longer be stagnant and assume that funding will be stable or constantly increasing and that the public will remain passive ... policing agencies will be competitive organizations. If not the trend toward increasing privatization will continue.

A. Normandeau and B. Leighton, *A Vision for the Future of Policing in Canada: Police Challenge 2000*. (Ottawa: Solicitor General Canada, 1990) at 138.



5. What are the best governance mechanisms to ensure that policing is delivered in accordance with the democratic values of justice, equality, accountability and efficiency?
6. Should police service boards and governments look at creative ways of regulating the relationship between public police and private security agencies?

Canadians must continue to reflect on the exponential growth in the demand and need for security. What are our expectations of security? What factors shape these expectations? What are the best ways of providing security and safety? These are questions that concern all Canadians: they are matters at the very heart of our democracy.

This Discussion Paper was designed to raise questions and stimulate debate. It is the first step in the process of reflecting on what policing should be in a democratic society. We need public input and awareness about these issues. The Law Commission invites you to forward any comments you may have about how governments should develop policing policies.



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